

Legis. Prog.

September 3, 2002

Memorandum 2002-40**2002 Legislative Program**

Attached to this memorandum is a chart showing the status of bills in the Commission's 2002 legislative program. Exhibit p. 1. This memorandum presents additional information concerning a few matters.

We will update this memorandum at the meeting with any further information we have at that time.

COMMISSION RECOMMENDATIONS**AB 568 (Dutra) — Double Liability Problem in Home Improvement Contracts**

The bill as amended was not brought to a hearing in Senate Judiciary Committee, in the face of strong opposition from stakeholders.

ACA 15 (Wayne) — Trial Court Restructuring (Constitutional Amendment)

The measure will appear on the November ballot as Proposition 48. It has received an opposition argument. Assembly Member Wayne prepared a rebuttal to the opposition argument, which was co-signed by David Huebner as incoming Chairperson of the Commission.

The opposition argument is of particular interest because it highlights the problems with trial court unification that have troubled the Commission — problems of peer review in the judicial review scheme. The text of the opposition argument and our rebuttal are set out at Exhibit p. 2.

SB 1316 (Senate Judiciary Committee) — Trial Court Restructuring (Statutory Revision)

The bill was amended to preserve existing law concerning the Merced County Marshal, due to late-surfacing concerns expressed by the County of Merced. Comment revisions to reflect the amendment are set out at Exhibit pp. 3-4. We will assume Commission ratification of the Comment revisions unless an issue concerning them is raised at the meeting. With luck, the stakeholders can resolve

their concerns in time to include appropriate statutory revisions in the second phase of this project.

ALSO OF INTEREST

ACR 125 (Papan) — Protection of Personal Information

ACR 125 directs the Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. It has been approved by the Legislature. The measure makes the study contingent on funding in the 2002-03 budget. There are no funds for this project included in the budget bill as approved by the Legislature, to the best of our knowledge.

SCR 81 (Machado) — Uniform Money Services Act

SCR 81 would have directed the Commission, through existing resources, to study and make recommendations to the Legislature concerning the advisability of California consolidating and revising its licensing laws governing money transmission, sales and issuance of payment instruments, sales and issuance of traveler's checks, check cashing, and currency exchange, into a single law similar to the Uniform Money Services Act. The measure died in Assembly Appropriations Committee.

AB 2238 (Dickerson) — Public Safety Officials Home Protection Act

This bill requires a report on privacy protection of public safety officials home information. At one point the Commission was identified to do the report, but the time allowed was insufficient. As enacted the bill instead establishes a task force, chaired by the Attorney General, that does not include the Commission.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Status of 2002 Commission Legislative Program

As of September 3, 2002

		AB 568	AB 1770	AB 1784	AB 1857	ACA 15	ACR 123	SB 1316	SB 1322	SB 1323	SB 1371	SB 2061
	Introduced	2/21/01	Jan 9	Jan 14	Jan 30	Jan 7	Jan 7	Jan 24	Jan 28	Jan 29	Feb 7	Feb 22
	Last Amended	May 28	—	Apr 30	Jun 12	Apr 2	—	Aug 19	Mar 13	Mar 7	—	Apr 29
First House	Policy Committee	—	Apr 2	May 7	Apr 9	Apr 9	Apr 9	Apr 23	Mar 19	Mar 20	Mar 19	May 7
	Fiscal Committee	—	—	—	Apr 24	Apr 30*	May 8	May 13	—	—	—	—
	Passed House	—	Apr 4	May 16	May 2	May 9	May 16	May 23	Apr 4	Apr 4	Apr 4	May 16
Second House	Policy Committee	dead	Jun 4	Jun 18	Jun 18	Jun 11	Jun 18	Jun 11	Jun 4	Jun 5	Jun 4	Jun 4
	Fiscal Committee	—	—	—	Aug 5	Jun 24*	Aug 5	Aug 7	—	—	—	—
	Passed House	—	Aug 12	Jun 27	Aug 12	Jun 27	Aug 27	Aug 21	Jun 10	Jun 13	Jun 10	Jun 10
Concurrence & Enrollment		—	Aug 12	Jun 27	Aug 15	Jun 27	Aug 27	Aug 29	Jun 10	Jun 13	Jun 10	Jun 10
Governor	Received	—	Aug 16	Jul 3	Aug 22	—	—		Jun 12	Jun 17	Jun 12	Jun 12
	Approved	—	Aug 28	Jul 10		—	—		Jun 21	Jun 28	Jun 21	Jun 21
Secretary of State	Date	—	Aug 28	Jul 11		Jun 27			Jun 21	Jun 30	Jun 21	Jun 21
	Chapter #	—	293	138		Res 88			68	94	71	72

Bill List: AB 568 (Dutra): Double Liability Problem in Home Improvement Contracts
 AB 1770 (Papan): Evidence of Prejudgment Deposit Appraisal in Eminent Domain
 AB 1784 (Harman): Rules of Construction for Trusts and Other Instruments
 AB 1857 (Wayne): Administrative Rulemaking Refinements

SB 1316 (Senate Judiciary Committee): Trial Court Restructuring (Statutory Revision)
 SB 1322 (Ackerman): Debtor-Creditor Technical Revisions
 SB 1323 (Ackerman): Municipal Bankruptcy
 SB 1371 (Morrow): Cases in Which Court Reporter Is Required
 SB 2061 (Morrow): Electronic Communications and Evidentiary Privileges

ACA 15 (Wayne): Trial Court Restructuring (Constitutional Amendment)
 ACR 123 (Wayne): Resolution of Authority

Also of Interest:
 ACR 125 (Papan): Protection of Personal Information
 SCR 81 (Machado): Uniform Money Services Act

KEY

Italics: Future or speculative
 “—”: Not applicable
 *: Double referral, not fiscal
 [date]: Deadline

ARGUMENT AGAINST PROPOSITION 48

In this measure, the State Legislature is proposing that we permanently delete from the California Constitution any provision for “municipal courts.”

The main drawback to the proposal is that it would preclude the re-establishment of municipal courts in any of California’s 58 counties.

Why might a county want to re-establish a “municipal court” below its “superior court”? One reason might be to save money. Superior Court Judges are paid more.

An even more important reason, though, is that some counties (or even the State Legislature sometime in the future) may realize that having all of the trial court judges in a county part of the same “superior court” creates at least the appearance of unfairness. Allow us to explain.

Trial courts handle two kinds of cases that have been particularly affected by the “consolidation” of the municipal and superior courts in the 58 counties.

The first kind of case involves a criminal charge lodged by a local or state prosecutor. A criminal charge may be a “felony” or a less-serious “misdemeanor.” Both kinds of criminal charges potentially call for examination of the case by two or more judges.

A felony case is initiated by the filing of a charge which is presented either to a local criminal grand jury or, in over 95% of the cases, to a local judge sitting as a “magistrate.” If the grand jury or magistrate decides that the prosecutor has presented enough evidence of guilt (i.e., probable cause) to justify a trial, the prosecutor is authorized to proceed to trial.

At that point, the decision to allow the prosecutor to proceed may be challenged by the accused. Here we encounter a problem created by court consolidation. The judge who will hear the challenge will almost always be a

judge in the very same court as the judge whose decision is being challenged!

A misdemeanor case is ordinarily set for trial without any hearing to determine whether a trial appears justified. If you are convicted in a misdemeanor trial, you may appeal; however, the appeal is decided by a panel of 3 judges from the very same “superior court” in which you would have already been convicted!

Finally, a civil case which seeks \$25,000 or less is called a “limited jurisdiction case.” An appeal from a judgment in such a case, once again, is decided by a panel of 3 judges from the very same “superior court” in which you would have lost the case!

The basis for seeking review of what a judge has done in a case is that the judge ruled or acted wrongly. A one-court system which asks judges of the very same court to correct or rebuke their colleagues creates at least the appearance of unfairness.

Separate municipal and superior courts in the counties offered more “checks and balances” than the consolidated superior courts which have now been established. Some counties (or the State Legislature) may wish, in the future, to return to the former system.

For these reasons, we recommend that voters *not* permanently delete “municipal courts” from the California Constitution.

GARY B. WESLEY, *Co-Chair*
Voter Information Alliance (VIA)
MELVIN L. EMERICH, *Co-Chair*
Voter Information Alliance (VIA)

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 48

In 1998 the voters of California overwhelmingly approved Proposition 220 to authorize the elimination of the municipal courts. Municipal courts have been eliminated in every county, for estimated savings of \$23,000,000 a year for the taxpayers.

What remains to be done is the removal of obsolete language in the state constitution that references the no longer existing municipal courts. Proposition 48 accomplishes that goal.

The argument against Proposition 48 ignores what is before the voters. Instead, it argues for the advantages of having municipal courts. The voters already decided that issue four years ago by passing Proposition 220. It was approved because eliminating municipal courts allows more efficient use of judicial resources and eliminates administrative costs necessary to maintain two separate trial court systems.

The ONLY issue before us is, should obsolete provisions of the Constitution be eliminated? The

answer is clearly YES. Leaving obsolete references to municipal courts on the books would only clutter the law, while serving no useful purpose.

Any necessary improvements to the law regarding review of magistrate decisions that there is sufficient evidence to try a defendant for a crime, or for appeals in misdemeanor and smaller civil cases can be made to the existing appeals court system. It should not be accomplished by re-creating another level of courts that the public has already voted to eliminate.

Proposition 48 would prune deadwood from the California Constitution. Obsolete language unnecessarily complicates the law.

Vote YES on Proposition 48.

HOWARD WAYNE, *Assembly Member*
78th District
DAVID HUEBNER, *Chair*
California Law Revision Commission

Exhibit

Gov't Code § 69916 (added). Marshal of Merced County Superior Court

Comment. The first sentence of Section 69916 continues the first sentence of the first paragraph of former Section 73796, replacing a reference to the municipal court with a reference to the superior court.

The second sentence continues the second paragraph of former Section 73796, omitting a reference to the municipal court as obsolete.

For provisions relating to restatements and continuations of existing law, see Section 2. For disposition of the provisions of former Section 73796 that are not continued, see the Comment to former Article 12.5 (commencing with former Section 73790).

Gov't Code §§ 71180-71184 (repealed). Filling of vacancies

Comment. Sections 71180-71184 are repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For election and terms of superior court judges, see Cal. Const. art. VI, § 16. For notification of judges' retirement systems on death, removal, or resignation of a superior court judge, see Section 68504; see also Sections 75025 (notice of retirement), 75033.5 (notice and election of retirement).

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71601(*l*) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial court employees), 71620(a) (job classifications and appointments), 71623 (salaries), 71640-71645 (employment selection and advancement), 71673 (authority of court). ~~Cf. Section 69916 Merced County marshal~~. For provisions relating to the appointment of county employees, see Cal. Const. art. XI, §§ 1(b) and 4 (county governing board shall provide for the number, compensation, tenure, and appointment of employees), and Section 25300 (board of supervisors shall provide for the appointment of county employees). See also Sections 77212(d) (contract for county services), 77212.5 (agreement with sheriff's department regarding court security services).

Gov't Code §§ 73790-73802 (repealed). Merced County Municipal Court

Comment. Sections 73790-73802 are repealed to reflect:

(1) Unification of the municipal and superior courts in Merced County pursuant to Article VI, Section 5(e), of the California Constitution, effective August 3, 1998. See Section 70211 (former municipal court judgeships continued as superior court judgeships); Cal. Const. art. VI, § 23(c)(2) and Section 70212(b) (preexisting court locations retained as superior court locations). See also Section 69589 (number of judges in Merced County), ~~69916 (Marshal of Merced County Superior Court)~~; Code Civ. Proc. §§ 38 (judicial district), 190 *et seq.* (jury selection). *Cf.* Sections 71042.5 (preservation of judicial districts for purpose of publication), 71265 (marshals' powers, duties, and liabilities).

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71601(*l*) ("trial court employee" defined), 71615(c)(1) (preservation of employees' job classifications), 71615(c)(5) (trial court as employer of all trial court employees), 71620 (trial court personnel), 71622 (subordinate judicial officers), 71623 (salaries), 71624 (retirement plans), 71625 (accrued leave benefits), 71628 (deferred compensation plan benefits), 71629 (trial court employment benefits not affected), 71640-71645 (employment selection and advancement), 71650-71658 (employment protection system), 71673 (authority of court). For provisions

governing the employment and compensation of county employees, see Cal. Const. art. XI, §§ 1(b) and 4 (county governing board shall provide for the number, compensation, tenure, and appointment of employees) and Section 25300 (board of supervisors shall provide for the number, compensation, tenure and appointment of county employees). See also Section 69941 (appointment of official reporters).

(3) Enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). See also Section 68073 (responsibility for court operations and facilities).

Gov’t Code § 73796. Marshal of Merced County Municipal Court

Comment. Section 73796 continues former Section 73796 without change. For provisions relating to restatements and continuations of existing law, see Section 2.