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Memorandum 2003-38

Appellate and Writ Review Under Trial Court Unification: Ad Hoc Task Force Proposal

BACKGROUND

An important piece of unfinished business from unification of the superior and municipal courts is to develop a satisfactory arrangement for appeals from cases formerly within the jurisdiction of the municipal courts — i.e., limited civil cases and misdemeanor and infraction cases. Prior to unification, those appeals were to the appellate department of the superior court for the county in which the municipal court was located. With unification, those appeals are to the appellate division of the same superior court in which the decision being appealed was rendered.

At the time the Law Revision Commission did the original work on trial court unification, we identified this as a problem that must be addressed:

> The primary concern with appellate jurisdiction within the unified court is the problem of conflicts of interest arising in peer review. A judge should not be in a position of having to reverse a judge of equal rank. There may be a collegiality or deference on the court that will destroy the independent judgment necessary for a fair review.

Trial Court Unification: Constitutional Revision (SCA 3), 24 Cal. L. Revision Comm'n Reports 1, 30 (1994).

The Commission sought to address the problem at the time by several devices. The appellate department of the superior court was converted to the appellate division, establishing a constitutional hierarchy. Appointments to the appellate division were vested in the Chief Justice, with appointees serving for a term rather than on an ad hoc basis. And the Judicial Council was directed to promulgate rules, not inconsistent with statute, to promote the independence of the appellate division. See Cal. Const. art. VI, § 4. This provision was implemented with legislation, also enacted on Commission recommendation,

requiring the Judicial Council to adopt rules to promote the independence and quality of the appellate division. See Code Civ. Proc. § 77.

This stop gap measure has served its function as a transitional scheme to facilitate unification of the trial courts without wholesale disruption of operations. However, the Commission has consistently felt that a more permanent long term solution to the peer review problem is necessary. This is expressed in the Commission's 2001 tentative recommendation to abolish the superior court appellate division and relocate its functions to a lower division of the Court of Appeal. See Cal. L. Revision Comm'n, *Appellate and Writ Review Under Trial Court Unification* (Tent. Rec. Nov. 2001). The tentative recommendation was well received by the bar, but ill received by the bench.

The Commission is not alone in its concern about this problem. The Judicial Council's Ad Hoc Task Force on the Superior Court Appellate Divisions has proposed a functionally similar approach to the one tentatively recommended by the Commission. Under the Ad Hoc Task Force proposal, in each Court of Appeal district the same panel of judges would be appointed to sit on the appellate division of each superior court in that district, effectively creating a district-wide appellate division. We understand this proposal has encountered the same type of reception within the Judicial Council that the Commission's tentative recommendation has encountered in the general legal community — attorney support and judge opposition.

Attorney support for separation of functions is based on the appearance of impropriety. Judicial opposition to separation of functions is based on the concept that judges can act independently and impartially; that is what they do, and it is unnecessary to disrupt existing structures to achieve this. Underlying these positions, however, the staff perceives a fundamental difference in attitude towards the importance of the smaller cases at issue here.

The Commission reviewed both its own tentative recommendation and the Ad Hoc Task Force proposal, together with other possible solutions to the peer review problem, at its September 2003 meeting. The Commission also had before it a new Judicial Council survey of attorney perceptions concerning the propriety of the peer review system. After considering the alternatives the Commission directed the staff to further investigate the feasibility of the Ad Hoc Task Force proposal, as perhaps the most readily achievable and most cost neutral of the various proposals before the Commission.

Summary of Ad Hoc Task Force Report

The Chief Justice created the Ad Hoc Task Force on the Superior Court Appellate Divisions to evaluate court organizational structures, including subject matter and geographical jurisdiction, judicial assignments to the appellate division, support staff needs, workloads, and concerns of peer review. The Ad Hoc Task Force was composed of four judges who had appellate department experience, an appellate division research attorney, and two attorneys who had handled civil and criminal matters in the appellate division. The Ad Hoc Task Force was staffed by Joshua Weinstein (an Administrative Office of the Courts attorney) and Professor J. Clark Kelso (who had served as the Commission's consultant on trial court unification).

The Ad Hoc Task Force issued its report in May 2001. It found the same problems with the superior court appellate division structure that the Commission is concerned about, as well as other deficiencies, including trial court judges not properly trained for occasional appellate work, insufficient support for the appellate division, inadequate facilities, workload inequalities, and variant procedures.

The Ad Hoc Task Force recommended structural change, including the following key features:

(1) Rather than an appellate division in each superior court, there should be district-wide appellate divisions. The boundaries of appellate division districts should be coextensive with the boundaries of Court of Appeal districts. This would be achieved by appointing the same panel of judges to each superior court appellate division in the district.

(2) The judges appointed to the appellate division should ride circuit to the superior courts in their district.

(3) Judges in the district-wide appellate divisions should receive training and be supported by trained staff.

(4) Court of appeal districts should make facilities available to the appellate division. New courthouse construction should contemplate local sessions of the district appellate division.

(5) Court of Appeal procedural rules should be applied in the appellate division and written opinions required in all cases.

The Ad Hoc Task Force pointed out that these structural reforms would eliminate peer review problems, create a corps of dedicated appellate division judges, create efficiencies in support operations, even out workload discrepancies among courts, and improve the quality of justice in causes within the jurisdiction of the appellate division.

Note, however, that under the Ad Hoc Task Force proposal, unlike the Commission's tentative recommendation to create a lower division in the Court of Appeal, the appellate districts are only used as a convenient organizing tool. Workable regional superior court appellate divisions could be created that are not necessarily coextensive with Court of Appeal district boundaries. For example, smaller divisions might be helpful to even out workload discrepancies or facilitate travel within a particular district. As we shall see, a district by district analysis suggests a few likely exceptions to a strict Court of Appeal district organization.

Note also, that the data collected by the Ad Hoc Task Force is somewhat dated. We use that data here for discussion purposes because it keys to the Ad Hoc Task Force analysis. However, the most recent court statistics (for 2001-2002) report a substantially greater volume of appellate division business than is reflected in the Ad Hoc Task Force discussion. That may be critical to determining whether a particular district requires a part time or full time appellate division, as well as the costs involved in dealing with a larger volume of cases on a district-wide basis.

Also, for purposes of simplifying our discussion here we refer to appeals and the appellate caseload generically to describe the business of the appellate division, even though that business also includes writ proceedings directed to the superior court.

Appointment of Judges

The law calls for an appellate division of three judges or, when the Chief Justice finds it necessary, four judges. Code Civ. Proc. § 77(a). The staff believes that, if we are to divorce the reviewing panel from the court being reviewed, it is necessary to have a minimum of four judges, including at least one judge from each court in the district. That way, when the panel reviews a decision from a particular court, it will be unnecessary to include on the panel a judge of the court whose decision is under review.

This system will work for most purposes, but not for the Second Appellate District. With the huge volume of appellate work in Los Angeles, that would require essentially full time appointment of judges from other counties in the district to handle the Los Angeles Superior Court appellate work. Los Angeles is also large enough that it does not appear to have a significant peer review problem. With 429 judges in the court, and assignment to the appellate division a full time appointment, it does not seem necessary to further insulate the appellate division in Los Angeles.

But that would leave the other three counties in the Second District (Ventura, Santa Barbara, and San Luis Obispo) without a fourth court to contribute to its regional appellate panel. The staff suggests that for this purpose, an additional judge be appointed from the Los Angeles Superior Court to fill out the appellate division panel for the remaining counties in that district. That will require workload and funding adjustments for the Los Angeles Superior Court. The mechanism for this is discussed below.

An alternative would be to appoint one judge from each of the three Coastal counties, plus an alternate from each county. That would enable convocation of an independent panel of judges for any county in the district without need for assignment of a Los Angeles County judge.

It is worth noting at this point that a three judge panel is not required for all appellate division cases. A traffic infraction appeal is heard and determined by a single judge. Code Civ. Proc. § 77(h). The impact of this provision on logistics and hearing costs within a regional appellate division is reviewed below.

Local Justice

The Commission has consistently felt that the appellate structure for limited civil cases and misdemeanor and infraction cases should feature not only a truly independent review, but also convenient and inexpensive justice for litigants and their attorneys. While a district-wide appellate division would achieve independence, it also is potentially less convenient and more expensive than local review within the county.

The Commission in the past has felt the simplest and most convenient arrangement for all concerned would be to have judges ride circuit. However, given the trial court budget squeeze, we are concerned about travel costs, not to mention travel time. For these reasons we need also to consider the possibility of limiting travel by judges and shifting more of the travel burden to litigants. That

could be done by centralizing operations within each district, or perhaps decentralizing operations to several convenient points within the district.

Centralization of operations could cause logistical problems for the county selected to house the regional appellate division, since that court would need to free up space where the appellate division could sit on a regular basis. Conversely, centralization would free up courtroom space in the other counties that do not house the appellate division.

There is nothing that requires the appellate division to sit in the county courthouse. In fact, most trial court facilities are ill designed for appellate use. However, given current budget constraints, it has got to be more cost effective to free up existing courtroom space for appellate division use than to rent outside space.

Centralization of operations could make it feasible for the appellate division to share Court of Appeal hearing facilities. This possibility is significant in light of the inadequacy of existing en banc hearing facilities in superior courts.

It is not clear to what extent centralization of operations would generate significant travel expense savings over circuit riding. Assuming each judge comes from a different county, each will have to travel to the central location (with the exception of the one judge who happens to reside in that county). Suppose for example the district has four superior courts, with equal appellate division workloads. If we locate appellate division operations in one county, two judges will have to travel to that county in 75% of the cases and three judges will have to travel to that county in 25% of the cases. (By comparison, if the judges ride circuit, three judges will have to travel to the county where the case arises in 100% of the cases.)

Even in a full time court with judges traveling for 100% of the cases, it is not as if the judges would be on permanent travel status. The judges will convene for oral arguments and case conferences, but the rest of the work (reviewing the record, researching issues, drafting opinions, etc.) can be done in their home courts. The available data indicates that no appellate division spends more than five hours per month hearing oral arguments, with the exception of Los Angeles where judges average between five and 10 hours per month hearing oral arguments.

This would suggest that some savings could be generated by consolidating hearing days. Instead of making trips to four different courts (or to the central

court) during the month, the appellate division judges could make one trip to the central hearing location and hear all cases from the four courts in one sitting.

Some of the more significant concerns with either centralization or riding circuit are logistical, and would confront a remote litigant traveling to a central location to the same extent they would confront a judge traveling to a remote location. The Ad Hoc Task Force report investigates travel issues in some depth, on a district by district basis.

The difference in treatment of traffic infraction and other appeals may affect total workload and travel expenses. However, it does not affect the need for an independent review by a judge of another jurisdiction. We have lumped together the two types of cases for rough analytical purposes here.

First Appellate District

The First Appellate District consists of the Bay Area counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, and Sonoma, plus the North Coast counties of Del Norte, Humboldt, Lake, and Mendocino. (The First District Court of Appeal has five divisions, all of which sit in San Francisco.)

The Ad Hoc Task Force reports about 1200 appeals annually to superior court appellate divisions in this district, a number sufficient to justify full time appointments to the appellate division. Most of the appeals arise within the Bay Area portion of the district; less than 10% are in the North Coast counties.

The Ad Hoc Task Force indicates the most logical approach in this district is to select three of the judges for the appellate division from Bay Area counties and the fourth from a North Coast county. That is likely to minimize the travel time spent by judges on the appellate division.

The staff can envision an alternate approach of two regions within the First District — a Bay Area region (full time) and a North Coast region (part time). That would make it relatively easier for the judges to visit different counties within a region, or for litigants and their attorneys to travel within rather than between regions.

If we were to centralize operations within the district rather than require circuit riding, the staff would suggest centralization at two locations within the Bay Area — a Peninsula location and an East Bay location. San Francisco would be readily accessible as a Peninsula location from Alameda, Marin, San Francisco, and San Mateo counties. Solano would be a readily accessible East Bay location for Napa, Sonoma, Solano, and Contra Costa counties. (Alternatively, the San

Francisco location could service Sonoma County, but that would leave only three East Bay counties for the eastern district. Perhaps Alameda could provide the fourth judge for that district, or we could provide an alternate from each county.)

Second Appellate District

The Second Appellate District consists of Los Angeles County, plus the Coastal counties of San Luis Obispo, Santa Barbara, and Ventura. (The Second District Court of Appeal has two divisions, one of which sits in Los Angeles and the other in Ventura, Santa Barbara, or San Luis Obispo, at the discretion of the judges of that division.)

The Ad Hoc Task Force reports 1250 appeals annually within the district, with 80% of them arising in Los Angeles County. Here the Ad Hoc Task Force recommends two divisions — a full time Los Angeles division and a half time Coastal division. This would leave in place the existing well-functioning Los Angeles appellate division and avoid the difficulty of travel into and out of Los Angeles.

The proposal makes sense to the staff. Judges in the Los Angeles division could be drawn from different districts within the court. (Los Angeles Superior Court has statutorily authorized districts. Gov't Code § 69640.) The Coastal division could sit in Ventura, with one judge drawn from each of San Luis Obispo, Santa Barbara, and Ventura counties. Unfortunately, that would leave a potential peer review conflict in every case in that division. Perhaps the fourth judge could be a "floater" from Los Angeles, with the four Los Angeles appellate division judges dividing their time between both divisions as workloads permit. Or an alternate could be appointed from each court in the Coastal division, to serve as needed.

Third Appellate District

The Third Appellate District consists of the Northern California counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba. (The Third District Court of Appeal sits in Sacramento.)

The Ad Hoc Task Force reports 350 appeals in the Third Appellate District, suggesting a half time panel. This is a geographically large district, encompassing 23 counties, and including mountainous terrain and weather-

impacted travel in winter. The Ad Hoc Task Force suggests a north and a south division for this district to most efficiently match judicial resources to caseloads and geographic conditions.

That approach makes sense to the staff. It could be accomplished either by a single panel sitting in two locations — Sacramento and Redding — or two panels riding north and south circuits. Travel costs would appear to be a key factor here.

Fourth Appellate District

The Fourth Appellate District consists of the Southern California counties of Imperial , Inyo, Orange, Riverside, San Bernardino, and San Diego. (The Fourth District Court of Appeal has three divisions, one in San Diego, one in San Bernardino/Riverside, and one in Orange County.)

This district has a case load of 1600, two-thirds of which arise in the San Diego County. The Ad Hoc Task Force suggests a full time panel of four judges would be appropriate here, but notes that circuit riding would be geographically difficult, indicating that perhaps teleconferencing could ease some of the problems.

That seems to make sense, although the staff is not enthusiastic about teleconferencing. If we were to centralize appeal locations, the court could alternate between sittings in San Diego, Orange, and San Bernardino counties, much the same as the Court of Appeal divisions.

Fifth Appellate District

The Fifth Appellate District consists of the Central Valley counties of Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tuolumne, and Tulare. (The Fifth District Court of Appeal sits in Fresno.)

The Ad Hoc Task Force observes that the case load of 125 in the Central Valley counties suggests a quarter time panel for this district. The staff notes that if we were to centralize operations, Fresno would appear to be a reasonably appropriate location in which the panel could sit.

Sixth Appellate District

The Sixth Appellate District consists of the South Bay counties of Monterey, San Benito, Santa Clara, and Santa Cruz. (The Sixth District Court of Appeal sits in San Jose.)

The Ad Hoc Task Force reports the case load in this district as 200, half of them arising in Santa Clara. The Ad Hoc Task Force indicates this would suggest

a quarter time appellate division for the district. The staff sees San Jose as the most appropriate central location if the decision is not to mandate circuit riding.

Multiple Districts

An alternate approach would be to set up districts that are not necessarily coterminous with the Court of Appeal districts, but that are geographically coherent in order to facilitate travel. Each district would be a cluster of three to five counties (except Los Angeles). There would be about a dozen districts in all. For example:

1. Inyo, Mono, Alpine — three permanent from each county plus one alternate from each county to serve as needed.

2. Kern, Kings, Fresno, Madera, and Tulare — one from each county.

3. San Luis Obispo, Santa Barbara, and Ventura — three permanent from each county plus one alternate from each county to serve as needed.

4. Los Angeles — four from different districts within the county.

5. Etc.

If we were to take this approach, the staff would not try to define the exact composition of each district. We would leave that to Judicial Council rule, to be developed taking into account ease of travel, workload, etc.

Teleconferencing

The Ad Hoc Task Force suggests, as one means to minimize travel costs and logistical problems, more extensive use of teleconferencing and video teleconferencing. While that may be better than nothing, the staff is skeptical that it would be a satisfactory substitute for a personal appearance. We would try to fashion the appellate divisions in such a way that reliance on those methods of communication is not necessary.

Workload Discrepancies

One of the troublesome problems in devising a district-wide appellate division system is the discrepancy in workload among various courts comprising the district.

Take for example the Sixth Appellate District, encompassing four counties. Of those four counties in the aggregate, about half the appellate workload comes from Santa Clara County and the remainder is equally spread among Monterey, San Benito, and Santa Cruz counties. This would call for an appellate panel composed of one judge from each of the four counties in the district.

But because the bulk of the workload is Santa Clara's, that court would benefit disproportionately from the work of the appellate panel. The small courts would in effect subsidize the Santa Clara appellate burden.

This should be accommodated by accounting for the disproportionate burden in the court budgeting process. Say for example there is a caseload of 60 appeals, of which 30 come from Santa Clara and 10 each from the three other counties. The Santa Clara caseload demands 90 judge-sittings (if that is an acceptable term), which Santa Clara achieves by receiving an appellate division panel composed of three judges from the other counties. At the same time, Santa Clara would release one of its own judges for 30 judge-sittings on the appellate division panel in the other counties.

Let's assume for simplicity that releasing a judge for an appellate judge-sitting costs the court $1,000 in travel costs, temporary personnel replacement costs, etc. Santa Clara receives a benefit of $90,000 at a cost of $30,000. Santa Clara's budget should be reduced by $60,000, and that amount allocated equally to the other courts to compensate them for their loss of judge-sitting time.

That all works in theory, so long as a court has sufficient flexibility to adequately replace the missing judge during the time the judge serves on the appellate panel. But a small court might lack the necessary flexibility. That could happen because the number of judges authorized in the court is determined by statute. If a court has only two authorized positions, and one of them is taken for appellate panel sittings, it may not be possible to add another judge, regardless of compensation by the other counties in the district. Of course, that can (and should) be remedied by assignment from other courts.

Is the concept of a district-wide appellate division too administratively complex? We have judges traveling back and forth between counties, budget reallocations between counties to adjust for them, and cross assignments between counties to make up for workload disruptions. It is a scheme worthy of Rube Goldberg.

On the other hand, the superior courts are no longer county courts. They are now state courts, and as the new system solidifies, some of these concerns should diminish. In the trial court funding process the Judicial Council should look at total court workload and costs, and allocate appropriations for operations among the courts accordingly.

Support Staff

What about support staff for the appellate division — clerks, bailiffs, research attorneys? It is one thing for a trial court to provide support necessary for its own appellate division; it is another for a trial court to provide support for an appellate division that serves several different counties. How will staffing be handled for the regional appellate division?

Support staffing for existing single-court appellate divisions tends to be minimal. The Ad Hoc Task Force found substantial variation in the amount of clerical and research attorney support for judges serving in the appellate division. Just over half the counties have some dedicated clerical support staff for the appellate division. Fewer than half have research attorney support for the appellate division.

The Ad Hoc Task Force makes the point that, when a court has only a small number of research attorneys, there is a substantial likelihood that a research attorney assigned part time to assist the appellate division may have had some prior involvement with the case on appeal. The same research attorney who advised the trial judge may be asked to assist the appellate division in determining whether the trial judge committed error, creating the potential for an unacceptable conflict.

With the pooling of resources in a regional appellate division, the Ad Hoc Task Force sees the opportunity to provide full time staff support that will avoid ethical conflicts and improve the quality of appellate decisionmaking. The Ad Hoc Task Force notes the problems — which court provides the staff, how are expenses to be allocated among the courts, etc. — and proposes a novel solution. The Court of Appeal for each district would provide necessary staff support for the appellate division in that district.

That is an interesting approach, although the staff would expect resistance from the Courts of Appeal, which have budgetary problems of their own. To the extent the appellate courts could be compensated out of trial court funds allocated for this function, that might ameliorate some of the Court of Appeal concerns. And conceptually, this is an appellate function, not a trial function, even though it is performed by the trial court.

The current state budget treats funding for Court of Appeal operations and for trial court operations as separate matters. If the Court of Appeal were to provide support for the superior court appellate divisions, that could be

accommodated in the budget by an appropriate increase in the Court of Appeal budget and a corresponding decrease in the trial court budget.

Regardless of the funding mechanism, staffing the appellate division through the Court of Appeal probably would not result in a net increase or decrease of costs to the court system. Although we have little data to go on, we can make some reasonable assumptions. Let's assume that the courts currently providing appellate division staff support are those with the greatest caseload. Together they account for nearly 97% of the state's total appellate division workload. That would suggest that to provide staff support for 100% of the appellate division cases could increase total costs by just over 3%. Such a relatively small increase would likely be offset by savings in efficiency, so that all cases could be staffed at no greater cost than is now spent by individual counties in separately funding their own appellate division support.

For that reason, we concur with the Ad Hoc Task Force approach of providing dedicated staff support in the regional appellate divisions. We have no opinion on whether use of Court of Appeal staff would be preferable to dedicated superior court staff. What happens to existing superior staff who support this function — would they be transferred to the Court of Appeal? What about the logistics of staff whose time is currently divided between trial and appellate functions in the superior court?

Facilities

The Los Angeles Superior Court, with its full time appellate division, has a facility dedicated to that purpose. Other courts have less adequate facilities — typically three judges will try to squeeze in behind the trial court bench.

The Ad Hoc Task Force suggests that one way to address this problem is to allow the regional appellate divisions to use Court of Appeal courtrooms for oral argument, or to use other facilities within the county.

Use of Court of Appeal courtrooms is probably feasible. Despite the heavy Court of Appeal workload, hearing rooms are undoubtedly in use only a fraction of the time. And the demands of the superior court appellate division are quite light. Los Angeles Superior Court aside, all other appellate divisions report fewer than five hours of hearing time per month.

Of course, use of the Court of Appeal facility would take care of only one county in the district. The other counties would still be catch as catch can. If we

were to centralize hearings in the district rather than requiring judges of the appellate division to ride circuit, this approach could solve the facilities problem.

The option of leasing adequate hearing space in a particular county is not appealing because of the cost involved. The courts are scraping by using existing courtroom space in each county right now, and there is not a compelling need to change this practice in the context of the present project. Our objective here is to address the peer review issue, not to solve all the problems of the appellate division. Those can be addressed later as the budgetary situation stabilizes.

Court Budgeting Process

Before trial court funding reform each county was responsible for funding trial court operations in that county. That system would have required a complex set of inter-county agreements, fund transfers, etc., to enable the sort of district-wide treatment of appeals we are contemplating here. But with the state's current assumption of responsibility for funding trial court operations, funding arrangements should be much more manageable.

Under the current trial court budgeting process, the Judicial Council collects workload statistics, employment costs, operational expenses, and other relevant data from the trial courts. This information feeds into the Judicial Council's budget request to the Governor and Legislature, and informs the budget appropriation enacted for the trial courts. The final appropriation is then allocated by the Judicial Council to the various trial courts for their operations.

The statute governing the allocation process is Government Code Section 77202. As amended in 2003, that statute provides:

> 77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request shall meet the needs of all trial courts in a manner which promotes equal access to the courts statewide. The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost-saving measures in court operations, in order to guarantee access to justice to citizens of the state.
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> The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost-saving measures.

These efficiencies and cost-saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(b) (1) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

(2) The Trial Court Policies and Procedures shall specify the process for a court to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operation or to correct technical errors. If the process requires a trial court to request approval of a specific transfer of existing funds, the Administrative Office of the Courts shall review the request to transfer funds and respond within 30 days of receipt of the request. The Administrative Office of the Courts shall respond to the request for approval or denial to the affected court, in writing, with copies provided to the Department of Finance, the Legislative Analyst Office, the Legislature's budget committees, and the court's affected labor organizations.

(3) The Judicial Council shall circulate for comment to all affected entities any amendments proposed to the Trial Court Policies and Procedures as they relate to budget monitoring and reporting.

Final changes shall be adopted at a meeting of the Judicial Council.

The staff believes this statute would provide the Judicial Council adequate authority to allocate funds to the counties as necessary to adjust for workload

changes and costs resulting from judicial and support staff assignments to a district-wide superior court appellate division.

Legal Issues

What is the legal authority for staffing the appellate division of a superior court with judges of other courts? Is there any legal impediment to the appellate division of a superior court sitting outside the county rather than riding circuit to the county? Can any necessary changes be done by court rule or must they be made by statute or even constitutional revision?

Judges from Other Courts

Article VI, Section 4 of the California Constitution establishes the superior courts and their appellate divisions:

> SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.
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> In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

The language of the second paragraph was added to the Constitution on recommendation of the Commission. The Commission's Comment states, in relevant part, that "Review by a panel of judges might include judges assigned from another county in appropriate circumstances, or even by a panel of appellate division judges from different superior courts who sit in turn in each of the superior courts in the 'circuit.'"

In this connection it should be noted that the Chief Justice has general authority to provide for the assignment of any judge to another court (but only with the judge's consent if the court is of lower jurisdiction). Cal. Const. art. VI, § 6(e).

It is clear from the history of the appellate division provision, as well as from its context, that there is no intention to limit the composition of a superior court's appellate division to judges of that court. Code of Civil Procedure Section 77(a) is the implementing statute for the superior court appellate division. It provides:

> 77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.
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> The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.
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> The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

The Law Revision Commission's Comment to this provision is the same as the Comment to the constitutional provision that the section implements.

The concept of the appellate division of a superior court staffed by judges of other counties is thus contemplated by the governing statutory and constitutional provisions.

Sitting Outside the County

While a superior court's appellate division may, and probably should, be staffed by judges from outside the county, can the appellate division also sit outside the county? If the district-wide appellate division does not ride circuit but instead sits at a central location in the district, would that satisfy constitutional and statutory requirements that each superior court have an appellate division?

Nothing in the Constitution or statutes explicitly requires the appellate division to sit in the county for which it is appointed. However, both the Constitution and statutes appear to assume that the appellate division will sit in the county for which it is appointed. See, e.g., Cal. Const. art. VI, § 4, ¶ 2 ("In each superior court there is an appellate division."); Code Civ. Proc. § 77(c) ("Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge ... the judge shall receive expenses for travel, board, and lodging.")

Existing statutory law governing superior court sessions is reasonably liberal in allowing sessions outside the county. Government Code Section 69740 (as amended effective January 1, 2004) provides:

> 69740. (a) Notwithstanding any other provision of law, each trial court shall determine the number and location of sessions of the court necessary for the prompt disposition of the business before the court. In making this determination, the court shall consider, among other factors, the impact of this provision on court employees pursuant to Section 71634, the availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public served by the court. Nothing in this section precludes a session from being held in a building other than a courthouse.
>
> (b) In appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county, except that the consent of the parties shall be necessary to the holding of a criminal jury trial outside the county. The venue of a case for which session is held outside the county pursuant to this section shall be deemed to be the home county of the court in which the matter was filed. Nothing in this section shall provide a party with the right to seek a change of venue unless otherwise provided by statute. No party shall have any right to request the court to exercise its discretion under this section.
>
> (c) The Judicial Council may adopt rules to address an appropriate mechanism for sharing of expenses and resources between the court holding the session and the court hosting the session.

In a memorandum prepared for the Ad Hoc Task Force, Joshua Weinstein observes that there may be a logical basis to treat the appellate function differently from the trial function of the superior court:

> The functions of the appellate division and the policy considerations that apply to it are more like those of the court of appeal than the superior court sitting as a trial court. Convenience of witnesses and a local jury are not issues, for example. Certain provisions that give appellate courts generally authority to do things that trial courts cannot do may provide a basis for excepting the appellate division from the general territorial limitations of superior courts.

If our ultimate recommendation for the district-wide appellate divisions is not to require them to ride circuit, it would be helpful to make clear by statute that the appellate division may sit outside the county from which the case arises, notwithstanding any limitations in Government Code Section 69740.

Court Rule v. Statute

One of the benefits of the district-wide appellate division is that the concept can be implemented rather simply, without the need for statutory or constitutional revisions. But that assumes the Judicial Council will implement the concept.

We understand there is antipathy within the Judicial Council to the concept of the district-wide appellate division. As an alternative, the concept could be implemented by statute.

A problem with statutory implementation is that statutes are less flexible than rules. It may be advisable, for example, to provide for circuit riding in some districts, centralized hearings in others, and sub-districts in others. And those configurations could change as populations and workloads change.

While a statute is less flexible than a court rule, it would be possible to set basic standards by statute and delegate implementation authority to the Judicial Council. That is the approach the staff would take.

Improvement of Quality of Appellate Review

The Ad Hoc Task Force suggests a number of ways to improve the quality of review in the appellate divisions, many of which would be facilitated by creation of district-wide divisions. The question for the Law Revision Commission is whether any of these are critical to creation of district-wide appellate divisions, and how much would they cost the court system. To the extent they are not essential to address the peer review problem, the staff's position is that they should be dealt with by the Judicial Council, not by the Law Revision Commission. We would maintain a narrow focus here.

Appellate Procedure

The Ad Hoc Task Force recommends that the special rules of procedure applicable to appellate division appeals be discontinued and the appellate division procedures governed by Court of Appeal and Supreme Court rules.

Generally speaking, the differences between the two sets of rules involve timing issues. Two changes could implicate significant court costs, however. One relates to the record on appeal, the other to use of written opinions.

The record on appeal in an unlimited civil case or a felony case is the transcript. In a limited civil case or a misdemeanor or infraction case, however, there often is no transcript. In that circumstance, a settled statement is developed.

The cost of requiring a transcript in all of these cases could be substantial. The Ad Hoc Task Force does not recommend any change here since, although the settled statement process is often unsatisfactory, there does not seem to be any practical alternative to it at present.

The Supreme Court and Courts of Appeal must issue written opinions. Superior Court appellate divisions are not required to issue written opinions, and often do not. There are no consistent guidelines for the content of a written opinion when it is issued by the appellate division. The Ad Hoc Task Force recommends that a written opinion be required for any decision resolving a case on the merits. While recognizing that this will increase the appellate division workload, that is outweighed by the improvement in quality of decisionmaking and public confidence. Also, with adequate staffing, the burden of additional written opinions would be manageable.

The staff does not believe any of these proposals, no matter how meritorious, should be made part of the Commission's recommendation. Our limited objective is to achieve a system in which there is no peer review. There is enough resistance to that objective as it is, without throwing extraneous issues into the mix. This is particularly true of procedural revisions that could add to the cost of operation of the appellate division.

Once the regional appellate divisions have been created, there will be a solid base for procedural improvements in the future, particularly after state revenues have improved.

Traffic Infraction Appeals

The Ad Hoc Task Force suggests another procedural improvement to the appellate division review process that could generate savings, rather than costs. The staff is generally opposed to including gratuitous procedural changes in the Commission's appellate division recommendation. However, this one is somewhat different because the savings generated could help cover costs associated with creation of the district-wide appellate division.

Traffic infraction appeals are unique in that they are heard by a single appellate judge rather than a three judge panel. Code Civ. Proc. § 77(h). They represent about a quarter of the appellate division workload. They also commonly are unaccompanied by a transcript. The cost to the judicial system of creating a settled statement is wasteful considering the kinds of simple factual disputes that are the crux of most traffic infraction appeals.

The Ad Hoc Task Force proposes a kind of demurrer procedure for weeding out a nonmeritorious appeal before a significant amount of judicial resources is devoted to it. When a traffic infraction appeal is presented, the reviewing judge would decide solely on the basis of the appellant's brief whether a reversible error may have occurred. If not, the appeal is dismissed. If the brief makes a case for reversible error, the case would proceed in the usual manner.

The Ad Hoc Task Force notes that many appeals could properly be denied under this system. It would simplify the appellate process and save litigants and courts considerable time preparing settled statements on appeal.

This change could be achieved by court rule; a statute would be unnecessary. But if the Commission agrees with the concept, and if we ultimately recommend legislation to accomplish the proposed reforms, we could make the concept part of the legislative package.

Cost Issues

The Commission decided to focus on the Ad Hoc Task Force proposal as perhaps the most easily achievable and least expensive option to ensure an independent review of limited civil cases and misdemeanor and infraction cases. What, realistically, is the implementation cost of the proposal?

We should eliminate from consideration some of the "optional" aspects of the proposal such as training, written opinions, facilities improvements, etc. While those are undoubtedly desirable, they are not essential to the objective of ensuring that limited civil cases and misdemeanor and infraction cases get an independent review. However, creation of a district-wide appellate division would lay the groundwork for those types of salutary changes when the fiscal situation improves.

Travel Costs

The direct costs of implementing the Ad Hoc Task Force proposal appear to be limited to travel costs. While it is true that there are some travel costs involved in the existing scheme of in-house review due to the fact that many courts are too small and require outside judges to fill out their panels, the amount of travel required would be significantly increased under the proposal.

We are unable to provide a good estimate of the cost of having judges ride circuit. The cost is not limited to travel expenses; it also includes judicial time spent on the road. Assuming most of the travel will take the form of a judge

driving a personal automobile, it will not be possible for the judge to make any effective use of the travel time reading briefs, etc. (Although this might be an opportunity to implement some of the training suggested by the Ad Hoc Task Force by making available to judges "Continuing Education of the Bench" audiotapes for edification while driving!)

The Judicial Council should be able to give us a guess as to costs, but so far they have not. The costs will primarily be travel to a location where an oral hearing will be held. It may also be possible for the judges to confer and reach their decision immediately following the oral argument, thereby saving further travel costs in connection with the matter. Alternatively, the judges could confer at a later date by teleconference; the staff is not as much disturbed by this prospect as we would be by the prospect of requiring litigants to present their cases by teleconference.

Let us assume for the sake of analysis that Los Angeles Superior Court will have its own judges sitting on its appellate division, and that appeals from all other superior courts will be heard by a panel of three judges traveling from other counties (or in the case of a traffic infraction appeal, by a single judge traveling from another county). For purposes of our analysis, we use the current Judicial Council court statistics for 2001-2002, rather than the lower Ad Hoc Task Force numbers. The annual caseload of the appellate divisions exclusive of Los Angeles Superior Court is approximately 7500 limited civil cases and 2100 misdemeanor and infraction cases. (We do not know what percentage of the criminal cases are traffic infraction appeals requiring only one judge, but that turns out to be unimportant for reasons that will become clear later.) Let us assume further that the appellate division sits once a month in each superior court (except for the smallest courts, in which appeals are less frequent), and that all appeals (including traffic infraction appeals) in any individual court can be heard on the same day each month. That translates to roughly 3 judge-trips to 40 courts 12 times a year, or 1440 judge-trips per year. Figuring the average distance of a trip for a judge to the county courthouse in a neighboring county is 75 miles (150 miles round trip; some trips will be longer, some shorter), and assuming no overnight stays, that translates to about $72,000 in mileage costs, and about 4,300 hours of lost judicial time spent in travel — the equivalent of at least two judicial positions. It is likely that our assumptions underestimate costs somewhat. Increase these figures by a factor of 50%, and we get a more generous estimate of $100,000 for travel expenses, plus three judicial positions. Spread over the entire

trial court system of the state with its 1500 superior court judges and its multi-billion dollar budget, these costs appear to the staff to be relatively small.

Even so, where will the money come from? The situation in the trial courts after the budget cuts and fee increases of 2003 is murky. With respect to an appeal in a limited civil case, the $50 filing fee provided by Government Code Section 26824 is unchanged for the past decade. By contrast, the filing fee for an appeal to the Court of Appeal or the Supreme Court was doubled in 2003. That would suggest that a filing fee increase for an appeal in a limited civil case is warranted. A modest filing fee increase should be sufficient to cover the costs of the reforms we are contemplating here. (Inflation alone would support a 20% increase to $60.)

What is the situation with respect to travel costs at present? Do all courts of four judges or more handle their own appeals, or are judges appointed from other courts? Again, we do not have good information, but the Judicial Council should be able to provide it.

For the time being, let us assume that out of county judges are only appointed for the smaller courts. Existing travel costs would be relatively small, since appeals in those courts arise infrequently. That would suggest that most of the travel costs associated with a requirement of circuit riding in district-wide appellate divisions will be new costs, not a duplication of existing costs.

It does not appear that there would be a major difference between the cost of travel to individual counties in an appellate division district and travel to a central location in the district. There would likely be modest savings resulting from travel to a central location, but not enough to overcome the benefit of local hearings for limited civil and misdemeanor and infraction cases. However, if it were possible to schedule appeals from all courts in the district for hearing in the same location and on the same day, the savings in travel costs would be more substantial.

Apart from costs, a central location in the appellate division district may actually be closer and more convenient for some litigants than would be travel to the county seat of their own county. And hearing facilities in the central location may be superior to those available in individual county seats.

The staff would not mandate an inflexible circuit riding requirement in all cases, but would provide general standards and leave it to Judicial Council rule to prescribe the most appropriate arrangement for the individual circumstances of each part of the state.

Other Costs

It is arguable that there could be other costs inherent in a district-wide appellate division, particularly with respect to staff support for the appellate division such as research attorneys. This could occur where the district is composed of a mix of large and small counties, some of which provide staff support and some of which do not. The existing staff of individual courts in the district will be inadequate to handle the larger district-wide caseload, generating pressure to increase staff support for the district.

While there would be upward pressure, we suspect that, given the current fiscal situation, courts will resist sinking any more resources into the appellate function than necessary. We hesitate to predict the amount of any increased expenses from this source, but we do believe they will not be large. We have speculated a 3% increase in costs, largely offset by an increase in efficiency.

CONCLUSION

Is it advisable to push for reform of the superior court appellate divisions at a time when trial court resources are severely constrained? If we limit ourselves just to curing the peer review problem, without invoking all the other benefits contemplated by a regional appellate division such as training programs, dedicated staff support, upgraded facilities, etc., we can minimize costs.

The costs contemplated by the regional appellate division primarily result from increased travel. We have no good data concerning the current composition of the various appellate divisions, and what the level of travel costs is at present. Therefore, we are unable to project what the amount of increase would be.

We do know there are some travel costs at present because many superior courts (in fact one fourth of the superior courts in California) have only two judges. Any case appealed in those courts that is within the appellate division jurisdiction necessarily requires at least two outside judges, since the judge rendering the decision being appealed from will be disqualified. Of course if retired judges who reside in the county can be found to sit, it would be unnecessary to pay travel expenses.

While this memorandum has focused on the logistics of creation of a regional appellate division, the staff believes that the details need not be spelled out by statute. The details can and should be left to Judicial Council rule. All we need to

do is give the Judicial Council a nudge by means of a statutory directive and leave the implementation details to court rule.

The statutory directive can be achieved rather simply by precluding a judge from serving in the appellate division for the superior court in which that judge sits. Then the Judicial Council would have free reign to propose whatever scheme is most appropriate for each superior court. In some cases that could be a district-wide appellate division or smaller than district-wide division; in other cases, a cross-district grouping or a reciprocal relationship between neighboring courts.

The one exception to this rule should be the Los Angeles Superior Court, which is so large that it can readily maintain a full time appellate division using judges from within the court without frequent conflicts or peer review problems. This could be further safeguarded by making appointments from different districts within the court. (Los Angeles County has statutory authority for superior court districts. Gov't Code § 69640.)

A policy question with this approach is whether circuit riding should be required. Unless it can be shown that centralization will actually cost significantly less than circuit riding, the staff thinks circuit riding should be required.

On the other hand, if the Commission decides that centralization should be permissible, as determined by Judicial Council rule, perhaps that should be made clear either in the statute or Comment. Our analysis in this memorandum suggests that centralization is permissible under existing law, but it wouldn't hurt to clarify the matter and perhaps prevent unnecessary litigation over it.

The following statutory revision may be sufficient:

Code Civ. Proc. § 77 (amended). Appellate division

77. (a) In every county ~~and city and county,~~ there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four or more judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the ~~three~~ judges who shall participate. A judge of a superior court may not participate in the hearing or decision of a case from the judge's court. A judge of the superior court in the County of Los Angeles may participate in the hearing or decision of a case from the judge's court, provided the case is from a district of the court other than the district in which the judge regularly sits.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve ~~in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired,~~ in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county of residence overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of the appellate division.

(h) Notwithstanding the provisions of subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

(i) The appellate division of a superior court shall hold session in the county in which the court is located unless the Judicial Council by rule provides that the division shall hold session in a location outside the county, after taking into consideration the policy of the state both to provide for locally accessible justice and to provide for efficient statewide administration of justice.

Comment. Section 77 is amended to preclude a superior court judge assigned to the appellate division from participating in the hearing or decision of a case from the judge's own court. The intent of the amendment is to eliminate the conflict of interest, or the perception of impropriety, inherent in peer review. A judge should not be in a position of having to reverse a judge of equal rank — there may be a collegiality or deference among members of the court that impairs the independent judgment necessary for a fair review.

Subdivision (a) is revised in anticipation of the possibility that implementing rules of the Judicial Council will provide for appointment of a panel of judges drawn from a cluster of superior courts to serve as the appellate division for each court in the cluster. In order to enable the panel to function without violating the prohibition against a superior court judge hearing or deciding a case that comes before the panel from the judge's court, it may be necessary to appoint a panel of more than four judges.

Subdivision (a) is also amended to delete superfluous language. See Section 17 ("county" includes "city and county").

Subdivision (b) implements the prohibition on a superior court judge participating in an appellate division hearing or decision in a case from the judge's own court. An exception is made for the Los Angeles Superior Court in recognition of the practicality that, due to its size, the peer review problem is de minimis in that court. The peer review concern is further ameliorated in Los Angeles Superior Court by subdivision (b)'s prohibition against an appellate division judge acting on a matter from the judge's home district. Cf. Gov't Code § 69640 (superior court districts in Los Angeles County).

Subdivision (b) is also amended to delete the required designation of three judges to participate in a case. A traffic infraction appeal may be heard and decided by one judge. Subdivision (h). See also Section 17 (plural includes singular).

The Judicial Council must by rule adopted pursuant to subdivision (g) implement the prohibition against a superior court judge appointed to the appellate division hearing or deciding a case from the judge's own court. For example, the Judicial Council rule might require appointment of the same panel of judges to the

appellate division of each superior court in a particular Court of Appeal district, thereby creating in effect a district-wide appellate division. Or the rule might require appointment of the same panel of judges for some but not all superior courts in the district, or across district lines, if convenient for travel, workload, or other reasons.

Subdivision (c) is revised to reflect the fact that a superior court judge is no longer required to reside in the county in which the judge is elected or appointed. Cf. former Gov't Code § 69502. Travel expenses are allowed under subdivision (c) if an appellate division judge is designated to serve in a county outside the judge's county of residence, regardless of the location of the judge's court.

Subdivision (i) establishes the rule that a superior court's appellate division must hold session in the county in which the court is located, notwithstanding the general provisions of Government Code Section 69740 (trial court sessions). This requirement implements the policy of the state to make the opportunity for appeal in a limited civil case or a misdemeanor or infraction case convenient and inexpensive to the parties. The requirement is subject to qualification pursuant to the Judicial Council's rulemaking authority. See subdivision (g). Judicial Council rules may require the appellate division to hold session at a location outside the county in the interest of efficiency and economy, but should not do so at the expense of making an appellate division hearing so costly or difficult as to discourage reasonable access to justice.

Gov't Code § 26824 (amended). Fee for appeal of limited civil case

26824. The fee for filing a notice of appeal to the appellate division of the superior court in a limited civil case is ~~fifty dollars ($50)~~ _____. The Judicial Council may make rules governing the time and method of payment and providing for excuse.

Comment. Section 26824 is amended to increase the filing fee for a limited civil case in recognition of the increased cost of operation of the appellate division under Code of Civil Procedure Section 77 (appellate division).

☞ **Staff Note.** We would not fill in the blank until we have a better fix on actual costs involved.

One issue is whether it is proper to raise the filing fee in Los Angeles County, considering there is no proposed change in the operation of its appellate division. (Actually, there may be a change — Los Angeles County superior court judges may be required to sit in Coastal county appellate divisions.) Under the current system of state funding of trial court operations, it is not inappropriate that

statewide fees be consistent and be aggregated at the state level for redistribution to trial courts to cover their operating expenses.

Operative date (uncodified)

This act becomes operative on July 1, 2006.

☞ **Staff Note.** The suggested operative date of July 1, 2006, assumes Commission approval of a tentative recommendation in February 2004, approval of a final recommendation in fall 2004, and enactment of legislation in 2005. The operative date would be deferred from January 1, 2006, to July 1, 2006, to allow time for Judicial Council adoption of governing rules. Starting at the beginning rather than the middle of a fiscal year would also simplify funding issues.

For now, the staff would draft no special provisions on funding allocation among the superior courts to compensate for assignment of their judges to sit on the appellate divisions of other courts and assignment of necessary support staff. These sorts of assignments are necessarily being made under existing law, so there should already be a satisfactory mechanism in place to accommodate it.

If the Commission decides to proceed with this proposal, the staff believes we should recirculate it as a revised tentative recommendation. The proposal is so dramatically different from the previous tentative recommendation, and the financial situation of the courts has changed so substantially, that we really need to get a new read on this.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary