

Memorandum 2002-14

Statutes Made Obsolete by Trial Court Restructuring (Comments on Tentative Recommendation): General Issues

The Commission has circulated for comment its Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (November 2001). The Commission has also sponsored introduction of legislation — ACA 15 (Wayne) and SB 1316 (Senate Committee on Judiciary) — that replicates the tentative recommendation, for the purpose of obtaining wider review of the material.

The comment deadline on the tentative recommendation was February 15, 2002. To date, we have received the following written comments on the tentative recommendation, as well as other less formal comments:

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Our objective at the March 2002 meeting is to review comments we have received on the tentative recommendation and make decisions as to any changes that appear necessary in order to adopt a final recommendation on the matter. Once the Commission has finalized its recommendation, we will have ACA 15 and SB 1316 amended accordingly and start them through the legislative process.

In the interest of making the volume of material more manageable, we have divided our analysis into three parts. This memorandum analyzes comments

addressed to general issues in the tentative recommendation. Memorandum 2002-17 analyzes comments addressed to individual issues in the tentative recommendation. Memorandum 2002-18 presents a draft of sections that it will be necessary for us to reenact because we wish to preserve the sections but are proposing to repeal the chapters or articles in which those sections are located. It may be necessary to supplement these memorandums if we receive additional comments before the meeting.

In the analysis of comments received, we do not generally mention sections as to which the only comment received is approval of our tentative recommendation on the point.

GENERAL COMMENT

We have found, in the process of working through the statutes made obsolete by trial court restructuring, that there are substantial areas of disagreement among stakeholders as to disposition of the statutes. The general attitude of the staff is that, at this phase of the project, if the parties need more time to work out an accommodation, we should give them more time, rather than trying to force the issue. The statutes need to be cleaned up, but leaving them on the books for another year will not be the end of the world.

With a little more time and work, many of the sensitive issues can be readily resolved. Those which are not readily resolved can be isolated and dealt with directly on the merits during the coming year, with the objective of a substantial cleanup of problem statutes next legislative session.

To that end, this session's legislation would remove the January 1, 2002, deadline for the Commission to report on this matter, signaling our intention to remain actively involved to completion. See Gov't Code § 72674 (Law Revision Commission study). Any material removed from the current recommendation should receive priority on the Commission's agenda for resolution by next session.

In the tentative recommendation, the Commission flagged many provisions as deserving careful consideration. Our objective was to obtain input on the points from interested and knowledgeable persons. The comments we have received address only a fraction of the provisions in question, undoubtedly due to the size of the proposal and the magnitude of the task involved in reviewing it. In each case, the Commission will need to decide whether to proceed with the

proposed revision, or to delay it until the revision is more thoroughly considered.

SESSIONS AND FACILITIES

General Issues

Provisions dealing with court facilities and sessions are not ripe for complete disposition. There are complex use, maintenance, and funding issues affecting facilities, as well as political issues relating to sessions. The Commission has deferred further work on these statutes pending legislative action on the recommendations made by the Task Force on Court Facilities, and completion of negotiations among the interested parties. Meanwhile, we have solicited comment on the provisions in anticipation of further work during the coming year.

The Los Angeles County Superior Court (Exhibit p. 48) advocates in favor of broad session authority for superior courts. The court suggests that sessions be authorized in any public building within the county, or at other locations ordered by the court. “At times, the court may need to hold session at non-court facility.” Exhibit p. 56. Although this concept may be considered, and even adopted, by the interested parties and the Legislature, **it is premature for the Commission to make such proposals** at this time. The Commission should consider sessions and facilities issues comprehensively during the coming year.

Some of the facilities and sessions statutes fall within larger municipal court articles being repealed in their entirety. **This will require us to reenact the articles in minimal form** (including the first section of the article that defines the court or judicial district) to maintain these statutes until they can be adequately and properly disposed of. For a draft of the reenacted provisions, see Memorandum 2002-18.

Gov’t Code § 69595.5. Concurrent Daily Sessions

The San Diego Superior Court supports the proposed revisions to Government Code Section 69595.5. Exhibit p. 15. Subdivision (b) was added at the request of the Court:

Gov’t Code § 69595.5 (amended). Concurrent daily sessions

SEC. ____ . Section 69595.5 of the Government Code is amended to read:

69595.5. (a) Notwithstanding the provisions of Article 5 (commencing with Section 69740) of Chapter 5 of Title 8, in the County of San Diego, one or more judges of the superior court shall hold concurrent daily sessions in the City of Vista, two or more judges of the superior court shall hold concurrent daily sessions in the City of El Cajon, and one judge of the superior court shall hold concurrent daily sessions within the former South Bay Municipal Court District.

(b) For purposes of this section, the portion of the City of San Diego lying south of the City of Chula Vista and the portion of the City of San Diego lying within San Diego Bay south of a westerly continuation of the northern boundary of National City to the point of intersection with the eastern boundary of the City of Coronado are part of the former South Bay Municipal Court District.

Comment. Subdivision (a) of Section 69595.5 is amended to reflect unification of the municipal and superior courts in San Diego County pursuant to Article VI, Section 5(e), of the California Constitution, effective December 1, 1998. *Cf.* Section 71042.5 (preservation of judicial districts for purposes of publication).

Subdivision (b) continues former Section 71040.6, omitting the reference to the San Diego Municipal Court District. For provisions relating to restatements and continuations of existing law, see Section 2. For disposition of the provisions of former Section 71040.6 that are not continued, see the Comment to former Article 2 (commencing with former Section 71040).

Subdivision (b) continues the description of the former South Bay Municipal Court District, which is currently found in Government Code Section 71040.6. The Court was concerned that if Section 71040.6 were repealed (as the staff draft proposed), there would be no statutory reference to the boundaries of the District for purposes of Section 69595.5.

Government Code Section 74740 is now proposed for retention as the first section of a preserved municipal court article. According to the Court Executive Officer, Section 74740 defines the boundaries of the South Bay Municipal Court District more accurately than does Section 71040.6 (for a draft of reenacted Section 74740, see Memorandum 2002-18). In light of this development, **the staff suggests deleting subdivision (b)** from proposed Section 69595.5 and adding a cross-reference to Section 74740 in the Comment. Provided Section 74740 is preserved, the Court Executive Officer has no objection to this approach.

Revised Section 69595.5 would now read:

Gov't Code § 69595.5 (amended). Concurrent daily sessions

SEC. ____ . Section 69595.5 of the Government Code is amended to read:

69595.5. Notwithstanding the provisions of Article 5 (commencing with Section 69740) of Chapter 5 of Title 8, in the County of San Diego, one or more judges of the superior court shall hold concurrent daily sessions in the City of Vista, two or more judges of the superior court shall hold concurrent daily sessions in the City of El Cajon, and one judge of the superior court shall hold concurrent daily sessions within the former South Bay Municipal Court District.

Comment. Section 69595.5 is amended to reflect unification of the municipal and superior courts in San Diego County pursuant to Article VI, Section 5(e), of the California Constitution, effective December 1, 1998. *Cf.* Section 71042.5 (preservation of judicial districts for purpose of publication). The boundaries of the former South Bay Municipal Court District are described in Section 74740.

LOCAL VENUE

A number of sections raise issues relating to local venue (i.e., venue within a county). These statutes provide for venue in a local judicial district, but local judicial districts no longer exist as a consequence of unification. The tentative recommendation solicits comment on the proper treatment of these provisions. The tentative recommendation also explains that the Administrative Office of the Courts (“AOC”) has organized a Joint Working Group on Sub-County Venue Issues, which is studying the area.

The Working Group has developed a proposal to address some but not all of the local venue issues. Various Judicial Council committees are studying this proposal; Commission staff have briefly reviewed it as well. It is unclear whether legislation will be introduced this year, or not until later.

The Los Angeles Superior Court has also suggested an approach to these provisions, using language similar to that in Code of Civil Procedure Section 198.5(b), which calls for a local superior court rule subdividing a county for purposes of jury selection under specified circumstances. Exhibit pp. 45-47 (Bus. & Prof. Code § 17511.12, Civ. Code §§ 798.61, 2984.4), 49 (Code Civ. Proc. §§ 392-395); see also Exhibit pp. 46 (Civ. Code § 798.61), 50 (Code Civ. Proc. § 396a). The staff will refer these comments to the Working Group for consideration.

Because the issues require further study, it is premature to finalize a recommendation on the sections that raise local venue issues. Comments from

the Contra Costa Superior Court underscore the complexity of the issues. Exhibit p. 18. **The Commission should therefore remove the following provisions** from the recommendation and bill:

Bus. & Prof. Code § 17511.12. Bond of telephonic seller

Civ. Code § 798.61. Abandoned mobilehomes

Civ. Code § 1780. Action for unlawful method, act, or practice

Civ. Code § 1812.10. Action on contract or installment account

Civ. Code § 2984.4. Action on contract or purchase order

Code Civ. Proc. § 392. Venue in real property actions

Code Civ. Proc. § 393. Venue in actions for statutory penalty or forfeiture and against public officers

Code Civ. Proc. § 395. Venue in actions generally

Code Civ. Proc. § 396a. Statement of jurisdictional facts

Code Civ. Proc. § 402.5. Change of venue in limited civil case

Educ. Code § 48295. Jurisdiction

Fish & Game Code § 12150. Shooting another person while hunting

Fish & Game Code § 12151. Shooting domestic animal

Harb. & Nav. Code § 664. Arrest procedures

Harb. & Nav. Code § 667. Place of trial

Health & Safety Code § 117070. Violation of rule or regulation of public agency

Health & Safety Code § 117120. Violation of rule or regulation of governmental agency

Lab. Code § 6436. Criminal complaint for failure to check for asbestos materials

Penal Code § 1034. Change of venue in criminal action pending in municipal court

Penal Code § 1035. Change of venue and consent to venue

Penal Code § 1038. Judicial Council rules for change of venue in criminal actions

Penal Code § 1039. Change of venue in misdemeanor or infraction case

Penal Code § 1462.2. Place of misdemeanor trial

Pub. Res. Code § 5560. Violation of ordinance, rule, or regulation of regional park district, regional park and open-space district, or regional open-space district

Water Code § 310. Proper court

CONCURRENT JURISDICTION

A number of sections can (but need not necessarily) be construed to confer concurrent jurisdiction on the municipal and superior courts. Instead of proposing revisions of these sections, the tentative recommendation sets forth the text of the pertinent provisions, and explains that further study is required to determine how to amend the sections so as to provide appropriate guidance regarding jurisdictional classification, if necessary. The tentative recommendation also solicits comment on the proper treatment of the provisions.

The Los Angeles Superior Court has commented on most of these provisions, suggesting a variety of approaches, depending on the context. Exhibit pp. 45 (Bus. & Prof. Code §§ 6412.1, 6455, 12606, 12606.2), 51-52 (Code Civ. Proc. § 688.010; Food & Agric. Code § 25564), 58 (Health & Safety Code §§ 108580, 110375, 111880, 111895). These proposals need to be studied and appropriate language drafted and circulated for comment before proposing legislation.

Notably, the Contra Costa Superior Court recognizes that “simply dropping municipal court from the statute” may be an inadequate solution to these provisions. Exhibit p. 17. But the court urges the Commission to clean up the provisions soon. “Municipal courts no longer exist, and it seems confusing to leave language in the statutes that suggests they do.” *Id.*

The Commission should therefore **analyze the following provisions as soon as time permits**, but should not include them in the recommendation or bill:

Bus. & Prof. Code § 6412.1. Remedies

Bus. & Prof. Code § 6455. Violations

Bus. & Prof. Code § 12606. Deceptive packaging

Bus. & Prof. Code § 12606.2. Misleading food containers

Code Civ. Proc. § 688.010. Jurisdictional requirements

Food & Agric. Code § 25564. Destruction of perishable noncomplying lot of poultry meat

Food & Agric. Code § 29733. Failure to recondition or remark honey

Food & Agric. Code § 43039. Destruction of perishable noncomplying lot of fruits, nuts, or vegetables

Food & Agric. Code § 59289. Petition to divert or destroy lot for noncompliance with marketing order or agreement

Gov't Code § 12965. Accusation or civil action for unlawful employment practice

Gov't Code § 12980. Complaint, accusation, and civil action for housing discrimination

Health & Safety Code § 108580. Condemnation proceedings

Health & Safety Code § 110375. Deceptive packaging

Health & Safety Code § 111880. Condemnation proceedings

Health & Safety Code § 111895. Condemnation or destruction of food, drug, device, or cosmetic

COURT FEES v. COUNTY TREASURY

Even though county funding of trial courts has been replaced by court funding, we are not attempting at this point to clean up statutes that still provide that specified court fees go to the county. That is because the matter is still under negotiation between the courts and counties, and a resolution has not yet been worked out.

A number of the provisions in the tentative recommendation that we are cleaning up in other respects also include court fee provisions. In each case we have appended a note to the effect that the matter is being examined by a Joint Court-County Working Group on Trial Court Funding, and soliciting comment on the proper treatment of the fee provision.

The Working Group has now issued a report to the Joint Legislative Budget Committee on Trial Court Funding, identifying problem statutes that require further work. They are continuing negotiations over disposition of those provisions.

The Contra Costa County Superior Court argues that, regardless whether fees continue to be deposited in the county treasury, they should ultimately be retained for the benefit of the court where they have been generated by court operations. "Fees should follow function. Clarification of language concerning retention of fees is helpful." Exhibit p. 8.

We have received a request from the AOC and from the California State Association of Counties that we defer making even the technical corrections we have proposed to those sections. They are concerned that it will complicate an already complex task to have several bills dealing with the same sections in different ways. They commit to amending into their bill the technical revisions we propose. If for some reason they are unable to come to an agreement during the session on how to deal with these provisions, they would agree that we should add the technical revisions back into our bill before final passage.

The sections at issue are:

Bus. & Prof. Code § 470.3. Fee for filing first paper in civil action

Bus. & Prof. Code § 6321. Filing fee

Bus. & Prof. Code § 6322. First appearance fee

Code Civ. Proc. § 1161.2. Case court records

Gov't Code § 26832. Marriage dissolution record

Gov't Code § 26835. Authentication of documents

Gov't Code § 26859. Fees for dissolution and other petition

Gov't Code § 71386. Acceptance of checks and money orders

Penal Code § 1463.22. Moneys deposited with county

Veh. Code § 14607.6. Vehicle driven by unlicensed driver

Veh. Code § 27360. Child passenger restraint system for children under six years old or under 60 pounds

Veh. Code § 40230. Judicial review of decision on parking violation

Veh. Code § 40508.6. Administrative assessments

While most of the changes to these sections proposed by the Commission are technical, at least two of them go to the heart of the question at issue, and therefore Commission action on these is premature. **The staff has no problem with holding all of these provisions in abeyance** while the interested parties attempt to achieve a resolution of the underlying substantive issues.

It is interesting to note that the Commission has identified two dozen statutes in the tentative recommendation that we believe relate to court-generated fees and costs and the deposit of fees into the county treasury. Of these, only two (Gov't Code § 71386 and Penal Code § 1463.22) are on the Working Group's list. It is our intention to proceed with cleanup of the provisions we have identified, other than sections that are on the Working Group's list or that present some other problem identified elsewhere in this memorandum or in Memorandum 2002-17.

COURT CLERKS

Many provisions of the tentative recommendation replace references to the county clerk with references to the court clerk. This reflects elimination of the county clerk's ex officio function as clerk of the superior court.

The tentative recommendation inquired whether the county clerk still continues to function as court clerk in any county and, if so, whether we should

provide for reimbursement to the county for its costs. The Los Angeles County Superior Court responds “no” to both questions. Exhibit pp. 56, 57. Assuming this is correct, no further action by the Commission is necessary on this point.

We have received a general comment from the Contra Costa County Superior Court to the effect that some provisions refer to the “clerk” or “clerk of the court,” others to the “clerk of the superior court”. They suggest it’s helpful to have consistency as much as possible. Exhibit p. 18.

The staff agrees with that suggestion as a general principle. However, each section must be looked at in context. In most cases, a simple reference to the “clerk of the court” is sufficient and clear in the context of the particular section. However, in some cases a more specific reference must be made to the “clerk of the superior court” because there is no other context, and a simple reference to the clerk of “the court” would be meaningless.

While the staff does not guarantee that every usage in the tentative recommendation is absolutely consistent with this principle, we believe nearly all are. If it is demonstrated that a specific usage could cause confusion, we certainly should clarify that provision. For example, the Los Angeles County Superior Court points out that the reference to the clerk in Code of Civil Procedure Section 1609 (commencement of proceeding by Attorney General) would be clearer if it were to the “clerk of the superior court.” **We would adopt this change to Section 1609.** However, **we would not follow the Contra Costa court’s suggestion** that we make all references either one way or the other.

Questions concerning the tentative recommendation to change county clerk to court clerk in specific sections are addressed individually in Memorandum 2002-17.

COURT ORDER FOR RETURN OF DEPOSIT

A number of sections permit a court to order return of a deposit under certain circumstances, but do not specify a procedure for seeking such an order. Bus. & Prof. Code §§ 6405, 22391, 22455; Civ. Code §§ 1789.24, 1812.105, 1812.503, 1812.510, 1812.515, 1812.525, 1812.600; Lab. Code § 1701.10; Veh. Code §§ 11102.1, 11203, 11301.5, 11710.2. The tentative recommendation proposes to amend these provisions to reflect unification of the municipal and superior courts. The tentative recommendation also solicited comment on whether the provisions should be further amended to provide guidance regarding the procedure for

seeking a court order requiring return of a deposit, particularly with regard to jurisdictional classification.

The Contra Costa County Superior Court reports that requests for return of a deposit “occur regularly in the form of complaint or petition.” Exhibit p. 18. “Clerks are trained to recognize them as such and handle them accordingly.” *Id.* Hence, “clarifying language is not essential, but it wouldn’t hurt to have it.” *Id.*

The Los Angeles County Superior Court has commented on most of the provisions. In general, the court states that it would be helpful to specify the procedure for seeking a court order requiring return of a deposit. For example, with regard to Business and Professions Code Section 6405, the court says:

There is a need to specify that the petitioner needs to petition the court for an order to return the bond. A declaration should be included when petitioning the court to order the return of the bond. The declaration would include a statement that there is no legal action pending, or no judgment entered against the petitioner.

Exhibit p. 44. The court incorporates these comments by reference with regard to several other provisions. Exhibit p. 45-47 (Bus. & Prof. Code §§ 22391, 22455; Civ. Code §§ 1812.105, 1812.503, 1812.510, 1812.515, 1812.525, 1812.600); see also Exhibit p. 59 (Labor Code § 1701.10) (“Procedures for seeking order would be helpful”). In one instance, however, the court incorporates its comments regarding Business and Professions Code Section 6405, but also states:

Upon filing of a petition and notice of hearing for calendaring purposes, the Court may make an order to disburse funds. Adding procedure to set the matter before the court will probably not be that helpful/necessary.

Exhibit p. 47 (Civ. Code § 1789.24).

From these comments, there appears to be some interest in providing guidance on the procedure for seeking return of a deposit. The comments do not focus on the issue of jurisdictional classification, however, which is the matter most germane to the instant study. Further, the need for guidance does not seem to be urgent.

The staff therefore recommends that the Commission **proceed with the amendments proposed in the tentative recommendation, but also consider doing further work regarding the procedure for seeking return of a deposit.** It might be appropriate to examine this matter in the Commission’s ongoing study on civil procedure technical corrections.

COMPENSATION OF OFFICIAL REPORTER

Superior Court Compensation Statutes

The California Court Reporters Association and the Los Angeles Court Reporters Association suggest repeal of existing code sections that provide for court reporters' salaries, per diems, and benefits, with the following saving clause:

69947. (a) As used in this section:

(1) "Compensation" includes, but is not limited to, salary, benefits, privileges, fees, and allowances.

(2) "Court operations" has the meaning defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996.

(3) "Official reporter" includes official reporter pro tempore.

(b) The official reporter shall receive the following compensation:

(1) For reporting services, the compensation determined pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), or, if the reporter is not a trial court employee within the meaning of that act, the compensation determined by agreement between the court and the reporter. In no event shall the compensation of the official reporter be less than the compensation provided by law on December 31, 2002, for duties of the reporter that constitute court operations.

(2) For transcription services, the fees prescribed in this article.

(c) If the duties for which the official reporter receives compensation from the court include services to the county that do not constitute court operations, including but not limited to services for the county board of supervisors, board of equalization, coroner, or grand jury, the county shall reimburse the court for a pro rata share of the compensation.

See Exhibit pp. 1, 6. This is consistent with the staff's initial proposal on the matter.

The Commission decided at the February 2002 meeting, however, that the statutes relating to compensation of official reporters in superior courts should be removed from the Commission's recommendation and from the bill implementing it. The purpose of the removal is to allow the Commission and interested parties to continue to work on the matter. The staff will schedule another working group session on it, if we can get assurance from the

stakeholders that they are interested in achieving resolution of this matter and will be represented at the session by persons authorized to negotiate and bind them to an agreement. We will report back to the Commission concerning progress on this matter.

Meanwhile, **the following provisions should be removed** from the recommendation and bill:

Gov't Code § 68114.8. Official reporters in San Bernardino County

Gov't Code § 69893.7. Court personnel in Yolo County

Gov't Code § 69894.6. Official reporters in Los Angeles County

Gov't Code § 69903. Court officers and employees in Alameda County

Gov't Code § 69947. Compensation of official reporter

Gov't Code § 69948. Compensation in contested cases

Gov't Code § 69948.5. Compensation in Modoc County

Gov't Code § 69949. Fee for reporting default

Gov't Code § 69950. Transcription fee

Gov't Code § 69953.5. Daily transcript requiring more than one reporter

Gov't Code § 69956. Stenographic or clerical assistance by reporter

Gov't Code §§ 69990-69991. Official reporters in Monterey, Santa Barbara, and Stanislaus Counties

Gov't Code §§ 69992-69992.2. Official reporters in Santa Clara County

Gov't Code § 69993. Official reporters in San Joaquin County

Gov't Code §§ 69994-69994.9. Official reporters in Sacramento County

Gov't Code §§ 69995-69999. Official reporters and fees in Ventura County

Gov't Code § 70000. Official reporters in Calaveras County

Gov't Code §§ 70010-70017. Official reporters in Orange County

Gov't Code § 70025. Official reporters in Riverside County

Gov't Code §§ 70040-70064. Official reporters and fees in particular counties

Gov't Code §§ 70100-70104. Alternative provisions for official reporters in Alameda County

Gov't Code §§ 70110-70113. Official reporters in Tulare County

Gov't Code §§ 70125-70128. Official reporters in Humboldt County

Gov't Code §§ 70130-70134. Official reporters in Marin County

Gov't Code §§ 70136-70139. Official reporters in Santa Cruz County

Penal Code § 938.3. Payment of reporter

Comments of the California Court Reporters Association and the Los Angeles County Court Reporters Association addressed to details of these provisions (see, e.g., their remarks concerning Gov't Code §§ 69950 and 69953.5 and Penal Code § 938.3, at Exhibit pp. 4, 5, 8, and 9) should be considered as part of the working group process. Similar treatment should be given comments of the Contra Costa Superior Court at Exhibit p. 23, addressed to Gov't Code § 68073(f). See discussion in Memorandum 2002-17.

Municipal Court Compensation Statutes

At the February meeting the Commission decided to temporarily suspend repeal of the Fresno County municipal court compensation statute (Gov't Code § 73691) at the request of the Fresno County Superior Court. Since then, the court has removed its objection to the repeal. **The staff recommends that the Commission proceed with the repeal as proposed in the tentative recommendation.**

Los Angeles Reporters' Salary Fund

Several sections of the statutes applicable to the Los Angeles Judicial District relate to a Reporters' Salary Fund. These are identified for repeal in the tentative recommendation because they fall within a municipal court article (and chapter). However, representatives of the Los Angeles Superior Court have informed the staff that the Reporters' Salary Fund is not obsolete and is, in fact, in use in the superior court. See also the comments of the California Court Reporters Association and the Los Angeles County Court Reporters Association supporting retention of these provisions. Exhibit pp. 5, 9.

Working with the interested parties, the staff has developed revisions to these sections that delete truly obsolete provisions while retaining those relevant to the Reporters' Salary Fund:

Gov't Code § 72709 (amended). Payment of official reporters' salaries and benefits

SEC. ____ . Section 72709 of the Government Code is amended to read:

~~72709. Each official reporter in the municipal court appointed pursuant to Section 72194 shall be an attache of the court. In lieu of any other compensation provided by law for his services in reporting testimony and proceedings in the court, each official~~

~~reporter shall receive a monthly salary in the same sum as is paid official court reporters of the Superior Court of the County of Los Angeles; provided, that if the amount of such salary is fixed under a step plan of compensation based upon tenure of service, the provisions of Section 72705(c) shall apply in fixing the respective salary step placements for official court reporters of the municipal court and any period of appointment as official court reporters pro tempore of the court shall be included as service under this section. In no event shall the salary of an official municipal court reporter exceed the highest salary paid to an official court reporter of the Superior Court of Los Angeles County, and in no event shall any one adjustment in the rate of the salary exceed eight schedule numbers of the salary schedule. The salaries and benefits of official court reporters shall be paid from the reporters' salary fund.~~

~~The judges of the court may provide employee benefits to official court reporters which are comparable to those provided official reporters in the superior court pursuant to Section 69894.3. In addition, on and after January 1, 1980, the judges may make one adjustment to the sick leave benefits of official court reporters to a reasonable amount in proportion to the sick leave benefits that other county employees have received. Such benefits shall be charged to the reporter's salary fund.~~

Comment. Section 72709 is amended to reflect unification of the municipal and superior courts in Los Angeles County pursuant to Article VI, Section 5(e), of the California Constitution, effective January 22, 2000.

The section is also amended to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71615(c)(1) (preservation of employees' job classifications), 71620 (trial court personnel), 71623 (salaries), 71624 (retirement plans), 71625 (accrued leave benefits), 71628 (deferred compensation plan benefits), 71629 (trial court employment benefits not affected), 71673 (authority of court). See also Sections 69941 (appointment of official reporters), 69947 (compensation of official reporter).

Gov't Code § 72710 (amended). Payment of fees and benefits of official reporters pro tempore

SEC. ____ . Section 72710 of the Government Code is amended to read:

~~72710. The judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary, but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official~~

~~reporters pro tempore shall in all cases receive the same per diem fee paid official court reporters pro tempore of the Superior Court of Los Angeles County which upon the On order of the court, the per diem fees and benefits of official reporters pro tempore shall be paid from the reporters' salary fund. The judges of the court may provide benefits to official reporters pro tempore comparable to those afforded other county employees who are employed on a daily basis. Such benefits shall be charged to the reporter's salary fund.~~

Comment. Section 72710 is amended to reflect unification of the municipal and superior courts in Los Angeles County pursuant to Article VI, Section 5(e), of the California Constitution, effective January 22, 2000.

The section is also amended to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71623 (salaries), 71624 (retirement plans), 71625 (accrued leave benefits), 71628 (deferred compensation plan benefits), 71629 (trial court employment benefits not affected), 71673 (authority of court). See also Sections 69941 (appointment of official reporters), 69947 (compensation of official reporter). The compensation of official reporters pro tempore who are not court employees (including temporary employees hired through agencies and individuals hired by the trial court pursuant to an independent contractor agreement) is subject to the terms of their appointment.

Gov't Code § 72711 (amended). Reporting and transcription fees

SEC. ____ . Section 72711 of the Government Code is amended to read:

~~72711. The per diem fees specified in this article, or if not so specified, otherwise Fees for reporting services payable by law by the parties to proceedings in the court to official reporters or official reporters pro tempore shall be paid to the clerk of the court, who shall deposit them in the reporters' salary fund.~~

Fees for transcription of testimony and proceedings in the court shall be paid by the parties to official reporters and official reporters pro tempore as otherwise provided by law, and in all cases where by law the court may direct the payment of transcription fees out of the county treasury Trial Court Operations Fund, such the fee upon order of the court, shall be paid from the reporters' salary fund, except fees for transcription of testimony and proceedings in felony cases, which shall be paid from the county treasury Trial Court Operations Fund.

Comment. Section 72711 is amended to reflect the repeal of Article 3 (commencing with former Section 72700). See Section 68086 (fees for reporting services).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). See also Section 69952 (payment from Trial Court Operations Fund).

Gov’t Code § 72711.5 (amended). Electronic or stenographic recording

SEC. ____ . Section 72711.5 of the Government Code is amended to read:

72711.5. The per-diem reporting and transcription fees payable pursuant to Section 72711 shall also be payable in the same sums and in the same manner by the parties to proceedings in the court for electronically recording an action or proceeding pursuant to Section 72194.5 or for transcriptions of testimony and proceedings in the court stenographically recorded. ~~Such~~ The fees shall be paid to the clerk of the court, who shall deposit them in the reporters’ salary fund. In any case where by law the court may direct the payment of a transcription fee out of the ~~county treasury~~ Trial Court Operations Fund, upon order of the court the fee for transcription of testimony and proceedings in the court electronically recorded shall be paid from the reporters’ salary fund, except fees for transcription of testimony and proceedings in felony cases, which shall be paid from the ~~county treasury~~ Trial Court Operations Fund.

Comment. Section 72711.5 is amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). See also Section 69952 (payment from Trial Court Operations Fund).

Gov’t Code § 72712 (amended). Reporters’ salary fund

SEC. ____ . Section 72712 of the Government Code is amended to read:

72712. There shall be set aside from the revenue of the court a revolving fund in the amount of seven hundred fifty thousand dollars (\$750,000). The fund shall be known as the Reporters’ Salary Fund.

At the time of each monthly distribution of the revenue of the court to the cities within the ~~judicial district~~ former Los Angeles Judicial District and to the county within which the ~~court is district~~ was established, the clerk of the court shall deduct proportionately

from their respective total shares such sum as will, when added to the sum then remaining in the fund, equal seven hundred fifty thousand dollars (\$750,000) and deposit it in the fund. Such sum shall include the cost incurred pursuant to Section 72194.5 from electronic recording devices, appurtenant equipment, supplies, recordings and transcriptions produced from electronic recording of testimony and proceedings in the court.

Deductions from the county's share of the revenue shall be made from that portion of it distributable to the salary general fund of the county, and deductions from each city's share shall be made from that portion of it distributable to the general fund of each city.

For the purposes of this section the "revenue" of the court includes all fines, forfeitures, and fees accruing to the cities or the county in misdemeanor cases, except law library fees.

Comment. Section 72712 is amended to reflect unification of the municipal and superior courts in Los Angeles County pursuant to Article VI, Section 5(e), of the California Constitution, effective January 22, 2000. See Code Civ. Proc. § 38 (judicial district).

The section is also amended to replace a reference to the "salary fund of the county" with a reference to the "general fund of the county" to reflect enactment of the Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77200 (state funding of trial court operations).

Gov't Code § 72713 (amended). Reporters' salary fund deficiency

SEC. ____ . Section 72713 of the Government Code is amended to read:

72713. If at any time the reporters' salary fund is insufficient, upon order of the court, the amount of the deficiency shall be paid from the ~~general fund of the county~~ Trial Court Operations Fund.

The county treasurer shall be the depository, and the county auditor the disbursing agent, for the reporters' salary fund.

Comment. Section 72713 is amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations).

Because Sections 72709 to 72713 fall within a municipal court article that is being repealed, the sections will need to be reenacted. We have received no comments objecting to the proposed revisions. **The staff recommends that Sections 72709 to 72713, as revised, be preserved in the final recommendation and in SB 1316.** A draft appears in Memorandum 2002-18.

CASES IN WHICH COURT REPORTER IS REQUIRED

The tentative recommendation includes provisions consolidating the superior court and municipal statutes governing cases in which a court reporter is required. The Commission has now issued a separate recommendation on the matter, and a separate bill has been introduced dealing with it. See Cal. L. Revision Comm'n, *Cases in Which Court Reporter is Required* (Nov. 2001); SB 1371 (Morrow). For this reason, **these provisions should be removed** from the trial court restructuring recommendation and from the bill implementing it. The provisions to be removed are:

Code Civ. Proc. § 269. Reporting of cases

Code Civ. Proc. § 271. Computer-readable transcripts

Code Civ. Proc. § 274c. Reporting of limited civil cases and misdemeanor and infraction cases

Gov't Code § 69950. Transcription fee

Gov't Code § 72197. Duties on assignment to municipal court

Penal Code § 190.9. Record in death penalty cases

Penal Code § 1539. Report of hearing

Any comments that are addressed to these provisions, we will analyze in a separate memorandum concerning SB 1371.

COURT INTERPRETERS

The tentative recommendation does not address the employment status of court interpreters. The stakeholders (including the courts, interpreters, interpreter associations, and the Judicial Council) are currently debating whether court interpreters should become employees of the courts or Judicial Council or remain primarily independent contractors.

The tentative recommendation does note that we will seek to consolidate court interpreter statutes in an appropriate place in the code, and that proposed revisions would be circulated separately. See, e.g., Notes to Gov't Code §§ 73075-73096.1, 73695, 73699.6.

The staff has circulated separately to interested parties a draft of possible revisions to statutes concerning appointment and payment of interpreters. These proposals do not appear in the tentative recommendation, with the exception of Government Code Section 26806:

Gov't Code § 26806 (amended). Foreign language interpreters

SEC. ____ . Section 26806 of the Government Code is amended to read:

26806. (a) In counties having a population of 900,000 or over, the county clerk may employ as many foreign language interpreters as may be necessary ~~to interpret in criminal cases in the superior and municipal courts, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal action or proceeding or for recordation in the county recorder's office.~~

(b) ~~The county clerk, as clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.~~

(c) ~~The county clerk may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.~~

(d) ~~The interpreters so employed shall, when assigned to do so by the county clerk, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars (\$3) per folio for the first folio or part thereof, and two cents (\$0.02) for each word thereafter. For preparing a carbon copy of such translation made at the time of preparing the original, the fee shall be twelve cents (\$0.12) per folio or any part thereof. All such fees shall be deposited in the county treasury.~~

Comment. The provisions of Section 26806 relating to foreign language interpretation in court proceedings are superseded by [Not Yet Drafted].

Note: Comment Requested. We anticipate relocating court interpreter provisions to Title 8 of the Government Code and integrating them with trial court employment and trial court funding provisions. This material is not yet drafted, and will be circulated for comment separately.

The Commission is reviewing whether county treasury provisions remain viable, given the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). These matters are also

being examined by a Joint Court-County Working Group on Trial Court Funding. The Commission solicits comment on the proper treatment of Government Code Section 26806.

Feedback from courts, interpreters organizations, and the AOC indicates that it would be premature to attempt to deal with this matter in the final recommendation and bill. See, e.g., Exhibit pp. 22 (Contra Costa County Superior Court), 25-26 (AOC).

In light of comments from stakeholders to the staff indicating that there is a lack of consensus with regard to the court interpreter statutes, **we recommend that Government Code Section 26806 be removed from the proposed legislation** and that further action on the matter be deferred until next legislative session.

The tentative recommendation also proposes the repeal of county-specific superior and municipal court staffing provisions regarding the appointment and compensation of court interpreters. See, e.g., Gov't Code §§ 69908, 73084.1, 74642. These sections are obsolete as a result of trial court unification and enactment of the Trial Court Employment Protection and Governance Act. We have not received any objection to the repeal of these statutes, and would proceed as proposed in the tentative recommendation.

JURY COMMISSIONERS

A number of sections in the tentative recommendation contain references to a “jury commissioner.” The majority of these references appear in superior and municipal court staffing sections that are proposed for repeal. In each case a Note is appended to the effect that the Commission is still researching several issues pertaining to jury commissioners, including possible relocation of Government and Penal Code provisions to the Trial Jury Selection and Management Act (Code Civ. Proc. § 190 *et seq.*). See, e.g., Notes to Gov't Code §§ 69895, 69896, 69911, 72192, 74765.

The staff has conducted a review of jury commissioner references in sections of the Code of Civil Procedure, Government Code, and Penal Code that are not in the tentative recommendation. This review indicates that their treatment should be fairly routine and will not affect, or be affected by, the revisions proposed in the current tentative recommendation. However, these sections have not been subjected to the Commission's usual process of circulating proposed

revisions for comment. Therefore, **the staff recommends deferring treatment of these sections** until the next legislative session.

The proposed revisions to sections that are in the tentative recommendation have been circulated for review and no objections have been raised. **The staff recommends proceeding with the proposed revisions** to these sections, with one minor change to Code of Civil Procedure Section 195. As set out in the tentative recommendation, Section 195 would read:

Code Civ. Proc. § 195 (amended). Jury commissioner

SEC. ____ . Section 195 of the Code of Civil Procedure is amended to read:

195. (a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. ~~The person so appointed shall serve as jury commissioner for all trial courts within the county. In any municipal court district in the county, a majority of the judges may appoint the clerk/administrator to select jurors for their court pursuant to this chapter. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or the judges of the appointing court.~~

(b) ~~Except where the superior court administrator or executive officer serves as ex officio jury commissioner, the jury commissioner's salary shall be set by joint action of the board of supervisors and a majority of the superior court judges. Any jury commissioner may, whenever the business of court requires, and with the consent of the board of supervisors, appoint deputy jury commissioners. Salaries and benefits of those deputies shall be fixed in the same manner as salaries and benefits of other court employees.~~

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility.

Comment. Subdivision (a) of Section 195 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Subdivision (b) is amended to reflect enactment of the Trial Court Employment Protection and Governance Act. See Gov't Code §§ 71620 (trial court personnel), 71623 (salaries).

The staff recommends retaining the last sentence of subdivision (a), which provides that anyone serving as jury commissioner on the effective date of the section (other than a court administrator) may continue to so serve at the pleasure of the court. It is not clear that this provision is obsolete. Its retention would maintain the status quo until all of the jury commissioner provisions are fully analyzed.

The San Diego County Superior Court and the Contra Costa County Superior Court comment that the court executive officer serves as jury commissioner in their counties. Exhibit pp. 15, 19. The Contra Costa County Superior Court also notes that the jury commissioner title is held independently from the court executive in Sacramento County. Exhibit p. 19. From discussions with AOC staff, it appears that there are at least four other courts in which the jury commissioner and court executive officer are separate positions. This information further supports retention, at least temporarily, of the last sentence of subdivision (a) of Section 195.

Penal Code Section 903.2 authorizes the jury commissioner to prepare a list of prospective grand jurors. This section is unchanged in the tentative recommendation and therefore is not included in SB 1316. The provision should be revised to eliminate references to Government Code Sections 69895 and 69896, which are proposed for repeal. However, **the staff would hold off doing this until next session,** and address it in conjunction with any other changes to the jury commissioner statutes that appear appropriate.

The Contra Costa County Superior Court favors relocation of this section to the Trial Jury Selection and Management Act. Exhibit p. 24. **The decision whether to relocate this or other sections into one code likewise should be deferred** until all of the jury commissioner revisions are compiled.

JURY VENIRES

The tentative recommendation proposes to repeal Code of Civil Procedure Sections 199, 199.2, 199.3, and 199.5, which authorize the superior courts in El Dorado, Placer, Nevada, and Santa Barbara Counties to select jury venires from specified geographical areas typically smaller than the entire county (e.g., supervisory districts or divisions of the former municipal courts). These sections would be replaced by the general jury selection provisions of Code of Civil Procedure Section 198.5 that are applicable to all superior courts that have

adopted local rules pursuant to that section. Section 198.5 would be revised to incorporate provisions drawn from Sections 199 to 199.5, including the right of prospective jurors to elect to serve as jurors anywhere in the county.

Equal Opportunity to be Considered for Jury Service

Existing Section 198.5 requires that a court rule providing for smaller than countywide venires must afford all qualified persons in the county “an equal opportunity to be considered for jury service”. The Contra Costa County Superior Court observes that this is a near impossible standard to satisfy. In addition it may undermine achievement of representative jury pools. Exhibit p. 19.

While these are weighty considerations, the staff notes that the equal opportunity provision is existing law. This is the first time we have heard of a problem with it. With respect to achievement of representative jury pools, the proposed amendment would add authority for the court, in its discretion, to order a countywide venire “in the interest of justice.” **The staff recommends that the Commission proceed** with this proposal as drafted.

Operative Date

A one-year deferred operative date for the proposed revisions to Section 198.5 is included in SB 1316 to allow adequate time for a superior court to adopt or revise an applicable local rule. As the Notes to Sections 199.2 and 199.3 indicate, Placer and Nevada Counties do not currently have local rules on the matter so repeal of these sections should be subject to a concomitant one-year deferral.

Although El Dorado and Santa Barbara Counties have adopted applicable local rules, the staff believes that repeal of Sections 199 and 199.5 should also be deferred for one year. If these sections are repealed before the operative date of the revisions to Section 198.5, the “election” right that residents of these counties currently have to serve on juries anywhere in the county will be lost for one year.

In addition, all four sections (§§ 199-199.5) provide for a countywide venire “in the interest of justice.” This special provision is proposed for addition to Section 198.5, but will not become operative until 2004. Therefore, the **staff recommends that the Commission include a deferred operative date provision** in the Commission’s recommendation and in SB 1316 which would make the amendment to Section 198.5 and the repeal of Sections 199, 199.2, 199.3 and 199.5 operative on January 1, 2004.

JUDICIAL BENEFITS

Provisions relating to judicial benefits are not yet ripe for revision since the stakeholders have not reached agreement on key issues. Moreover, the Trial Court Employment Protection and Governance Act does not have application to judicial benefits as judges are specifically excluded from the definition of “trial court employee” (Gov’t Code § 71601(m)). The tentative recommendation proposes deferring further work on these provisions pending study and review by interested parties, including the Judicial Council’s Task Force on Judicial Service. We have received no objections to this approach.

Government Code Sections 69907, 69909, and 77210 are unchanged in the tentative recommendation and therefore will not be included in the final recommendation or SB 1316. The San Diego County Superior Court agrees with this approach regarding Section 69907 (benefits for superior court judges in San Diego County). Exhibit p. 15.

However, other provisions (Gov’t Code §§ 73642, 73952, 74145, 74342, 74742) require reenactment because they fall within a municipal court article that is proposed for repeal. For a draft of the reenacted provisions, see Memorandum 2002-18.

In addition, **the following provisions should be removed** from the recommendation and bill until the interested parties have resolved outstanding issues:

Gov’t Code § 22754.35. Benefits of municipal and justice court judges

Gov’t Code § 53200.3. County group insurance

Gov’t Code § 53214.5. County deferred compensation plans

Gov’t Code § 69893.7. Court personnel in Yolo County (Note: The Commission has already decided to remove this section in another context — compensation of official reporters.)

Gov’t Code § 69894.3. Court personnel in counties over 2,000,000

The Los Angeles County Superior Court comments that subdivision (f) of Section 22754.35 should be “repealed as it relates only to active municipal court judges and is therefore obsolete.” Exhibit p. 53. Several provisions in Section 22754.35 may apply to active municipal court judges; however, the staff believes it is ill-advised to tinker with these provisions while the stakeholders attempt to resolve the underlying substantive issues and develop a comprehensive approach. We would revisit this section at a later time.

The Presiding Judge of the Los Angeles County Superior Court, Judge James A. Bascue, strongly supports preservation of Sections 53200.3 and 53214.5, both as to judicial benefits and benefits provided court officers and employees. Exhibit pp. 39-41. Although the staff questions the continuing application of these sections to court employees in light of the Trial Court Employment Protection and Governance Act, the staff agrees that the provisions should be retained in their entirety for now.

Government Code Section 69894.3 is a broad superior court employment statute applicable to counties with populations exceeding 2,000,000, though at the time of its enactment it applied only to Los Angeles County (and is still considered a Los Angeles statute). It is proposed for repeal in the tentative recommendation inasmuch as the majority of the provisions appear to be superseded by the Trial Court Employment Protection and Governance Act and the Trial Court Funding Act. An appended Note solicits comments on the usefulness of this section, particularly provisions regarding jury benefits, judicial benefits, and the right of court employees to transfer to employment in county departments.

Gov't Code § 69894.3 (repealed). Court personnel in counties over 2,000,000

SEC. ____ . Section 69894.3 of the Government Code is repealed.

~~69894.3. Employees of the superior court in each county having a population of over 2,000,000 shall be entitled to step advancement, vacation, sick leave, holiday benefits and other leaves of absence and other benefits as may be directed by rules of the court. Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these may be made applicable by rule to court personnel, including but not limited to jurors, and judges.~~

~~These benefits shall also include the same lump sum payments for sick leave and vacation for the superior court employees when they are separated from the service as are made to county employees of the county; except that lump sum payments to court commissioners when separated from the service of the superior court shall be limited to accrued vacation if any, as is provided by local rule of court, exclusive of accrued sick leave.~~

~~Court employees under this section shall have the right to transfer to other departments in the county government, subject to the approval of the board of supervisors, the county charter, and other usual conditions that may be placed upon the transfer, including, but not limited to, a requirement that the transferee~~

~~successfully complete an appropriate civil service examination. The right of transfer shall not give any employee any additional rights by reason of his employment with the court, other than those to which he would have been entitled if the employment had been with a different department of the county government.~~

~~Employment by the court shall be deemed to be employment by the county, if approved by rule of court, for the purpose of determining a court employee's rights with respect to a county's ordinances providing for salary step advancements and other employee benefits and rights, including, but not limited to, amount of compensation, vacations, sick leave, and accumulated sick leave.~~

~~In any such county attaches may be voluntarily transferred from a position in one judicial district to a position in another within the county and promoted or voluntarily demoted from a position in one judicial district to a position in another within the county in substantially the same manner as transfers, demotions and promotions are authorized generally in county departments or between departments of the county.~~

~~Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of court personnel, including but not limited to jurors and judges. When rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Section 68070.~~

~~When requested to do so by the court the county shall through the county civil service commission furnish to the court services as may be required in connection with the recruitment and employment of court officers and employees.~~

Comment. Section 69894.3 is repealed to reflect:

(1) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71615(c)(1) (preservation of employees' job classifications), 71620 (trial court personnel), 71622 (subordinate judicial officers), 71623 (salaries), 71624 (retirement plans), 71625 (accrued leave benefits), 71628 (deferred compensation plan benefits), 71629 (trial court employment benefits not affected), 71640-71645 (employment selection and advancement), 71650-71658 (employment protection system), 71673 (authority of court).

(2) Enactment of the Trial Court Funding Act. See Sections 77001 (local trial court management), 77003 and Cal. R. Ct. 810 ("court operations" defined).

Note: Comment Requested. The Commission solicits comments regarding the continuing usefulness of Government Code Section 69894.3 or any of its provisions, particularly those that refer to jury

benefits and the right of court employees to transfer to employment in county departments.

Issues involving judicial benefits are still unsettled, but Section 69894.3 is proposed for repeal because most of the provisions appear to be superseded by the Trial Court Employment Protection and Governance Act and the Trial Court Funding Act. The Commission solicits comments on whether the provisions regarding judicial benefits should be preserved pending further study and review by interested parties, including the Judicial Council's Task Force on Judicial Service.

Section 69894.3 could potentially apply to Los Angeles, Orange, and San Diego Counties.

A comment from the organizing director for AFSCME District Council 36 (which represents some court employees in Los Angeles County) to an earlier circulated staff draft, urged retention of this section in its entirety. AFSCME was concerned that removal of this section (and a few others) would hinder their ability to negotiate identical agreements at the local level. AFSCME has not submitted any additional comments with regard to the tentative recommendation. It is not clear whether AFSCME is standing by its previous comment or has withdrawn its objection.

Judge Bascue argues, rightly so, that the provisions in Section 69894.3 relating to judicial benefits should be retained for several reasons, including the fact that judges are not "trial court employees" under the Trial Court Employment Protection and Governance Act, the unification provisions do not reference or affect judicial benefits, and locally provided judicial benefits are recognized in Government Code Section 77201. Exhibit pp. 39-41. Judge Bascue also contends that the juror benefit provisions should be retained since jurors are likewise not considered "court employees" under the employment act. Exhibit p. 41. The staff concurs in the retention of the provisions relating to judicial and juror benefits.

The employee transfer rights are more troubling. Judge Bascue claims that "[w]hile the Employment Act, (section 71615(c)(4)), provides for employee transfer rights in certain contexts, it does not make this section obsolete." Exhibit p. 41. He further argues that the repeal of these rights "would force the court and its employees to negotiate for transferability rights that have been in place for many years." Exhibit p. 42. Judge Bascue's position raises the same debate that has arisen with regard to court reporter compensation; namely, whether the Trial Court Employment Protection and Governance Act supersedes these special employment-related provisions. Section 71615(c)(4) provides that transfer

policies that are in place as of the implementation date of the act shall be continued while an existing memorandum of understanding remains in effect or for two years, whichever is longer (subject to county agreement). With regard to transfer rights beyond this time period, the section states:

[A]ny further rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

The act clearly contemplates and requires renegotiation of such rights following a transitional period. On the other hand, Section 71615(c)(4) refers to transfer “policies” — is a statutory provision the equivalent of a transfer policy? It is not clear.

The Commission must decide whether to preserve Section 69894.3 in its entirety or retain only those provisions relevant to judicial and jury benefits (and possibly transfer rights). **The staff recommends that Section 69894.3 be removed from the recommendation and SB 1316 and revisited during the next legislative session.** This will give the staff more time to determine which of the numerous provisions in this section everyone agrees are obsolete and which require further work and negotiation among the interested parties.

RETIRED ANNUITANTS

A handful of statutes relate to retired annuitants. The statutes generally provide that the retiree — typically a subordinate judicial officer in a specified county — may continue to work after retirement and receive full compensation for that work. Full compensation is achieved by supplementing the person’s regular retirement pay. This does not reinstate the retiree in the county retirement system.

Arguably these statutes are superseded by provisions of the individual retirement plans, the Trial Court Funding Act, the Trial Court Employment Protection and Governance Act, and other changes to the structure of the trial courts. The Commission solicited comment on whether these provisions need to be retained in the law.

The Los Angeles County Superior Court notes that, if we maintain general retired annuitant authority in Government Code Section 72190 (court

commissioners), we could consolidate the provisions. This is a good point. **The staff would proceed with the repeals** of Sections 70141.10 (Marin County Superior Court commissioners), 70142 (Los Angeles County Superior Court commissioners), and 74908 (Ventura County Superior Court commissioners), in reliance on the retired annuitant provision of Section 72190.

We would not propose the repeal of Section 72407 (Los Angeles County Superior Court traffic referee), however, since it is not subsumed by the general court commissioner statute. The Los Angeles County Superior Court suggests the following revision of that section:

72407. Notwithstanding any other provision of law, a traffic referee in any county with a population of 3,000,000 or more who has been duly appointed and has thereafter been retired for service, may be assigned by the presiding judge of a court to serve as a traffic referee of the court for such periods as he is needed for the prompt and efficient discharge of the business of that court. While so serving, he shall be paid the full compensation of a traffic referee, payable as follows: He shall continue to receive his retirement allowance, and in addition ~~the county shall pay him~~ the amount equal to the difference between such retirement allowance and such full compensation. Such employment shall not operate to reinstate him as a member of the county retirement system or to terminate or suspend his retirement rights or allowance, and no deductions shall be made from his compensation as contributions to the retirement system.

That change appears appropriate. We should also render that statute gender-neutral while we're at it.

The Los Angeles County Superior Court also draws the Commission's attention to the first paragraph of Section 70142 (Los Angeles County Superior Court commissioners):

Every court commissioner shall be a citizen of the United States, a resident of this state, and, if required by the court for which he is to be a commissioner, shall have been admitted to practice before the Supreme Court of the state for a period of at least five years immediately preceding his appointment. He shall hold office during the pleasure of the court appointing him and shall not engage in the private practice of law.

We have proposed repeal of this section in reliance on the general requirement that the Judicial Council prescribe qualifications. Gov't Code § 71622

(subordinate judicial officers). The court suggests that the old law might be kept in place until the Judicial Council exercises its authority to prescribe qualifications.

The staff doesn't think it is necessary to continue this provision in effect — if the section is repealed, the Judicial Council will act. In fact, we are informed that the Council is about to circulate draft rules for review this spring, with the intention to adopt them effective January 1, 2003. That is the same as the operative date of SB 1316 would be.

SHERIFFS, MARSHALS, AND CONSTABLES

General Statutory Provisions

Code Civ. Proc. § 217. Food, lodging, and necessities for jurors in criminal cases

Code of Civil Procedure Section 217 permits the court to direct the sheriff or marshal to provide a sequestered jury in criminal cases with food and lodging and other reasonable necessities, which shall be county charges. Proposed revisions to Section 217 would include replacing references to county charges with a reference to the “court operations fund of the county.” The San Diego County Superior Court advocates a further clarification: “trial court operations fund.” Exhibit p. 15. **The staff agrees with this proposal** and further recommends adding a cross-reference to the Trial Court Operations Fund in the Official Comment:

Code Civ. Proc. § 217 (amended). Food, lodging, and necessities for jurors in criminal cases

SEC. ____ . Section 217 of the Code of Civil Procedure is amended to read:

217. In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff or marshal to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. ~~In the superior and municipal courts, the~~ The expenses incurred under the provisions of this section shall be charged against the county or city and county Trial Court Operations Fund of the county in which the court is held. All those expenses shall be paid on the order of the court.

Comment. Section 217 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations).

Gov't Code §§ 71265-71267. Marshal

A new Article 7 is proposed in the tentative recommendation that would reenact viable provisions of Government Code Sections 71265, 71266, and 71267 relating to the marshal. The marshal's office currently performs services for the superior court in four counties (Merced, San Benito, Shasta, and Trinity). The employment status of the marshals and deputies differ — some remaining county employees, others becoming court employees. The revisions to Sections 71265-71267 reflect these experiences. No objections have been raised with regard to these sections.

Section 71266 as reenacted provides that marshals shall charge and collect for their services the fees, expenses and mileage allowed by law to sheriffs and shall pay those fees into the county treasury. The Commission has solicited comment on the proper treatment of the county treasury references. No comments have been received. The staff believes that the reference to the county treasury is appropriate since security services are the only allowable "court operations" expenses under Rule 810 (function 8). In fact, other costs, such as service of process in civil cases and transportation of detainees, are specifically disallowed. Since the fees, expenses and mileage allowed by law to sheriffs involve those associated with service of process and other non-security services, the county treasury appears to remain the appropriate depository.

The staff recommends reenactment of Sections 71265, 71266, and 71267 as proposed in the tentative recommendation.

Gov't Code § 72111. Expenses

Government Code Section 72111 provides that marshals, assistants, and deputies of municipal courts (except custodians) be permitted their expenses, including traveling expenses. This section is proposed for repeal. The tentative recommendation notes that this section appears to be obsolete with regard to court employees and that county ordinances or memoranda of understanding would govern the terms and conditions of those marshals who are county employees. The Note solicits input on the continuing usefulness of this section. No comments have been received.

The Official Comment to Section 72111 was written before the enactment of new Government Section 69505, which governs the business-related travel expenses of trial court judges and employees. Therefore, **the staff suggests that the Comment to Section 72111 be revised to cross-refer to Section 69505:**

Gov't Code § 72111 (repealed). Expenses

SEC. ____ . Section 72111 of the Government Code is repealed.

~~72111. In addition to their salaries, the marshals, assistants, and deputies of municipal courts, except custodians, shall be allowed their actual and necessary incidental expenses incurred in the actual performance of their duties, including traveling expenses. At the option of the board of supervisors, they may be furnished with automobiles at public expense or allowed traveling expenses at the rate a mile fixed by the board of supervisors for the operation of automobiles actually used in performance of their duty on public business or paid for such other method of transportation as they may adopt.~~

Comment. Section 72111 is repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial court employees), 71673 (authority of trial courts to establish terms and conditions of employment). For county employees, this section is superseded by county ordinances or memoranda of understanding.

(3) Enactment of Section 69505 (business-related travel expenses of trial court judges and employees).

(4) Enactment of the Trial Court Funding Act. See Section 77001 (local trial court management).

Penal Code §§ 412, 413. Boxing contests

The tentative recommendation would revise Penal Code Sections 412 and 413 (boxing contests) to eliminate references to a “constable.” Legislative Counsel has pointed out that because these sections were adopted by initiative measure, they can only be amended by a vote of the people. The staff instructed Legislative Counsel to omit these sections from SB 1316. **The staff suggests that the Commission omit them from the final recommendation.** They can be cleaned up another time when substantive revisions are going before the people.

Penal Code Section 13510. Rules of minimum standards

Penal Code Section 13510 still references “marshals or deputy marshals of a municipal court.” It is unchanged in the tentative recommendation because, as the appended Note states, there are unsettled issues regarding the status of marshals and deputy marshals who are now employed by the superior court. The Commission on Peace Officer Standards and Training has requested that we defer treatment of this section until they have had the opportunity to research the matter.

General Employment-Related Sections

Several municipal court sections proposed for repeal in the tentative recommendation concern the appointment, suspension, or discharge of marshals, as well as other municipal court officers and employees. These sections are discussed below under “Municipal Court Statutes.”

Sheriff-Marshal Consolidation Statutes

The tentative recommendation includes proposed revisions to a number of statutes relating to the consolidation of court services in either the sheriff’s or marshal’s office in certain counties. See, e.g., Gov’t Code §§ 26625-26626, 26638.2-26638.12, 72110, 72114.2, 72116, 73665.

In accordance with Commission direction, an automatic sunset provision was added to each extant consolidation statute or article with the exception of Shasta County. Other revisions were made to reflect actual practices within the counties and to delete obsolete provisions. A Note appended to each consolidation section or article requests input as to whether the consolidation statutes continue to serve a useful purpose and, if so, whether further revisions are necessary to reflect current practice.

San Diego County

The San Diego County Superior Court comments that the 1/1/2005 sunset provision added to its consolidation statute (Gov’t Code § 72114.2) “seems legitimate.” Exhibit p. 16.

Contra Costa County

The Contra Costa County Superior Court, however, does not favor the proposed inclusion of a sunset provision in its consolidation article:

GC 26626, which has been added, is not supported. The applicable code sections negotiated by the Contra Costa Courts are critical to current practice and contracts. The statutes, as they exist and as proposed for amendment, represent a model for the long-term relationship of the sheriff and court and should not have a sunset clause.

Exhibit p. 22.

A Note specific to Government Code Section 26625.4 (part of Contra Costa County's consolidation article) also requests input as to whether the appointment and removal authority authorized in that section continues to reflect current practice. Specifically, do the judges still have selection, appointment, and removal power with regard to management heads of the court security bureau? Is this power an exception to the sheriff's general appointing authority as set forth in subdivision (a)?

As set out in the tentative recommendation, Section 26625.4 would read:

Gov't Code § 26625.4 (amended). Appointing authority

SEC. ____ . Section 26625.4 of the Government Code is amended to read:

26625.4. (a) The sheriff shall be the appointing authority for all court security bureau positions and employees.

~~(b) The incumbent marshal of the Contra Costa County Municipal Court shall become the assistant sheriff (exempt) of the court security bureau upon the operative date of this section and may not be removed except by a four-fifths majority vote of the Court Security Oversight Committee. He or she shall hold the permanent rank of captain in the merit system. Whenever the salary of assistant sheriff is adjusted by the board of supervisors, the salary of assistant sheriff, court security bureau, shall be adjusted in the same amount with the same effective date.~~

(c) The selection, appointment, and removal of subsequent management heads of the court security bureau shall be made by a majority vote of the superior court judges of Contra Costa County and majority vote of the municipal court judges of Contra Costa County from a list of qualified lieutenants submitted by the sheriff.

~~(d) The two incumbent assistant marshals in the marshal's office shall become marshals, court security bureau, in the sheriff's department and assigned to the court security bureau upon the operative date of this section and may not be removed except by a four-fifths majority vote of the Court Security Oversight Committee. They shall be allocated to a salary level which is 67 levels on the C5 salary schedule above that of lieutenant in the~~

~~service of Contra Costa County. Whenever the salary of lieutenant is adjusted by the board of supervisors, the salary of these two individuals shall be adjusted in the same percentage or levels with the same effective date.~~

Comment. Section 26625.4 is amended to reflect unification of the municipal and superior courts in Contra Costa County pursuant to Article VI, Section 5(e), of the California Constitution, effective June 8, 1998.

The section is also amended to delete obsolete provisions regarding the former incumbent marshal and assistant marshals.

The Court states that the appointment and removal authority set forth in subdivision (b) is “the current practice” and does not conflict with the sheriff’s authority in subdivision (a):

This section is specific to the assignment of the management head of the court security bureau and is the current practice. This section does not conflict with GC 26625.4(a) as the Sheriff is the appointing authority to positions in the Sheriff’s Department. This section is specific to the assignment to the court. GC 26625.2 assigns this court authority in the context of a contractual relationship. In Contra Costa, the Sheriff contracts with cities for the provision of police services. The court is therefore the client in the contractual relationship, and as such, has the authority to approve who will be assigned as the court security bureau management head.

Exhibit pp. 21-22. With the exception of the added sunset provision, the Contra Costa County Superior Court supports the proposed revisions to its consolidation statutes. Exhibit p. 22.

In a subsequent conversation with Ken Torre, Court Executive Officer, the staff inquired why the statutes need to be preserved indefinitely given that there is an existing contract between the court and the sheriff regarding the court security bureau. Mr. Torre explained that the existence of the statutes assures continuation of the provisions into the future; something which is much less certain with regard to contractual provisions. The statutes vest control over the court security bureau in the judges, including the power to select, appoint, and remove the bureau’s management head (§ 26625.4). In addition, Section 26625.7 requires that an employee of the sheriff’s office who is approved by the court for transfer into the bureau, must agree to serve in the bureau for at least three years.

The staff recommends removal of the sunset provision from Contra Costa County’s consolidation article. While some of the provisions in the article are of

a transitional, short-term nature, others appear to apply indefinitely. A policy decision was made by the Legislature to vest control over the court security bureau in the court. The court opposes any attempt to remove this statutory authority given the mutable nature of contracts.

Los Angeles County

The automatic sunset provision is also attached to Los Angeles County's consolidation article (Gov't Code §§ 26639-26639.4). The Los Angeles County Superior Court suggests a number of revisions to these statutes that would make the repealer unnecessary. Exhibit pp. 53-54. **The staff agrees with the court's suggestions.** The proposed revisions would eliminate truly obsolete provisions while maintaining the ongoing, useful ones. However, these revisions would not be subject to another round of review by other interested parties, such as the sheriff, before becoming part of SB 1316. The staff believes that the proposed revisions are sound and do not substantively affect any existing rights. Also, SB 1316 contains a saving clause that continues any right or privilege based on a provision of law which is repealed by SB 1316. If the Commission is not comfortable with this approach, the subject sections could be removed from the proposed legislation and included in legislation next session following another comment period.

Sections 26639 and 26639.1 provide for action by the board of supervisors to implement the consolidation of court-related services. Those actions occurred long ago — the consolidation was effective on January 1, 1994. The court recommends repealing these two sections; they are currently unchanged and therefore not in the tentative recommendation. The staff, while agreeing with the deletion of the existing provisions, would amend Section 26639 along the lines of amendments made to San Bernardino County's consolidation statute (Gov't Code §72115). Thus, Sections 26639 and 26639.1 would read:

Article 1.8. Sheriff-Marshal Consolidation

Gov't Code § 26639 (repealed). Consolidation of court-related services

~~26639. (a) Notwithstanding any other provision of law, the Board of Supervisors of Los Angeles County may, no later than October 1, 1993, commence public hearings regarding the consolidation of court-related services provided by the marshal and sheriff within the county. Within 30 days of the commencement of~~

~~public hearings as authorized by this section, the board shall make a final determination as to the most cost effective and most efficient manner of consolidation.~~

~~(b) Concurrently, an election may be conducted among all of the judges of the superior and municipal courts of that county to provide an advisory recommendation to the board of supervisors as to the preferred agency, either the marshal or the sheriff, under which court-related services and the service of civil and criminal process may be consolidated. The outcome shall be determined by a simple majority of votes cast. The vote of the judges shall then be forwarded to the board of supervisors prior to the close of the public hearing, and the board of supervisors shall take into advisement the recommendation of the judges provided by the election report.~~

Comment. Section 26639 is repealed to reflect elimination of the marshal's office and consolidation of court-related services within the sheriff's office in Los Angeles County, effective January 1, 1994.

Gov't Code § 26639 (added). Consolidation of court-related services

26639. This article applies to the abolition of the marshal's office and the consolidation of court-related services within the sheriff's office in Los Angeles County.

Comment. Section 26639 reflects elimination of the marshal's office and consolidation of court-related services within the sheriff's office in Los Angeles County, effective January 1, 1994.

Gov't Code § 26639.1 (repealed). Board's determination

~~26639.1. The consolidation shall occur pursuant to the board's determination, and shall be concluded no later than July 1, 1994.~~

Comment. Section 26639.1 is repealed to reflect elimination of the marshal's office and consolidation of court-related services within the sheriff's office in Los Angeles County, effective January 1, 1994.

As it appears in the tentative recommendation, Section 26639.2 is revised to reflect elimination of the municipal court:

Gov't Code § 26639.2 (amended). Bailiff courtroom assignment

SEC. ____ . Section 26639.2 of the Government Code is amended to read:

26639.2. The courtroom assignment of bailiffs after consolidation pursuant to this article shall be determined by a three-member committee comprised of the presiding judge of the

superior court; ~~the Chairperson of the Municipal Court Judges' Association~~ and the bailiff's management representative; or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned, the bailiff's management representative, and with the bargaining unit of the bailiff employee, if the employee is represented.

It is the intent of the Legislature, in enacting this section, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

Comment. Section 26639.2 is amended to reflect unification of the municipal and superior courts in Los Angeles County pursuant to Article VI, Section 5(e), of the California Constitution, effective January 22, 2000.

Although the court's suggested rewrite (Exhibit p. 53) appears to leave in the reference to the Chairperson of the Municipal Court Judges' Association, the staff believes this is a typo. The staff will attempt to confirm this before the meeting (although the staff has been told that the Municipal Court Judges' Association no longer exists). The court proposes adding the words "in the Los Angeles Superior Court" in the first sentence of Section 26639.2 so that it reads: "The courtroom assignment of bailiffs in the Los Angeles Superior Court ...". Although this is probably unnecessary given that there is only one trial court in the county, **the staff is not opposed to this change.**

Finally, the court proposes deleting subdivisions (a) and (b) from Section 26639.3 and revising subdivisions (c) and (d). That section is not in the tentative recommendation as no revisions were made to it. Since the consolidation took place in 1994, the five-year protection against involuntary transfer has expired. The other provisions in subdivisions (a) and (b) seem equally obsolete. The suggested revisions to Section 26639 shown above make unnecessary some of the court's suggestions with regard to subdivisions (c) and (d). With Commission approval, revised Section 26639.3 would read:

Gov't Code § 26639.3 (amended). Personnel of consolidated office

~~26639.3. (a) Notwithstanding any other provision of law, the marshal, sheriff, and all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services and the service of civil and criminal process under this article shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits,~~

~~and except as may be necessary for the operation of the agency under which court-related services and the service of civil and criminal process are consolidated, shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.~~

~~(b) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this article shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this article 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) (a) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a the consolidation under this article shall be counted toward seniority in the consolidated sheriff's office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.~~

~~(d) (b) No employee of the marshal's office or the sheriff's office on the effective date of a the consolidation under this article shall lose peace officer status, be demoted, or otherwise adversely affected as a result of the consolidation.~~

Comment. Section 26639.3 is amended to reflect elimination of the marshal's office and consolidation of court-related services within the sheriff's office in Los Angeles County, effective January 1, 1994.

If the Commission agrees with the above approach, then **added Section 26639.4 (the sunset provision) would be removed** from the recommendation and SB 1316.

Reenacted Sections

A few of the consolidation statutes appear within municipal court articles that are proposed for repeal (Gov't Code §§ 73665, 73666, 73757, 74784). Notes appended to these sections inform reviewers that the sections will likely be preserved in some form, draw attention to possible reenactments of these sections (appearing as "added" sections), and again solicit input as to whether the provisions continue to serve a useful purpose and are in need of further revisions. No comments have been received with regard to these proposed revisions. **The staff recommends that the proposed "added" sections be included in the final recommendation and SB 1316 with one change:**

At the time that proposed Section 74784 was included in the tentative recommendation it was not clear whether other sections applicable to Stanislaus County would also be reenacted. That does not appear to be the case. Therefore, the staff recommends removing the sunset provision from Section 74784 and placing it in an “added” Section 74785 so that the entire article will be repealed (otherwise the article heading will remain after the repeal of Section 74784). The revised Article 31 and Sections 74784 and 74785 would read as follows:

Gov’t Code §§ 74784-74785 (added). Stanislaus County

SEC. ____ . Article 31 (commencing with Section 74784) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 31. Stanislaus County

§ 74784. Former marshal’s office personnel in Stanislaus County

74784. All sworn personnel of the former Stanislaus County marshal’s office who are assigned to court services on the date of the elimination of the marshal’s office shall become members of the sheriff’s Court Services Bureau, with those permanent employees holding the rank of deputy marshal becoming deputy sheriff coroners.

Sworn personnel may be transferred to another position in the sheriff’s office at the same or equivalent classification, but shall not be involuntarily transferred out of the Court Services Bureau.

Comment. The first paragraph of Section 74784 continues the eleventh paragraph of subdivision (b) of former Section 74784, making clear that the provision applies to sworn personnel of the former Stanislaus County marshal’s office.

The second paragraph continues the twelfth paragraph of subdivision (b) of former Section 74784 without change.

For provisions relating to restatements and continuations of existing law, see Section 2. For disposition of the provisions of former Section 74784 that are not continued, see the Comment to former Article 31 (commencing with former Section 74780).

§ 74785. Repeal of article

74785. (a) This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 74785 is added to provide for the automatic repeal of Article 31 (commencing with Section 74784) in fifteen years.

For a draft of all of the reenacted provisions, see Memorandum 2002-18.

Other County-Specific Provisions

Madera County

Government Code Section 73758 provides that the Sheriff of Madera County shall provide transportation services for prisoners held in the county's adult correctional facility. It falls within the municipal court article applicable to Madera County that is proposed for repeal. The tentative recommendation notes that Government Code Section 73758 will likely be preserved and seeks input regarding its continuing usefulness. No comments have been received. Nevertheless, the section does not appear to be obsolete, at least not as a result of trial court restructuring. **The staff recommends that Section 73758 be reenacted as an added section in the final recommendation and SB 1316:**

§ 73758. Transportation of prisoners

73758. The Sheriff of Madera County shall be responsible for the transportation of prisoners held in the county's adult correctional facility to and from necessary court appearances, medical and dental trips, and transfers to or from local, state, or federal correctional facilities. To meet this responsibility, the Sheriff of Madera County shall contract with the county department of corrections, pursuant to Section 831.6 of the Penal Code, to provide these transportation services by qualified personnel of the county department of corrections.

Comment. Section 73758 continues former Section 73758 without change. For provisions relating to restatements and continuations of existing law, see Section 2.

Merced and Shasta Counties

As noted, the marshals in Merced and Shasta Counties perform court-related services for the superior courts. County-specific municipal court provisions (Gov't Code §§ 73796, 74984, 74985, 74988) applicable to these marshals are proposed for repeal and reenactment in the tentative recommendation. No comments have been received with regard to these proposals. This is probably due to the fact that staff drafts of these sections had been circulated earlier. Comments to the staff draft were analyzed and incorporated in the tentative

recommendation. **The staff recommends that the added sections be included in the final recommendation and SB 1316, with one change.**

Section 73796 has been revised to refer to the superior court rather than the municipal court. Consequently, it is inappropriate to place this section in the reenacted article applicable to the Merced County Municipal Court (Article 12.5). Memorandum 2002-18. **The staff would renumber this section as Section 69916 so that it falls within the chapter applicable to the superior courts (with a corresponding change to comments in the tentative recommendation that cross-reference Section 73796).**

MUNICIPAL COURT STATUTES

Employment Provisions

Government Code Sections 71181, 71182, 71183, 71184, 71260, and 72002 concern the appointment, discharge, or suspension of the clerk, marshal, deputy clerks, deputy marshals, and other employees and attaches of the municipal court. These sections are proposed for repeal in the tentative recommendation. Notes are appended to each of these sections soliciting comments on the continuing usefulness of these provisions. The Notes explain that the provisions appear to be obsolete given enactment of the Trial Court Employment Protection and Governance Act. With regard to marshals and deputy marshals who remain county employees, the Notes remark that county ordinances or memoranda of understanding would appear to govern the terms and conditions of their employment.

No comments have been received with regard to the tentative recommendation. Comments were submitted in response to an earlier staff draft that was circulated for review to interested parties. In general, the earlier comments favored repeal of these sections. In the staff draft, several of the above sections were amended, rather than repealed, because of uncertainty at that time regarding the extent to which county employees continue to work for the courts. In most cases, it appears that services provided by county employees for the superior court will be governed by contract pursuant to Government Code Sections 77212 or 77212.5. **The staff recommends the Commission proceed with the proposed repeals.**

County-Specific Municipal Court Fee Provisions

The staff has identified nine sections within county-specific municipal court articles that have fee provisions, including some that provide for collected fees to be paid into the county treasury. The provisions are proposed for repeal in the tentative recommendation, although notes solicit input on the proper treatment of these sections. No comments or objections have been received.

Inasmuch as these are municipal court statutes that reviewers seem to agree are obsolete, the **staff recommends proceeding with the proposed repeal** of Government Code Sections 72610 (Los Angeles County), 73118 (San Bernardino County), 73443 (Kern County), 73766 (Madera County), 73802 (Merced County), 74521 (San Francisco City and County), 74648-74649 (Santa Barbara County), and 74668 (Santa Clara County). We will supplement this recommendation if we receive additional comments before the meeting.

TECHNICAL REVISIONS

The tentative recommendation includes a number of technical errors, some of which are pointed out by commentators on the draft, and most of which the staff previously discovered through a line-by-line review of the proposal after it was finalized. These will be fixed in the final recommendation, and in the bill if necessary. We do not generally note these technical revisions in this memorandum.

SB 1316 also includes a number of errors introduced by Legislative Counsel in the drafting process, such as incorrect versions of statutes, omitted words or punctuation, erroneous capitalization, etc. The staff will have these corrected before the bill is set for hearing.

Respectfully submitted,

Lynne Urman
Staff Counsel

Barbara S. Gaal
Staff Counsel

Nathaniel Sterling
Executive Secretary

February 12, 2002

TO: Law Revision Commission

FROM: Los Angeles County Court Reporters Association
Arnella Sims, President
Gary Cramer, Executive Director

SUBJECT: Law Revision Proposals (Statutes Made Obsolete by Trial Court Restructuring)

The Los Angeles County Court Reporters Association is the professional association representing the approximately 700 official court reporters employed by the Los Angeles Superior Court. Our association, through its committee structure, has reviewed the entirety of the Commission's tentative recommendations. We do not comment on many of the tentative recommendations because they either do not apply to court reporters or we do not take a position on the tentative recommendation as proposed. Our comments do include objection to all proposals to which we object and those we support. Also included are those that we suggest be further amended.

Because of the size and number of the tentative recommendations, it is possible that we may find further need to comment on any or all of the proposed tentative recommendations.

Government Code Section 69947

We suggest repeal of existing code sections that provide for court reporters' salaries, per diems and benefits with the following savings clause:

Government Code Section 69947 should be added as follows:

- (a) As used in this section:
 - (1) "Compensation" includes, but is not limited to, salary, benefits, privileges, fees, and allowances.
 - (2) "Court operations" has the meaning defined in Section 77003. and Rule 810 of the California Rules of Court as it read on July 1, 1996.
 - (3) "Official reporter" includes official reporter pro tempore.
- (b) The official reporter shall receive the following compensation:
 - (1) For reporting services, the compensation determined pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), or, if the reporter is not a trial court employee within the meaning of that act, the compensation determined by agreement between the court and the reporter. In no event shall the

compensation of the official reporter be less than the compensation provided by law on December 31, 2002, for duties of the reporter that constitute court operations.

(2) For transcription services, the fees prescribed in this article.

(c) If the duties for which the official reporter receives compensation from the court include services to the county that do not constitute court operations, including but not limited to services for the county board of supervisors, board of equalization, coroner, or grand jury, the county shall reimburse the court for a pro rata share of the compensation.

Code of Civil Proceedings §269

We support the proposed amendment.

Code of Civil Proceedings §271

We have no opposition to the proposed amendment.

Code of Civil Procedure §274a

We support the proposed amendment.

Code of Civil Procedure §274c

We support the proposed amendment.

Code of Civil Procedure §575.1

We recommend amendment to this section to include distribution of local court rules to recognized employee organizations.

Government Code §31554

Out of an abundance of caution we recommend retaining this section.

Government Code §68073(f)

We support the proposed amendment.

Government Code §68086

In order to assure availability of a court reporter from the private sector when an official court reporter is not available there is need for parties to negotiate fees with private sector court reporters.

We recommend amendment to add the following:

(1)The cost of reporting services as provided by the certified shorthand reporter shall be as agreed to by the certified shorthand reporter and the party arranging for the presence of the certified shorthand reporter.

(2)The cost of transcription of the proceedings, if any, shall be as agreed to between the certified shorthand reporter and the party ordering the transcript or any portion thereof. Absent such arrangements, the certified shorthand reporter may charge those fees as provided in Sections 69947 to 69954 inclusive.

Government Code §68105

We object to repeal of the word “phonographic.” “Phonographic” should be retained because the phrase “certified shorthand reporter” is meaningful only as long as the Certified Shorthand Reporters Act (Government Code §8000, et seq.) remains in effect.

Government Code §68152

We recommend amendment to subsection (j)(8) to require E.R. tapes of misdemeanor proceedings to be retained for 10 years in order to be consistent with the retention requirement for court reporter notes in misdemeanor proceedings pursuant to Government Code §69955.

Government Code §68525

We recommend repeal of this section. The provisions of income disclosure contained in this section should be subject to the meet and confer provisions of the TCEPGA.

Government Code §69941

We have no opposition to the proposed amendment.

Government Code §69942

We support the proposed amendment.

Government Code §69944

We have no opposition to the proposed amendment.

Government Code §69945

We have no opposition to the amendment, particularly upon adoption of our proposed adoption of Government Code §69947.

Government Code §69950

We support the proposed amendment. We also suggest further amendment by adding the following clarifying language

For purposes of this section, "word" is defined as a printed character or combination of characters, a line number, a page number, or a "Q" and "A" that designates a speaker.

Government Code §69953.5

We support the proposed amendment based on our suggested amendment to Government Code §69947.

Due to the fact that many courts require official court reporters to independently hire a second reporter to provide daily transcript production, it is suggested that this section be further amended to provide that payment as required in §69953.5 shall be paid to official court reporter for the use of additional court reporters.

Government Code §69955

Various Superior Courts do not provide space for storage of stenotype notes.

Based on the fact that the stenotype notes belong to the court, it is suggested subsection (a) of this section be amended to require payment by the court to the reporter for reimbursement of cost of storage if the court does not designate a place for storage without cost to the reporter.

Government Code §69956

We support the proposed amendment.

Government Code §72709 through §72713

We support retention of the “reporters salary fund” as provided for in these sections. The intent of these sections should be carried forward by including the salary fund within those sections that become applicable to the unified Los Angeles Superior Court.

Government Code §73301

Out of an abundance of caution we recommend retaining this section.

Penal Code §938.3

The reference to “transcribing at the same rates as prescribed in Section 69947 of the Government Code” appears inconsistent with the proposed content of §69947.

February 14, 2002

TO: Law Revision Commission

FROM: California Court Reporters Association
2400 22nd Street, Suite 110
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SUBJECT: Law Revision Proposals (Statutes Made Obsolete by Trial Court Restructuring)

The California Court Reporters Association is the largest professional association representing official and freelance court reporters in California. Our association has reviewed the Commission's tentative recommendations. We have not commented on numerous of the tentative recommendations because they either do not apply to court reporters or we do not take a position on the tentative recommendation as proposed. Our comments do include objection to all proposals to which we object and those we support. Also included are those that we suggest be further amended.

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Government Code Section 69947 should be added as follows:

(a) As used in this section:

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(2) "Court operations" has the meaning defined in Section 77003. and Rule 810 of the California Rules of Court as it read on July 1, 1996.

(3) "Official reporter" includes official reporter pro tempore.

(b) The official reporter shall receive the following compensation:

(1) For reporting services, the compensation determined pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), or, if the reporter is not a trial court employee within the meaning of that act, the compensation determined by agreement between the court and the reporter. In no event shall the compensation of the official reporter be less than the compensation provided by law on December 31, 2002, for duties of the reporter that constitute court operations.

(2) For transcription services, the fees prescribed in this article.

(c) If the duties for which the official reporter receives compensation from the court include services to the county that do not constitute court operations, including but

not limited to services for the county board of supervisors, board of equalization, coroner, or grand jury, the county shall reimburse the court for a pro rata share of the compensation.

Code of Civil Proceedings §269

We support the proposed amendment.

Code of Civil Proceedings §271

We have no opposition to the proposed amendment.

Code of Civil Procedure §274a

We support the proposed amendment.

Code of Civil Procedure §274c

We support the proposed amendment.

Code of Civil Procedure §575.1

We recommend amendment to this section to include distribution of local court rules to recognized employee organizations.

Government Code §31554

Out of an abundance of caution we recommend retaining this section.

Government Code §68073(f)

We support the proposed amendment.

Government Code §68086

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We recommend amendment to add the following:

(1)The cost of reporting services as provided by the certified shorthand reporter shall be as agreed to by the certified shorthand reporter and the party arranging for the presence of the certified shorthand reporter.

(2)The cost of transcription of the proceedings, if any, shall be as agreed to between the certified shorthand reporter and the party ordering the transcript or any portion thereof. Absent such arrangements, the certified shorthand reporter may charge those fees as provided in Sections 69947 to 69954 inclusive.

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We object to repeal of the word "phonographic." "Phonographic" should be retained because the phrase "certified shorthand reporter" is meaningful only as long as the

Certified Shorthand Reporters Act (Government Code §8000, et seq.) remains in effect.

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Government Code §68525

We recommend repeal of this section. The provisions of income disclosure contained in this section should be subject to the meet and confer provisions of the TCEPGA.

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Government Code §69942

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Government Code §69945

We have no opposition to the amendment, particularly upon adoption of our proposed adoption of Government Code §69947.

Government Code §69950

We support the proposed amendment. We also suggest further amendment by adding the following clarifying language

For purposes of this section, "word" is defined as a printed character or combination of characters, a line number, a page number, or a "Q" and "A" that designates a speaker.

Government Code §69953.5

We support the proposed amendment based on our suggested amendment to Government Code §69947.

Due to the fact that many courts require official court reporters to independently hire a second reporter to provide daily transcript production, it is suggested that this section be further amended to provide that payment as required in §69953.5 shall be paid to official court reporter for the use of additional court reporters.

Government Code §69955

Various Superior Courts do not provide space for storage of stenotype notes.

Based on the fact that the stenotype notes belong to the court, it is suggested subsection (a) of this section be amended to require payment by the court to the reporter for reimbursement of cost of storage if the court does not designate a place for storage without cost to the reporter.

Government Code §69956

We support the proposed amendment.

Government Code §72709 through §72713

We support retention of the "reporters salary fund" as provided for in these sections. The intent of these sections should be carried forward by including the salary fund within those sections that become applicable to the unified Los Angeles Superior Court.

Government Code §73301

Out of an abundance of caution we recommend retaining this section.

Penal Code §938.3

The reference to "transcribing at the same rates as prescribed in Section 69947 of the Government Code" appears inconsistent with the proposed content of §69947.

Thank you for your consideration.

From: Grove, Janet
Sent: Friday, February 15, 2002
To: Bgaal (E-mail); Sterling (E-mail)

Subject: Comments on tentative recommendation

Below are some additional comments on the trial court restructuring proposal:

Government Code section 69897 - Probate commissioners - The Probate Advisory Committee recommended repealing this section at its meeting on November 16, 2001. The section is obsolete in light of TCEPGA and does not accurately describe what probate commissioners currently do.

CCP § 116.940 - Small claims advisor services - AOC staff recommends this section not be changed at present because there is still wide variation among the counties in how these services are actually funded. (I believe Cara Vonk and Daniel Pone have discussed this with you. Dan described this issue in detail in a recent email.)

CCP §§ 1141.11-1141.29 - Judicial arbitration - Heather Anderson, staff counsel to the ADR Subcommittee of the Civil and Small Claims Advisory Committee comments:

- The cross-references to CCP § 1141.11 in the amendment to § 1141.12 appear to be correct, but the amendments to § 1141.11 do not clean up the overlap between subdivisions (b) and (c) (for limited civil cases in small courts).
- Repeal of § 1141.29 is appropriate.
- Two sections that are not in the proposal could be cleaned up: The phrase at the end of CCP § 1141.18(b) that allows the county to set a higher level of compensation for arbitrators is no longer appropriate; and in § 1141.21(a)(i) the word "county" should be changed to "court." (See attached document 1141.doc.)

CCP §§ 403, 404, 404.3, 404.9 - Coordination of cases - Following the Civil and Small Claims Advisory Committee meeting on January 30, 2002, the Complex Litigation Subcommittee reviewed and concurred with the proposed amendments to these sections.

The tentative recommendation would repeal the statutes governing the timing of municipal court elections (Gov. Code §§ 71141-71180). Keeping these sections for a few more years might help to avoid confusion. Some superior court judges are still "previously selected municipal court judges"

within the meaning of § 70211, so their terms of office are governed by those sections.

The sections could be kept through 2006. By then, all municipal court judges who became superior court judges through court unification should have stood for election as superior court judges (or have left office).

§ 1141.18. Arbitrators; qualifications; compensation; selection; disqualification

- (a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.
- (b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators, except that no compensation shall be paid prior to the filing of the award by the arbitrator, or prior to the settlement of the case by the parties. Compensation for arbitrators shall, unless waived in whole or in part, be one hundred fifty dollars (\$150) per case, or one hundred fifty dollars (\$150) per day, whichever is greater, [except that the board of supervisors of a county or a city and county may set a higher level of compensation for that county or city and county].
- (c) The board of governors of the State Bar shall provide by rule for the method of selection of arbitrators after consulting with administrative committees established pursuant to Rule 1603 of the Judicial Arbitration Rules for Civil Cases and with county bar associations in counties where there are no administrative committees. These rules shall provide for specialized panels and shall become operative upon approval of the Judicial Council.
- (d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

§ 1141.21. Judgment on trial de novo equal to or less favorable than arbitration award for party electing; payment of nonrefundable costs and fees

- (a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the

party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

- (i) To the ~~county~~ court, the compensation actually paid to the arbitrator, less any amount paid pursuant to paragraph (iv).
- (ii) To the other party or parties, all costs specified in Section 1033.5, and the party electing the trial de novo shall not recover his or her costs.
- (iii) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case.
- (iv) To the other party or parties, the compensation paid by the other party or parties to the arbitrator, pursuant to subdivision (b) of Section 1141.28.

Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

- (b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (ii) and (iii) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that party.
- (c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under paragraph (i) of subdivision (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SAN DIEGO COUNTY COURTHOUSE
220 WEST BROADWAY
SAN DIEGO, CALIFORNIA 92101

FACSIMILE TRANSMITTAL

February 15, 2002

California Law Revision Commission
4000 Middlefield Road, Rm. D-1
Palo Alto, California 94303
Fax: 650/494-1827

RE: Comment on Statutes Made Obsolete by Trial Court Restructuring

Attached are the comments and observations from San Diego Superior Court concerning your November 2001 request for comment on Statutes Made Obsolete by Trial Court Restructuring. The Commission's work in this area is greatly appreciated by local courts. If you have any questions please contact the Executive Officer, Stephen Thunberg at 619/685-6393.

Submitted by:
Scott Brown
Sr. Adm. Analyst

Total pages including cover: 3

CONSTITUTION

Art. VI §5(d). Authorizes the City of San Diego to be split into separate judicial districts, now used as court divisions and filing districts for the San Diego Superior Court. The City of San Diego is now split between the Central Division of the Court and the South County Division. *Is specific authorization needed to split the City of San Diego into filing districts of the Court? Also see GC §69595.5 below.*

BUSINESS AND PROFESSIONS CODE

§ 25762. Proposed amendments would eliminate the misdemeanor fine distribution to the city, county and state under PC §1463, and instead provide that all revenue for violations of B&P laws relating to minors and alcohol be deposited with the county treasury. This section should be amended to provide that fines and forfeitures of bail be distributed pursuant to PC §1463.

CODE OF CIVIL PROCEDURE

§75. Under existing law this section only applies to courts with only one judge. The CLRC amendments would make this section applicable to all courts. *Is this the intent of the Commission or should the section be deleted since there are now no one-judge courts?*

§86.1. Under existing law this section provides for consolidation of municipal and superior court cases involving "citation enforcement actions" under the Long-Term Care, Health, Safety and Security Act of 1973. *Should these amendments provide for consolidation of limited and unlimited civil citation enforcement actions?*

§116.950(d)(6) refers to "judges of the appellate courts." *Should this state "justices" of the appellate courts.*

§195 CLRC Comment Requested: section provides that each county shall have a jury commissioner appointed by a majority of the judges and if there is a superior court executive officer or court administrator then that person shall be the jury commissioner. In San Diego the executive officer is the jury commissioner.

§217 regarding sequestered juries. Amendments should be made to state, "trial court operations fund."

ELECTIONS CODE

§327 *Is the section being renumbered to §325 or is this a typo?*

GOVERNMENT CODE

§69595.5 CLRC requested comment on former judicial districts. *Amendments here look good. The San Diego Superior Court has been divided into four divisions for purposes of accepting filings which utilize the four former municipal court districts (El Cajon Judicial District, North County Judicial District, San Diego Judicial District and South Bay Judicial District). The former South Bay Judicial District, now called the South County Division of the Superior Court, is a special case because the City of San Diego is geographically split, and subsequently split into two court divisions. Amendments to GC §69595.5 seem to also replace GC §74740 (set for repeal in this comment cycle).*

§69907 regarding benefits of San Diego Superior Court judges. *This section should be kept until further study by the Task Force on Judicial Service and implementation of subsequent legislation.*

§71622 amendment provides that a subordinate judicial officer may not engage in the practice of law except to the extent permitted by "Judicial Council rules." *Does this mean the California Rules of Court or a Standard of Judicial Administration? We are not familiar with Judicial Council rules? SJO's are*

generally treated as employees of the local court, but subject to action by the Commission on Judicial Performance.

§72114.2 CLRC comment requested concerning consolidation of San Diego Marshal's Office. The 1/1/2005 sunset seems legitimate to us.

PENAL CODE

§808 Should "judges" of the supreme court and court of appeal be referred to as "Justices."

§1269b Regarding procedure for adoption of felony and misdemeanor/infraction bail schedules. In San Diego Superior Court, a special judges committee is charged with preparing the bail schedules and solicits comments on a draft of the schedules. After comments are incorporated, it is deemed approved.

§1428 CLRC comment requested regarding municipal court registers of actions. Amendment provides flexibility to have registers of actions in misdemeanor and infraction cases or to have the same record keeping procedures provided to superior courts in GC §§ 69844, 69845, or 69845.5.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

649 Main Street
Martinez, California 94553

TO: CALIFORNIA LAW REVISION COMMISSION

FROM: SHERRY CARABALLO DORFMAN
CHIEF ASSISTANT EXECUTIVE OFFICER

SUBJECT: COMMENTS ON NOVEMBER 2001 TENTATIVE RECOMMENDATIONS

DATE: FEBRUARY 19, 2002

Following are comments on the tentative recommendations. Note that some general comments are offered regarding recommendations that recur throughout.

GENERAL COMMENTS

1. Issues Concerning Concurrent Jurisdiction

The LRC's comments about concurrent jurisdiction suggest that prior to court unification a case could have been classified as either limited or unlimited, though it's unclear how such a distinction has historically been made. In all likelihood that means this happened differently in different courts and counties. Hence, simply dropping municipal court from the statute would leave uncertainty as to the appropriate classification when filed since by definition, today it must be filed in a superior court. Municipal courts no longer exist, and it seems confusing to leave language in the statutes that suggests they do. Jurisdiction needs to be conferred on superior courts alone, but with some clarifying language as to how the cases in question are to be classified as limited or unlimited. In some courts (including Contra Costa), this classification makes a difference as to the location in which the case would be handled and possibly the judge to which it is assigned. In any event it is preferable that reference to municipal courts be deleted so that statutes conform to court structure, as it exists today.

2.Issues Concerning Local Venue

This issue is somewhat related to the discussion regarding concurrent jurisdiction, at least in Contra Costa where the former municipal court locations, now branches of superior court, handle limited jurisdiction cases in much the same fashion as they did pre-unification. That means former municipal jurisdictional boundaries still define a local venue for limited civil cases, distinct from the countywide jurisdiction applicable to unlimited civil cases. Further, cases are transferred by judges handling unlimited civil to branch locations handling limited civil. This means Contra Costa continues to operate with reliance on countywide venue and court venues reflective of the former municipal courts' jurisdictions. There is no imminent plan to alter this basic arrangement. While these comments clearly offer no solution to the fundamental problem, perhaps they illustrate the impact of changes in law and the need to maintain flexibility for courts as they move through the iterations of unification.

3.Procedure for Seeking Court Order Requiring Return of Deposit – Need for Clarifying Language

The comment requests ask if there is need for clarifying language. These actions occur regularly in the form of complaint or petition. Clerks are trained to recognize them as such and handle accordingly. Hence, clarifying language is not essential, but it wouldn't hurt to have it.

4.Transfer from County Clerk to Clerk of Court

Amendments to codes that reflect the elimination of the county clerk's role as ex officio clerk of the superior court occur throughout the tentative recommendations. In some cases the amendment refers to the clerk or clerk of court, in others the reference is to the clerk of the superior court. While most of the time the reference is likely self-evident, it's helpful to have consistency as much as possible.

5.County Treasury

The LRC's requests for comment concern the viability of county treasury provisions. Contra Costa has particular concern about such provisions where the language does not clearly specify that fees be retained by the court, regardless of whether they are to be deposited to the county treasury. Fees deposited to the county treasury, but retained by the court might include a specific provision for deposit to a special account in the county treasury, and transferred periodically to the Trial Court Trust Fund. The county treasury deposit is not so much the issue, as the retention of the funds. Fees should follow function. Clarification of language concerning retention of fees is helpful.

CODE SPECIFIC COMMENTS

6. **CCP 195. Jury Commissioner** (page 89)

The court executive serves as jury commissioner in Contra Costa. Sacramento is the only county of which I am aware where the jury commissioner title is held independent from the court executive. The Jury Commissioner in Sacramento is Meredith Bostian at (916) 874-5230 or by email at bostiam@sacct.com. She is part of the court staff, a manager overseeing jury functions. For that reason, it is not clear to me whether her title is statutorily provided distinct from that of the court executive or if this is simply a local practice. If you have received no other comment on this question, I would recommend contacting Thu Ngyuen from Orange County at (714) 834-4650 or by email at tbnguyen@occourts.org. Thu is the current president of the statewide jury managers' association (JEM). She has an email list for JEM members and could solicit feedback on this rather quickly I think, as could Meredith Bostian. She is the vice-president of JEM.

7. **CCP 198.5. Superior court venires** (page 89-90)

The concerns voiced here are twofold. First, the language specifying *equal opportunity* imposes a near impossible standard unless a court uses exclusively countywide jury pools, an impracticality for larger and geographically dispersed courts. Two, giving jurors the choice of where to serve, while desirable from the standpoint of making juror service more convenient for the public, may undermine achievement of representative jury pools. It certainly would have this effect in Contra Costa.

8. **CCP 396. Court without jurisdiction** (page 102-103)

CCP 396 has little if any relevance for courts that have fully internalized unification and adapted court operations accordingly. However, for many courts operational unification is a long-term iterative process in which progress is hindered by factors such as facility constraints, limited technology funding, and labor relations issues. Contra Costa is in the latter group and the issues outlined in the general comments above pertaining to local venue apply here as well. So, while technically a unified court system should not need this code section, practically we may still need this or some alternate authority for transferring cases.

9. **Elections Code 2212. Report of persons convicted of felonies** (page 125-126)

The request for comment here concerns the need to retain the requirement for reporting which felons remain imprisoned, which in effect would leave this matter to the determination of the county elections official. Comments here go beyond this question and may go to the substantive meaning of the statute that might be beyond the LRC jurisdiction to address.

The code specifies a list be provided, (per the LRC's recommended change, by the clerk of court), of all persons convicted of felonies since the last report, with reports not less frequently than April 1 and September 1. Clearly this should be the responsibility of the clerk of court rather than the county clerk.

Note that the elections official is required *to cancel affidavits of registration of those persons are currently imprisoned or on parole for a felony conviction*. The report provided by the clerk of court will not necessarily provide information about status of either parole or imprisonment;¹ hence the list provided by the court may not provide all the information the elections official needs to effectively accomplish the goal of this code section. This is a meaningful distinction with respect to voting rights, which are restored to convicted felons upon completion of a prison sentence and/or parole.

Note also that the outcome of this process has an impact on Jury Commissioner functions. The list of registered voters is statutorily defined in CCP 197 as one of two mandatory source lists for jury service. Convicted felons are ineligible for jury service (unless their civil rights have been restored, a rare event), even when legitimately their voting rights have been restored. So, from the Jury Commissioner's standpoint the cancellation of affidavits of *any convicted felon* may serve to restrict summoning to only eligible prospective jurors, but may nonetheless cancel voter registration for persons who are entitled to vote.

Maybe all this is moot, since registering to vote is not an onerous process. Nonetheless, you have the information to use as appropriate here.

10. Food & Agric. Code 30801. Issuance of dog license (page 144)

No comment was requested as to the LRC's recommended changes to this code; however, an issue concerning board of supervisors' authority needs to be addressed. The section in question reads:

...The dog license shall be: ...

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or through judges of municipal courts or the superior court in a county in which there is no municipal court, to owners of dogs, that make application.

This seems to leave discretion with the board of supervisors to allow this task to default to the court. The licensing of dogs is an executive branch function and should be clearly defined as such.

11. Food & Agric. Code 31622. Determination and appeal (page 145-146)

¹ In Contra Costa it would not include this information because it is not maintained in the case management system.

The comment requested here concerns county treasury provisions. This code section simply provides for a fee to file an appeal in a particular case type. It should be handled just like other court filing fees. Filing fees are deposited to the county treasury. The county is obligated by statute to deposit these with the state.

12. Government Code 811.9. Representation, defense, and indemnification of trial court judges, judicial officers, court executive officers, and employees (page 147-148)

(See item 19 below re: Government Code 27647. Representation of court or judge by county counsel.)

13. Government Code 990.2. Authority to insure court officer or attaché (page 148-149)

The question of insurance and indemnification is complex given the interdependent relationships between courts and counties. A bright line does not clearly delineate the two. A variety of county staff continues to provide services to the court in a myriad of ways. Further, there is question as to the meaning of court attaches? Are they exclusively court employees? The transition separating court and county is still evolving and at vastly different paces through the state. While this code section is permissive giving counties the option to insure, further legal analysis seems prudent.

14. Government Code 6701. Holiday falling of Saturday or Sunday (page 152)

The last sentence includes a final clause proposed for deletion. This would delete a phrase that would be better left in this code section, specifically, *except those employees of the county working as court attaches* The meaning of the term *court attaches* is unclear, but it is wise to leave this in tact given lingering interdependent relations between court and county. The phrase, *or as clerks of the superior or municipal courts*, should be deleted as proposed.

15. Government Code 16265.2. County costs of eligible programs, county costs of justice programs, and general purpose revenues (page 157-158)

No changes are needed in this code section other than those proposed by the LRC.

16. Government Code 26625.4 (b). Appointing Authority (page 167)

This section is specific to the assignment of the management head of the court security bureau and is the current practice. This section does not conflict with GC 26625.4(a) as the Sheriff is the appointing authority to positions in the Sheriff's Department. This section is specific to the assignment to the court. GC 26625.2 assigns this court authority in the context of a contractual relationship. In Contra Costa, the Sheriff contracts with cities for the provision of police services. The court

is therefore the client in the contractual relationship, and as such, has the authority to approve who will be assigned as the court security bureau management head.

The proposed changes as amended or repealed are supported as drafted with the note that GC 26626.5 through 226626.9 are critical to current practice and contracts and remain unchanged.

GC 26626, which has been added, is not supported. The applicable code sections negotiated by the Contra Costa Courts are critical to current practice and contracts. The statutes, as they exist and as proposed for amendment, represent a model for the long-term relationship of the sheriff and court and should not have a sunset clause.

17. Government Code 26806. Foreign language interpreters (page 180)

The LRC's recommended changes remove court interpreters from this provision. The comment requested proposes relocating the court interpreter provisions to Title 8 of the Government Code. These changes make sense; however, the inclusion of interpreter provisions within trial court employment provisions introduces issues around interpreters as employees versus independent contractors – a hotly debated topic among interpreters and courts alike. The vast majority of court interpreters are independent contractors, not court employees. The relocation of the court interpreter provisions would be better kept out of this debate.

18. Government Code 26835.1. Authentication of documents (page 181-182)

This is an example of a code that does not link work of the court with the fee generated for it, (see general comments regarding county treasury provisions). The code specifies this fee as county general fund revenue. When the court was funded at the county level, this made sense. It doesn't anymore.

19. Government Code 27647. Representation of court or judge by county counsel (page 183-184)

The LRC has recommended repeal of this code section. It seems to be superceded by GC 811.9. However, there are no specific provisions in GC 811.9 for reimbursement of attorney fees where a judge (or other court staff member) is required to retain their own counsel due to conflict of interest. While GC 27647 limits this protection to judges, all court staff should have this reimbursement provision. That could be accomplished by repealing GC 26747 and expanding GC 811.9. Further, there is some concern that GC 811.9 may be narrower in scope than other provisions for representation and defense. While the specific exclusions aren't outlined here, this is a concern that warrants some exploration.

20. Government Code 31469. "Employee" defined (page 185-186)

This code section should be retained with reference to municipal court given retirement implications.

21. Government Code 68073. Responsibility for court operations and facilities (page 193-194)

This code section is reference in California Rule of Court 810. Subsection (f) specifically is proposed for deletion by LRC. Contra Costa would oppose this because subsection (f) provides necessary clarification. An alternate approach would move the language in (f) to another location, perhaps an amendment to Rule 810.

22. Government Code 68089. Witness fees in criminal cases (page 198-199)

This code section, which pre-dates trial court funding, is in conflict with GC 29603. The latter specifies that the county pays witness fees in criminal cases. With trial court funding juror fees became a state cost, but witness fees did not. The exception to this is noted in California Rule of Court 810 (see Function 10), where the court is authorized to pay for *court-appointed expert witness fees (for the court's needs)*.

23. Government Code 68202. Annual salary of judges (page 205)

It seems appropriate to bring current the salary for superior court judges and to prescribe the process for future salary adjustments.

24. Government Code 69947 (added). Compensation of official reporter (page 252)

It appears the content of this code section proposed for addition has not been drafted. Issues concerning compensation and transcript fees need to be resolved. These issues are of great concern to both court reporters and courts.

25. Government Code 68562. Certification of court interpreters (page 208-209)

Eventually, portions of this code section may be obsolete, but given ongoing concerns regarding court interpreter services, it is preferable that this code section remains in tact for now.

26. Government Code 70141.11 (page 293)

This code section is recommended for repeal. Contra Costa does not object to this, and supports the proposed in the new GC 70141.11 as follows:

70141.11 Notwithstanding Section 269 of the Code of Civil Procedure, any court reporting functions for the commissioner in Contra Costa County may be by electronic or mechanical means and devices.

Additional language is desirable that specifies should this statute ever change, the Judicial Council will provide funding for associated court reporter costs.

27. Government Code 73340 – 73366. Article 2. Municipal Courts in Contra Costa County (page 385-392)

Contra Costa has no objection to repealing Article 2 in its entirety. It is obsolete.

28. Labor Code 98.1. Order, decision or award (page 610)

The last sentence refers to the *appropriate* superior court. This distinction seems unnecessary.

29. Penal Code 869. Deposition or testimony before magistrate (page 626-627)

The question posed is whether to retain references to the county clerk. Substituting clerk of court for county clerk references seems appropriate in this code.

30. Penal Code 903.2. Jury Commissioner (page 628-629)

The relocation of this code section pertaining to jury commissioners to the Trial Jury Selection and Management Act seems appropriate.

31. Penal Code 987.2. Appointment and compensation of counsel (page 634-635)

The reference under subdivision (a) that assigned counsel is to be paid out of the general fund of the county is still appropriate as indigent defense is county cost.

32. Penal Code 1203.7. Probation records (page 646-647)

The proposed amendment substituting the county probation department for the county clerk seems appropriate.

33. Penal Code 4852.18. Certificate of rehabilitation (page 669)

The proposed amendment substituting the clerk of court for the county clerk seems appropriate.



Judicial Council of California
Administrative Office of the Courts

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RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

February 20, 2002

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

MICHAEL BERGEISEN
General Counsel

Ms. Lynne Urman
Staff Counsel
California Law Revision Commission
3200 Fifth Avenue
Sacramento, California 95817

Re: California Law Revision Commission's December 17, 2001 staff draft legislative proposals – Court interpreters and translators

Dear Lynne:

In our telephone conversation last week, you requested that the Administrative Office of the Courts (the "AOC") provide to you by February 20 its comments regarding the California Law Revision Commission (the "CLRC") staff's December 17, 2001 draft legislative proposals regarding court interpreter statutes. The December 17 draft proposes numerous changes to several statutes regarding employment, assignment, certification, and payment of interpreters and translators.

The CLRC staff's proposed amendments to these statutes raise complex issues concerning the funding of interpreters and translators in various types of cases. In addition, while some of the proposed amendments may be technical in nature, it appears that some others may not.

We are in the process of reviewing these issues and will be able to provide you with further input once our review is completed. Until that time, we respectfully request that the CLRC defer recommending changes to the statutes regarding interpreters and translators that are addressed in the December 17 draft until the next legislative session.

Ms. Lynne Urman
February 20, 2002
Page 2

Thank you for the opportunity to comment on these draft proposed legislative changes. If you have any questions or concerns, please feel free to call me at (415) 865-7667.

Very truly yours,

Deborah Brown by cdcw
Deborah Brown
Attorney

cc: Claudia Westin, Attorney

Subject: CLRC Proposal re Small Claims Advisor Program
Date: Feb. 7, 2002
From: "Pone, Daniel" <Daniel.Pone@jud.ca.gov>
To: "Gaal Barbara (E-mail)" <bgaal@clrc.ca.gov>

Barbara - This follows our earlier email communications with you and Cara Vonk regarding CLRC's proposal to amend CCP 116.940 to make the Small Claims Advisor program a superior court program by substituting "superior court" for "county." In our last email, we suggested NOT moving forward with the proposal at that time given our concerns about varying practices around the state with respect to the actual operation and funding of the programs. For example, we knew that some programs were being operated by district attorney offices and other county agencies. We indicated that while it may be clear that Rule 810 identifies the program as a cost to the court, it was not clear that the court is always paying for the program, or at least the full costs of the program. As noted above, some programs are run by a county agency or through a county contract or other arrangement.

We have contacted a number of counties in order to better understand how these programs are being implemented. Thomas Stevenson, a legislative intern in our office, conducted a telephone survey of the small claims advisor programs in the ten most populous counties. As you know, CCP 116.910, subdivision (c), provides for funding of the program through a designated portion of the small claims filing fee; "other" county funding is allowed as defined in subdivision (d). Our survey determined that funding for three of the programs is being supplemented by other sources. In Contra Costa, the program funding through the filing fee is being supplemented by county general fund dollars. In San Diego county, the program is being supplemented by other local revenues. Funding for the Santa Clara program is being supplemented by the District Attorney's office. And in Los Angeles County, the program is apparently being funded through the Board of Supervisors. It's likely that these varied funding arrangements have evolved over time, and were negotiated locally among the various stakeholders. In our view, the current proposal, which would make it a superior court program, could jeopardize the arrangements in a number of counties which have chosen to supplement funding for the program, especially in this current fiscal climate.

In addition, the fee referenced in CCP 116.910 is on the undesignated court fee list. As we've previously discussed, this is a list of fees not designated by AB233 (Trial Court Funding Act) for either the court or the county. We are awaiting release of a Bureau of State Audits report on these fees and hope to move forward with legislation this year to resolve the issue. We have made a general recommendation to court clerks and others not to go forward with separate legislation that affects these undesignated fee sections. We believe that recommendation applies here as well.

For all of these reasons, we are recommending not proceeding with the proposal at the present time. If you have any questions, please feel free to contact me or Eraina Ortega, who is the advocate working on the fee issues. -Dan

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February 5, 2002

Law Revision Commission
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File: J-1400

Barbara S. Gaal
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Proposed amendments of Bus. & Prof. Code Sec. 6302.5 and Code Civ.
Proc. Sec. 575.1

Dear Ms. Gaal,

The Board of Law Library Trustees support the proposed amendments of the California Law Revision Commission to Business and Professions Code Section 6365 and Code of Civil Procedure Section 575.1 that affect county law libraries.

Sincerely,



Karen M. Lutke,
Director

CC: Board of Law Library Trustees

Comments on Code of Civil Procedure § 575.1

GRANT BARRETT, CALAVERAS COUNTY SUPERIOR COURT

From: Grant Barrett <GBarrett@co.calaveras.ca.us>
To: bgaal@clrc.ca.gov
Subject: CCP 575.1 Comment in Opposition to Amendment
Date: Feb. 4, 2002

Dear Law Review Commission:

This comment addresses the proposed revision to CCP sec. 575.1 requiring the clerk of the superior court to make a "hard copy" of each county's local rules available for inspection by the public.

We oppose this proposed revision. Currently our county law library maintains updated copies of each court's local rules. The law library provides the space and quiet necessary for review of local rules. Our court clerks' window does not have the space to store or provide access to these rules. Additionally, we do not have the staff to update each court's local rules as the supplements come out approximately every six months.

In the near future our court intends to have a public access computer terminal. If the State would provide an internet address or link where the local rules could be accessed (and kept uniformly updated) it would be possible to provide the public access to such information, but not in a hard copy format.

Thank you for this opportunity to comment and register our opposition to the proposed revisions.

Grant V. Barrett
General Counsel
Calaveras Superior Court

P.S. If any commission representative wishes to discuss this comment, you may contact me at 209/754-6340.

MIKE BEREST, MARIPOSA COUNTY SUPERIOR COURT

Date: Jan. 16, 2002
From: Michael Berest <berestm@mariposacourts.org>
To: Brian Hebert <bhebert@clrc.ca.gov>
Subject: Trial Court Restructuring: Code Civ. Proc. § 575.1

I personally think the copies should only be with the Law Library. I know no one who remembers anybody ever coming in to the Clerk's Office and asking to see the local rules of another county. Of course, many ask to see the local rules of our county, which is what one would expect. Having them in the Law Library only, however, would make them

accessible to the public while taking the burden off of court staff of what I see as the totally unnecessary task of keeping and updating the local rules of the other counties.

Mike Berest
Mariposa Superior Court

TIMOTHY GEE, SAN MATEO COUNTY SUPERIOR COURT

From: "Timothy Gee" <TGee@sanmateocourt.org>
Subject: Comments on CCP 575.1

Thank you for providing our Court with the opportunity to comment on the proposed changes to CCP 575.1. We support, in most part, the changes proposed. We do have two concerns.

1) In section 575.1 (b) reference is made to having 61 copies provided to the Judicial Council. We believe that the California Rules of Court, Rule 981 (d) specifies 80 copies to be provided to the Judicial Council. Section (b) should be changed to be consistent with the Rules of Court.

2) The other changes in section (b) should also be consistent with the recent proposed changes to the California Rules of Court issued by the Judicial Council (number W02-08). The two should be consistent with each other. We agree with having the copies of each county's local rules deposited with either the law library OR the Clerk of Court, depending on who is designated as the maintainer of the local rules as provided for under Rule 981.

Please feel free to contact me if you have any questions regarding our comments.

Timothy Gee
Superior Court, San Mateo County
Planning and Development
(650) 599-1790
(650) 363-4698 FAX

JANET GROVE, ADMINISTRATIVE OFFICE OF THE COURTS

Subject: CLRC comment on CCP 575.1
Date: Feb. 15, 2002
From: "Grove, Janet" <Janet.Grove@jud.ca.gov>
To: "Bgaal (E-mail)" <bgaal@clrc.ca.gov>,
"Sterling (E-mail)" <sterling@clrc.ca.gov>

Below is a comment from Cara Vonk and other AOC staff about CCP 575.1 (local court rules).

We recommend that subdivision (b) be amended as follows:

(b) After a majority of the judges have officially adopted the rules, 61 copies or a greater number as specified by Judicial Council rule, or an electronic copy, shall be filed with the Judicial Council as required by Section 68071 of the Government Code. [We also request that all suggested changes be deleted from the second sentence.]

We disagree with the comment that the statute should “make clear that a hard copy of each rule and amendment must be made available for public examination. It is not sufficient for a county law library or clerk of a superior court to provide the material to the public solely in electronic form.” We also do not agree that a copy of local rules should be deposited with both the county law library and the clerk of the superior court.

Currently rule 981(e) provides that the court executive officer, with the approval of the superior court and the written consent of the county law librarian, may delegate the authority to receive and maintain the rules [for all 58 counties] to the law librarian. There are counties that do not maintain a public law library. In counties that do maintain a public law library, there is no reason to burden the court executive officer with maintaining the local rules for all 58 counties. Maintaining local rules involves substantial filing time, and at least one court has told us that it doesn’t have the staff to maintain and file all the amendments that come in twice per year (and therefore the rules are just dumped into a box).

The Judicial Council is currently circulating an invitation to comment with proposed rule 981 changes governing the filing, distribution, and maintenance of local rules. Under the proposal, the court (or law librarian, if delegated) must make local rule amendments available for public examination “either in paper copy or through the Internet with personal public assistance.” If the court cannot certify public assistance, then the AOC will continue to make paper copies of all 58 counties’ rules amendments available to these courts. If the CLRC believes that a hard copy of other courts’ local rules should be made available, it may wish to comment on the rule 981 proposal, suggesting that the local rules should be made available for viewing and copying. A court must make its own local rules available for inspection and copying in all court locations. (See rule 981(b).) There are also publishers of statewide local rules including Westlaw, The Daily Journal, and the Recorder, among others. The Judicial Council plans to post all local rules amendments on its California Judicial Web site, which can then be viewed from home or on any public library computer and printed. Our goal is to make it easier, not harder, to access local court rules. We believe that the statutes should provide the Judicial Council with the greatest amount of flexibility possible, so that it may use new techniques and technologies to devise the best possible public access to all courts’ local rules.

JOSÉ GUILLÉN, RIVERSIDE COUNTY SUPERIOR COURT

Date: Jan. 16, 2002
From: "José Guillén" <JGUILLEN@co.riverside.ca.us>
To: <bhebert@clrc.ca.gov>
Subject: Trial Court Restructuring: Code Civ. Proc. § 575.1

I would recommend deleting county law library and in practice, all the courts would need is the confirmation that the local rules as submitted have been approved by judicial council.

EILEEN LEDGERWOOD, TULARE COUNTY SUPERIOR COURT

Date: Jan. 16, 2002
From: "Sam Ledgerwood" <SLedgerw@co.tulare.ca.us>
To: <bgaal@clrc.ca.gov>
Subject: Trial Court Restructuring: CCP 575.1

In accordance with Nathaniel Sterling's instructions to comment on the proposed amendment to CCP 575.1, please be informed that the Tulare County Superior Court is of the opinion that copies of local rules of court should be deposited with the law library in each county, rather than with the clerk of court. The task of maintaining all local rules of court appears to be better associated with routine library services

Respectfully submitted.

Eileen Ledgerwood, Admin. Svcs. Ofcr.
on behalf of CEO, LaRayne Cleek
Tulare County Superior Court

JODY PATEL, SACRAMENTO COUNTY SUPERIOR COURT

From: "Patel, Jody" <patelj@saccourt.com>
To: "bhebert@clrc.ca.gov" <bhebert@clrc.ca.gov>
Subject: Trial Court Restructuring: Code Civ. Proc. § 575.1
Date: Jan. 17, 2002

Noted below is our response to restructuring of CCP 575.1 Please let me know if you have any questions.

Proposed Amendment to Code of Civil Procedure section 575.1

In response to Commission's question of whether to require the Judicial Council to deposit a copy of proposed local rules with both the county library and the clerk of the superior court, I would recommend that proposed local trial court rules be sent only to the county law library which will make a hard copy available for public inspection. From my

experience, the law library is equipped for public use and viewing of documents. There is no need for the clerk of the superior court to duplicate the public examination service for proposed local rules adopted by trial courts in other counties.

SANDRA SILVA, FRESNO COUNTY SUPERIOR COURT

From: "Silva, Sandra" <SSilva@fresno.ca.gov>
To: "bhebert@clrc.ca.gov" <bhebert@clrc.ca.gov>
Subject: Trial Court Restructuring: Code Civ. Proc. § 575.1
Date: Feb. 11, 2002

Thank you for the opportunity to comment on the proposed modification of Code of Civil Procedure Section 575.1 relating to Local Rules.

The Fresno Superior Court is supportive of the change which will allow the court to transmit Local Rules to the Judicial Council electronically.

Sandra Silva
Associate Executive Office
Fresno County Superior Court
(559)488-6792 - FAX (559)488-6883

GAYLE WEBB, RIVERSIDE COUNTY LAW LIBRARY

Date: Jan. 22, 2002
From: "Gayle Webb" <GWEBB@co.riverside.ca.us>
To: <bhebert@clrc.ca.gov>
Subject: Trial Court Restructuring: Code Civ. Proc. § 575.1

We have been receiving the print copies of rule updates for all California local courts for several years and making them available to the public. We would like to continue providing that service, even if it means receiving them in electronic format and making a print copy of Riverside's. If the Court would prefer to take this over, please let me know.

From: "McConnell.Gloria" <Gloria.McConnell@ftb.ca.gov>
To: "bgaal@clrc.ca.gov" <bgaal@clrc.ca.gov>
Subject: Statutes Made Obsolete by Trial Court Restructuring - Rev. & Tax. Code § 19280
Date: Jan. 29, 2002

In response to your request for comment on the proper treatment of Revenue and Taxation Code Section 19280, FTB staff agrees with the Commission that Section 19280 should remain unchanged this year.

The following is in response to your question as to when subdivision (a) and subdivision (b) will be ready for reform:

Subdivision (a) -- As you indicated, Section 19280 does authorize the Franchise Tax Board to collect certain "[f]ines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court." These obligations may be referred by the county to the Franchise Tax Board "no sooner than 90 days" after payment becomes delinquent. Staff agrees with the Commission's conclusion that given the last municipal court was eliminated in early 2001, it would be premature to delete the "municipal court" reference from the section for the following reason.

When a county refers account information on a court-imposed debt to FTB for collection, FTB cannot determine from that account information what court imposed the debt. Therefore, FTB may presently have in its collection inventory, debts that were imposed by a municipal court. Also, the 90-day referral period represents the minimum age of a debt that can be referred to FTB for collection and referral is at discretion of the county. Therefore, FTB presumes that debts imposed by a municipal court would presently be in the county's inventory, subject to referral to FTB. FTB staff does not know when counties would no longer be referring municipal court-imposed debts to FTB for collection.

Subdivision (b) - As you indicated this provision requires the Franchise Tax Board to submit a report "on or before April 1, 2001," and authorizes the Franchise Tax Board to limit referrals under the statute to 17 counties "[f]or the period January 1, 2001, to December 31, 2002, inclusive." The Commission raised the question as to whether subdivision (b) will continue to serve a useful purpose after December 31, 2002

As required by this provision, the report was submitted by April 1, 2001, and the period for limiting the referrals to FTB will expire December 31, 2002. However, both this provision and the collection program in its entirety are due to expire on December 31, 2002, unless the sunset date in Section 19283 (b) is deleted or extended. Staff indicates that it anticipates an interested party will seek legislation this year to delete or extend this sunset date. In the event this occurs, subdivision (b) would no longer be useful and could be deleted next year.

From: "Weibel, Tom" <tweibel@DMV.CA.gov>
To: "bgaal@clrc.ca.gov" <bgaal@clrc.ca.gov>
Subject: Statutes Made Obsolete by Trial Court Restructuring - Proposed Revisions to Penal Code Section 1463.22
Date: Feb. 13, 2002

Dear Ms. Gaal:

I have attached comments and suggested amendment language prepared by our Licensing Operations Division in response to Mr. Sterling's request regarding Section 1463.22 of the Penal Code.

Section 13365 of the Vehicle Code, one of the suggested references, is a broad section pertaining to failures to appear in general, and not just those related to financial responsibility violations. In suggesting this reference, it is not the Department of Motor Vehicles' intent to receive funding beyond what we are already getting, but only to preserve the existing reimbursement of our administrative costs. If necessary, we would be agreeable to some sort of language specifying only FR-related FTAs.

Despite the obsolescence of some of the specific references, we received \$479,683.53 during FY 2000-2001 pursuant to 1463.22(b) PC, according to the State Controller's Office on about 300,000 16028 VC violations (the courts often waive the fines, thus the disparity between convictions and revenue). The Motor Vehicle Account is in some jeopardy, and we can ill afford to give up this money.

Call me if you wish to discuss this issue, or, for greater technical expertise on the affected processes, call Julie Montoya, manager of our Post Licensing Policy Unit, at 657-5691.

Tom Weibel
Assistant Legislative Officer
Department of Motor Vehicles
916.657.6518
tweibel@dmv.ca.gov

PENAL CODE SECTION 1463.22

The Department of Motor Vehicles (DMV) offers the following comments regarding the proper treatment of the references to California Vehicle Code Sections 16031, 16032, 16034, and 16035 which have been repealed.

Although the above referenced CVC sections were repealed in 1990, similar provisions of the Financial Responsibility (FR) citation program were re-enacted on January 1, 1997, as the result of passage of Assembly Bill 650, and further expanded by the passage of Senate Bill 652 effective January 1, 2000.

DMV continues to expend resources for suspension actions based on a driver's failure to appear or failure to pay for a citation based on CVC sections 16028/13365 (*no proof of insurance at the time of a traffic stop or at the time of a traffic collision*). This was one of the original requirements contained in repealed CVC section 16031 (Statutes of 1985). Additionally, the current provisions of CVC section 16030 now mandate DMV to suspend the driving privilege of any person for one year, upon receipt of a court abstract of conviction, for providing false evidence of FR to a peace officer or clerk of the court.

Based on legislative mandates, DMV continues to sanction drivers who fail to provide valid evidence of FR, or who fail to appear and/or pay for such violations. Rather than repeal Penal Code Section 1463.22(b), DMV respectfully requests the repealed CVC sections be replaced with corresponding references to the current provisions of law.

This change will allow DMV to continue to defray its costs in administering the provisions of the CVC related to uninsured motorists.

Suggested language attached

CVC sections prior to 1990	Current CVC sections
16028 Evidence of Financial Responsibility – Required every person to show evidence of financial responsibility if requested to do so by a peace officer.	16028 Evidence of Financial Responsibility – Requires every person to show evidence of financial responsibility upon demand of a peace officer.
16031 Failure to Appear: Financial Responsibility Offense – (a) Required DMV to suspend upon notice of a failure to pay or failure to appear for a violation of subdivision (a) of Section 16028 Subdivision (b) Required DMV to suspend the registration of an employer vehicle, if responsible for the violation and failed to appear or pay a fine.	13365 Suspension for Failure to Appear – Requires DMV to suspend for two failure to pay or failure to appear notices, including violations of Section 16028.
16032 Unpaid Fine: Lien on Vehicle	No corresponding section.
16034 Proof of Financial Responsibility Required –Required every person conviction of section a 16028(a) violation to file proof of insurance within 60 days, and maintain proof for three years. Persons convicted of a violation of section 16029 False Evidence of Financial Responsibility would be suspended for one year, or restricted by the court, and required to maintain proof of insurance for three years.	16030 False Evidence of Financial Responsibility: Penalties – Requires DMV to suspend for one year for a conviction of 16028(a) or allows the court to restrict.
16035 Course of Employment Restrict – Allowed any person convicted of a violation of subdivision (a) of Section 16028 or 16029 to receive a restricted license if driving a motor vehicle was necessary to perform the duties of their primary employment.	See Above

PENAL CODE SECTION 1463.22

Penal Code § 1463.22 (amended). Moneys deposited with county

SEC. ____ . Section 1463.22 of the Penal Code is amended to read:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents (\$17.50) for each conviction of a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of ~~municipal and superior courts~~ incurred in administering Sections 16028, and 16030, ~~and 16031~~ of the Vehicle Code. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars (\$3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections ~~16031, 16032, 16034, and 16035~~ 16030 and 13365 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars (\$10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

Comment. Subdivision (a) of Section 1463.22 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. Subdivision (b) is amended to reflect the proper Vehicle Code sections where administrative costs are incurred by the Department of Motor Vehicles based upon the actions required after convictions for failure to be in compliance with the current financial responsibility laws.



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF

JAMES A. BASCUE

PRESIDING JUDGE

February 14, 2002

TELEPHONE
(213) 974-5600

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Dear Commission Members:

In its Tentative Recommendation regarding statutes made obsolete by Trial Court Restructuring, the Commission specifically requested input on the preservation of three statutes — Government Code sections 53200.3, 53214.5, and 69894.3. For the reasons noted, these sections are not made obsolete by trial court restructuring and should be preserved as discussed below.

SUMMARY

These sections pertain to benefits provided to judges and court employees. With respect to judges, these sections provide the basis for county-provided benefits and are in no way made obsolete by trial court restructuring. Neither the Trial Court Employment Protection and Governance Act (Employment Act) nor court unification provisions make reference to judicial benefits or otherwise affect their status.

The Brown-Prasley Trial Court Funding Act (Funding Act) specifically recognizes locally provided judicial benefits and provides procedures for their payment in the context of state funding (Government Code section 77201). Preservation of these provisions with respect to judicial benefits is essential to avoid substantive changes in the law that would far exceed the Commission's charge to identify statutes made obsolete by trial court restructuring. As the Commission noted in its request for comment, the issue of judicial benefits is the subject of a separate study and review by the Judicial Council Task Force on Judicial Service and others. Pertinent statutes should be preserved pending the completion of that endeavor.

With respect to court employees, these statutes also remain viable and are essential to maintaining the current benefit structure for court employees. As discussed below, these statutes provide the authority, mechanism and procedure for providing benefits to court employees within parameters established by the Employment Act. As such, these statutes are complementary to the Employment Act, and their repeal would adversely affect employee benefits in a manner neither required nor anticipated by the Employment Act and other provisions relating to trial court restructuring.

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DISCUSSION**Section 53200.3**

In part, this section is a primary authority for county-provided benefits to judges in the Los Angeles Superior Court. Section 53200.3 is not made obsolete by the Employment Act, the Funding Act nor court unification provisions. Locally provided judicial benefits are expressly recognized in Government Code section 77201, which provides for payment of such benefits by the County in the context of adjusting a county's trial court funding "maintenance of effort" payment to the State. (See also CRC Rule 810 (d) identifying "judicial-benefits, county-paid" as part of "court operations"). The Employment Act does not pertain to judicial benefits, as judges are not included in the definition of "court employee." (Government Code section 71601[m]). Finally, nothing in the unification-related provisions impacts local judicial benefits.

As to court employees, section 53200.3 authorizes the current arrangement by which the court provides benefits on a par with county employees. This arrangement is not only consistent with the Employment Act, it effectuates what has been agreed to in labor negotiations undertaken pursuant to the Act and adopted by court rule. As such, this section is not obsolete. Nor is it inconsistent with the Act, since its application is subject to the overriding provision in Government Code section 71627 that "notwithstanding any other provision of law" the level of benefits may be changed. In other words, section 53200.3 is applicable to court employees only to the extent its provisions are consistent with action taken and labor agreements reached pursuant to the Employment Act.

Section 53214.5

As with section 53200.3, this section pertains to locally provided judicial benefits which are not affected by the Employment Act or by provisions relating to trial court funding or court unification. Preservation of this section is essential to maintaining such benefits for judges. There is no basis for recommending repeal of these provisions as obsolete.

This section should also be retained in its entirety with respect to court employees. Section 71628 of the Government Code provides that the implementation of the Employment Act "shall not be a cause for the modification of the level of deferred county compensation plan benefits provided to a trial court." Section 71628 further provides that "[i]f the county administers deferred compensation plan benefits to trial court employees . . . a trial court employee shall be eligible to participate in deferred compensation plan benefits."

Section 53214.5 authorizes a county to administer deferred compensation benefits for court employees and judges by permitting their participation in county plans. Together with section 71628, section 53214.5 establishes the basis for participation of court employees

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in county deferred compensation plans in Los Angeles County. Some of these plans, such as the County's 401K plan, are not plans that successor employers can establish under Federal law. Continued participation in these plans by judges and court employees as county employees for the purpose of the plans is dependent upon the continuing authority conferred by section 53214.5.

This provision should be retained in its entirety. Repealing the legal authority that enables court personnel to participate in county-sponsored deferred compensation programs may even undermine the negotiated agreements between the Court and its represented employees that provide for such benefits. Section 53214.5 continues to be relevant and necessary because it provides the specific mechanism and authority by which the county can permit court employees to participate in county plans.

Section 69894.3

Government Code section 69894.3 allows trial courts by local rule to provide that trial court personnel, including judges and jurors, be treated as county employees for benefits purposes. To the extent that this provision applies to judicial benefits, it should be retained for the reasons outlined above regarding the retention of sections 53200.3 and 53214.5 as they relate to judicial benefits.

This section should be retained with respect to court employees and jurors as well. Section 69894.3 provides the historical and statutory authority for court personnel to participate in County of Los Angeles benefit plans and simply provides a mechanism for effectuating agreements between the Court and its represented employees made pursuant to Article 3 of the Employment Act.

In addition, this section and the local rule implementing it, are also the legal means by which jurors are covered by county workers compensation plans in Los Angeles County. The Employment Act does not affect juror benefits as jurors are not "court employees" under the Act. (Government Code section 71601[m]).

Finally, the Commission has requested comment on the continued usefulness of provisions in section 69894.3 relating to the transferability of court employees in Los Angeles County. While the Employment Act, (section 71615(c)(4)), provides for employee transfer rights in certain contexts, it does not make this section obsolete.

Section 69894.3 was originally enacted to provide for the transferability of Superior Court employees in Los Angeles County upon approval of the Board of Supervisors because the court and county were considered separate employers. Section 71615(c)(4) similarly recognizes that the counties and the court are separate employers under the Employment Act. It provides statutory authorization for negotiating transferability and provides a

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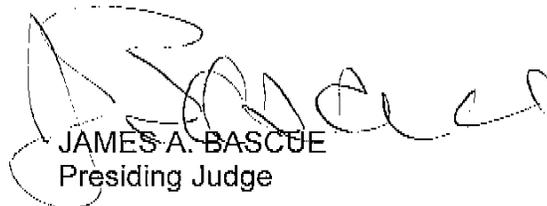
mechanism for employees to obtain transferability rights. With respect to Los Angeles County, court employees have already been provided such rights through enactment of section 69894.3.

Repeal of the transferability provisions in section 69894.3 would force the court and its employees to negotiate for transferability rights that have been in place for many years. This exercise would not serve the policies reflected in the Employment Act. One of the basic tenets of the Employment Protection and Governance Act is to avoid reducing court employee benefits as a result of the passage of the Act. The elimination of transferability rights that court employees have long enjoyed runs counter to this tenet. In addition, the uncertainty prompted by the repeal of these provisions would have a destabilizing influence in Los Angeles County for both court and county employees without furthering any state interest.

Section 69894.3 is consistent with the Employment Act and its preservation is essential to the continued existence of transferability rights in Los Angeles County.

Thank you for the opportunity to provide input on these important issues.

Sincerely,



JAMES A. BASCUE
Presiding Judge

JAB:bs

c: Honorable Robert A. Dukes, Assistant Presiding Judge
John A. Clarke, Executive Officer/Clerk

TRIAL COURT RESTRUCTURING PROPOSALS
Comments on Proposed Changes

RESPONDING COURT:
LOS ANGELES SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

Contact Person: Larry Jackson
Phone: 213-974-5106

CONSTITUTION

Article VI, § 15

As a practical matter, this may be fine if there are no judges with less than 10 years experience. However, this amendment creates the technical possibility that a former municipal court judge could be rendered ineligible if he or she has fewer than 10 years service. Note that the Commission has proposed repeal of Article VI, § 23, which exempts former municipal court judges who become superior court judges from the ten-year service requirement.

Article VI, § 23

Repeal of the 10-year service exemption for former municipal court judges is theoretically a problem. If there are any judges who have less than 10-years service, this repeal would seem to make them ineligible (note proposed repeal of Art. VI § 15 as well).

BUSINESS AND PROFESSIONS CODE

§ 6302.5

Add new language requiring staggered terms:

- 1) The terms of no more than three Judge–appointed members shall expire in the same year.
- 2) The term of one board–appointed member shall expire each year.

§ 6405

The provision does not specify who can revoke the certificate. There is a need to specify that the petitioner needs to petition the court for an order to return the bond. A declaration should be included when petitioning the court to order the return of the bond. The declaration should include a statement that there is no legal action pending, or no judgment entered against the petitioner.

§ 6412

It should retain the jurisdictional limit as any other civil matter involving personal injury.

§ 6412.1

Makes reference to seeking redress in any municipal court. Perhaps the word "any" should be deleted to clarify that relief should be sought in the county where the person is injured.

§ 6455

Refers to seeking redress in any municipal court. Change language to read "superior court of the county where the injury occurs."

§ 12606

Strike "municipal" from "by order of the municipal or superior court."

§ 12606.2

To get to the proper jurisdiction to open such a superior court case, the agency responsible for regulating/prosecuting violations should be taken into consideration. If such organization, e.g. comparable to the State Weights and Measures Agency is responsible for regulation, then any action filed under these provisions might be considered a matter for general jurisdiction courts. This approach is consistent with the jurisdiction responsible for issuance of inspection warrants.

§ 17511.12

Page 50, lines 37-38. Attorney General should be required to file in the county "pursuant to local superior court rule". (See CCP Section 198.5(b) for language.)

§ 22391

Same comment as § 6405.

CCP Section 996.430 refers to "court of competent jurisdiction". Should it be cleaned up to provide jurisdiction as to which county? It is unclear which other courts accept these actions for filing. If reference was to municipal court, change language to reflect court unification.

§ 22455

Same comments as § 6405.

§ 25361

The language change improperly reflects the change from County clerk to clerk of the court. In this instance, it appears that it requires the clerk of the court to take possession of a Notice of Seizure and “Lis Penden” [a function traditionally performed by recording] when there is/are no active cases on file to resolve a controversy. This language needs to be changed to County clerk or Recorder of the County wherein such action would be brought in court.

§ 25762

Removing language regarding the municipal court in the first paragraph is fine. However, the proposed deletion of the entire second paragraph relating to the depositing and distribution of fines and forfeitures under PC §1463 is highly problematic since without this section, the Court would have no authority to deposit fines and forfeitures with the county treasurer and no authority to disburse and distribute said fines.

CIVIL CODE

§ 798.61

Local venue issue. As with all solicitations for comment citing local venue issue, similar wording to that of CCP Section 198.5(b), regarding local superior court rules for those courts holding session in locations other than the county seat, should be used.

§ 1780

Issues on venue should be handled at the court level.

1780(5)(c) refers to filing “in the county in...” Should it refer to the superior court in county X?

§ 1789.24

Upon filing of a petition and notice of hearing for calendaring purposes, the Court may make an order to disburse funds. Adding procedure to set the matter before the court will probably not be that helpful/necessary.

Return of deposit should be handled in the same manner as suggested for B&P 6405.

§ 1812.10

Does filing the addendum satisfy the requirement for separate affidavit attesting to proper location in commencing the action?

§1812.105, § 1812.503, §1812.510, §1812.515, §1812.525, § 1812.600

Return of deposit should be handled in the same manner as suggested for B&P 6405.

§ 2924j

The Court does not accept deposit of funds without an order or pending interpleader action. Therefore, it is recommended that language allowing trustees to deposit funds with the clerk of the court be removed.

§ 2984.4

Refers to filing “in the county in which”. Should it refer to “in the superior court of the county in which”? Local venue issue. As with all solicitations for comment citing local venue issue, similar wording to that of CCP Section 198.5(b), regarding local superior court rules for those courts holding session in locations other than the county seat, should be used.

CODE OF CIVIL PROCEDURE

§ 32.5

We need to be consistent when referring to matters over \$25,000.00; is it unlimited or is it general?

§ 116.210

It is not clear whether the seven judges referred to are in the Superior Court or the small claims division.

§ 116.250

The language defining where small claims court sessions can be held should be carried over to all superior court sessions.

§116.940

This section transfers responsibility for advisory services from the county to the court. In Los Angeles, these are currently provided through the county's Department of Consumer Affairs. This would require a shift of personnel, budgeting, processing, and changes to the California Rules of Court and Local Rules. It would also require negotiations between the county and the court re: transition of responsibility. This function should remain with the county in order to avoid conflict of interest for the court.

§ 134

Unnecessarily complicated in (d). Filing documents on the next regular court business day may be confusing, yet the procedure described specifically exempts injunctive relief cases. Suggestion: if the court prescribes that an order or filing is effective on a non-business day, it should so reflect the appropriate filing date.

§ 170.6

There is a conflict between these two codes [GC68616 vs. CCP 170.6] concerning the time available to file a judicial challenge. In both cases, they would be extended by five days for mailing of notice, if not served in person. There should be one standard of 15 days.

§ 215

215(b) Phrase at the end of the sentence, "in going only" is unnecessarily confusing. Does this mean one way? Then, let's say one way. Otherwise the juror needs to be compensated for "each mile." Presumably, that means both ways.

§ 259

The suggested deletion of the phrase "or written consent of an appearing party" from Code of Civil Procedure § 259(e) would eliminate a commissioner's current authority to issue judgments in uncontested and default matters with the stipulation of an appearing party. At present, in uncontested and default matters, a commissioner can act as a temporary judge with the written consent of an appearing party and, in particular, issue judgments on family law matters that are submitted in writing without the necessity of a court hearing.

The Legislative history indicates the phrase was added by Stats. 1990, ch. 411 (AB 3973) to clean-up a preceding amendment. In 1989, the section had been amended to provide that a commissioner may act as a temporary judge "by written consent of the party appearing at the hearing where the action is either uncontested or the other party or parties in default." Stats. 1989, ch. 1105 (AB 1905). The Assembly Committee analysis for the 1990 clean-up legislation states "[w]ithout the party having to make a specific court appearance, a temporary judge will again be able to issue judgments in uncontested or default matters submitted in writing." Bill Analysis, Assembly Committee on Judiciary, Nov. 27, 1990, p. 3. By removing the language "or by written consent of an appearing party" from CCP § 259(e) the authority to do so would be eliminated.

§ 269

Judges sitting on court trials usually take detailed notes. However, as was pointed out, it might perfect the clerk's transcript on appeal to include the argument to the court at the conclusion of a court trial.

§ 392- 395

Local venue issue. As with all solicitations for comment citing local venue issue, similar wording to that of CCP Section 198.5(b), regarding local superior court rules for those courts holding session in locations other than the county seat, should be used.

§ 396

This section can be repealed as a result of court unification.

§ 396a

Civil Code Section 1812.10 and 2984.4 make reference to municipal court. Also, references transfer to proper court. Should this refer to proper case classification rather than proper court?

§ 403

As a result of unification, this section should only refer to transfer and coordination of cases from a court in another county.

§ 404.3

Does line 13, "presiding judge of a court" refer to courts of a different jurisdiction or of a different county?

§ 422.30

Suggestion: Should this include "over 10,000" or "under 10,000" in caption for Limited Civil Case (may be covered in CRC 201?)

(1) Should include the address of the courthouse; (b) should include the payer amount.

§ 575.1

Instead of specifying entities to receive and maintain current individual copies of local rules, it might make more sense to specify the alternative of posting on the court's web page (assuming it has one) as satisfying the requirement to share access to local rules statewide.

§ 668

This requirement is deemed to be satisfied by creation of a reel of microfilm. Past practice until 1983 for general cases was to actually maintain a separate bound book with copies of each judgment with a judgment book and page number so identifying it. In 1983, procedural change allowed the clerk to perform the "entry" of judgments by simply affixing the firm stamp.

§ 688.010

This section should refer to limited jurisdiction instead of municipal court.

§ 904.1

Section 904.1(a)(1) refers to municipal court judges and matters pending in the municipal court. Delete.

§ 1141.11

Suggest legal review for conflict with State and Federal Constitutional protections as to an unappealable determination of cases.

The term "at-issue" is no longer used. Since the form changed, perhaps the language should be changed for consistency. For example, "cases ready for trial" instead of "at-issue."

§ 1141.12

Suggest standardized language: "cases ready for trial" instead of "at-issue."

§ 1420

Provision for filing these cases only in Sacramento impacts interested parties elsewhere in the Superior Court's jurisdiction – which is statewide. NO explanation is provided for deviation from prior approach to filing cases, e.g. where property is located or party resides(ed). Since both court and AG have authority to act statewide, suggest revision that mirrors previously stated criteria to commence cases resolving title to property by private citizens.

§ 1609

Where "county clerk" is stricken, replace it with "clerk of the superior court" instead of just "clerk."

EDUCATION CODE

§ 69763.2

Ed. Code 69763.2 should include reference to Section 1091a of the US Code Title 20 re statute of limitation.

Local venue issue. As with all solicitations for comment citing local venue issue, similar wording to that of CCP Section 198.5(b), regarding local superior court rules for those courts holding session in locations other than the county seat, should be used.

FOOD AND AGRICULTURAL CODE

§ 25564

Refers to filing in municipal court. Delete reference.

§ 30801

May require the court to issue dog license if the Board of Supervisors does not designate the animal control department to do so.

GOVERNMENT CODE

§ 990.2

In addition to a county, the local superior court and Judicial Council should be given the authority to insure Court employees against liability.

§ 6103.5

There is a conflict between this section and the Bus & Prof Code re: substitute service for private mailboxes. GC has always allowed substitute service as currently enforced. B&P requires actions by the "owner" or "person served", and verification on the proof of service. This is impossible to verify or enforce. The B&P cite should be removed.

§ 6701

There should be a specific comment as to what superior courts will do with holidays that fall on Sat. or Sun. What entity will define for courts?

§ 12965 & 12980

Delete municipal court references.

§ 15422

There is a typographical error at line 15: "the superior or municipal courts at all stages of proceedings...", "courts" should be "court."

§ 16265.6

The Commission may wish to consider repealing this section because it is obsolete.

§ 22754.35

Keep section (d) and repeal section (f). Section (f) should be repealed as it relates only to active municipal court judges and is therefore obsolete.

§ 26299.008

Until the issues involving facilities are settled, no changes should be made.

§ 26639-26639.3

We are recommending the following amendments to the Los Angeles County Sheriff-Marshal Consolidation Legislation rather than the proposed 15-year automatic repealer. The proposed changes may need to be placed elsewhere in the Govt Code since they mainly relate to operational issues.

Repeal 26639, 26639.1, 26639.3 (a), 26639.3 (b). Modify 26639.2 and 26639.3 (c) and 26639.3 (d) as follows:

26639.2. The courtroom assignment of bailiffs in the Los Angeles Superior Court after consolidation pursuant to this article shall be determined by a three-member committee comprised of the presiding judge of the superior court; the Chairperson of the Municipal Court Judges' Association and the

bailiff's management representative; or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned, the bailiff's management representative, and with the bargaining unit of the bailiff employee, if the employee is represented. It is the intent of the Legislature, in enacting this section, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

26639.3 (c) (a) All county service or service by employees of the marshal's office ~~or the sheriff's office~~ on the effective date of ~~a~~ the consolidation of court-related services provided by the marshal and sheriff under this article shall be counted toward seniority in the **consolidated** sheriff's office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

26639.3 (d) (b) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation ~~under this article~~ shall lose peace officer status, be demoted, or otherwise adversely affected as a result of the consolidation.

§ 27647

This section is proposed for repeal in light of recently enacted provisions making judges and court employees state officers and employees for purposes of representation and conferring on the Judicial Council the authority and responsibility for providing for indemnification and defense. (Government Code §§ 811.9 *et seq.*). This section should not be repealed as it continues to have practical application. County counsel may be the desired choice for representation in some circumstances. The scope of section 811.9 does not extend to all actions in which the court or its employees are represented and the authorization in section 27647 should be preserved. Courts may contract for county counsel services pursuant to section 77212 and the authority for county counsel representation is a prerequisite to such a contract.

§ 27648

At minimum, any amendment to this section must preserve the principle that any judge otherwise entitled to representation who is required to retain his or her own counsel is entitled to reimbursement, unless this principle is implemented elsewhere in the Code.

§ 31469

Subdivision (b) should not be deleted. The commission report correctly points out that section 71624 provides for continued participation of court employees in county retirement plans. Subdivision (b) provides the legal authority in the Retirement Law for this to occur.

§ 31554

Section 31554 should not be amended or repealed. The commission report correctly points out that section 71624 provides for continued participation of court employees in county retirement plans. This section permits participation by court employees who are not participants on other pension systems to participate in the County system. Section 31544 is necessary to provide for participation by court employees in a pension plan. This is consistent with section 71624 which provides for participation in the County system but does not preclude the courts from offering a different plan.

§ 31555

In view of the proposed repeal of section 31555, it might be appropriate to add the following language to section 31520 for the sake of clarity: and a “retired member” means a member, including a member under former section 31555, retired for service or disability.

§ 53200.3, § 53214.5

Should not be repealed.

This section is the subject of separate comments submitted by Judge Bascue.

§ 68152

68152 – Remove: “after notice of destruction.”

(d)(1) – add: Cases dismissed without prejudice due to violation of delay reduction rules.

- (j)(1) – change: one year from application date.
- (J)(12) – change: define a time limit.
- (l) – add: All records required to be maintained over 10 years may be retained in a industry recognized electronic format.

§ 68551

This section should not be amended as proposed. The language marked for deletion pertains specifically to reimbursement of expenses incurred in attending seminars and institutes presented by the Judicial Council. Recommended repeal is based on Government Code section 69505 which gives the Judicial Council the authority and responsibility to establish procedures and schedules for reimbursement for travel expenses.

The language should be preserved. There is nothing in the trial court restructuring provisions that suggests a policy determination that reimbursement for attendance at such programs should no longer be expressly provided. Its repeal would constitute such a determination. Moreover, it might be argued that "travel expenses" is more limited than "expenses incurred in attending seminars and institutes" and the latter term ought to be given continuing effect.

Section 68551 should be amended, however, to provide that the charge for such expenses is against the court rather than the county.

§ 69510

Amend as follows: "where there is a court facility" or other locations ordered by the court. Current statute is too restrictive. At times, the court may need to hold session at non-court facility.

§ 69840

There no longer appears to be any county clerk who continues to act as court clerk in any county, and that it does not appear necessary to preserve statutes authorizing that or providing reimbursement to counties for doing so.

§ 69894.3

Should not be repealed.

This section is the subject of separate comments submitted by Judge Bascue.

§ 69894.4

This section pertains to reimbursement of duty-related travel expenses incurred by judges and employees. For the most part, this section appears to be supplanted by recently enacted Government Code § 69505 which requires Judicial Council-approved policies and reimbursement schedules and which requires each court to adopt a conforming reimbursement system. However, whereas section 69894.4 authorizes the Board of Supervisors to assign an automobile to any judge or officer of the court, section 69505 makes no allowance for assignment of an automobile. The portion of section 69894.4 pertaining to assignment of an automobile should be retained, substituting the Court as the entity determining whether an automobile in lieu of reimbursement would better serve the interests of the court.

§ 69898

Appropriate to repeal provided proposed amendments to 71620 are enacted.

§ 70142

The first paragraph of this section pertains to the qualifications of commissioners. It might be amended to apply until the Judicial Council exercises its authority under Government Code section 71622 (c).

The second paragraph of section 70142 pertains to appointment of retired commissioners to the court and provides that such a commissioner may be assigned by the presiding judge as needed and shall be paid while serving the difference between the full compensation of a court commissioner and the appointee's retirement allowance. It further provides that such employment shall not operate to reinstate the appointee as a member of the county retirement system. Similar authority will be retained in Government Code section 72190 if amended as proposed in the commission's recommendations. Since the first paragraph of this section should be retained as indicated above, it might be preferred draftsmanship to consolidate the provisions of section 72190 and 70142 into a single section.

§ 71080 – 71100

Proposed recodification of 71094 is appropriate and necessary.

§ 71080 – 71280.5

New Article 7 commencing § 71265 should be titled "Marshal" since there are no provisions pertaining to the clerk.

§ 71617

Agree with Commission's proposal to defer until February 8, 2003.

§ 72190

See reply under §70142.

§ 72407

Line 27 – strike out the phrase "the county shall pay him."

§ 72709 – 72714

These provisions are the subject of comments already submitted by the court to the Commission. These sections provided a source of funding for court reporters' salaries in the Los Angeles Municipal Court. Its continued existence is necessary to avoid a significant funding shortfall in the unified superior court. Amendments to the Commission's proposal have been submitted to preserve the fund and the means by which it is funded in the context of court unification.

HEALTH AND SAFETY CODE

§ 1428

Pg. 597, line 26 refers to at-issue memorandum. Should be changed to reflect request for trial setting.

§ 108580, § 110375, § 111880, § 111895

Refers to proceedings in the municipal court. Delete reference.

LABOR CODE

§ 98.1

Do we need “appropriate” superior court or can the word be deleted?

§ 1701.10

Procedures for seeking order would be helpful.

PENAL CODE

§ 896, 900, 904, 932, 933

The proposal to move grand jury functions from the county clerk to the clerk of the superior court has significant fiscal impact on the court. In Los Angeles County, the grand jury office is staffed by superior court employees. However, as the grand jury is a cost not allowable under CRC Rule 810, the county is presently responsible for funding these positions. The proposed change would require additional support from Trial Court Funding.

§ 977 – 977.2

Question: Is the phrase "initial hearing in a felony case" sufficient to convey the intention of the Legislature in Penal Code § 977, subdivision (c) and Penal Code § 977.2, subdivision (b), when it specifically created an exception to the general provisions on attorney appearance during video arraignments in cases of arraignment on an information in superior court? Suggested language for both provisions: "However, if the defendant is represented by counsel at arraignment on an information in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing."

§ 1269b

The suggested language that follows might be suitable concerning adoption of bail schedules by the courts. It does not specify a procedure. The intent of the legislation is satisfied so long as the bail schedules are annually revised and approved either by the judges themselves or by a representative committee of the judges.

(c) "It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses.... (d) The superior court judges in each county shall also prepare, adopt, and annually revise a uniform countywide schedule of bail for all misdemeanor and infractions offenses except Vehicle Code infractions...."

VEHICLE CODE

§ 11205

References to the municipal court in Section 11205 should be deleted. A County Superior Court is a judicial district. The DMV has addressed the organization of the traffic violator schools (TVS) for the TVS referral list. Cities in the county are listed with a separate number for each city. The TVS is listed one time with numbers by the TVS name for the cities where the TVS class is scheduled. Due to its size and number of cities, the list for LA County is still divided based on the previous municipal court judicial districts. Any change to the language for the list needs to be reviewed by both the courts and the DMV.

The following language is suggested:

11205(a) The department shall publish a traffic violator school referral list of all the approved locations of the traffic violator school classes, by school name, to be transmitted to each superior court in a county in sufficient quantity to allow the court to provide a copy to each person referred to traffic violator school.

11205(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each superior court in the state. Superior courts with multiple districts within the county, shall be provided a copy for each district.

WELFARE AND INSTITUTIONS CODE

§ 603.5

The reference to "parking" should be deleted and the reference to Vehicle Code infractions should be revised to exclude standing and parking violations. AB 408 (Epple), chapter 1244, stats. 1992, decriminalized non-misdemeanor standing and parking violations and enacted a new system of civil penalties. These violations are subject to a civil penalty only, the enforcement of which is governed by the civil administrative procedures set forth in Vehicle Code § 40200 *et seq.* In enacting section 40200 *et seq.*, the Legislature determined that criminal penalties are not appropriate sanctions for standing and parking violations; and criminal procedures are not necessary for the fair enforcement of those violations. Chapter 1244, stats. 1992, section 1.

§ 742.16

Some clarification might be beneficial. The following are suggested amendments:

(n) Except as provided in subdivision (o), the options available pursuant to subdivisions (a), (b), (c), (d), and (k), to order payment by the minor and his or her parents of less than the full costs described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons of justice, are available only to a juvenile court judge in a proceeding brought pursuant to this section *shall not be available to a municipal court in an ordinary civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in*

(o) In any proceeding pursuant to either this section or subdivision (b) of Section 1714.1 of the Civil Code, the maximum amount that a parent or a minor may be ordered to pay shall not exceed twenty thousand dollars (\$20,000) for each tort of the minor.

§ 872

Grammatical change: INSERT the phrase “a period” in line 35, on page 717, as follows:...county in the state for the detentions of an individual minor for a period not to exceed 60 days.