

First Supplement to Memorandum 2002-17

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

This supplemental memorandum contains further analysis of comments concerning individual issues in the Commission's Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (November 2001). Attached to this memorandum is:

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| | <i>Exhibit p.</i> |
| 1. Los Angeles County Superior Court | 1 |

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

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 VI, § 23 (repealed).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

Memorandum 2002-17 discusses the question whether transitional provisions are still needed for the possibility that a superior court judge could have less than 10 years experience through the mechanism of trial court unification. The staff indicated that this was unlikely, but that we would double-check the actual situation with the Administrative Office of the Courts.

AOC no longer has this information readily available. Moreover, the staff overstates the case in Memorandum 2002-17, since (1) six of California's 58 superior courts did not unify until after 1998, and (2) the proposed constitutional amendment could conceivably make it onto the November 2002 ballot if it moves through the Legislature quickly enough — that would be less than five years after unification commenced.

In light of these considerations, and absent information about the actual situation of every former municipal court judge who became a superior court judge through unification, the staff has now come to agree with the position of the Los Angeles County Superior Court — it might be prudent to preserve the transitional provision for a few more years, just on the off chance. It won't hurt anything. Rather than proposing the repeal of Article VI, Section 23 immediately, we would make the repeal effective on the January 1 that falls five years after the last court unified:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(d) This section is operative until January 1, 2007, and as of that date is repealed.

This would also be consonant with a comment we previously received from an AOC staff member to the effect that the transitional provision is helpful when analyzing how provisions that applied to the former municipal and superior courts should be interpreted for the unified trial court, and how structures and procedures in the former municipal and superior courts should be continued or modified in the unified court. “It is true that most of the substance of § 23 is found in the Government Code (§§ 70200 et seq.), often in more detail. Still, I think it is helpful to keep in the Constitution (at least for the near future) a statement of what court unification is intended to do. The constitutional provision is less easily modified than statutes, and § 23 may provide simpler and more persuasive guidance as to how laws should be interpreted when applied to unified courts.” Janet Grove, AOC, email of 11/14/01.

Bus. & Prof. Code § 25361 (amended). Notice of seizure and intended forfeiture proceeding

Business and Professions Code Section 25361 relates to bringing a forfeiture proceeding in an alcoholic beverage control case. The tentative recommendation would require the notice of seizure and intended forfeiture to be filed with the court clerk rather than the county clerk.

The Los Angeles County Superior Court indicates this change is improper. Memorandum 2002-14, Exhibit p. 46. The staff has questioned that position; the court has reconsidered and now agrees that the change is proper. **The staff would proceed with this change** as proposed in the tentative recommendation.

Civ. Code § 1812.10 (amended). Action on contract or installment account

Under a heading for Civil Code Section 1812.10, the Los Angeles County Superior Court comments: “Does filing the addendum satisfy the requirement for separate affidavit attesting to proper location in commencing the action?” Memorandum 2002-14, Exhibit p. 47. The staff does not understand this comment, because Section 1812.10 does not mention an addendum. We are trying to find out more about it.

In any case, **Section 1812.10 should be removed from the recommendation and bill**, because it is a local venue provision and requires further study. See Memorandum 2002-14, pp. 5-6.

Code Civ. Proc. § 996.430 (not in TR). Enforcement of liability on bond

Code of Civil Procedure Section 996.430, which is not included in the tentative recommendation, concerns an action to enforce liability on a bond. One sentence in the provision states: “If the bond was given other than in an action or proceeding, the action shall be commenced in any court of competent jurisdiction, and the amount of damage claimed in the action, not the amount of the bond, determines the jurisdictional classification of the case.”

The Los Angeles County Superior Court comments:

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

Memorandum 2002-14, Exhibit p. 45.

The court is correct that Section 996.430 should be revised to reflect trial court unification. The Commission should study this matter in its continuing work on trial court restructuring, but **should not attempt to include an amendment in the recommendation and bill**, without the opportunity for circulation and input.

Code Civ. Proc. § 1141.11 (amended). Arbitration of at-issue civil actions

Code Civ. Proc. § 1141.12 (amended). Arbitration

Code of Civil Procedure Sections 1141.11 and 1141.12 pertain to judicial arbitration of civil actions. The tentative recommendation proposes to amend these provisions to reflect unification of the municipal and superior courts, and to clarify the application of Section 1141.12(a). A number of issues have been raised regarding these provisions:

At-issue civil actions

Both provisions refer to “at-issue civil actions.” The Los Angeles County Superior Court states that the term “at-issue” is no longer used. Memorandum 2002-14, Exhibit p. 51. The court suggests referring to “cases ready for trial” instead. *Id.* That point is unrelated to trial court restructuring, but **would be appropriate for consideration in the Commission’s study of civil procedure technical corrections.**

Unappealable determination of cases

Section 1141.11 permits a trial court to require arbitration of certain civil cases, under specified circumstances. The Los Angeles County Superior Court suggests “legal review for conflict with State and Federal Constitutional protections as to an unappealable determination of cases.” Memorandum 2002-14, Exhibit p. 51.

The staff does not understand this concern, because in judicial arbitration (unlike contractual arbitration) any party “may elect to have a de novo trial, by court or jury, both as to law and facts.” Code Civ. Proc. § 1141.20(b). What is unappealable under Section 1141.11 is not the ultimate decision in the arbitration, but rather the determination of whether the amount in controversy is such that judicial arbitration is required. That procedural determination may not trigger constitutional concerns. Even if it does, the issues are unrelated to trial court restructuring. Absent further explanation, **we would not pursue them in the context of this study.**

Overlap of Section 1141.11(b) and (c)

The AOC comments that the “cross-references to CCP § 1141.11 in the amendment to § 1141.12 appear to be correct, but the amendments to § 1141.11 do not clean up the overlap between subdivisions (b) and (c) (for limited civil cases in small courts).” Memorandum 2002-14, Exhibit p. 10. As set forth in the tentative recommendation, those subdivisions provide:

(b) ~~In each superior court with less than 10 judges, or fewer than 18 judges in a county in which there is no municipal court,~~ the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be appealable.

(c) ~~Each municipal court, or superior court in a county in which there is no municipal court,~~ may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue limited civil cases pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161 of this code.

The staff interprets these provisions to afford different options.

Under subdivision (b), a superior court with fewer than 18 judges is permitted in specified circumstances to adopt a local rule requiring that all at-issue civil actions for \$50,000 or less per plaintiff be submitted to judicial arbitration. Under subdivision (c), any superior court is permitted in specified circumstances to adopt a local rule requiring that all at-issue limited civil cases (i.e., cases for \$25,000 or less) be submitted to judicial arbitration. Those are two different types of local rules, although both would require judicial arbitration of all at-issue limited civil cases. The staff is not sure that there is any overlap problem that needs to be cured. We will try to discuss this point with AOC staff before the meeting, but **we are not presently inclined to make any revisions to address it.**

Grammatical suggestion

The tentative recommendation proposes to amend the first sentence of Section 1141.12 to read:

In each superior court in which arbitration may be had is required pursuant to subdivision (a) ~~or (b)~~ of Section 1141.11, or pursuant to a local rule adopted under subdivision (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

On re-reading this amendment, the staff recommends deleting the comma after “Section 1141.11” and before “or pursuant to a local rule” Thus, the sentence would read:

In each superior court in which arbitration may be had is required pursuant to subdivision (a) ~~or (b)~~ of Section 1141.11 or pursuant to a local rule adopted under subdivision (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

With this revision, the Commission should proceed with the proposed amendments of Sections 1141.11 and 1141.12.

Educ. Code § 69763.2 (amended). Entry and enforcement of judgment

The Los Angeles County Superior Court raises questions about statute of limitations and local venue issues in connection with Education Code Section

69763.2, relating to collection of delinquent student loans. Memorandum 2002-14, Exhibit p. 52. The staff has suggested to the court that these concerns are beyond the scope of the present statutory cleanup, and the court agrees. **The staff recommends that the Commission proceed with the technical revisions to this section** set out in the tentative recommendation.

Gov't Code § 990.2 (amended). Authority to insure court officer or attaché

The tentative recommendation includes the following amendment of Government Code Section 990.2, which permits a *county* to insure against liability of court employees:

990.2. A county may insure any officer or attache of its superior and former municipal courts against all or any part of the officer or attache's liability for injury resulting from any act or omission in the scope of the officer or attache's employment, and also may insure against the expense of defending any claim against such officer or attache, whether or not liability exists on such claim.

Comment. Section 990.2 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. The reference to the municipal courts is revised rather than deleted, because a claim might still be asserted against a person formerly employed by a municipal court, even though the court itself no longer exists.

A Note solicits comment on whether, due to the enactment of the Trial Court Funding Act and Government Code Section 811.9, another entity (e.g., the Judicial Council or the local superior court) should be given this authority instead of or in addition to the county.

The Los Angeles County Superior Court suggests that “[i]n addition to the county, the local superior court and Judicial Council should be given authority to insure Court employees against liability.” Memorandum 2002-14, Exhibit p. 52. The Contra Costa County Superior Court cautions that the situation is complex and deserves careful study. Memorandum 2002-14, Exhibit p. 21. “While this code section is permissive giving counties the option to insure, further legal analysis seems prudent.” *Id.*

In light of these comments, the Commission should **remove Section 990.2 from the recommendation and bill**, and study it further before proceeding. The Contra Costa County Superior Court has pointed out a number of matters for the Commission to consider when it undertakes this analysis. *Id.*

Gov't Code § 6701 (amended). Holiday falling on Saturday or Sunday

The tentative recommendation includes the following amendment of Government Code Section 6701:

6701. If January 1st, February 12th, March 31st, July 4th, September 9th, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday. If November 11th falls upon a Saturday, the preceding Friday is a holiday.

If any holiday designated in Section 6700 falls on a Saturday, the board of supervisors of any county may by ordinance or resolution provide that an alternate day shall be a holiday for the employees of the county, ~~except those employees of the county working as court attaches or as clerks of the superior or municipal courts.~~

Comment. Section 6701 is amended to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial court employees), 71673 (authority of trial courts to establish terms and conditions of employment).

A Note solicits comment on whether the entire last clause should be deleted (as shown), or only the reference to municipal courts.

The Contra Costa County Superior Court would not delete the phrase “except those employees of the county working as court attaches.” Memorandum 2002-14, Exhibit p. 21. According to the court, the “meaning of the term *court attaches* is unclear, but it is wise to leave this intact given lingering interdependent relations between court and county.” *Id.* The phrase “or as clerks of the superior or municipal courts” should “be deleted as proposed.” *Id.*

Given the court’s reservations about deleting the reference to court attaches, the Commission should **revise the amendment to retain that reference.** Alternatively, the Commission could study the matter further before proceeding with legislation.

The Los Angeles County Superior Court also comments on Section 6701. The court states that there “should be a specific comment as to what superior courts will do with holidays that fall on Sat. or Sun.” Memorandum 2002-14, Exhibit p. 53. The court also questions: “What entity will define for courts?” *Id.*

These points are unrelated to the proposed amendment. Section 6701 does not cover trial court employees, either now or as we propose to amend it. The amendment would just delete trial court employees from *the exception* to Section 6701, because they are no longer county employees.

The court's question regarding who designates alternate days for the court deserves to be answered. But **the Commission should not delve into that area, at least not in the context of amending Section 6701.**

Gov't Code § 15422 (amended). Substitute for county public defender

The Los Angeles County Superior Court points out that the proposed amendment of Government Code Section 15422 refers to "superior courts" instead of "superior court." The Commission should **correct this reference in the recommendation and bill.**

Gov't Code § 16265.6 (not in TR). Implementation of Trial Court Funding Act of 1985

Government Code Section 16265.6 provides:

16265.6. Notwithstanding any other provision of this chapter, once the Legislature has fully implemented the fiscal provisions of the Trial Court Funding Act of 1985, as contained in Chapter 13 (commencing with Section 77000) of Title 8, the Director of Finance shall not make the determinations pursuant to subdivision (b) of Section 16265.3 and subdivisions (b) of Section 16265.4.

This provision is not in the tentative recommendation. The Los Angeles County Superior Court suggests repealing the provision because it is obsolete. Memorandum 2002-14, Exhibit p. 53.

The Commission **may want to investigate this possibility for future legislation.** It might be appropriate not only to repeal Section 16265.6, but also to delete the subdivisions cross-referenced in it.

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

Government Code Section 26859 requires a \$2 filing fee for each initial petition for dissolution of marriage, legal separation, or nullity. The tentative recommendation proposes to amend this provision to make the fee payable to the clerk of the superior court, instead of to the county clerk. A Note indicates that a conforming revision of Health and Safety Code Section 103200 might also be appropriate.

The AOC agrees with the proposed amendment of Government Code Section 26859. Memorandum 2002-17, Exhibit p. 1. The AOC also agrees that Health and Safety Code Section 103200 should be conformed as proposed. *Id.* (as clarified by AOC attorney Bonnie Hough).

The Commission should therefore **proceed with the proposed amendment of Government Code Section 26859, and add the following amendment of Health and Safety Code Section 103200 to its recommendation and bill:**

Health & Safety Code Section 103200 (amended). Transmittal to State Registrar

SEC. _____. Section 103200 of the Health and Safety Code is amended to read:

103200. The ~~county~~ clerk of ~~the superior court of~~ each county shall send a copy of every judgment of dissolution of marriage, legal separation, and of declaration of nullity, to the State Registrar monthly. If a judgment of dissolution of marriage is vacated, the ~~county~~ clerk shall send a copy of the order or dismissal to the State Registrar.

Comment. Section 103200 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Section 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Sections 69840 (powers, duties, and responsibilities of clerk of court and deputy clerk of court), 71620 (trial court personnel).

Gov't Code § 27648 (unchanged). Reimbursement where judge is required to retain own counsel due to conflict of interest

The tentative recommendation sets forth the text of Government Code Section 27648, which includes a cross-reference to Government Code Section 27647. A Note points out that the provision will require revision if Section 27647 is repealed as proposed. The Note solicits comment on whether the provision should be amended to delete the reference to Section 27647, repealed in its entirety due to the enactment of Government Code Section 811.9, continued with revisions in Section 811.9, or otherwise revised.

The Los Angeles County Superior Court states that “[a]t minimum, any amendment to this section must preserve the principle that any judge otherwise entitled to representation who is required to retain his or her own counsel is entitled to reimbursement, unless this principle is implemented elsewhere in the Code.” Memorandum 2002-14, Exhibit p. 54. The Commission should consider this comment, and Section 27648 generally, when it studies Sections 811.9, 27647, and 26524 as discussed at pages 20-21 of Memorandum 2002-17. As in the tentative recommendation, **Section 27648 should be left alone for now.**

Gov't Code § 29603 (amended). Payments to jurors and witnesses

Gov't Code § 68098 (amended). Witness fees in criminal cases

The tentative recommendation would amend Government Code Section 68098 as follows:

68098. Witness' fees in criminal cases in superior ~~and municipal~~ courts are charges against the same funds as jurors' fees in such cases.

Comment. Section 68098 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

A Note points out that county treasury provisions are still under study, and solicits comment on the proper treatment of Section 68098.

The tentative recommendation also includes the following amendment of Government Code Section 29603:

29603. The sums required by law to be paid to the grand ~~and trial~~ jurors and witnesses in criminal cases tried in a superior ~~or municipal~~ court are county charges.

Comment. Section 29603 is amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (jury services). The reference to grand jurors is retained because grand jury expenses and operations are not court operations. Cal. R. Ct. 810(b)(6); *cf.* Cal. R. Ct. 810(d), Function 2 (grand jury selection).

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

Again, a Note points out that county treasury provisions are still under study, and solicits comment on the proper treatment of Section 29603.

The Contra Costa County Superior Court writes that Section 68098

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

Memorandum 2002-14, Exhibit p. 23 (emphasis in original).

Given these comments, it appears that Sections 29603 and 68098 require further study. The Commission should **remove these provisions from the recommendation and bill.**

Gov't Code § 31469 (amended). "Employee" defined

The tentative recommendation includes the following amendment of Government Code Section 31469:

31469. (a) "Employee" means any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and any officer or other person employed by any district within the county.

(b) "Employee" includes any officer or ~~attache~~ of any superior court ~~or municipal court~~ which has been brought within the operation of this chapter.

(c) "Employee" includes any officer or other person employed by a district as defined in subdivision (c) of Section 31468 and whose compensation is paid from funds of the district.

(d) "Employee" includes any member paid from the county school service fund who elected pursuant to Education Code Section 873.1 to remain a member of this system.

(e) "Employee" includes any person permanently employed by a local agency formation commission including the executive officer thereof.

Comment. Subdivision (b) of Section 31469 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

A Note points out that Section 31469 is part of the County Employees Retirement Law, and asks whether the municipal court reference is still necessary and whether a reference to the justice court should be re-inserted. The Note also queries whether subdivision (b) should be deleted altogether, due to the enactment of Government Code Section 71624, the retirement provision in the Trial Court Employment Protection and Governance Act. The Note explains that the answer is not obvious, because Section 71624 appears to permit court employees to participate in the County Employees Retirement system in some circumstances.

The Los Angeles County Superior Court comments that "[s]ubdivision (b) *should not be deleted.*" Memorandum 2002-14, Exhibit p. 55 (emphasis in original). "The commission report correctly points out that section 71624 provides for

continued participation of court employees in county retirement plans.” *Id.* “Subdivision (b) provides the legal authority in the Retirement Law for this to occur.” *Id.*

The Contra Costa County Superior Court also comments on Section 31469, stating that it “should be retained *with reference to municipal court* given retirement implications.” Memorandum 2002-14, Exhibit pp. 22-23 (emphasis added). The court does not mention justice courts.

Due to these comments, the Commission should leave Section 31469 alone, at least for now. The provision should be **deleted from the recommendation and pending bill.**

Gov’t Code § 68086 (amended). Fees for reporting services

The tentative recommendation proposes to amend Government Code Section 68086 as follows:

68086. (a) The following provisions apply in superior court:

(1) In addition to any other trial court fee required in civil cases, a fee equal to the actual cost of providing that service shall be charged per one-half day of services to the parties, on a pro rata basis, for the services of an official reporter on the first and each succeeding judicial day those services are required.

(2) All parties shall deposit their pro rata shares of these fees with the clerk of the court at the beginning of the second and each succeeding day’s court session.

(3) For purposes of this section, “one-half day” means any period of judicial time during either the morning or afternoon court session.

(4) The costs for the services of the official reporter shall be recoverable as taxable costs at the conclusion of trial.

(5) The Judicial Council shall adopt rules to ensure all of the following:

(A) That parties are given adequate and timely notice of the availability of an official reporter.

(B) That if an official reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official ~~pro tempore~~ reporter pro tempore, the costs ~~therefore~~ therefor recoverable as provided in paragraph (4).

(C) That if the services of an official ~~pro tempore~~ reporter pro tempore are utilized pursuant to this section, no other charge will be made to the parties.

~~(b) The following provisions apply in municipal court:~~

~~(1) In addition to any other trial court fee required in civil cases, a fee equal to the actual cost of providing that service shall be~~

~~charged per one-half day of services to the parties, on a pro rata basis, for~~ For purposes of this section, “services of an official reporter” includes official reporting services on the first and each succeeding judicial day those services are required.

~~(2) All parties shall deposit their pro rata shares of these fees with the clerk of the court at the beginning of the second and each succeeding day’s court session.~~

~~(3) For purposes of this section, “one-half day” means any period of judicial time during either the morning or afternoon court session.~~

~~(4) The costs for the official reporting services shall be recoverable as taxable costs at the conclusion of trial.~~

~~(5) The Judicial Council shall adopt rules to ensure all of the following:~~

~~(A) That litigants receive adequate information about any change in the availability of official reporting services.~~

~~(B) That if official reporting services are not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefore recoverable as provided in paragraph (4).~~

~~(C) That if the services of a pro tempore reporter are utilized because official reporting services are unavailable, no other charge will be made to the parties for recording the proceeding.~~

Comment. Subdivision (a) of Section 68086 is amended for consistency of terminology. See Section 69941 (appointment of official reporters).

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

The California Court Reporters Association and Los Angeles County Court Reporters Association state that “[i]n order to assure availability of a court reporter from the private sector when an official court reporter is not available there is need for parties to negotiate fees with private sector court reporters.” Memorandum 2002-14, Exhibit pp. 3, 7. The court reporter associations propose language to be added to Section 68086 to address this point. *Id.* This issue is unrelated to trial court restructuring, and the staff is reluctant to get involved in it, certainly not without further study.

Section 68086 may warrant further study, however, because the staff is not satisfied with the drafting of subdivision (b), which would be revised to state: “For purposes of this section, ‘services of an official reporter’ includes official reporting services.” The intent is to cover both shorthand reporting and

electronic recording, because both types of services are now used in superior court, under specified circumstances.

But that needs to be made more clear. Rather than attempting to provide such clarification now, it may be better to **remove Section 68086 from the recommendation and bill**, and study it under less time pressure.

Gov't Code § 68098 (amended). Witness fees in criminal cases

This provision should **be removed from the recommendation and bill for future study**. See discussion of Government Code Section 29603.

Gov't Code § 68202 (amended). Annual salary of judges

Government Code Section 68202 prescribes the compensation of trial court judges effective January 1, 1985. The tentative recommendation would delete the reference to the salary of a municipal court judge. A Note solicits comment on whether this provision should also be updated to reflect current salaries, which are now determined by provisions modifying the base figure in Section 68202.

The Contra Costa County Superior Court says that it “seems appropriate to bring current the salary for superior court judges and to prescribe the process for future salary adjustments.” Memorandum 2002-14, Exhibit p. 23.

But the Commission has already decided not to update the provision, because that might open a can of worms in a tight budget year. Minutes (February 2002), p. 5; see also Memorandum 2002-3, pp. 1-2. **The Commission should stick to that decision and proceed with the approach in the tentative recommendation.**

Gov't Code § 68551 (amended). Institutes and seminars

Government Code Section 68551 concerns Judicial Council institutes and seminars for judges. The last sentence of the provision states that “[a]ctual and necessary expenses incurred by superior and municipal court judges at any such institute or seminar shall be a charge against the county to the extent that funds are available therefor.” The tentative recommendation proposes to delete that sentence due to the recent enactment of Government Code Section 69505, which governs business-related travel expenses of trial court judges and employees.

The Los Angeles County Superior Court objects to this proposed revision. “There is nothing in the trial court restructuring provisions that suggests a policy determination that reimbursement for attendance at such programs should no longer be expressly provided.” Memorandum 2002-14, Exhibit p. 56. In the court’s view, deletion of the last sentence of Section 68551 “would constitute such

a determination.” *Id.* “Moreover, it might be argued that ‘travel expenses’ is more limited than ‘expenses incurred in attending seminars and institutes” and the latter term ought to be given continuing effect.” *Id.* The court urges the Commission to amend Section 68551 to “provide that the charge for such expenses is against the court rather than the county.” *Id.*

In view of these comments, the Commission should **remove the amendment of Section 68551 from the recommendation and bill**, and study the provision further. The Commission should not attempt to implement the court’s suggestions without providing ample opportunity for review and discussion by all of the interested parties.

Gov’t Code § 68562 (amended). Certification of court interpreters

Government Code Section 68562 pertains to certification of court interpreters. The tentative recommendation proposes to amend the provision to delete a municipal court reference. A Note points out that subdivisions (b) and (f) refer to events that were to occur in 1996. The Note solicits comment on whether these subdivisions are obsolete.

The Contra Costa County Superior Court cautions against further revisions: “Eventually, portions of this code section may be obsolete, but given ongoing concerns regarding court interpreter services, it is preferable that this code section remains intact for now.” Memorandum 2002-14, Exhibit p. 23.

In light of this comment, the Commission should **proceed with the proposed amendment**, instead of proposing further revisions.

Health & Safety Code § 1428 (amended). Contest of citation or civil penalty

The tentative recommendation proposes to amend Health and Safety Code Section 1428 to delete municipal court references. A Note points out that subdivision (b) requires service of an at-issue memorandum, but this requirement might be obsolete. The Note explains that the Commission does not plan to address this point in this study but might look into it in the future.

The Contra Costa County Superior Court suggests that the reference to an at-issue memorandum be “changed to reflect request for trial setting.” Memorandum 2002-14, Exhibit p. 58. The Commission should **consider this suggestion in its study of civil procedure technical revisions**.

Health & Safety Code § 11758.54 (amended). Evaluation of alcohol detoxification and intravenous drug user AIDS education pilot project

The tentative recommendation proposes to amend Health and Safety Code Section 11758.54 to reflect unification of the municipal and superior courts. The tentative recommendation also solicits comment on whether the provision is obsolete.

The Commission has not received any comments regarding this section or the pilot project to which it relates. **The staff will attempt to obtain more information about the status of the pilot project before the Commission meets.** If the pilot project is still viable, the Commission should proceed with the proposed amendment. If the pilot project is obsolete, or if we are unable to determine its status by the time of the meeting, the Commission should delete the amendment from the recommendation and bill, and study the matter further.

Lab. Code § 98.1 (amended). Order, decision or award

The tentative recommendation proposes the following amendment of Labor Code Section 98.1(a):

98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon filing of the order, decision, or award, the Labor Commissioner shall serve a copy of the decision personally or by first-class mail on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the appropriate ~~municipal or superior court, in accordance with the appropriate rules of jurisdiction.~~

A Note solicits comment on whether it is necessary to refer to the “appropriate” superior court in the last sentence.

Both the Contra Costa County Superior Court and the Los Angeles County Superior Court indicate that the word “appropriate” seems unnecessary in this context. Memorandum 2002-14, Exhibit pp. 24, 59. Thus, **the Commission might consider revising the amendment to delete that word:** “The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this

chapter shall result in the decision or award becoming final and enforceable as a judgment by the appropriate municipal or superior court, in accordance with the appropriate rules of jurisdiction.” The staff does not feel strongly about whether to make this change.

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

Memorandum 2002-17 notes the Los Angeles County Superior Court’s concern about the cost of grand jury selection. The staff noted it would attempt to obtain additional information concerning actual practice in Los Angeles and other counties.

Los Angeles County Superior Court personnel confirm that, notwithstanding Rules of Court 810, the practice in that county is for the county to reimburse the court for that expense. We have so far been unable to ascertain the practice in other counties.

The Los Angeles County Superior Court suggests that, rather than substituting the court clerk for the county clerk in the selection process, we substitute the jury commissioner. The staff is reluctant to do this without contacting other courts to make sure that works for them. **The staff suggests we hold Penal Code Sections 896, 900, and 904 out of the recommendation and bill**, and deal with them during the coming year in the context of jury commissioner statute revisions. See discussion in Memorandum 2002-14.

The Los Angeles County Superior Court also objected to substitution of the court clerk for the county clerk in Penal Code Sections 932 and 933, relating to filing of grand jury orders and final reports. The staff has pointed out that these are not cost provisions and are appropriate, and the court now agrees. **The staff would proceed with these revisions** as proposed in the tentative recommendation.

Penal Code § 977 (amended). Presence of defendant and counsel

Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic audiovideo communication

Penal Code Section 977 and 977.2 permit use of two-way electronic audiovideo communication for certain court appearances under specified circumstances. The tentative recommendation would amend these provisions to reflect unification of the municipal and superior courts. Each of these amendments includes the following sentence: “However, if the defendant is represented by counsel at an initial hearing ~~in superior court~~ in a felony case, and

if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.”

The Los Angeles County Superior Court questions whether the phrase “initial hearing in a felony case” is sufficient to “convey the intention of the Legislature in Penal Code § 977, subdivision (c) and Penal Code § 977.2, subdivision (b), when it specifically created an exception to the general provisions on attorney appearance during video arraignments in cases of arraignment on an information in superior court.” Memorandum 2002-14, Exhibit p. 59. The court suggests using the phrase “arraignment on an information” instead of “initial hearing.” *Id.*

The staff appreciates this suggestion. Before trial court unification, a felony defendant was arraigned on a complaint in municipal court, and, if held to answer, later arraigned on an information in superior court (if not indicted). Now, both types of arraignments are conducted in superior court (technically the arraignment on the complaint is before a superior court judge acting as magistrate, rather than before the superior court). This makes the phrase “initial hearing in superior court” ambiguous: Does it refer to the arraignment on the complaint, or to the arraignment on the information? The Los Angeles County Superior Court is correct that this ambiguity should be eliminated.

We are reluctant, however, to implement the court’s proposed approach without circulating it for comment. Thus, we suggest that the Commission **remove the amendments of Penal Code Sections 977 and 977.2 from the recommendation and bill**, and seek input on the approach proposed by the Los Angeles County Superior Court.

Penal Code § 1463.22 (amended). Definitions

Penal Code Section 1463.22 concerns allocation of moneys deposited with the county treasurer in connection with certain Vehicle Code violations. The tentative recommendation proposes to amend the provision to delete a reference to municipal courts. A Note explains that county treasury provisions such as Section 1463.22 are still being studied. The Note solicits comment on the funding aspects of the statute. The Note also seeks input on the proper treatment of cross-references to Vehicle Code provisions that have been repealed.

The Department of Motor Vehicles (“DMV”) has provided extensive comments regarding the proper disposition of the cross-references. Memorandum 2002-14, Exhibit pp. 35-38. We are grateful for this input.

The statute is, however, on the list of fee provisions being studied by the Joint Court-County Working Group on Trial Court Funding. As explained at pages 8-9 of Memorandum 2002-14, the Commission should therefore **remove the provision from the recommendation and pending bill**, and study it further in the coming year. The DMV's comments should be analyzed in the course of that work.

Rev. & Tax. Code § 19280 (unchanged). Collection of fines, penalties, and forfeitures by Franchise Tax Board

Revenue and Taxation Code Section 19280 provides that certain fines, penalties, and forfeitures imposed by a municipal or superior court may be referred to the Franchise Tax Board ("FTB") for collection "no sooner than 90 days" after payment becomes delinquent. The tentative recommendation proposes to leave this provision intact for the time being, because the last municipal court was not eliminated until February 2001 and it "probably is premature to delete the 'municipal court' reference from the section." The Commission solicited comment on when the provision would be ripe for reform. The Commission also solicited comment on whether subdivision (b), which requires the FTB to submit a report on or before April 1, 2001, and authorizes the FTB to limit referrals under the statute to 17 counties until December 31, 2002, would continue to serve a useful purpose after December 31, 2002.

The FTB concurs that Section 19280 should be left alone for now. Memorandum 2002-14, Exhibit p. 34. The FTB does not know when the provision will be ripe for reform, because it cannot tell which court imposed the debts that a county refers to it for collection. *Id.* The FTB further reports that the debt-referral program will sunset on December 31, 2002 (Rev. & Tax Code § 19283), unless this sunset date is extended before then. The FTB anticipates that the sunset date will be timely extended. *Id.* "In the event this occurs, [Section 19280(b)] would no longer be useful and could be deleted next year." *Id.*

From these comments, it is clear that Section 19280 requires further study. **The provision should not be included in the recommendation or pending bill.** The Commission should monitor the situation and attempt to obtain more information regarding the source of debts referred to the FTB.

Veh. Code § 11205 (unchanged). List of traffic violator schools (as amended by Section 455.5 of Chapter 931 of the Statutes of 1998)

Vehicle Code Section 11205 is a lengthy provision regarding lists of traffic violator schools, which are provided to persons eligible to attend such a school instead of being subjected to the normal penalty for a traffic violation. As explained at pages 6-7 of the First Supplement to Memorandum 2002-88, this provision requires further study, because it uses judicial districts as the geographic unit for organizing traffic violator schools. This approach needs to be rethought due to trial court unification and the consequent elimination of municipal court districts.

Thus, the tentative recommendation does not propose any revisions of Section 11205. Instead, it sets forth the text of the provision followed by a Note explaining the issue and soliciting comment.

The Los Angeles County Superior Court has provided background information and suggestions regarding the provision. Memorandum 2002-14, Exhibit pp. 60-61. The court also cautions that “[a]ny change to the language for the list needs to be reviewed by both the courts and the DMV.” *Id.*

The Commission should take the court’s suggestions into account when it studies Section 11205, as well as suggestions previously offered by Bill Niles, President of the California Traffic School Association. Because Section 11205 requires further study, **it should not be included in the recommendation or pending bill.**

Welf. & Inst. Code § 247 (repealed). Juvenile court referees

The Trial Court Employment Protection and Governance Act provides for appointment of subordinate judicial officers by the “trial court” who serve at the pleasure of the trial court. Gov’t Code § 71622 (subordinate judicial officers). That statute also requires the Judicial Council to prescribe minimum qualifications and training requirements for subordinate judicial officers.

Based on this statutory scheme, the tentative recommendation proposes to repeal as obsolete Welfare and Institutions Code Section 247. That section provides for appointment of a juvenile court referee by the presiding “judge” of the juvenile court; the referee serves at the pleasure of the judge. Section 247 also imposes a qualification of 5 years California practice experience for appointment. And it provides that compensation for the referee is to be set by the county board of trustees (despite the fact that the trial court employment law now provides for

compensation to be set by the court and that the trial court funding law now provides for the state, rather than the county, to fund trial court operations).

The Los Angeles County Superior Court objects to repeal of Welfare and Institutions Code Section 247. They argue that (1) appointment authority of the presiding juvenile court judge is consistent with the new law — the trial court is in effect making the hiring and firing decisions, via the statutory delegation to the presiding juvenile judge, and (2) the minimum qualifications established by statute are not obsolete because the Judicial Council has not yet adopted rules pursuant to its statutory mandate. They argue that the statutory delegation to the presiding judge of the juvenile court is appropriate since that judge is in the best position to evaluate the needs of the court and the performance of its referees. “This approach continues to work quite successfully in the large and complex superior court in Los Angeles County.” Exhibit p. 2.

The court suggests amendment, rather than repeal, of the statute along the following lines:

247. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more referees to serve on a full-time or part-time basis, subject to determination by the Judicial Council pursuant to Section 71622 of the Government Code of the number of referee positions authorized. A referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a referee, such referee shall continue to serve as such until the appointment of his successor. ~~Except as otherwise provided by law, the amount and rate of compensation to be paid referees shall be fixed by the board of supervisors.~~ Every referee first appointed on or after January 1, 1977, shall have been admitted to practice law in this state and, in addition, shall have been admitted to practice law in this state for a period of not less than five years or in any other state and this state for a combined period of not less than 10 years. Nothing in this section shall be construed to apply to the qualifications of any referee first appointed prior to January 1, 1977.

If we go this route, the staff would also repeal the provisions relating to qualifications since, as we have noted in Memorandum 2002-14 (in connection with retired annuitant statutes), the Judicial Council is about to circulate draft rules on subordinate judicial officer qualifications for review this spring, with the intention to adopt them effective January 1, 2003.

The more significant issue, in the staff's opinion, is whether the statute prescribing the procedure for appointment and termination of a juvenile court referee should remain on the books in light of the general provisions of the Trial Court Employment Protection and Governance Act. The staff agrees with the Los Angeles County Superior Court that the two statutes are not necessarily inconsistent — presumably if Welfare and Institutions Code Section 247 were repealed the court would have authority to delegate the hiring and firing function to a court committee or an individual court officer, including the presiding juvenile court judge; the court would not have to act by a majority vote of all the judges on each appointment and termination decision for every court employee. The only limitation specified in Government Code Section 71622 is that the appointment of a subordinate judicial officer be made by order entered in the minutes of the court.

In fact, Government Code Section 77001 requires the Judicial Council to promulgate rules to establish a decentralized system of trial court management, which must include the authority and responsibility of trial courts to establish the means of selecting various court officers. (Juvenile court referees are not specifically mentioned in Section 77001(c)(4), though.)

The staff thinks that Welfare and Institutions Code Section 247 should be repealed, but this should not preclude the Los Angeles County Superior Court, or any other court for that matter, from delegating to the presiding juvenile court judge authority to hire and fire juvenile court referees. **We could add language to that effect to the Comments** to make it clear, if necessary. **It might also be appropriate to add a deferred operative date of a year** to allow the court time to adopt whatever procedures for hiring and firing juvenile court referees it deems appropriate. We will run this proposal by the court before the Commission meeting.

Alternatively, if the court is sufficiently nervous that it needs to see explicit statutory authority for a court to delegate hiring and firing decisions, we could add statutory language to that effect. We would not want to do that in the context of the juvenile court referee statute, however, since that could by implication cast doubt on all other employment decision delegations. We would need to do it by a general provision added to the Trial Court Employment Protection and Governance Act. That is something we should do deliberately. If that is the Commission's decision, then **repeal of Section 247 would need to**

come out of the recommendation and bill until we have had an opportunity to develop a satisfactory general statute on delegation of employment decisions.

Welf. & Inst. Code § 603.5 (amended). Minor charged with Vehicle Code infraction or violation of local ordinance relating to motor vehicle

Welfare and Institutions Code Section 603.5 concerns jurisdiction of a case in which a minor is charged with a Vehicle Code infraction or violation of a local ordinance involving driving, parking, or operation of a motor vehicle. The tentative recommendation proposes to amend this provision to delete municipal court references. A Note solicits comment on whether the provision should be further revised to reflect enactment of Vehicle Code Section 40215, which provides for an administrative hearing of a parking violation by a minor.

The Los Angeles County Superior Court comments that further revisions are in order. “The reference to ‘parking’ should be deleted and the reference to Vehicle Code infractions should be revised to exclude standing and parking violations.” Memorandum 2002-14, Exhibit p. 61.

The Commission should study these suggestions and **remove Section 603.5 from the recommendation and bill.**

Welf. & Inst. Code § 742.16 (amended). Cleanup, repair, replacement, or restitution

Welfare and Institutions Code Section 742.16 concerns punishment of a minor who defaces, damages, or destroys property. The tentative recommendation proposes to amend the provision to delete municipal court references.

Section 742.16(d) directs the court in specified circumstances to “hold a hearing to determine the liability of the minor’s parent or parents pursuant to Section 1714.1 of the Civil Code.” With exceptions, Section 742.16(n) makes the payment options of Section 742.16(a), (b), (c), (d), and (k) inapplicable in “an *ordinary* civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code.” (Emphasis added.) A Note in the tentative recommendation explains that the word “ordinary” apparently serves to differentiate between (a) a hearing under the circumstances specified in Welfare and Institutions Code Section 742.16(d), and (2) other proceedings pursuant to Civil Code Section 1714.1 (i.e., “ordinary” proceedings pursuant to that provision). The Note solicits comment on whether revisions should be made to express this distinction more clearly.

The Los Angeles County Superior Court states that “[s]ome clarification might be beneficial.” Memorandum 2002-14, Exhibit p. 61. The court offers some suggested language. *Id.*

We are not sure that we fully understand the court’s suggestion, but could try to find out more about it if the Commission so desires. Alternatively, the Commission could simply proceed with the revisions proposed in the tentative recommendation, to which no one has objected. **The staff does not feel strongly about how to proceed on this point.**

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

Nathaniel Sterling
Executive Secretary

The Superior Court

JOHN A. CLARKE
EXECUTIVE OFFICER/CLERK

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VIA FACSIMILE

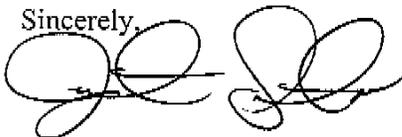
March 5, 2002

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

Dear Mr. Sterling:

I have enclosed an addendum to the comments that were sent to you by Los Angeles Superior Court on Friday, March 1, 2002 regarding the tentative recommendations of the Trial Court Restructuring Proposals. Please incorporate the addendum to the comments of the Welfare and Institute Code Section. If you have any questions, please contact me at (213) 893-1031. Thank you for your attention as it pertains to this matter.

Sincerely,



Janet Soto, Court Manager
Intergovernmental Relations Office

c: John A. Clarke, Executive Officer/Clerk
Larry Jackson, Administrator

ADDENDUM 1

Welfare and Institutions Code §247 should not be repealed as proposed. The express authority of the juvenile court presiding judge in that section to appoint and terminate juvenile court referees reflects the fact that the presiding judge of the juvenile court is in the best position to evaluate the juvenile court's needs and how well applicants for referee positions would meet such needs, as well as to evaluate the performance of juvenile court referees. This approach continues to work quite successfully in the large and complex superior court in Los Angeles County.

The Trial Court Employment and Governance Act does not make section 247 obsolete. Government Code section 71622 generally provides that the court may appoint subordinate judicial officers and that such judicial officers serve at the pleasure of the court. Section 247 provides specifically for how this appointment and termination power is to be exercised in the context of juvenile court referees.

In addition, the provisions of section 247 setting forth the minimum qualifications for juvenile court referees, may not be ripe for repeal. Government Code section 71622(c) requires the Judicial Council to establish minimum qualifications and training requirements for all subordinate judicial officers, including referees. The Judicial Council has not yet adopted rules establishing such criteria.

Two provisions of section 247 should be amended. The sentence pertaining to the Board of Supervisors setting referee compensation should be deleted since the court now establishes compensation rates for its employees. The first sentence should be amended to refer to the Judicial Council's authority to approve the number of subordinate judicial officers, including referees in section 71622.