

Memorandum 2002-23

Statutes Made Obsolete by Trial Court Restructuring: Part 2 (Discussion of Issues)

OVERVIEW OF CONTINUING CLEANUP WORK

SB 1316 implements the Commission's Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 1* (March 2002). The bill would amend Government Code Section 71674 to delete the January 1, 2002, deadline so that the Commission can continue its work in this area until completion. Many statutes still require amendment or repeal but are not included in *Part 1* because the stakeholders have not reached agreement on underlying substantive and fiscal issues, further research is necessary in light of the complexity of the law and comments received, or time constraints have prevented full circulation of proposed treatments in advance of the statutory deadline.

Some statutes were never included in the tentative recommendation because of ongoing studies by, or negotiations among, the interested parties (e.g., most sessions and facilities statutes). Others were removed from the tentative recommendation at the March 2002 meeting at the suggestion of the staff, commentators, or Commissioners to be dealt with in future legislation (e.g., local venue statutes). The staff will continue to work on these provisions for possible inclusion in legislation next session. See, e.g., "Jury Commissioner," below.

It is possible that legislation addressing some of the unresolved matters may be sponsored by other individuals or entities. For example, the Task Force on Court Facilities issued its final report on October 1, 2001. SB 1732 was introduced this session to implement the recommendations of the Task Force. For further discussion of SB 1732, see "Sessions and Facilities," below.

Due to the size of this project, the staff has not yet had the opportunity to systematically search the codes for provisions that are indirectly or less obviously obsolete as a result of trial court restructuring (e.g., searching for references to "proper court," "jurisdiction," "board of supervisors," and the like). This will be a time-consuming task. However, the actual revisions will most likely be straightforward and noncontroversial.

A few issues have been raised by commentators that have not yet been examined by the staff. For example, the Los Angeles County Superior Court would like court executive officers and clerks of court to be considered public officers for purposes of Division 4 (commencing with Section 1000) of Title 1 of the Government Code (“Public Officers and Employees”). This proposal appears reasonable, but could have wide-ranging implications and will require careful review.

In the first phase of this project the staff circulated preliminary drafts of proposed revisions relating to specific topics to interested persons and organizations for review and comment before bringing them to the Commission. We plan to follow a similar approach with regard to the continuing cleanup work.

SESSIONS AND FACILITIES

SB 1732 would add Chapter 5.7 to Title 8 of the Government Code to be known as the Trial Court Facilities Act of 2002. The bill is quite inclusive and detailed. The main provisions are discussed in this memorandum.

SB 1732 would provide for the transfer of responsibility for court facilities from each county to the Judicial Council between July 1, 2004, and June 30, 2007, pursuant to a negotiated agreement. “Responsibility for facilities” includes the obligation of providing, operating, maintaining, altering, and renovating a building.

Title to a particular building would depend on a number of factors, including bonded indebtedness, historical designation, and usage. For example, if a building is currently owned by a county and used solely for court functions, the state would hold title to the entire building. If the building is currently owned by a county and used for both court and county functions, title to the building could be held by the county, by the state, or jointly by the county and state.

The bill would also establish the Court Facilities Trust Fund to be financed by quarterly payments from each county based on the amount the individual county historically paid for the operation and maintenance of court facilities. If these amounts are insufficient for the ongoing operations and maintenance of court facilities, additional amounts would be provided from the state General Fund.

A separate State Court Facilities Construction Fund would be financed by specified penalty assessments, parking surcharges, and filing fee surcharges in

civil actions. The construction fund would only be used to acquire, rehabilitate, construct, or finance court facilities.

SB 1732 does not address sessions. However, AB 3028 does provide a general approach to the sessions issue. AB 3028 is sponsored by the Judicial Council. It would permit each trial court to determine the number and location of sessions subject to (1) the availability and adequacy of facilities; (2) the impact on court employees; (3) the efficiency and cost of holding sessions at a specific location; (4) security issues; and (5) the convenience to the parties and the public.

AB 3028 proposes to repeal only a few of the numerous sessions statutes that currently exist in Title 8 of the Government Code. If AB 3028 is enacted, it would serve as a general statute — much like the Trial Court Employment Protection and Governance Act — in providing direction for revising or repealing the remaining sessions statutes. Some of the sessions statutes may be relevant to the needs of a particular court or county. Therefore, the staff would still go through the exercise of circulating proposed revisions to the interested parties for review and comment. If AB 3028 is not enacted, its failure would also guide the staff in proposing revisions to sessions statutes.

Therefore, the **staff would defer** further work on sessions and facilities statutes until the Legislature and Governor have acted upon SB 1732 and AB 3028.

FEES, FINES, AND PENALTIES

The Commission has deferred work on statutes that appear inappropriately to give certain court revenues to the counties, pending work by the Joint Court-County Working Group on Trial Court Funding. The working group has identified and categorized fees not addressed by the Trial Court Funding Act:

- (1) Nondiscretionary revenue specified for a particular program or fund.
- (2) Revenue directed for court use that may be discretionary (the revenue is recommended to go to the state).
- (3) Revenue directed for county use that may be discretionary (the revenue is recommended to go to the county).
- (4) Statutes that do not specify the use or disposition of the revenue.

California State Auditor, Bureau of State Audits, *Superior Courts 7* (Feb. 2002). The report is available at <<http://www.bsa.ca.gov/bsa/pdfs/2001117.pdf>>.

The working group determined that the majority of the fees fall within the first three categories, and agreed on an appropriate distribution. However, the working group could not reach consensus on 47 fees categorized as “undesigned fees” (category 4). *Id.* at 7-8.

Pursuant to a request from the Joint Legislative Audit Committee, the Bureau of State Audits conducted an audit of the undesigned fees. The Bureau has determined that a uniform statewide solution with regard to the undesigned fees is not feasible at this time because of constitutional restrictions on the disposition of fees:

Before the State can implement a consistent and equitable distribution of undesigned fees, it must resolve several important issues. The California Constitution requires that fee revenue be used to offset the cost of providing services. Thus, it will be necessary to determine who incurs the cost related to each fee in each superior court before determining who should receive that revenue. Currently, the entities providing certain services vary from county to county; therefore, a uniform statewide designation of fees would be vulnerable to constitutional challenge. Additionally, the list of undesigned fees that the working group prepared contains errors, and though the courts we reviewed properly administered these fees, the list requires correction.

Id. at 2.

The audit recommends that the Administrative Office of the Courts (AOC) direct each superior court to identify the entity in its jurisdiction that incurs the cost of providing the service related to each fee and ensure that the fee is distributed to that entity. The audit also recommends that the AOC seek legislation designating the distribution of charges other than fees, such as penalties and fines. Penalties and fines are not subject to the constitutional requirement that they be used to offset the cost of providing a service. *Id.* at 2-3.

The AOC’s response states it is “taking steps to implement” the recommendations. *Id.* at 3. These steps include proposing “legislation to clarify the disposition of fees, fines, and penalties where currently no statutory reference provides for its distribution and use.” *Id.* at 34. The staff has asked the AOC for further clarification of any legislation it is proposing to sponsor regarding fees, fines and penalties. The staff will, hopefully, have additional information on this subject to present at the meeting.

In light of these developments, **the staff recommends** continuing to defer substantive revisions of statutes dealing with court-related fees and duties.

COMPENSATION OF OFFICIAL REPORTER

The Commission has deferred action on statutes relating to compensation of official reporters due to disagreements among the stakeholders as to disposition of those statutes. It had been our intention to convene a working group session of the stakeholders (reporter organizations, labor unions, courts, AOC) to seek resolution of the issues.

The working group session has not yet occurred, and at present appears unlikely to occur. The staff will update the Commission on the matter, and suggest a direction for future work on this matter, at the Commission meeting.

JURY COMMISSIONER

Pursuant to Code of Civil Procedure Section 195, every court now has a jury commissioner who is appointed by the judges of the superior court. In the vast majority of courts, the court executive officer is ex officio the jury commissioner, although the day-to-day duties are performed by deputies and assistants. In a few courts, the court executive officer does not serve as the jury commissioner. Section 195 authorizes separate positions when the person serving as jury commissioner held that position on January 1, 1989.

The jury commissioner is primarily responsible for managing the trial court jury system, but may also perform duties with regard to the selection of jurors for grand juries and juries of inquest. The salaries, wages, and benefits of the jury commissioner and jury services staff — including the selection of the grand jury — are permissible court operations expenses under Rule 810.

Survey of Jury Commissioner Provisions

Jury commissioner references appear in sections of the Code of Civil Procedure, Government Code, and Penal Code. Proposed revisions to some of these sections are included in SB 1316. The Commission deferred work on a number of sections pending a comprehensive review of the different laws applicable to jury commissioners.

Jury commissioner references in sections of the Code of Civil Procedure are part of the Jury Selection and Management Act, which was enacted in 1988 in an attempt to consolidate in one code all provisions affecting civil and criminal trial juries.

The Penal Code sections apply only to grand juries. Penal Code Sections 895 through 902 set forth a procedure for the selection of grand jurors by the court. An alternative procedure is authorized by Penal Code Section 903 *et seq.* for counties having a jury commissioner.

The Government Code sections provide for the jury commissioner's appointment, salary, and duties or authorize the performance of those duties by the judges' secretary or other designated officer or employee. The provisions are superseded by the Trial Court Employment Protection and Governance Act and the Jury Selection and Management Act. Most of the Government Code provisions referencing jury commissioners are proposed for repeal in SB 1316. With the possible exception of two sections, the remaining Government Code sections would be proposed for repeal during the next legislative session.

Government Code Section 68114.6 has been left unchanged (including municipal court references) at the request of the AOC, pending consideration of possible amendments to all sections relating to trial court coordination. Minutes of November 15-16, 2001, Commission Meeting.

The proposed repeal of Government Code Section 69903, a staffing statute for the Alameda County Superior Court, was removed from the final recommendation and SB 1316 pending resolution of court reporter compensation issues. Memorandum 2002-14, p. 13.

Proposed revisions to the Code of Civil Procedure and Government Code sections would be fairly straightforward. For example:

Code Civ. Proc. § 196 (amended). Inquiry into qualifications

SEC. ____. Section 196 of the Code of Civil Procedure is amended to read:

196. (a) The jury commissioner or the court shall inquire as to the qualifications of persons on the master list or source list who are or may be summoned for jury service. The commissioner or the court may require any person to answer, under oath, orally or in written form, all questions as may be addressed to that person, regarding the person's qualifications and ability to serve as a prospective trial juror. The commissioner and his or her assistants, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. ~~Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.~~

(b) Response to the jury commissioner or the court concerning an inquiry or summons may be made by any person having

knowledge that the prospective juror is unable to respond to such inquiry or summons.

(c) Any person who fails to respond to jury commissioner or court inquiry as instructed, may be summoned to appear before the jury commissioner or the court to answer such inquiry, or may be deemed to be qualified for jury service in the absence of a response to the inquiry. Any information thus acquired by the court or jury commissioner shall be noted in jury commissioner or court records.

Comment. Subdivision (a) of Section 196 is amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations). *Cf.* Cal. R. Ct. 810(d), Function 2 (jury services). Subdivision (a) is also amended to reflect enactment of Government Code Section 69505 (business-related travel expenses of trial court judges and employees).

Code Civ. Proc. § 208 (amended). Summoning prospective jurors

SEC. ____. Section 208 of the Code of Civil Procedure is amended to read:

208. The jury commissioner shall estimate the number of prospective jurors that may be required to serve the needs of the ~~trial courts~~ court, and shall summon such prospective jurors for service. Prospective jurors shall be summoned by mailing a summons by first-class mail or by personal service or, in urgency situations, as elsewhere provided by law. The summons, when served by mail, shall be mailed at least 10 days prior to the date of required appearance. Once a prospective juror has been summoned, the date, time, or place of appearance may be modified or further specified by the jury commissioner, by means of written, telegraphic, telephonic, or direct oral communication with the prospective juror.

Comment. Section 208 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 § 69893 (repealed). Secretary performing duties of jury commissioner

SEC. ____. Section 69893 of the Government Code is repealed.

~~69893. In any county where there is a secretary of the judges of the superior court, a majority of the judges may require the secretary to perform the duties of jury commissioner in addition to his regular duties as secretary.~~

Comment. Section 69893 is repealed to reflect the fact that each county has a jury commissioner. See Code Civ. Proc. § 195 (jury commissioner).

The section is also repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71673 (authority of court).

The Penal Code sections are discussed below.

Relocation of Jury Commissioner Provisions

An outstanding issue is the possible relocation of the Penal Code provisions to the Trial Jury Selection and Management Act in the Code of Civil Procedure or to some other code. The Penal Code provisions concern the jury commissioner's duties with respect to the selection of grand jurors only. Although the jury selection act could be expanded to include these additional duties, proposals by others to move some or all of the Penal Code grand jury sections to a different location have met with resistance.

The Capital Center for Government Law & Policy, University of the Pacific McGeorge School of Law, has circulated a tentative recommendation on *Reform of California Grand Jury Statutes* (April 2001). The recommendation is available at <http://www.mcgeorge.edu/government_law_and_policy/publications/>.

The Capital Center's tentative recommendation proposes moving the Penal Code sections governing grand juries to a new Title 8.5 ("Grand Jury") in the Government Code. According to Clark Kelso, Director of the Capital Center, this proposal has met with strong opposition and little, if any, support. As a result, Professor Kelso has informed us that their final recommendation will propose relocation of sections relating to the grand jury's civil functions to the Government Code, but the provisions relating to the criminal functions of the grand jury will remain in the Penal Code.

Legislation (SB 1002) introduced by Senator Ackerman last year with the intention of revising various grand jury provisions, including moving sections from the Penal Code to another code, received so much opposition that it was allowed to die without a hearing.

Based on the controversial nature of any proposed relocation of grand jury provisions, **the staff recommends** that the Commission not attempt a relocation at this time.

Replacement of "County Clerk" or "Court Clerk" with "Jury Commissioner"

Penal Code Sections 896, 900, and 904 relate to grand jury selection by the judges of the court. The Commission's tentative recommendation (November

2001) proposed changes to these sections to lodge certain selection-related functions with the court clerk rather than the county clerk. The Los Angeles County Superior Court commented that grand jury functions are a county expense under Rule 810 and the proposed change would, therefore, have a significant fiscal impact on the court. Memorandum 2002-14, Exhibit p. 59. The court suggested that, rather than substituting the court clerk for the county clerk in the selection process, we should replace both with the jury commissioner. First Supplement to Memorandum 2002-17, p. 18.

Although the court's proposed change would omit the word "court," it would still substitute a court officer for a county officer. However, the suggested change is consistent with other grand jury selection provisions.

Under Rule 810(d), Function 2, the "salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)" are allowable court operations costs. See also Rule 810(b) (grand jury *selection* not excluded from the definition of "court operations").

In addition, the Penal Code provides for an alternative selection procedure under which the jury commissioner prepares a list of prospective grand jurors and submits the names to the judges. The alternative procedure was added to the Penal Code in 1959. Since then, the law has been revised to mandate that there be a jury commissioner in every county (Code Civ. Proc. § 195). In fact, Section 17 of the Standards of Judicial Administration (selection of regular grand jury) provides for the jury commissioner to prepare a list of qualified candidates to be considered for nomination.

Consequently, designation of the jury commissioner as the responsible officer with regard to all grand jury selection functions would be consistent with the Trial Court Funding Act, Code of Civil Procedure Section 195, and Judicial Council standards.

Sections 896, 900, and 904 could be revised to read:

Penal Code § 896 (amended). Selection of grand jurors

SEC. ____. Section 896 of the Penal Code is amended to read:

896. (a) Immediately after such order is made, the court shall select the grand jurors required by personal interview for the purpose of ascertaining whether they possess the qualifications prescribed by subdivision (a) of Section 893. If a person so interviewed, in the opinion of the court, possesses such qualifications, in order for his name to be listed he the person shall sign a statement declaring that he the person will be available for

jury service for the number of hours usually required of a member of the grand jury in that county.

(b) The selections shall be made of men and women who are not exempt from serving and who are suitable and competent to serve as grand jurors pursuant to Sections 893, 898, and 899. The court shall list the persons so selected and required by the order to serve as grand jurors during the ensuing fiscal year of the county, or until a new list of grand jurors is provided, and shall at once place this list in the possession of the ~~county clerk~~ jury commissioner.

Comment. Subdivision (b) of Section 896 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). Subdivision (b) is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

Penal Code § 900 (amended). Duties of jury commissioner

SEC. ____. Section 900 of the Penal Code is amended to read:

900. On receiving the list of persons selected by the court, the ~~county clerk~~ jury commissioner shall file it in ~~his~~ the jury commissioner's office and have such list, which shall include the name of the judge who selected each person on the list, published one time in a newspaper of general circulation, as defined in Section 6000 of the Government Code, in the county. The ~~county clerk~~ jury commissioner shall thereupon do either of the following:

(a) Write down the names on the list onto separate pieces of paper of the same size and appearance, fold each piece so as to conceal the name thereon, and deposit the pieces in a box to be called the "grand jury box."

(b) Assign a number to each name on the list and place, in a box to be called the "grand jury box," markers of the same size, shape, and color, each containing a number which corresponds with a number on the list.

Comment. Section 900 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court).

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

810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

Penal Code § 904 (amended). Drawing of grand jury

SEC. ____. Section 904 of the Penal Code is amended to read:

904. Every superior court, whenever in its opinion the public interest so requires, shall make and file with the ~~county clerk~~ jury commissioner an order directing a grand jury to be drawn. Such order shall designate the number of grand jurors to be drawn, which shall not be less than 29 or more than 40 in counties having a population exceeding four million and not less than 25 nor more than 30 in other counties.

Comment. Section 904 is amended to reflect elimination of the county clerk’s role as ex officio clerk of the superior court. See former Gov’t Code § 26800 (county clerk acting as clerk of superior court).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov’t Code §§ 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

The staff also proposes substituting the jury commissioner for the “clerk” in Penal Code Sections 908 and 908.2 and for the “clerk of the court” in Penal Code Section 908.1. Section 908.1 is illustrative:

Penal Code § 908.1 (amended). Filling of vacancies

SEC. ____. Section 908.1 of the Penal Code is amended to read:

908.1. When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the ~~clerk of the superior court~~ jury commissioner, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, or from a special venire as provided in Section ~~226~~ 211 of the Code of Civil Procedure. No person selected as a grand juror to fill a vacancy pursuant to this section shall vote

as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of ~~his~~ the person's selection.

Comment. Section 908.1 is amended to replace “clerk of the superior court” with “jury commissioner” for consistency with trial court funding principles. See Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

The section is also amended to correct a reference to former Code of Civil Procedure Section 226.

Sections 908-908.2 are part of the article pertaining to impaneling of a grand jury, but still focus on the selection of grand jurors (i.e., procedures for staggered selection, vacancies, and selection of the required number after summoning of potential grand jurors). The staff was unable to find any case law interpreting these sections or any other authority discussing the use of the term “clerk.” Given the proposed changes to other selection provisions and Rule 810’s reference to the jury commissioner with regard to grand jury selection, it makes sense to also reference the jury commissioner in Sections 908-908.2.

Sections 908 and 908.1 would also be amended to replace a reference to former Code of Civil Procedure Section 226 with a reference to Section 211 of that code. Former Section 226 (repealed in 1988) allowed the court to order additional jurors drawn and summoned or to order the sheriff or marshal to summon additional jurors when less than the required number of trial jurors appeared for duty. The only comparable section in the Trial Jury Selection and Management Act is Section 211, which authorizes the court to order the sheriff or marshal to summon and attach potential jurors.

The proposed changes would be circulated to interested parties (including the courts, counties, AOC, CSAC, California Grand Jury Association, Professor Kelso, and others) to receive their comments and alert us to any unintended consequences in making the proposed changes.

Penal Code Section 903

Jury commissioners are authorized to prepare a list of prospective grand jurors and recommend these individuals to the judges for grand jury duty under Article 3 (Penal Code §§ 903-903.4). For thirty years, Article 3 was applicable only in counties in which a jury commissioner had been appointed in the court’s discretion pursuant to Code of Civil Procedure Section 204.1 or in which the

judges' secretary performed the duties of jury commissioner pursuant to Government Code Section 69893 (Penal Code § 903). In 1989, Penal Code Section 903 was amended to substitute Code of Civil Procedure Section 195 for Section 204.1 following enactment of the Jury Selection and Management Act. Section 195 requires that there be a jury commissioner in each county.

Penal Code § 903. Applicability of article

903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 195 of the Code of Civil Procedure and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.

Government Code Section 69893 is proposed for repeal as obsolete (above). Therefore, a conforming revision deleting the reference to Section 69893 in Penal Code Section 903 would be necessary.

Penal Code § 903 (amended). Applicability of article

SEC. ____. Section 903 of the Penal Code is amended to read:

903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 195 of the Code of Civil Procedure ~~and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.~~

Comment. Section 903 is amended to reflect the repeal of Government Code Section 69893.

This raises several issues: (1) Is Article 3 the only permissible selection procedure since every county is now required to have a jury commissioner? (2) Should Penal Code Section 903 be repealed? (3) Should provisions authorizing selection by the judges without jury commissioner input be repealed?

In *People v. Goodspeed*, 22 Cal. App. 3d 690, 701, 99 Cal. Rptr. 696 (1972), the court of appeal held that the provisions of Article 3 are not mandatory. Although *Goodspeed* was decided before the enactment of Code of Civil Procedure Section 195, the holding and reasoning of the court are still valid. In *Goodspeed*, a jury commissioner had been appointed; nevertheless, the court held that the superior court was not required to proceed in accordance with the provisions of Penal Code Section 903 *et seq.*:

The provisions of Penal Code section 903 *et seq.* respecting the duties of a jury commissioner in the preparation of a list of grand

jurors permit, but do not require, the judges of the superior court to proceed in the manner there designated. Section 903.1 declares: "... [A] majority of the judges of the Superior Court may adopt such rules or instructions as may be necessary for the guidance of the jury commissioner, *who shall at all times be under the supervision and control of the judges of the court...*" (Italics ours.) The language used does not impose a mandate of the judges. Section 903.4 provides: "The judges are not required to select any names from the list returned by the jury commissioner, but may, if in their judgment the due administration of justice requires, make all or any selections from among the body of persons in the county suitable and competent to serve as grand jurors regardless of the list returned by the jury commissioner." As the judges may make all selections of grand jurors without regard to any list returned by the jury commissioner, if in their judgment the due administration of justice requires, it would be unreasonable to interpret the statute to require them to adopt rules for the guidance of the jury commissioner in the selection of grand jurors and to cause the jury commissioner, who at all times is under the supervision and control of the judges, to prepare a list of persons qualified to serve as grand jurors.

Id. The provisions of Sections 903.1 and 903.4 quoted above by the *Goodspeed* Court as the basis of its decision have not been amended since their original enactment. Therefore, the procedures specified in Article 3 are discretionary only — i.e., merely an available alternative for selecting prospective grand jurors.

Without the reference to Government Code Section 69893, Penal Code Section 903 is surplus. The Commission could simply repeal Section 903. This would also remove language of a "mandatory" nature. Another approach is to revise Section 903 to make clear that the Article is not mandatory simply because a jury commissioner has been appointed. An example of each alternative follows:

Penal Code § 903 (repealed). Applicability of article

SEC. ____. Section 903 of the Penal Code is repealed.

~~903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 195 of the Code of Civil Procedure and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.~~

Comment. Section 903 is repealed to reflect:

- (1) The fact that each county has a jury commissioner. See Code Civ. Proc. § 195 (jury commissioner).
- (2) The repeal of Government Code Section 69893.

Penal Code § 903 (amended). Applicability of article

SEC. ____. Section 903 of the Penal Code is amended to read:

903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 195 of the Code of Civil Procedure ~~and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code~~ and in which a majority of the judges have adopted written rules or instructions as provided in Section 903.1.

Comment. Section 903 is amended to reflect the repeal of Government Code Section 69893.

The section is also amended to make clear that application of the article is not mandatory. See Sections 903.1 (judges may adopt written rules or instructions to guide jury commissioner), 903.4 (judges may select grand jurors without regard to list returned by jury commissioner); *People v. Goodspeed*, 22 Cal. App. 3d, 690, 701, 99 Cal. Rptr. 696 (1972) (provisions of Penal Code § 903 *et seq.* are not mandatory).

If the latter alternative is chosen, it may make sense to include a staff note soliciting input on the proposed revision.

Grand Jury Fees and Costs

Penal Code Section 903.2 provides that the jury commissioner and the commissioner's assistants shall be allowed actual traveling expenses, which are paid out of the county general fund. Pursuant to Rule 810, grand jury selection is a court operation. In addition, new Government Code Section 69505 governs reimbursement of traveling expenses of court employees. The staff feels that the reference to the county general fund should be deleted. However, at least one court would object to such a change as the county reimburses the court for jury selection expenses in Los Angeles County.

The Capital Center's tentative recommendation attempted to modify funding provisions relating to the grand jury to reflect the current state of trial court funding. According to Professor Kelso, this proposal met with such strong opposition that it will be dropped from the final recommendation. Apparently, the interested parties have decided to leave grand jury fees and costs alone for now. **The staff recommends** that the provision relating to traveling expenses in Section 903.2 be left unchanged as well. However, a staff note would request comments on its proper treatment.

Penal Code § 903.2 (amended). Jury commissioner’s powers and duties

SEC. ____ . Section 903.2 of the Penal Code is amended to read:

903.2. The jury commissioner shall diligently inquire and inform himself in respect as to the qualifications of persons resident in his the county who may be liable to be summoned for grand jury duty. ~~He~~ The jury commissioner may require any person to answer, under oath to be administered by ~~him~~ the jury commissioner, all such questions as ~~he~~ the jury commissioner may address to such person, touching ~~his~~ the person’s name, age, residence, occupation, and qualifications as a grand juror, and also all questions as to similar matters concerning other persons of whose qualifications for grand jury duty ~~he~~ the person has knowledge.

The commissioner and ~~his~~ the commissioner’s assistants, referred to in Sections ~~69895 and 69896~~ of the Government Code, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.

Comment. Section 903.2 is amended to reflect the repeal of Government Code Sections 69895 and 69896. *Cf.* Code Civ. Proc. § 196(a) (jury commissioner and assistants authorized to administer oaths and allowed actual traveling expenses).

☞ **Staff Note.** The Commission solicits comment on the proper treatment of the provision in Penal Code Section 903.2 regarding the payment of traveling expenses out of the county general fund.

One Other Questionable Grand Jury Provision

Penal Code Section 899 references “wards” and “judicial districts” with regard to the selection of grand jurors. The staff will consider this section in conjunction with its review of all code sections referencing the term “judicial district.” It should be noted that the Capital Center’s tentative recommendation proposes to delete these references as archaic and obsolete.

Conclusion

The staff will circulate a draft of proposed revisions to jury commissioner statutes following the May meeting consistent with the Commission’s policy decisions.

Respectfully submitted,

Lynne Urman
Staff Counsel