

Memorandum 2002-17

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

This memorandum analyzes comments concerning individual issues in the Commission's Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (November 2001). Most of the comments are attached as an Exhibit to Memorandum 2002-14. The following comments are attached to this memorandum:

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|---|-------------------|
| | <i>Exhibit p.</i> |
| 1. Administrative Office of the Courts (Family Code provisions) | 1 |
| 2. Administrative Offices of the Courts (SJOs) | 2 |

Comments concerning general issues in the tentative recommendation are analyzed in Memorandum 2002-14.

This memorandum does not cover all of the comments on individual issues in the tentative recommendation. The staff is still analyzing some of these comments, and will supplement this memorandum when we have completed that work.

Cal. Const. Art. VI, § 5 (repealed). Municipal court

The San Diego County Superior Court is concerned about repeal of the constitutional provision authorizing the City of San Diego to be split into more than one municipal court district. Cal. Const. art. VI, § 5(d). Subdivision (d) is an exception to the general rule of Section 5(a) precluding a city from being divided into more than one municipal court district. The court asks whether specific authorization is needed to allow the superior court to maintain separate filing districts within the city. Memorandum 2002-14, Exhibit p. 15.

The staff does not believe specific authorization is needed for a superior court to maintain separate filing districts. The courts have inherent authority to manage their business, derived from the general constitutional vesting of judicial power in the courts. Cal. Const. art. VI, § 1. In addition, there is general statutory authority for superior courts to maintain sessions at any place where there is a

court facility. Gov't Code § 69510. We could add specific statutory authority for a superior court to maintain separate filing districts within its jurisdiction. If we did that, we could not make it specific to San Diego, since that would cast doubt on the general authority of every other court.

Perhaps to allay the court's concern, we **should refer in the Comment to the general authority of the court:**

Comment. Section 5 is repealed to reflect unification of the municipal and superior courts pursuant to former subdivision (e).

This repeal deletes the requirement of subdivision (a) that each county be divided into municipal court districts as provided by statute. Statutes provide the manner of creation of judicial districts, and these statutes have continuing relevance for legal publication purposes. See Gov't Code §§ 71042.5-71042.6. These statutes are not affected by repeal of Section 5.

Repeal of subdivision (d), which authorizes division of any city in San Diego County into more than one municipal court district, does not affect the ability of the superior court to maintain separate filing districts within a city, where appropriate. A superior court has inherent authority to control its business as well as express authority to maintain a session in any place where it has a facility. Section 1 (judicial power of state vested in courts); Gov't Code § 69510 (superior court sessions at location of facility).

Cal. Const. Art. VI, § 15 (amended). Qualifications of judges

Cal. Const. Art. VI, § 23 (repealed). Transitional provision

The tentative recommendation would delete constitutional provisions relating to qualifications of municipal court judges — specifically the requirement that they have at least 5 years experience, leaving in place the 10 years experience requirement for superior court judges. The Los Angeles County Superior Court is concerned about a transitional issue — suppose there was a municipal court judge appointed with 5 years experience under the old law, the judge has become a superior court judge through trial court unification, and the transitional provision protecting that judge is repealed before the judge acquires the 10 years experience necessary for a superior court judge. Memorandum 2002-14, Exhibit p. 44.

The staff does not believe that is an issue. When we first began studying unification issues in 1993 we found that all judges had a minimum of 10 years experience, and the Governor never appointed anyone without that experience. (It would have been theoretically possible for a person without 10 years

experience to gain office by election at that time, however.) In any event, by the time the proposed constitutional amendment is likely to go into effect, the 10 year requirement will have been in place for more than 5 years (since June 1998), making it technically impossible for any sitting judge to have less than 10 years experience. Nonetheless, the staff will confirm with the Judicial Council that no judge in California has less than 10 years experience.

Bus. & Prof. Code § 6302.5 (amended). Board of law library trustees of Los Angeles County

Business and Professions Code Section 6302.5 pertains to the board of law library trustees of Los Angeles County. The tentative recommendation proposes the following amendment:

6302.5. Notwithstanding any other provision of law, in Los Angeles County appointments made by judges of the superior court ~~or municipal court~~ shall be for a term of four years, and appointments made by the board of supervisors of the county shall be for a term of two years.

~~Trustees who are incumbents on the effective date of this section shall be considered to have started their terms on the effective date of this section.~~

~~At the first regular meeting following the effective date of this section, the members appointed by the judiciary shall classify themselves by lot so that three members shall serve for four years, and two members for two years. Thereafter, the term of office of each member so appointed shall be four years.~~

~~At the first regular meeting following the effective date of this section, the members appointed by the board of supervisors shall classify themselves by lot so that one member shall serve for two years, and one member for one year. Thereafter the term of office of each member so appointed shall be two years.~~

Comment. Section 6302.5 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 delete obsolete language regarding the manner of establishing a system of staggered terms.

The tentative recommendation also solicited comment on whether the last three paragraphs of the statute, which established a system of staggered terms, are now obsolete.

The Los Angeles County Superior Court suggests replacing those paragraphs with new language regarding staggered terms: (1) “The terms of no more than three Judge-appointed members shall expire in the same year,” and (2) “the term of one board-appointed member shall expire each year.” Memorandum 2002-14, Exhibit p. 44. That suggestion could be implemented as follows:

6302.5. (a) Notwithstanding any other provision of law, in Los Angeles County appointments made by judges of the superior court ~~or municipal court~~ shall be for a term of four years, and appointments made by the board of supervisors of the county shall be for a term of two years.

~~Trustees who are incumbents on the effective date of this section shall be considered to have started their terms on the effective date of this section.~~

~~At the first regular meeting following the effective date of this section, the members appointed by the judiciary shall classify themselves by lot so that three members shall serve for four years, and two members for two years. Thereafter, the term of office of each member so appointed shall be four years.~~

~~At the first regular meeting following the effective date of this section, the members appointed by the board of supervisors shall classify themselves by lot so that one member shall serve for two years, and one member for one year. Thereafter the term of office of each member so appointed shall be two years.~~

(b) The terms of no more than three judge-appointed members shall expire in the same year.

(c) The term of one member appointed by the board of supervisors shall expire each year.

Comment. Section 6302.5 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 delete obsolete language regarding the manner of establishing a system of staggered terms.

The staff is not sure this new language is necessary, because the existing system of staggered terms should perpetuate itself indefinitely of its own accord. But we see no harm in including the language. Unless there is an objection, **we would revise the amendment as shown above.**

Bus. & Prof. Code § 25762 (amended). Fines and forfeitures of bail

Existing law provides disparate treatment of fines and forfeitures under Section 25762, depending on the court — municipal or superior — in which the

deposit is made. The tentative recommendation eliminates the special municipal court treatment, notes that this is a fiscal issue under consideration, and solicits comment.

The San Diego County Superior Court comments that these deposits should continue to be treated in the same manner that municipal court deposits have been treated in the past, and the section should be amended to accomplish this. Memorandum 2002-14, Exhibit p. 15. The Los Angeles County Superior Court believes the proposed revisions are highly problematic. Memorandum 2002-14, Exhibit p. 46.

These comments convince the staff that this section is not ripe for amendment. **We would remove it** from the recommendation and bill, for now.

Civ. Code § 2924j (amended). Proceeding to discharge trustee and distribute proceeds of sale under deed of trust

Civil Code Section 2924j is a lengthy provision setting forth the procedure for discharging a trustee and distributing the proceeds of a sale under a deed of trust. The tentative recommendation proposes revisions to reflect unification of the municipal and superior courts, and to clarify the jurisdictional classification of a proceeding to distribute excess sale proceeds. The tentative recommendation also includes a Note pointing out that the Commission is examining other issues pertaining to the section in its study of civil procedure technical corrections.

The Los Angeles County Superior Court comments that the court “does not accept deposit of funds without an order or pending interpleader action.” Memorandum 2002-14, Exhibit p. 47. “Therefore, it is recommended that language allowing trustees to deposit funds with the clerk of the court be removed.” *Id.*

This suggestion goes beyond the scope of the current project. The Commission should **proceed with the proposed amendment of Section 2924j**, and consider the court’s suggestion in the study of civil procedure technical corrections.

Code Civ. Proc. § 32.5 (amended). Jurisdictional classification

The tentative recommendation proposes to amend Code of Civil Procedure Section 32.5 as follows:

32.5. The “jurisdictional classification” of a case means its classification as a limited civil case or ~~otherwise~~ an unlimited civil case.

Comment. Section 32.5 is amended to replace the reference to “otherwise” with a reference to an “unlimited civil case.” See Section 88 (civil action or proceeding other than limited civil case may be referred to as unlimited civil case).

The Los Angeles County Superior Court states that “[w]e need to be consistent when referring to matters over \$25,000.00.” Memorandum 2002-14, Exhibit p. 47. “[I]s it unlimited or is it general?” *Id.*

The court is correct that consistency in this regard is important. The proposed amendment conforms to this principle. Although the term “general civil case” is being used by some courts to refer to matters in which the amount in controversy exceeds \$25,000, the codes consistently use the term “unlimited civil case.” See, e.g., Code Civ. Proc. § 88 (unlimited civil case). In drafting the statutes, the Commission deliberately avoided the term “general civil case,” because that term was already in use for other purposes. In using the term “unlimited civil case, the proposed amendment of Section 32.5 would be consistent with other code provisions. **The Commission should proceed with the proposed amendment.**

Code Civ. Proc. § 75 (amended). Submission of noncontested matter

Section 75 provides that in a one-judge county, the court may provide by rule that where the judge is absent on assignment, a noncontested matter may be deemed submitted on filing with the clerk of a statement of submission. The tentative recommendation would eliminate the one judge limitation, since there are no longer any one-judge counties.

The San Diego County Superior Court notes the expansion, and asks whether the Commission really intends this, as opposed to deletion of the section.

The Commission did consider several options, including expansion to two-judge counties as well as deletion. The Commission concluded that this might be a useful procedure regardless of the precise number of judges in a county or whether unavailability of a particular judge is due to an out of county assignment. The proposed expansion is not automatic — the court would have to adopt a local rule in order to come within the terms of the statute.

The San Diego court does not identify any particular problems with the proposed expansion. The staff would proceed with the expansion as proposed; however, **we should note the expansion** in the preliminary part of the recommendation.

Code Civ. Proc. § 86.1 (amended). Long-Term Care, Health, Safety, and Security Act

The tentative recommendation proposes to amend Code of Civil Procedure Section 86.1 as follows:

86.1. An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) is a limited civil case if civil penalties are not sought or amount to twenty-five thousand dollars (\$25,000) or less. ~~An action brought in a municipal court may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party.~~

Comment. Section 86.1 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. See Section 1048 (consolidation of actions in superior court).

San Diego County Superior Court notes that 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.” Memorandum 2002-14, Exhibit p. 15. The court queries whether the proposed amendment should “provide for consolidation of limited and unlimited civil citation enforcement actions.” *Id.*

The staff does not think this is necessary. The Comment cites Code of Civil Procedure Section 1048, which provides:

(a) When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

....

Because Section 1048 gives general authority to consolidate related actions in the same court, there is no need for Section 86 to include a further grant of authority, specific to consolidation of limited and unlimited civil citation enforcement actions. In fact, inclusion of such language in Section 86 might raise issues as to why similar language is not included in other provisions. **We therefore recommend that the Commission stick with its proposed amendment of Section 86.1.**

Code Civ. Proc. § 116.250 (amended). Small claims court sessions

The tentative recommendation includes the following amendment of Code of Civil Procedure Section 116.250, which relates to small claims court sessions:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the ~~judicial district~~ county, including places outside the courthouse.

(b) ~~Each small claims division of a municipal court with four or more judicial officers, and each small claims division of a superior court with seven or more judicial officers,~~ officers shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term “session” includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

Comment. Section 116.250 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. See Section 38 (judicial districts).

A Note points out that issues relating to sessions and facilities are still unsettled, so further work on the provision (i.e., possible additional revisions) is being deferred pending progress on those issues. See Memorandum 2002-14, p. 3.

The Los Angeles County Superior Court comments that it is “not clear whether the seven judges referred to are in the Superior Court or the small claims division.” Memorandum 2002-14, Exhibit p. 48. The staff agrees that this could be made more clear, as by revising the first sentence of subdivision (b) to read: “In a superior court with seven or more judicial officers, the small claims division shall conduct”

But such a revision would be unrelated to trial court restructuring. The ambiguity it seeks to resolve already exists in the statute. Rather than proposing such clarification in the context of this study, the Commission should **proceed with the amendment proposed in the tentative recommendation**, and consider the point in the study of civil procedure technical corrections.

Code Civ. Proc. § 116.940 (amended). Small Claims Advisory Services

Code of Civil Procedure Section 116.940 relates to small claims advisory services. The tentative recommendation proposes to amend this provision to reflect unification of the municipal and superior courts. The tentative

recommendation would also amend the statute to give the superior courts responsibility for small claims advisory services, instead of the counties. This is intended to reflect the enactment of the Trial Court Funding Act and promulgation of California Rule of Court 810, which lists “small claims advisor program costs” as a court operation.

The Administrative Office of the Courts (“AOC”) reports, however, that issues relating to the proper allocation of responsibility for small claims advisory services remain unresolved. “[W]hile it may be clear that Rule 810 identifies the program as a cost to the court, it [is] not clear that the court is always paying for the program, or at least the full costs of the program.” Memorandum 2002-14, Exhibit p. 27. “[S]ome programs are run by a county agency or through a county contract or other arrangement.” *Id.* The AOC cautions that the Commission’s proposed amendment “could jeopardize the arrangements in a number of counties which have chosen to supplement funding for the program, especially in this current fiscal climate.” *Id.* The AOC also points out that the provision governing use of filing fees for small claims advisory services (Code Civ. Proc. § 116.910) is still a subject of negotiation between the courts and the counties. *Id.* The AOC therefore requests that the Commission not proceed with the amendment of Section 116.940 at this time. *Id.*

The Los Angeles County Superior Court expresses similar concerns:

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.

Memorandum 2002-14, Exhibit p. 48.

Given these objections, **we would delete the proposed amendment from the pending bill** and study the matter further before proceeding with legislation.

Code Civ. Proc. § 116.950 (amended). Advisory committee

Under specified circumstances, Code of Civil Procedure Section 116.950 calls for creation of an advisory committee on small claims practice and procedure. The tentative recommendation proposes to amend Section 116.950(d)(6) as follows to reflect unification of the municipal and superior courts:

(d) The advisory committee shall be composed as follows:

....

(6) Six judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, ~~judicial officers of the municipal court~~, judges of the appellate courts, retired judicial officers, and temporary judges.

San Diego County Superior Court points out that the provision refers to “judges of the appellate courts.” The court asks whether the reference should be changed to “justices of the appellate court.” Memorandum 2002-14, Exhibit p. 15.

The staff is not inclined to make this change. The Constitution and statutes are inconsistent in referring to persons serving on a court of appeal. Sometimes such persons are known as “justices;” elsewhere they are known as “judges. See, e.g., Cal. Const. art. II, § 14 (judge), art. VI § 3 (both), § 6 (judge), § 7 (justice), § 8 (judge), § 10 (judge), § 16 (judge), § 18 (judge). Standardizing this terminology is beyond the scope of the present project. The Commission should **proceed with the amendment proposed in the tentative recommendation.**

Code Civ. Proc. § 134 (amended). Court closure on judicial holidays

Code of Civil Procedure Section 134 relates to closure of courts on judicial holidays. The tentative recommendation proposes to amend subdivision (c) to delete the reference to municipal courts.

The Los Angeles County Superior Court comments that subdivision (d), relating to computation of time, is unnecessarily complicated. Memorandum 2002-14, Exhibit p. 48. The court suggests a way to improve that portion of the statute. *Id.* The court does not criticize the proposed revision of subdivision (c).

Accordingly, the Commission should **proceed with the amendment proposed in the tentative recommendation.** The court’s suggestion regarding subdivision (d) could be considered in another context (perhaps the study of civil procedure technical corrections, although the issue may relate to both civil and criminal cases).

Code Civ. Proc. § 170.6 (amended). Prejudice against party or attorney

The tentative recommendation proposes to amend Code of Civil Procedure Section 170.6 to delete a municipal court reference. The proposed amendment would also revise the affidavit form to reflect the turn of the century.

The Los Angeles County Superior Court points out that there is a conflict between this provision and Government Code Section 68616 regarding a time deadline. Memorandum 2002-14, Exhibit p. 48. The court comments that this conflict should be eliminated. *Id.*

This suggestion is unrelated to trial court restructuring. The Commission should consider it in the study of civil procedure technical corrections, and **proceed with the amendment proposed in the tentative recommendation.**

Code Civ. Proc. § 215 (amended). Fees and mileage for jurors

Code of Civil Procedure Section 215 specifies fees and mileage reimbursement for jurors. The tentative recommendation proposes to amend this provision to delete references to municipal courts.

The Los Angeles County Superior Court does not comment on the proposed revisions, but urges clarification of how mileage is to be reimbursed. Memorandum 2002-14, Exhibit p. 48. Again, this point should be pursued in another context, and the Commission should **proceed with the amendment proposed in the tentative recommendation.**

Code Civ. Proc. § 259 (amended). Powers of court commissioners

The tentative recommendation, as part of the cleanup of court commissioner statutes, notes the misleading implication in Code of Civil Procedure Section 259 that a single appearing party can authorize a commissioner to act as a temporary judge, without the consent of the opposing party. The tentative recommendation proposes repeal of this provision.

The Los Angeles County Superior Court makes a convincing argument that this provision is intended to authorize action by a single appearing party in circumstances where the other party defaults. Memorandum 2002-14, Exhibit p. 49. **The staff would remove the proposed revision** from the recommendation and bill. It goes beyond the scope of immediate cleanup. If the Commission is interested in further review of this matter, we will schedule it for in depth consideration at a future meeting.

Code Civ. Proc. § 396 (amended). Court without jurisdiction

Code of Civil Procedure Section 396 pertains to transfer of an action for lack of subject matter jurisdiction. The tentative recommendation proposes to amend the provision to reflect unification of the municipal and superior courts. The tentative recommendation also includes a Note explaining that the Commission

and the Judicial Council are studying whether the provision is still necessary in a unified trial court system. The Note solicits comment on the proper treatment of the provision.

The Los Angeles County Superior Court reports that Section 396 “can be repealed as a result of court unification.” Memorandum 2002-14, Exhibit p. 50. But the Contra Costa Superior Court comments that the provision is not yet ripe for repeal:

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.

Memorandum 2002-14, Exhibit p. 19. Preliminary analysis by the AOC also suggests that Section 396 should be retained, at least for the time being.

Thus, we would not recommend repeal at this time. **The Commission should proceed with the amendment as proposed** in the tentative recommendation.

Code Civ. Proc. §§ 403, 404, 404.3, 404.9 (amended). Coordination of cases

The tentative recommendation includes proposed amendments of Code of Civil Procedure Sections 403, 404, 404.3, and 404.9, which relate to coordination of actions pending in different courts. The Commission solicited comment on the proper treatment of the provisions governing coordination, as well as those governing consolidation of related actions pending in the same court.

The proposed amendments of Sections 403, 404, 404.3, and 404.9 were reviewed by the Complex Litigation Subcommittee of the Judicial Council’s Civil and Small Claims Advisory Committee. The subcommittee “concurred with the proposed amendments to these sections.” Memorandum 2002-14, Exhibit p. 10.

The Commission has not gotten any other input regarding the proposed amendments of Sections 404 and 404.9. **It should therefore proceed with those proposed amendments.**

The proposed amendment of Section 403 reads:

403. A judge may, on motion, transfer an action or actions from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action and on each court in which an action is pending. Any party to that action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.

~~If the cases are pending in different courts of the same county, the judge who grants the motion to transfer may also order the cases consolidated for trial in the receiving court.~~

The Judicial Council may adopt rules to implement this section, including rules prescribing procedures for preventing duplicative or conflicting transfer orders issued by different courts.

Comment. Section 403 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. *Cf.* Code Civ. Proc. §§ 404-404.8 (coordination of complex cases).

The Los Angeles County Superior Court comments that “[a]s a result of unification, this section should only refer to transfer and coordination of cases from a court in another county.” Memorandum 2002-14, Exhibit p. 50. The proposed amendment is consistent with that view. Due to unification, there is only one superior court in each county, so Section 403 as amended necessarily would refer to transfer and coordination of a case from another county. **The Commission should proceed with the proposed amendment of Section 403.**

The Los Angeles County Superior Court also raises a question regarding the proposed amendment of Code of Civil Procedure Section 404.3, which reads:

404.3. (a) A judge assigned pursuant to Section 404 who determines that coordination is appropriate shall order the actions coordinated, report that fact to the Chairperson of the Judicial Council, and the Chairperson of the Judicial Council shall either assign a judge to hear and determine the actions in the site or sites the assigned judge finds appropriate or authorize the presiding judge of a court to assign the matter to judicial officers of the court in the same manner as assignments are made in other civil cases.

~~(b) When an action pending in a superior court is sought to be coordinated with an action pending in a municipal court located in the same county, the presiding judge of the superior court may, as an alternative to coordination, order the municipal court action transferred to the superior court and consolidated with the superior court action.~~

Comment. Section 404.3 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. *Cf.* Code Civ. Proc. § 403 (transfer and coordination of noncomplex cases).

The court asks whether the reference to “the presiding judge” in subdivision (a) refers “to courts of a different jurisdiction or of a different county?” Memorandum 2002-14, Exhibit p. 50.

Before unification, subdivision (a) pertained to coordination of actions pending in courts of different jurisdiction, as well as coordination of actions pending in courts of different counties. That is clear because the provision applies where a “judge is assigned pursuant to Section 404.” Under existing law, Section 404 covers both situations.

However, the tentative recommendation proposes to delete the second paragraph of Section 404, pertaining to actions “pending in a superior court and in a municipal court of the same county.” As so amended, Section 404 necessarily would apply only to coordination of actions pending in courts of different counties, because it refers to coordination of actions pending in different courts, and there is only one trial court in each county. It follows that the same would be true of Section 404.3. Thus, the staff sees no problem with the proposed amendment of Section 404.3. **We recommend that the Commission proceed with that amendment.**

Code Civ. Proc. § 422.30 (amended). Caption

Under Code of Civil Procedure Section 422.30, every pleading is to contain a caption meeting certain requirements. The tentative recommendation proposes to amend this provision to reflect unification of the municipal and superior courts.

The Los Angeles County Superior Court asks whether the provision should be further revised to require a caption to include the address of the courthouse and the payer amount. Memorandum 2002-14, Exhibit p. 50. These issues are unrelated to trial court restructuring. We would refer them to the Judicial

Council for consideration, because they are more in the Judicial Council's bailiwick than in the Commission's areas of expertise.

The Los Angeles County Superior Court also suggests that Section 422.30 require a caption to state whether the amount in controversy in a limited civil case exceeds \$10,000. Memorandum 2002-14, Exhibit p. 50. Such a revision is unnecessary, because Government Code Section 72055 already requires that the first page of the first paper in a limited civil case "state whether the amount demanded exceeds or does not exceed ten thousand dollars (\$10,000)." See also Cal. R. Ct. 201(f)(8), which specifies that this information is to be stated "[o]n the complaint, petition, or application filed in a limited civil case, immediately below the character of the action or proceeding. Accordingly, the Commission should **proceed with the amendment of Section 422.30 proposed in the tentative recommendation.**

Code Civ. Proc. § 575.1 (amended). Local court rules

Code of Civil Procedure Section 575.1 concerns preparation, publication, and accessibility of local court rules. The tentative recommendation proposes to amend this provision to reflect unification of the municipal and superior courts, as well as elimination of the county clerk's role as ex officio clerk of the superior court. The tentative recommendation would also amend the statute to make clear that a hard copy of each rule and amendment must be made available for public examination. The Comment explains:

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. But the material may be electronically transmitted from a court to the Judicial Council or from the Judicial Council to the county law library or clerk of the superior court.

The Commission has received an abundance of comments relating to this provision, reflecting a variety of views. Memorandum 2002-14, Exhibit pp. 2, 7, 28-33, 50. It is clear that the provision requires further study. The Commission should **remove the proposed amendment of Section 575.1** from the recommendation and bill.

Code Civ. Proc. § 668 (amended). Judgment book

The tentative recommendation proposes to amend Code of Civil Procedure Section 668 as follows:

668. Except as provided in Section 668.5, the clerk of the superior court and municipal court, must keep, with the records of the court, a book called the “judgment book,” in which judgments must be entered.

Comment. Section 668 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The Los Angeles County Superior Court provides insight into how a judgment book is actually kept:

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.

Memorandum 2002-14, Exhibit p. 50.

These comments have no bearing on the proposed amendment, but may be helpful in the study on civil procedure technical corrections. The Commission previously decided to examine issues relating to entry of judgment in that study. Minutes (Oct. 2000), p. 8. The Commission should consider the court’s comments in that context, and **proceed with the proposed amendment of Section 668.**

Code Civ. Proc. § 904.1 (amended). Taking appeal

The tentative recommendation includes the following amendment of Code of Civil Procedure Section 904.1:

904.1. (a) An appeal, ~~other than in a limited civil case,~~ in an unlimited civil case is to the court of appeal. An appeal, ~~other than in a limited civil case,~~ in an unlimited civil case may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

....

Comment. The first sentence of Section 904.1 is amended to replace the references to “other than a limited civil case” with references to an “unlimited civil case.” See Section 88 (civil action or proceeding other than limited civil case may be referred to as unlimited civil case).

A Note explains that the Commission is studying whether to relocate Code of Civil Procedure Section 904.1(a)(1)(C) to Code of Civil Procedure Section 904.2, with revisions to reflect unification. The Note solicits comment on the proper treatment of these provisions.

The Los Angeles County Superior Court points out that “Section 904.1(a)(1) refers to municipal court judges and matters pending in the municipal court.” Memorandum 2002-14, Exhibit p. 51. The court says simply “Delete.” *Id.*

This comment convinces the staff that the Commission should not proceed with an amendment of Section 904.1 at this time. We have not as yet determined how to address Section 904.1(a)(1)(C). Any proposed treatment of that portion of Section 904.1 should be circulated for comment before it is incorporated into a recommendation and bill. Revisions of the remainder of Section 904.1 should be delayed until the Commission has figured out what to do with Section 904.1(a)(1)(C), because the references to municipal court are a red flag and it would be difficult to explain why they were being retained. **The amendment of Section 904.1 should therefore be deleted from the recommendation and bill.**

Code Civ. Proc. § 1141.18 (not in TR). Qualifications, compensation, and selection of arbitrators

The AOC suggests an amendment of Code of Civil Procedure Section 1141.18, a provision that is not included in the tentative recommendation. Memorandum 2002-14, Exhibit pp. 10, 12. We appreciate this suggestion. The Commission should not include Section 1141.18 in its recommendation or bill, but should **study the AOC’s suggestion for possible legislation in 2003.**

Code Civ. Proc. § 1141.21 (not in TR). Judgment on trial de novo

The AOC also suggests an amendment of Code of Civil Procedure Section 1141.21, another arbitration provision that is not included in the tentative recommendation. Memorandum 2002-14, Exhibit pp. 10, 12-13. Again, the Commission should not include this amendment in its recommendation or

pending bill, but should **study the AOC's suggestion for possible legislation in 2003.**

Code Civ. Proc. § 1420 (amended). Escheat

The tentative recommendation would make a technical revision in Code of Civil Procedure Section 1420, relating to escheat proceedings. The Los Angeles County Superior Court objects to a provision in this section for filing cases in Sacramento County, and argues for local filing. Memorandum 2002-14, Exhibit p. 51. The provision they object to is existing law that is not affected by the current project. The change they suggest goes beyond the scope of this project. **The staff would make no change in the recommendation on this point.**

Elec. Code § 2212 (amended). Report of persons convicted of felonies

The tentative recommendation shifts from the county clerk to the court clerk the duty of reporting felony convictions to the Registrar of Voters. The Registrar of Voters in turn must determine whether the convict remains imprisoned or on parole and, if so, cancel the convict's voter registration.

The Contra Costa County Superior Court notes that this is appropriate, but that there may be complications because jury lists are drawn from voter registration lists. Memorandum 2002-14, Exhibit pp. 19-20. As the court correctly notes, however, that consideration is **beyond the scope of this project.**

Fam. Code § 6390 (amended). Domestic violence courts

Family Code Section 6390 requires the Judicial Council to conduct a study of domestic violence courts. The tentative recommendation proposes to amend the statute to reflect unification of the municipal and superior courts. A Note solicits comment on whether the provision is obsolete because the Judicial Council's report was due by March 1, 2000.

The AOC reports that the provision "is, indeed, obsolete." Exhibit p. 1. "The report was completed and sent to the legislature." *Id.*

Accordingly, Section 6390 should be repealed, rather than amended:

Fam. Code § 6390 (repealed). Domestic violence courts

SEC. ____ . Section 6390 of the Family Code is repealed.

~~6390. (a) The Judicial Council shall conduct a descriptive study of the various domestic violence courts established in California and other states. As used in this section, "domestic violence courts" means the assignment of civil or criminal cases, or both, involving domestic violence to one department of the superior court or~~

~~municipal court, consistent with the jurisdiction of those courts. The study shall describe the policies and procedures used in domestic violence courts and provide an analysis and rationale for the common features of these courts. The study shall identify issues and potential obstacles, if any, to be considered in developing and implementing effective domestic violence courts at the local level.~~

~~(b) The Judicial Council shall report to the Legislature no later than March 1, 2000, with respect to the study required by subdivision (a).~~

Comment. Section 6390 is repealed as obsolete.

Food & Agric. Code § 30801 (amended). Issuance of dog licenses

Food and Agricultural Code Section 30801 pertains to issuance of dog licenses. The tentative recommendation proposes to amend the provision to delete references to municipal courts:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(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.

....

The Los Angeles County Superior Court comments that Section 30801 “[m]ay require the court to issue dog license if the Board of Supervisors does not designate the animal control department to do so.” Memorandum 2002-14, Exhibit p. 52. The court does not express dissatisfaction with this situation or with the proposed amendment.

The Contra Costa County Superior Court writes, however, that Section 30801(a)(2) “seems to leave discretion with the board of supervisors” to allow the task of dog licensing to default to the court. Memorandum 2002-14, Exhibit p. 20. The court objects to this. “The licensing of dogs is an executive branch function and should be clearly defined as such.” *Id.*

The court’s position might be correct, but the issue it raises is unrelated to trial court restructuring. The change the court proposes would also present questions about whether funding is properly tied to duties. As discussed at pages 8-9 of Memorandum 2002-14, such issues are still being negotiated between the

AOC and the California State Association of Counties. The Commission should therefore avoid these matters and **proceed with the revisions proposed in the tentative recommendation**, to which no one has objected. Further revisions could be made at another time, if necessary.

Gov't Code § 811.9 (amended). Representation, defense, and indemnification of trial court judges, judicial officers, court executive officers, and employees

Gov't Code § 27647 (repealed). Representation of court or judge by county counsel

Government Code Section 27647 pertains to representation of a superior court or superior court judge by county counsel. The tentative recommendation proposes to repeal this provision, because it appears to have been superseded by newly-enacted Government Code Section 811.9, which requires the Judicial Council to provide for representation, defense, and indemnification of superior courts and superior court judges. Section 811.9 expressly states that “[t]he county counsel and Attorney General may, but are not required to, provide such representation or defense for the Judicial Council.” The tentative recommendation solicits comment on the proposed repeal of Section 27647, and on the proper treatment of Section 811.9, which the Commission proposes to amend to reflect unification of the municipal and superior courts.

The Contra Costa County Superior Court urges further study of these provisions:

The LRC has recommended repeal of [Section 27647]. It seems to be superseded 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.

Memorandum 2002-14, Exhibit p. 22.

Similarly, the Los Angeles County Superior Court objects to the proposed repeal of Section 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 17647 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.

Memorandum 2002-14, Exhibit p. 54.

In light of these objections, the Commission should not go forward with the proposed amendment of Section 811.9 and proposed repeal of Section 27647. It should **remove these provisions from the recommendation and bill**, and study them further before proceeding with legislation.

Gov't Code § 26524 (repealed). Representation of court or judge by district attorney

Government Code Section 26524 pertains to representation of a superior court or superior court judge by the district attorney. The tentative recommendation proposes to repeal this provision because it appears to have been superseded by Government Code Section 811.9. A Note solicits comment on the proper treatment of the provision.

The Commission has not received any comments on the proposed repeal of Section 26524. Nonetheless, we recommend that the Commission **remove the provision from the recommendation and bill**. The provision is similar to Government Code Section 27647, concerning representation of a superior court or superior court judge by the county counsel. Issues relating to Sections 811.9 and 27647 require further study, as discussed above. Section 26524 should be considered in connection with that analysis.

Gov't Code § 26835.1 (amended). Authentication of documents

The tentative recommendation corrects the statute providing for authentication of documents so that it refers to the court clerk instead of the county clerk.

The Contra Costa County Superior Court observes that the section provides for a portion of the authentication fee collected by the court clerk to be deposited with the county as county general fund revenue. “When the court was funded at the county level, this made sense. It doesn’t any more.” Memorandum 2002-14, Exhibit p. 22.

Consistent with the Commission’s general approach, the **staff recommends against touching this fee**. This matter should be under negotiation between the courts and counties. The staff notes, however, that the Joint Court-County Working Group on Trial Court Funding has not identified this fee as one that is at issue, even though it has so identified the fee in the preceding section — Government Code Section 26835 (authentication of documents by county clerk).

Gov’t Code § 27647 (repealed). Representation of court or judge by county counsel

See discussion of Government Code Section 811.9.

Gov’t Code § 31520 (amended). Board of retirement

The tentative recommendation would revise Government Code Section 31520, relating to membership in the board of retirement, to reflect elimination of the municipal court:

As used in this section “active member” means a member in the active service of a county, district, ~~municipal court~~ or superior court and a “retired member” means a member retired for service or disability.

The Los Angeles County Superior Court suggests that for the sake of clarity this provision might be further revised to provide that “retired member” includes “a member under former Section 31555.” Memorandum 2002-14, Exhibit p. 55. (Section 31555, relating to membership by municipal court employees, would be repealed by the tentative recommendation.) **The staff has no problem with the proposed clarification.**

Gov’t Code § 31554 (unchanged). Participation in county retirement plan by superior court employees

Section 31554 specifies the date court employees become members of the county pension plan. The Commission solicited comment on the continued usefulness of this provision in light to the Trial Court Employment Protection

and Governance Act, including whether it is appropriate to retain it for transitional purposes.

The California Court Reporters Association and the Los Angeles County Court Reporters Association recommend that the statute be retained in the law “out of an abundance of caution”. Memorandum 2002-14, Exhibit pp. 2, 7. The Los Angeles County Superior Court likewise takes the position that this section should be retained in order to permit court employees to continue to participate in the county pension plan. Memorandum 2002-14, Exhibit p. 55.

The staff has no problem with retaining this provision. It is not part of the recommendation or bill, and no further action is necessary to keep it in the law.

Gov’t Code § 68073 (amended). Responsibility for court operations and facilities

The tentative recommendation would amend Section 68073 to delete subdivision (f):

(f) This section shall not be construed as authorizing a county, a city and county, a court, or the state to supply to the official reporters of the courts stenography, stenotype, or other shorthand machines; nor as authorizing the supply to the official reporters of the courts, for use in the preparation of transcripts, of typewriters, transcribing equipment, supplies, or other personal property.

The theory is that this is now a matter of negotiation between the reporters and their courts, as a facet of their compensation.

The California Court Reporters Association and the Los Angeles County Court Reporters Association support this change. Memorandum 2002-14, Exhibit pp. 2, 7. However, it is opposed by the Contra Costa County Superior Court because it provides necessary clarification. They note that this expense does not come within allowed “court operations” within the meaning of Rule of Court 810. Memorandum 2002-14, Exhibit p. 23.

In light of these comments, **the staff suggests the Commission not proceed with the proposed change**, but refer the matter for disposition as part of the working group on official reporter compensation.

Gov’t Code § 68105 (amended). Certified shorthand reporter who intends to become citizen

The tentative recommendation proposes to amend the first paragraph of Government Code Section 68105 as follows:

68105. Notwithstanding any other provision of law to the contrary, the Supreme Court, any court of appeal, or any superior court, ~~or any municipal court~~ may appoint as an official phonographic reporter or as an official phonographic reporter pro tempore a person who has declared his the intention to become a citizen and who is a certified shorthand reporter.

....

Comment. Section 68105 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 for consistency of terminology. See Section 69941 (appointment of official reporters).

The Los Angeles County Court Reporters Association (Memorandum 2002-14, Exhibit p. 3) and the California Court Reporters Association (Memorandum 2002-14, Exhibit pp. 7-8) object to deletion of the word “phonographic.” They explain that “phonographic” should “be retained because the phrase ‘certified shorthand reporter’ is meaningful only as long as the Certified Shorthand Reporters Act [Bus. & Prof. §§ 8000-8047] remains in effect.” Memorandum 2002-14, Exhibit pp. 3, 7-8.

The staff does not understand this objection. The proposed amendment would simply conform the terminology in Section 68105 to terminology used elsewhere in the codes. We see that as a desirable result, but it is not essential to the task of revising the codes to delete language made obsolete by trial court restructuring. Given the objections raised, we would **leave the word “phonographic” intact but proceed with the remainder of the amendment:**

68105. Notwithstanding any other provision of law to the contrary, the Supreme Court, any court of appeal, or any superior court, ~~or any municipal court~~ may appoint as an official phonographic reporter or as an official phonographic reporter pro tempore a person who has declared his the intention to become a citizen and who is a certified shorthand reporter.

....

Comment. Section 68105 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Gov’t Code § 68108 (amended). Unpaid furlough days

Section 68108 provides for the court’s closure on “unpaid furlough days” as provided in a county’s Consolidated Memorandum of Understanding for county employees. The section mandates use of a drop box and the availability of a

judicial officer to handle emergency arraignments and examinations on these days. Staff was uncertain whether this section had continuing application following enactment of the Trial Court Funding Act and the Trial Court Employment Protection and Governance Act. Therefore, Section 68108 is revised rather than repealed in the tentative recommendation and a note requests input regarding the section's continuing usefulness. Unfortunately, no comments have been received. Given this lack of information, the staff recommends erring on the side of caution and **preserving this section as it would be amended in the tentative recommendation.**

Gov't Code § 68152 (amended). Retention of court records

Government Code Section 68152 is a lengthy provision governing retention of court records. The tentative recommendation proposes to amend paragraphs (j)(12) and (j)(13) to reflect unification of the municipal and superior courts.

Regrettably, the proposed Comment erroneously states that paragraph (j)(12) "is also amended to replace the reference to 'other than a limited civil case' with a reference to an 'unlimited civil case.'" This statement is a remnant of a previous draft. The staff has already deleted it for purposes of the final recommendation.

The Los Angeles County Court Reporters Association and California Court Reporters Association do not comment on the proposed revisions of paragraphs (j)(12) and (j)(13). They suggest, however, that paragraph (j)(8) be amended to require that electronically recorded tapes of misdemeanor proceedings "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." Memorandum 2002-14, Exhibit pp. 3, 8. Similarly, the Los Angeles County Superior Court suggests various improvements of Section 68152, which are unrelated to trial court restructuring. Memorandum 2002-14, Exhibit p. 55.

These may be good suggestions, but they are beyond the scope of the task at hand. Instead of addressing the points in the recommendation on *Statutes Made Obsolete by Trial Court Restructuring*, the Commission should consider them in connection with the study of civil procedure that it is jointly conducting with the Judicial Council. Other issues relating to Section 68152 have already been raised in that context. The Judicial Council is taking the lead on those matters, but it has given them low priority. We would **refer the suggestions regarding Section 68152 to the Judicial Council, and proceed with the proposed revisions of paragraphs (j)(12) and (j)(13).**

Gov't Code § 68525 (amended). Records and reports of official reporter

Section 68525 permits the board of supervisors to require official reporters to maintain records and submit annual reports concerning such matters as the number of transcripts prepared, fees charged and collected, expenses incurred, and time spent. The tentative recommendation proposes to shift this authority from the county to the superior court, as the employing entity under the Trial Court Employment Protection and Governance Act.

The California Court Reporters Association and Los Angeles County Court Reporters Association recommend repeal of the section. “The provisions of income disclosure contained in this section should be subject to the meet and confer provisions of the TCEPGA.” Memorandum 2002-14, Exhibit pp. 3, 8.

While the staff agrees in principal with this position, **we are reluctant to take the statute out of the law.** As long as we are leaving on the books for now the county-specific official reporter compensation statutes, we should leave this statute as well, and deal with the compensation provisions all together.

Gov't Code § 69594. Number of judges in San Bernardino County

The Administrative Office of the courts has brought to our attention an error in the tentative recommendation relating to the number of judges in San Bernardino County. They note that the correct number is 63. **The staff agrees with their analysis.** The number in the tentative recommendation and bill — 60 — is an older number which we have since reconciled. The staff will make the correction.

Gov't Code 69894.4 (repealed). Expense allowances

Section 69894.4 provides that superior court employees in Los Angeles County and judges in counties having a population over 2,000,000 are allowed their actual traveling and necessary expenses incurred while engaged in their duties. It further provides that the board of supervisors may assign an automobile in lieu of allowing travel expenses if in the best interest of the county and the court. This section is proposed for repeal in the tentative recommendation.

The Los Angeles County Superior Court comments that “[f]or the most part, this section appears to be supplanted by recently enacted Government Code § 69505.” Memorandum 2002-24, Exhibit p. 57. However, the court contends that the provision pertaining to assignment of an automobile in lieu of

reimbursement should be retained, substituting the Court in place of the Board of Supervisors. The court argues that Section 69505 makes no allowance for the assignment of an automobile. *Id.*

Government Code Section 69505 (2001 Cal. Stat. ch. 824, § 21) provides that the Administrative Director of the Courts must annually recommend policies and schedules for the reimbursement of travel expenses of judges and court employees and procedures for processing these requests, which are to be approved by the Judicial Council and followed by the trial courts. Each court is to adopt a conforming system. The language of Section 69505 speaks only to “reimbursement” of travel expenses. It is not clear whether the reimbursement policies to be adopted by the Judicial Council will include provisions for the assignment of automobiles in lieu of reimbursement. The staff hopes to obtain further clarification from the Administrative Office of the Courts (AOC) before the meeting.

Although the Trial Court Employment Protection and Governance Act does not specifically mention travel expenses or the assignment of automobiles, it does authorize trial courts to establish local personnel structures and to adopt personnel rules, policies, and procedures pertaining to conditions of employment, subject to meet and confer (see, e.g., Gov’t Code §§ 71601(f), 71612, 71630). Assuming Section 69505 and the policies adopted pursuant thereto do not address the assignment of automobiles with regard to court employees, the courts presumably have the authority to institute their own policies regarding this matter as a term and condition of employment (subject to meet and confer).

Rule 810 (Function 10) includes travel and transportation (judicial and nonjudicial), vehicle use, equipment (leased, rented, or purchased), and general liability/comprehensive insurance (for other than faulty maintenance or design of facility) as allowable court operations costs. In addition, Government Code Section 68073.1 (part of the 1997 Trial Court Funding Act) provides:

Gov’t Code § 68073.1. Furniture, furnishings and equipment used by the court

68073.1. (a) All furniture, furnishings, and equipment used solely by a trial court on June 30, 1997, shall become the property of the court unless the county is prohibited from transferring title by a contract, agreement, covenant, or other provision in the law.

(b) Any other furniture, furnishings, or equipment made available by the county or city and county for use by a court on June 30, 1997, shall continue to be made available to the court,

unless otherwise agreed in writing by the court and the county or city and county.

(c) The court shall assume all responsibility for any furniture, furnishing, and equipment for which title is transferred to the court or that continues to be made available for use by a court pursuant to this section, including the fiscal responsibility for any rental or lease obligation, the repair, maintenance, and replacement of such furniture, furnishing, and equipment.

The above suggests that automobiles for court use may be permissible court operations expenses. The staff will also attempt to obtain more information on this matter from the AOC in time for the meeting.

Gov't Code § 69897 (amended). Probate commissioners

The tentative recommendation would eliminate obsolete material from the statute authorizing appointment of probate commissioners, leaving the following residue:

69897. Every subordinate judicial officer appointed as a probate commissioner shall be in attendance at all sessions of the court. The probate commissioner shall examine all the files and proceedings and advise the court on them. The probate commissioner shall have the powers and duties delegated by the appointing court, including the powers conferred on court commissioners by this title or the Code of Civil Procedure.

The Administrative Office of the Courts reports that its Probate Advisory Committee has recommended repeal of the section. "The section is obsolete in light of TCEPGA and does not accurately describe what probate commissioners currently do." Memorandum 2002-14, Exhibit p. 10.

The staff agrees with this analysis. We kept this material in the draft merely because it may provide useful detail. However, if does not serve a useful function, it **should be repealed**. We will attempt to confirm this approach with the Court Commissioners Association.

Gov't Code § 69955 (amended). Reporting notes

The proposed amendment to Section 69955 standardizes terminology ("pro tempore court reporter" changed to "official reporter pro tempore").

The California Court Reporters Association and the Los Angeles County Court Reporters Association suggest amendment of the section to provide reimbursement to an official reporter of the cost of storage of reporting notes

where the court does not designate a storage place. Memorandum 2002-14, Exhibit pp. 5, 9.

This proposal is beyond the scope of the current project. The staff suggests it be made a part of the negotiations concerning official reporter compensation issues.

Gov't Code § 70141.11 (repealed and added). Court commissioners

The tentative recommendation would preserve the Contra Costa County statute that enables the court commissioner to provide for court reporting functions by electronic or mechanical means and devices. The Contra Costa County Superior Court approves this provision, but would like to see additional language that indicates if this statute is changed, the Judicial Council will provide funding for associated court reporter costs.

The issue of electronic recording is highly political, and the Commission has consistently avoided entering that fray. Our effort is to maintain the status quo. The staff thinks **the Commission would be ill-advised** to abandon that position here.

Gov't Code §§ 71141-71180 (repealed). Qualifications, election, and term of office of judges and other personnel, and filling of vacancies

The tentative recommendation proposes to repeal Article 4 (commencing with Section 71140) and Article 5 (commencing with Section 71180) of Chapter 6 of Title 8 of the Government Code. These articles relate to qualifications, election, and term of office of municipal court judges and other municipal court personnel, and to filling of municipal court vacancies.

The AOC suggests retaining the provisions governing the timing of municipal court elections, at least until the end of 2006:

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).

Memorandum 2002-14, Exhibit pp. 10-11.

This is a good point. The Commission should **proceed with the repeals of Articles 4 and 5, but should reenact the provisions governing the timing of**

municipal court elections, with a sunset date of January 1, 2008. Barring unusual circumstances (e.g., election of a successor who fails to take office), the statutes should be obsolete by that time. Setting the sunset date in 2008, instead of 2007, would allow time to repeal the sunset provision should any unusual circumstance occur.

The provisions in question are Government Code Sections 71141, 71143, 71144, 71145, 71145.1, and 71180. For a draft of these sections as we propose to reenact them, see Memorandum 2002-18.

Gov't Code § 71601 (amended). Definitions

Section 71601 defines various terms for purposes of the Trial Court Employment Protection and Governance Act. As drafted in the tentative recommendation, subdivision (i) is amended to delete the reference to a “judge pro tempore” from the listing of types of subordinate judicial officers. An appended note explains that the reference would be deleted to eliminate the implication that a commissioner serving as a temporary judge acts under auspices of Article 1, Section 22, of the California Constitution (subordinate judicial officers). The authority of a temporary judge is derived from Article 1, Section 21, of the California Constitution.

The AOC is concerned that the deletion of “judge pro tempore” from Section 71601(i) may have unintended effects on other provisions in the Trial Court Employment Protection and Governance Act that use the term “subordinate judicial officer.” The AOC is especially concerned that it might cause the Judicial Council to lose its authority over temporary judges — courts could add judicial officer positions in the form of temporary judges without the Judicial Council approval required by Government Code Section 71622. Exhibit pp. 2-3. The AOC identifies several possible solutions, but suggests that any such change would “best be made with input from the Advisory Committees to the Judicial Council.” They “request that the commission not take action to delete ‘judge pro tem’ from section 71601(i) at this time.” Exhibit p. 3.

The staff did not intend a substantive change to Section 71601, yet, as the AOC clearly points out, the deletion of the temporary judge reference potentially changes the scope of the Trial Court Employment Protection and Governance Act. Therefore, the **staff recommends that the reference to “judge pro tempore” be retained** in subdivision (i) for purposes of the current recommendation and legislation.

Gov't Code § 71622 (amended). Subordinate judicial officers

The tentative recommendation proposes to repeal a multitude of general and county-specific provisions prohibiting the practice of law by court commissioners and referees and replace them with a single general prohibition in Section 71622 applicable to all subordinate judicial officers:

(g) A subordinate judicial officer may not engage in the private practice of law except to the extent permitted by Judicial Council rules.

The San Diego County Superior Court has concerns regarding the language (but not the concept) which would permit the Judicial Council to establish exceptions to the general prohibition. The court inquires whether the phrase “Judicial Council rules” means the California Rules of Court or a Standard of Judicial Administration. The court further states, “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.” Memorandum 2002-14, Exhibit pp. 15-16.

Article VI, Section 6 of the California Constitution authorizes the Judicial Council to “adopt rules for court administration, practice and procedure.” The Introductory Statement to the Rules of Court explains that each rule is adopted pursuant to this constitutional authority and has the force of law. The Statement distinguishes the Standards of Judicial Administration as recommendations of a nonmandatory nature. The staff does not believe that the reference to “Judicial Council rules” in proposed Section 71622(g) would cause confusion. Indeed, references to Judicial Council “rules” already exist in numerous sections of Title 8 (see, e.g., §§ 68070, 68071, 70200, 73105). It is also worth noting that the Comment cites Canons 4G and 6 of the Code of Judicial Ethics which prohibit court commissioners from engaging in the practice of law.

The AOC does not object to the substance of new subdivision (g), but requests that it be removed from Section 71622 and incorporated into Government Code Section 68082 or another appropriate section so that it does not fall within the Trial Court Employment Protection and Governance Act. Exhibit p. 3. As discussed with regard to Government Code Section 71601(i), if the reference to “judge pro tempore” is retained within the definition of “subordinate judicial officer” for purposes of the act, then the prohibition on the practice of law would pertain to temporary judges as well. The AOC staff state this

“would require the council to adopt rules of court concerning the practice of law by SJOs and judges pro tem. This would involve a broader set of rules than is required by the commission’s other recommendations. Although the commission recommends the repeal of several statutes limiting the practice of law by commissioners and referees, none of the commission’s recommendations concern the practice of law by temporary judges.”

Id.

As the AOC staff note, a court commissioner and a temporary judge perform different functions in the court. *Id.* Indeed, temporary judges are normally practicing attorneys. Therefore, if the reference to “judge pro tempore” is retained in Section 71601(i), the staff agrees that a corresponding change to Section 71622(g) is equally necessary.

One possible approach is to retain subdivision (g) in Section 71622, but exempt temporary judges from its application. The AOC does not favor this approach since it might perpetuate the inappropriate definition of “subordinate judicial officer” in Section 71601(i).

Another alternative would be to replace “court commissioner” with “subordinate judicial officer” in Government Code Section 68082. However, the staff believes this may be a substantive expansion of the prohibition. The provisions that are proposed for repeal and replacement with subdivision (g) refer to the “private practice of law.” In contrast, Section 68082 prohibits the practice of law in any court, as well as acting as an attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any state department, general government, or federal court. Section 68082 also provides that the practice of law includes being in a partnership or sharing fees, commissions, or expenses in the practice of law. Therefore, the staff and the AOC are reluctant to expand Section 68082 to apply to all subordinate judicial officers.

A third solution is to place the content of subdivision (g) in a brand new section outside of the Trial Court Employment Protection and Governance Act. The AOC prefers this approach. The staff suggests adding the provision as new Section 69917 so that it falls within the superior court article applicable to “Officers, Attaches, and Employees Generally”:

Gov't Code § 69917 (added). Practice of law by subordinate judicial officers

SEC. ____ . Section 69917 is added to the Government Code, to read:

69917. A subordinate judicial officer may not engage in the private practice of law except to the extent permitted by Judicial Council rules. As used in this section, "subordinate judicial officer" means an officer appointed by the court to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution.

Comment. Section 69917 continues and generalizes provisions that formerly governed the private practice of law by commissioners and referees of the superior and municipal courts. See, e.g., former Sections 70141.1 (superior court commissioner in El Dorado County), 70142 (superior court commissioners), 72190 (municipal court commissioners), 72450 (municipal court traffic trial commissioners), 74925 (municipal court commissioner in Tulare County). See also Cal. Code Jud. Ethics, Canons 4G (practice of law), 6 (compliance with Code). It makes clear that the prohibition on the practice of law applies only to subordinate judicial officers appointed pursuant to Article VI, Section 22 of the California Constitution.

Section 69917 authorizes the Judicial Council to establish exceptions to the general statutory prohibition to allow subordinate judicial officers, or classes of subordinate judicial officers, to engage in the private practice of law. For example, special provisions formerly permitted certain types or classes of municipal court commissioners and referees to engage in the private practice of law before any court except the court in which they served. See, e.g., former Sections 74703(e) (temporary municipal court traffic referees in Sonoma County), 74982(d) (part-time municipal court commissioners in Shasta County).

The staff recommends that subdivision (g) be deleted from Section 71622 and placed in new Section 69917 as drafted above.

Gov't Code § 72194.5 (amended). Use of electronic equipment

Section 72194.5 is found in an article relating to "other officers" in superior and municipal courts. The other officers dealt with are principally court commissioners; the remaining provisions of the article dealing with official reporters would all be repealed under the tentative recommendation.

For this reason, **the staff recommends that this section be relocated among the other superior court official reporter statutes. The place being vacated by the**

proposed repeal of Section 69956 (stenographic or clerical assistance by reporter) seems like a good spot:

Gov't Code § 69956 (added). Use of electronic equipment

69956. Whenever an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use.

Comment. Section 69956 continues the substance of former 72194.5, revised for consistency of terminology and to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Gov't Code § 73301 (amended). Prior service in court superseded by municipal court

The tentative recommendation proposes to amend Government Code Section 73301 to reflect unification of the municipal and superior courts. The tentative recommendation also solicited comment on whether the provision is obsolete.

“Out of an abundance of caution,” the Los Angeles County Court Reporters Association and California Court Reporters Association recommend retaining the statute. Memorandum 2002-14, Exhibit pp. 5, 8. In light of these comments, the Commission should **proceed with the proposed amendment of Section 73301**, instead of recommending repeal of the provision.

Gov't Code § 73353.2 (repealed). Bonus program

Section 73353.2 authorizes the Contra Costa County Board of Supervisors to adopt a resolution establishing a pay-for-performance bonus program for certain employees which is funded solely by the county from county funds. The section is proposed for repeal as it falls within the municipal court article (Article 2) applicable to Contra Costa County. An appended note requests input as to

whether the bonus program continues to reflect current practice and should be preserved in some fashion.

While not addressing Section 73353.2 specifically, the Contra Costa County Superior Court states that it has “no objection to repealing Article 2 in its entirety. It is obsolete.” Memorandum 2002-14, Exhibit p. 24. Therefore, the **staff recommends proceeding with the proposed repeal of Section 73353.2.**

Gov’t Code § 77003. (amended). “Court operations” defined

Subdivision (a)(1) of Section 77003 provides that the salaries, benefits, and retirement contributions for judges and subordinate judicial officers are “court operations.” “Subordinate judicial officers” include, among others, those commissioner positions created pursuant to Government Code Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908. The tentative recommendation adds the word “former” before the above list of sections since they are all proposed for repeal as part of this project. A note solicits comments on this proposed revision explaining that the reference to these sections is retained to make clear that the commissioner positions created pursuant to those sections are “court operations” despite the proposed repeal of those sections.

The enumerated sections typically authorize the appointment of commissioners provided that no state funds are used in support of these positions. Some even specifically declare that the salary for these positions is not considered court operations (see, e.g., Section 70142.11). These sections predate the 1997 Trial Court Funding Act. The staff believes that they were specifically identified in Section 77003(a)(1) to declare that the commissioner positions created pursuant to those sections are now considered to be court operations. The deletion of these sections from the statute might be misinterpreted as a statement that the positions created thereunder are no longer court operations expenses. The staff recommends that **Section 77003 be revised as proposed in the tentative recommendation.**

Penal Code § 808 (amended). Magistrates

The tentative recommendation proposes to amend Penal Code Section 808 as follows to reflect unification of the municipal and superior courts:

808. The following persons are magistrates:

1. The judges of the Supreme Court.
2. The judges of the courts of appeal.
3. The judges of the superior courts.

4. ~~The judges of the municipal courts.~~

San Diego County Superior Court points out that the provision refers to “judges of the courts of appeal.” The court asks whether the reference should be changed to “justices of the courts of appeal.” Memorandum 2002-14, Exhibit p. 16.

As with Code of Civil Procedure Section 116.250, the staff is not inclined to make this change, because it is beyond the scope of the present project. The Commission should **proceed with the amendment proposed in the tentative recommendation.**

Penal Code § 869 (amended). Deposition or testimony before magistrate

Section 869 relates to transcripts of examination testimony in homicide cases and requires, among other provisions, filing of transcripts with and by the county clerk. The tentative recommendation would change this to the court clerk, but queries whether this change is appropriate.

The Contra Costa County Superior Court comments that the change is appropriate. Memorandum 2002-14, Exhibit p. 24. **No further revision of the recommendation or bill is required** to implement the change.

Penal Code §§ 896, 900, 904, 932, 933 (amended). Grand juries

The tentative recommendation would revise various statutes relating to grand juries to lodge functions with the court clerk rather than the county clerk. The Los Angeles County Superior Court objects that grand jury functions are a county expense under Rules of Court 810, and this change would have a significant fiscal impact on the court. Memorandum 2002-14, Exhibit p. 59.

The staff disagrees with this analysis. The changes proposed to Penal Code Sections 896, 900, and 904 relate only to grand jury selection, as opposed to expenses and operations. Under Rule 810, grand jury selection is specifically included within court operations and is a court rather than county expense. The changes proposed to Penal Code 932 and 933 do not affect court operations at all — they localize filing of certain grand jury orders and reports with the court clerk rather than the county clerk.

Nonetheless, it is certainly possible that in Los Angeles County the parties have worked out financial arrangements at odds with the law. The staff will attempt to obtain further information about practices in Los Angeles and other counties before the Commission meeting.

Penal Code § 1203.7 (amended). Probation records

The tentative recommendation would have the county probation department, rather than the county clerk, provide books of record to probation officers. The Contra Costa County Superior Court thinks that seems appropriate. Memorandum 2002-14, Exhibit p. 24.

However, **the Commission has previously decided to remove this sensible proposal** from the recommendation and bill, to be dealt with another day. It was causing Legislative Counsel to tag the bill as imposing a state-mandated local program.

Penal Code § 1269b (amended). Bail

The tentative recommendation would make technical revisions to Section 1269b to reflect unification of the superior and municipal courts. The statute provides a procedure in which the judges in a county meet and vote on a bail schedule annually. We asked commentators whether the statute reflects actual practice, and whether it should be further amended to do so.

The San Diego County Superior Court tells us it uses a special judges' committee, which follows an expedited procedure. Memorandum 2002-14, Exhibit p. 16. The court apparently does not feel constrained by the statutory requirements, and does not suggest revision of the statute to conform to practice.

The Los Angeles County Superior Court suggests some general language that could be used in place of the prescribed detail.

The staff believes we should schedule this matter for later consideration by the Commission, and develop language that is circulated to all interested persons for comment. Our objective would be to recommend appropriate revisions for next session.

Penal Code § 4852.18 (amended). Certificate of rehabilitation

Existing law requires the county clerk to reproduce the Board of Prison Terms form of "Certificate of Rehabilitation and Pardon" in sufficient number for the needs of the people in the county and to make copies available at no charge to persons requesting them. The tentative recommendation would shift this duty to the court clerk, since the county clerk no longer serves ex officio as court clerk.

The tentative recommendation also notes that this is an expense of the type that is in contention between the courts and counties, and solicits comment on

the matter. The Contra Costa County Superior Court responds that the shift to the court clerk seems appropriate. Memorandum 2002-14, Exhibit p. 24.

This is one of the few cost issues where the Commission in the tentative recommendation decided to propose a shift. The theory was that the cost in this case is de minimis. Given the Contra Costa court's willingness to absorb this cost, and given the lack of adverse comment on the issue, **the staff would proceed with this revision** as proposed.

Welf. & Inst. Code § 872 (amended). Transfer to juvenile hall outside county

The Los Angeles County Superior Court suggests a grammatical change in this section, referring to an order for "detention of an individual minor for a period not to exceed 60 days." Memorandum 2002-14, Exhibit p. 62. **The staff has no problem with this revision.**

Welf. & Inst. Code § 6776 (amended). Number and compensation of counselors in mental health

Welfare and Institutions Code Section 6776 contains a cross-reference to Government Code Section 69894.1, which is proposed for repeal. According to representatives of the Los Angeles County Superior Court, the counselors in mental health are now court employees. Therefore, **the staff recommends the following amended version of Section 6776:**

Welf. & Inst. Code § 6776 (amended). Number and compensation of counselors in mental health

SEC. ____ . Section 6776 of the Welfare and Institutions Code is amended to read:

6776. In each county where the office of counselor in mental health has been created under the provisions of this chapter, the judge of the superior court may appoint two such counselors. In ~~counties of the first class having a charter~~ Los Angeles County the numbers, compensation and benefits of ~~officers and employees~~ counselors in mental health ~~shall be as provided in Section 69894.1~~ are governed by the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600) of Title 8 of the Government Code.

Comment. Section 6776 is amended to reflect the repeal of Government Code Section 69894.1, concerning salaries of court personnel in Los Angeles County, and the enactment of the Trial Court Employment Protection and Governance Act. See Gov't Code §§ 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), 71640-71645 (employment selection and advancement), 71673 (authority of court).

Respectfully submitted,

Lynne Urman
Staff Counsel

Barbara S. Gaal
Staff Counsel

Nathaniel Sterling
Executive Secretary

Subject: Comments on amendments to Family Code sections
Date: March 5, 2002
From: "Grove, Janet" <Janet.Grove@jud.ca.gov>
To: "Bgaal (E-mail)" <bgaal@clrc.ca.gov>, "Lynne Urman (E-mail)" <lurman@clrc.ca.gov>, "Sterling (E-mail)" <sterling@clrc.ca.gov>

Below are comments from Bonnie Hough, a senior attorney in the AOC's Center for Family, Children and the Courts, on proposed amendments to Family Code sections in the tentative recommendation.

1) The changes to section 4252 re: child support commissioners appear to be appropriate.

2) Section 6390 re: the study of domestic violence courts is, indeed, obsolete. The report was completed and sent to the legislature.

3) The changes to section 7122 re: declaration of emancipation appear to be fine based upon the reasoning in the report as do the proposed changes to section 7134.

4) The same reasoning applies for Family Code sections 8613 - 8818 and 9200, and Gov. Code section 26832.

5) Again, the reasoning seems appropriate for the changes to 26859. It appears that Gov. Code section 26859 should be conformed as well.

Subject: Comment - SJO provisions in TCEPGA
Date: Tue, 5 Mar 2002 08:18:00 -0800
From: "Grove, Janet" <Janet.Grove@jud.ca.gov>
To: "Bgaal (E-mail)" <bgaal@clrc.ca.gov>,
"Sterling (E-mail)" <sterling@clrc.ca.gov>,
"Lynne Urman (E-mail)" <lurman@clrc.ca.gov>

The following is a comment on the proposed amendments to provisions regarding SJOs in the trial court restructuring study:

TO: Lynne Urman at lurman@clrc.ca.gov

This a comment by Administrative Office of the Courts staff. It is not a comment on behalf of the Judicial Council.

Dear Ms. Urman,

This comment concerns the proposed amendment to Government Code section 71601(i) and the addition of Government Code section 71622(g).

Government Code section 71601(i)

This section defines subordinate judicial officers (SJOs) for purposes of the Trial Court Employment Protection and Governance Act (TCEPGA). We are concerned with the proposed deletion of "pro tem judge" from that definition, and the effect such an amendment will have on other provisions in the TCEPGA.

The act uses the term "subordinate judicial officer" in Government Code sections 71622 (concerning subordinate judicial officers), 71643 (concerning competitive selection and promotion processes for court employees), and 71650 (concerning the employment protection system for court employees). Deleting "pro tem judge" from the definition in Government Code section 71601(i) would affect the scope of each of these code sections.

We understand that, because the constitutional authority of temporary judges is derived from article VI, section 21 of the California Constitution, rather than section 22, it may be appropriate to amend the current 71601(i). However, we feel that deleting "pro tem judge" from section 71601(i) without addressing the effect of that amendment on other provisions in the TCEPGA poses its own problems.

For example, section 71601(i) combined with section 71622 is the source of Judicial Council authority to authorize the numbers and types of SJOs (including pro tems) and to establish qualification and training standards for SJOs (also including pro tems). We are concerned that the council will lose this authority over pro tems if they are removed from section 71601(i). Because some courts have hired attorneys to sit as "pro tems" under the authority of article VI, section 21, without hiring them as SJOs, it is important that the council have authority

over both pro tems and SJOs. Excluding "pro tems" from section 71601(i) could enable courts to add judicial officer positions, in the form of pro tem judges, without the Judicial Council approval that is required by section 71622.

Deleting "judge pro tem" from section 71601(i) could have similar unintended effects on sections 71643 and 71650 of the TCEPGA.

We have not found a simple solution to this issue, but have identified the following possible solutions: 1) pro tem judges could be explicitly included in sections 71622, 71643, and 71650; 2) the definition in Government Code 71601(i) could be restructured to include pro tems in a manner that is consistent with both sections 21 and 22 of article VI; or 3) the Judicial Council could take steps to adopt an appropriate rule of court or sponsor legislation on the matter.

It seems that each of these solutions would require a somewhat detailed amendment to the TCEPGA, and, therefore, could lie outside the scope of the commission's charge under Government Code section 71674. We feel that such an amendment to the Court Employment Act would best be made with input from the Advisory Committees to the Judicial Council. Thus, we request that the commission not take action to delete "judge pro tem" from section 71601(i) at this time.

Proposed Government Code section 71622(g)

This section prohibits SJOs from practicing law except as provided by Judicial Council rule. The provision is not problematic in itself, but, because it is placed within section 71622(g), it is governed by the definition of SJO contained in 71601(i). As discussed above, this definition is broader than the standard definition of SJO because it includes judges pro tem.

If "judge pro tem" is to remain in 71601(i) as we have requested, the proposed 71622(g) would require the council to adopt rules of court concerning the practice of law by SJOs and judges pro tem. This would involve a broader set of rules than is required by the commission's other recommendations. Although the commission recommends the repeal of several statutes limiting the practice of law by commissioners and referees, none of the commission's recommendations concern the practice of law by temporary judges.

We request that the proposed 71622(g) be incorporated into the existing Government Code 68082 (or in another appropriate code section) so that it does not fall within the TCEPGA. This will permit the council to adopt rules that address the practice of law by subordinate judicial officers appointed under Article VI, section 22, without immediately addressing the practice of law by temporary judges, who are appointed under Article VI, section 21. Because these two types of judicial officers have different sources of authority and perform different functions in the courts, it is preferable that they be handled separately.

Please feel free to contact us to discuss this comment in more detail.

Sincerely,

Karen A. Sundermier
Attorney, Office of the General Counsel
Administrative Office of the Courts
415.865.7715
415.865.7664 fax

Sonya Smith
Attorney, Research and Planning Unit
Administrative Office of the Courts
415-865-7653
415-865-4332