

Memorandum 2006-9

**Statutes Made Obsolete by Trial Court Restructuring: Part 3
(Scope of Project)**

Government Code Section 71674 directs the Commission to identify and study provisions made obsolete due to:

- (1) Trial court unification;
- (2) The Lockyer-Isenberg Trial Court Funding Act (1997 Cal. Stat. ch. 850), which made the state responsible for funding trial court operations instead of the counties; and
- (3) The Trial Court Employment Protection and Governance Act ("TCEPGA") (2000 Cal. Stat. ch. 1010), which implemented a statewide employment structure for trial court employees.

The Commission has already prepared two substantial legislative proposals in response to this directive, both of which were enacted. *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & 2002 Cal. Stat. res. ch. 88; *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149.

But further cleanup remains to be done. Some issues were not ripe for resolution when the Commission did its earlier work; other issues require detailed research and analysis that the Commission did not previously have sufficient time and resources to complete. Last November, the Commission decided to reactivate its work on trial court restructuring.

This memorandum outlines the work that still needs to be done. The staff has divided that work into several categories: (1) major projects, (2) mid-sized projects, (3) small projects, and (4) premature or low priority projects. We also briefly discuss a related project on publication of legal notice, which the Commission is responsible for studying pursuant to Government Code Section 70219. The memorandum concludes with the staff's proposed plan for handling these projects. The Commission needs to decide whether that plan is acceptable.

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MAJOR PROJECTS

Two major projects were premature during the earlier phases of the Commission's work on trial court restructuring, but now appear ripe for attention. Those projects are: (1) clarifying the rights and responsibilities of the county versus the superior court with respect to trial court operations, and (2) revising certain provisions that pertain to judicial benefits.

Another major project is reexamination of the concept of a limited civil case. In connection with its study of equitable relief in a limited civil case (Study J-1323), the Commission recently decided to undertake such a reexamination. We briefly describe that project here because it relates to trial court restructuring and has implications for some of the remaining projects in that area.

Rights and Responsibilities of the County Versus the Superior Court With Respect to Trial Court Operations

Numerous provisions throughout the codes refer to rights and responsibilities of a county with respect to various aspects of trial court operations. For example, certain fees are to be paid to the county treasury, certain duties are to be performed by the county clerk, and certain authority is given to the Board of Supervisors. These provisions need to be revisited in light of the switch from local to state funding of trial court operations. In many instances, a reference to the county is no longer appropriate; the reference should be to the superior court.

Much work along these lines has already been done. For example, a 2002 bill authored by Senator Torlakson corrected about 200 references to the county clerk. See 2002 Cal. Stat. ch. 221. Other such references were corrected the same year in legislation drafted by the Commission and authored by the Senate Judiciary Committee. See 2002 Cal. Stat. ch. 784. More references were corrected in a bill brought the following year by the Senate Committee on Local Government. See 2003 Cal. Stat. ch. 296.

Additional provisions were included in the Commission's 2001 tentative recommendation on trial court restructuring, but removed at the request of the Administrative Office of the Courts ("AOC"), which was negotiating with the California State Association of Counties ("CSAC") over the proper allocation of fees and fines between the state and the counties. These provisions were: Bus. & Prof. Code §§ 470.3, 6321, 6322; Code Civ. Proc. § 1161.2; Gov't Code § 26832, 26835, 26859, 71386; Penal Code § 1463.22; Veh. Code §§ 14607.6, 27360, 40230. Of

these provisions, all but two have been repealed or amended in a way that resolves the allocation issue. Most of these were dealt with last year, in the Uniform Civil Fees and Standard Fee Schedule Act drafted and sponsored by the Judicial Council (2005 Cal. Stat. ch. 75).

The remaining two provisions that were removed on the AOC's request are Penal Code Section 1463.22 and Vehicle Code Section 27360. We understand that the AOC is planning to review criminal fines and penalties, with the objective of preparing legislation similar to the Uniform Civil Fees and Standard Fee Schedule Act. This project would include fees associated with Vehicle Code violations. The AOC has not yet formed a working group, but probably will take that step soon. Because the AOC plans to work in this area, there is no need for the Commission to get involved. We would simply refer relevant provisions to the AOC for consideration. The AOC is already aware of Penal Code Section 1463.22 and Vehicle Code Section 27360. Other relevant provisions we have spotted, which may or may not have come to the AOC's attention, include Penal Code Section 1205(c) and Vehicle Code Section 42008(d).

Provisions relating to criminal fines and penalties are not the only ones that still require adjustment to reflect the switch from county to state funding of trial court operations. In addition to the provisions that the AOC specifically asked the Commission to leave intact, the 2001 tentative recommendation included some other provisions implicating county finances that the Commission refrained from addressing due to the ongoing AOC-CSAC negotiations and other reasons. These provisions were: Bus. & Prof. Code § 25762; Code Civ. Proc. § 116.940; Gov't Code §§ 26806, 29603, 68551, 68098, 71266, 71384, 72004; Harb. & Nav. Code § 664(e); Health & Safety Code § 103200. With the possible exception of Code of Civil Procedure Section 116.940, these provisions still require attention.

Further, we have not yet systematically searched the codes for terms such as "county treasury," "Board of Supervisors," "county clerk," and "court." Such searches probably will reveal additional provisions bearing on rights and responsibilities of a county with respect to trial court operations. At least some of these provisions may require revisions to reflect the switch from local to state funding of trial court operations. Conducting these searches and analyzing the results will be a big, time-consuming project.

In addition, during the first phase of the Commission's work on trial court restructuring, Larry Jackson of the Los Angeles County Superior Court

suggested making court clerks and court executive officers expressly subject to Division 4 of Title 1 of the Government Code (“Public Officers and Employees”). Second Supplement to Memorandum 2002-14, Exhibit p. 3 (available from the Commission, www.clrc.ca.gov). The Commission directed the staff to look into this possibility. Minutes (March 2002), p. 10 (available from the Commission, www.clrc.ca.gov). Preliminary staff work indicated that Division 4 of Title 1 should not apply its entirety to court clerks and court executive officers; any reform along the suggested lines would have to be more selective. The staff suspended further work on this matter because the AOC was looking into it.

We are in the process of checking with the AOC to determine the results of its investigation. Additional work on this topic might be necessary. We are not aware of any reform along the suggested lines, nor any report or memorandum concluding that such a reform is inadvisable.

Judicial Benefits

Another unfinished area is judicial benefits. The Commission’s 2001 tentative recommendation included a number of provisions relating to judicial benefits. Some of these provisions pertain solely to benefits of municipal court judges (Gov’t Code §§ 73640, 73642, 73950, 73952, 74130, 74145, 74340, 74342, 74740, 74742, 77210; see also former Gov’t Code § 22754.35). Others involve benefits of municipal or superior court judges, as well as employment terms for court personnel affected by the enactment of TCEPGA (Gov’t Code §§ 53200.3, 53214.5, 69893.7, 69894.3, 69894.4). Still other provisions involve county control over benefits of superior court judges (Gov’t Code §§ 69907, 69909).

Due to concerns over judicial benefits, in March 2002 the Commission removed these provisions from its proposal for further study. One of the provisions (Gov’t Code § 69893.7) also raises issues relating to court reporter compensation.

At about the same time, a Task Force on Judicial Service, appointed by Chief Justice Ronald George, proposed a rule of court establishing a Judicial Service Advisory Committee. The Judicial Council approved that proposal in January 2003; the role of the Judicial Service Advisory Committee is to study means of improving judicial service, retention, compensation, and benefits. See Cal. R. Ct. 6.57.

To our knowledge, the Judicial Service Advisory Committee has not taken any action with respect to the provisions that the Commission removed from its

proposal in March 2002. Two years ago, one of the provisions was repealed (former Gov't Code § 22754.35) and several others were amended to correct a cross-reference (Gov't Code §§ 73642, 73952, 74342, 74742), as part of a recodification of the Public Employees' Medical and Hospital Care Act. See 2004 Cal. Stat. ch. 69. The other provisions remain in the codes unchanged.

To determine whether this area is ready for Commission consideration, the staff contacted Michael Fischer, an AOC staff attorney familiar with judicial benefits and the work of the Judicial Service Advisory Committee. Mr. Fischer said that the Judicial Council probably will seek enactment of a proposal relating to judicial benefits this year. He did not think that proposal would eliminate the need for the Commission to study the judicial benefits provisions it previously identified. He suggested that the Commission go forward with that work.

Mr. Fischer warned, however, that the area of judicial benefits is tricky and requires especially careful analysis. For example, a municipal court provision may remain relevant despite the elimination of the municipal courts, because there are still retired municipal court judges or because current terms of employment are linked to what's in the provision.

Based on Mr. Fischer's comments, it appears appropriate for the Commission to begin a detailed review of the judicial benefits provisions previously identified. In conjunction with this review, the staff will doublecheck whether there are other judicial benefits provisions that require revisions to account for trial court restructuring.

Reexamination of the Concept of a Limited Civil Case

In the Commission's ongoing study of equitable relief in a limited civil case (Study J-1323), the Commission recently decided to reexamine the concept of a limited civil case. The objective of this reexamination would be to "determine whether the complexity in the law created by the limited civil case system is worth the effort to address problems in the system." Minutes (Nov. 2005), p. 7 (available from the Commission, www.clrc.ca.gov).

This project will involve preparation of an overview of the role of the limited civil case in the unified court system. *Id.* The overview is to include "an analysis of the number of limited civil cases filed, the cost of economic litigation procedures compared with the cost of unlimited civil case litigation, the satisfaction level of the courts with the limited civil case system, and the approach taken in other jurisdictions that have a unified court system." *Id.*

The staff is investigating the possibility of hiring a law professor to prepare a background study for this project. We will keep the Commission posted on our efforts in that regard.

MID-SIZED PROJECTS

A number of what appear to be mid-sized projects remain to be done.

Judicial Districts and Local Venue

Many provisions in the codes refer to a “judicial district.” Some of these provisions became problematic on unification of the municipal courts with the superior court in a county. For example, suppose a provision specified that a particular judicial district was the proper venue for a case within the jurisdiction of the municipal court. On unification, the case would have to be brought in superior court rather than municipal court. Would venue then be proper in the entire county, as the judicial district of the superior court? Or would some effort be made to ensure that the case was tried more locally?

In the 2001 tentative recommendation, the Commission identified a number of provisions that raised issues relating to local venue. The AOC formed a working group to study local venue issues, so the Commission did not include these provisions in its final recommendation. See Memorandum 2002-14, pp. 5-6 (available from the Commission, www.clrc.ca.gov).

Some of the local venue provisions were addressed by legislation enacted in 2002. See 2002 Cal. Stat. ch. 806 (affecting Civ. Code §§ 1812.10, 2984.4; Code Civ. Proc. §§ 392, 395, 396a, 402.5). Other provisions were addressed by legislation enacted the following year. See 2003 Cal. Stat. ch. 449 (affecting Bus. & Prof. Code § 17511.12; Civ. Code §§ 798.61, 1780; Code Civ. Proc. § 393; Educ. Code § 48295; Fish & Game Code §§ 12150-12151; Harb. & Nav. Code §§ 664, 667; Health & Safety Code §§ 117070, 117120; Lab. Code § 6436; Penal Code §§ 1034, 1035, 1038, 1039, 1462.2; Pub. Res. Code § 5560; Water Code § 310). Further work regarding these provisions probably is not necessary.

But Code of Civil Procedure Section 398 concerns certain transfers of cases from one court to another. It needs to be examined in light of the revisions that were made to Code of Civil Procedure Section 396a, which now refers to the “proper court location” for some lawsuits, not just the “proper court.” Section 398 requires other revisions as well. See Memorandum 2001-4, p. 7 (available from the Commission, www.clrc.ca.gov); Memorandum 2000-72, attachment pp.

10-11 (available from the Commission, www.clrc.ca.gov); Tentative Recommendation on *Civil Procedure: Technical Corrections* (Oct. 2000), pp. 11-12 (available from the Commission, www.clrc.ca.gov).

The Commission also needs to study Vehicle Code Section 11205, which concerns the list of traffic violator schools that is distributed by courts to each person referred to traffic violator school. At present, the list “shall be organized alphabetically in sections for each county *and subsections for each judicial district within the county.*” (Emphasis added.) References to this organizational scheme permeate the statute. This approach needs to be reconsidered in light of the elimination of municipal court districts.

The Commission recognized this problem in the first phase of this study, but deferred it for later study because the practicalities of the matter are complicated. See First Supplement to Memorandum 2001-88, pp. 6-7 (available from the Commission, www.clrc.ca.gov); First Supplement to Memorandum 2002-17, p. 21 (available from the Commission, www.clrc.ca.gov); Memorandum 2002-14, Exhibit pp. 60-61. The Judicial Council made some efforts to address the problem, but dropped the attempt on encountering stiff resistance from traffic violator schools. The Commission should look into this matter and try to figure out a way to revise the statute that is workable for the interested parties (including the Department of Motor Vehicles, the courts, traffic violator schools, and traffic offenders).

The staff will also search the codes for other references to “judicial district” that require attention. We think we have previously identified all such provisions, but we should doublecheck to be sure.

Some provisions relate to publication of legal notice within a judicial district. On Commission recommendation, the Legislature already took steps to account for trial court unification in this context. The Legislature also directed the Commission to study the provisions further; that work remains to be done. See discussion of “Related Study: Publication of Legal Notice in County with Unified Superior Court” *infra*.

Similarly, some time ago the Commission “directed the staff to research the impact of unification and the elimination of judicial districts on the composition of jury pools.” Minutes (March 2002), p. 11. We have not yet undertaken this task.

Appellate Jurisdiction

Code of Civil Procedure Sections 904.1 and 904.2 are the key provisions governing appellate jurisdiction in a civil case. Section 904.1(a) still refers to certain municipal court matters:

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

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

....

(Emphasis added.) The Commission included this provision in the 2001 tentative recommendation on trial court restructuring, but withdrew it from the final proposal for further consideration because the proper treatment of Section 904.1(a)(1)(C) is complicated. The Commission needs to carefully research and analyze this point before proposing an amendment.

Concurrent Jurisdiction

In the 2001 tentative recommendation, the Commission identified a number of sections that could, but need not necessarily, be construed to confer concurrent jurisdiction on the municipal and superior courts. The Commission did not propose specific revisions of these sections in the tentative recommendation. Instead, the tentative recommendation reproduced the text of each section and explained that further study was required to determine how to amend the section to provide appropriate guidance regarding jurisdictional classification. The Commission solicited comment on the proper treatment of each section.

The Commission received some input on these points, but did not have sufficient time to fully analyze the provisions before finalizing its recommendation. The Commission removed the provisions from the proposal for further study. See Memorandum 2002-14, pp. 7-8.

Of the provisions that the Commission removed for this reason, one of them (former Bus. & Prof. Code § 6412.1) has since been repealed and replaced by a new provision that does not raise a concurrent jurisdiction issue (Bus. & Prof. Code § 6412.1). Several other provisions have been amended to delete the municipal court references, without adding language clarifying the extent to which a proceeding under the statute is to be treated as a limited civil case. See 2003 Cal. Stat. ch. 449 (amending Health & Safety Code §§ 108580, 110375, 111880, 111895). The other concurrent jurisdiction provisions remain unchanged. See Bus. & Prof. Code §§ 6455, 12606, 12606.2; Code Civ. Proc. § 688.010; Food & Agric. Code §§ 25564, 29733, 43049, 59289; Gov't Code §§ 12965, 12980.

The Commission needs to study the remaining provisions and propose appropriate amendments. The Commission should also review the provisions that have already been amended, to assess whether further changes are necessary.

Judicial Disqualification

In a unified superior court, an appeal from a decision in a limited civil case is heard by the appellate division of the same superior court that rendered the decision. Code Civ. Proc. §§ 77, 904.2; see also Cal. Const. art. VI, § 11. This appellate structure presents a question that did not arise before unification: May a superior court judge who has ruled on a pretrial matter in a limited civil case participate in appellate division review of a different aspect of the same case?

In *Housing Authority of the County of Monterey v. Jones*, 130 Cal. App. 4th 1029, 1042, 30 Cal. Rptr. 3d 676 (2005), the court of appeal concluded that “the existing statutory scheme compels disqualification of a judge in these particular circumstances.” The court of appeal suggested, however, that

the Legislature might consider amendments to the judicial disqualification statutes that are specific to the predicament of post-unification superior court appellate division panels. ... [T]he promotion of objectivity and independence in appellate division assignments is reflected in the constitutional and statutory provisions and rules of court that were enacted or amended to create and address the superior court appellate division. The applicable judicial disqualification statutes should likewise promote this goal, and they should include more specific provisions to account for the dual roles in which superior court judges, especially in smaller counties, may find themselves when they seek to discharge their duties while on simultaneous assignments to both the trial court and the appellate division.

Id. The Commission should investigate this suggestion.

Representation and Indemnification of Court and Court Personnel

The 2001 tentative recommendation included a number of provisions relating to indemnification and representation of judges and other trial court personnel (Gov't Code §§ 811.9, 990.2, 26524, 26529, 27647, 27648). At the time, the area was in flux and the Commission received several comments urging further study of the provisions. See Memorandum 2002-17 (available from the Commission, www.clrc.ca.gov), pp. 20-21, 22; First Supplement to Memorandum 2002-17, pp. 7, 10. Consequently, the Commission did not include these provisions in its final recommendation in 2002.

Later the same year, the Legislature enacted a bill on the subject, which was sponsored by the Judicial Council. See 2002 Cal. Stat. ch. 1007 (AB 2321 (Hertzberg)). Another bill on the subject, amending Government Code Section 811.9, was enacted last year. See 2005 Cal. Stat. ch. 706 (AB 1742 (Committee on Judiciary)).

The Commission needs to revisit the provisions it identified in 2001 and determine what treatment is appropriate in light of the recent legislation and the implementation of trial court restructuring. Of those provisions, only Section 811.9 has been changed since the Commission last looked at them.

Court Interpreter

In the first phase of the Commission's work on trial court restructuring, the staff circulated to interested parties a draft of possible revisions to statutes concerning appointment and payment of court interpreters. Those proposed revisions were not included in the Commission's final recommendation; only one of the proposed revisions was included in the tentative recommendation. The Commission decided not to address the area at that time because the stakeholders (including the courts, interpreters, interpreter associations, and the Judicial Council) were debating whether court interpreters should become employees of the courts or Judicial Council or remain primarily independent contractors. See Memorandum 2002-14, pp. 19-21.

Since then, the Trial Court Interpreter Employment and Relations Act has been enacted. See 2002 Cal. Stat. ch. 1047, SB 371 (Escutia). The Legislature has repealed most of the provisions that were included in the draft that the staff circulated to the stakeholders.

Only a few provisions from that draft still need attention: Evid. Code § 731; Gov't Code §§ 26806, 68092, 68562, 69894.5. It may also be advisable to check whether there are other provisions that require adjustment in light of the enactment of the Trial Court Interpreter Employment and Relations Act.

Some of this work might still be premature. We understand that some agreements between court interpreters and the court system have been reached, but disputes in some geographic areas are still unresolved. We are checking into this matter. From a preliminary review of the statutes, it appears that at least part of the remaining work can be done without awaiting the results of further negotiations.

SMALL PROJECTS

Several relatively small projects relating to trial court restructuring require attention.

Bank Deposits

Three provisions involving court-related bank deposits were included in the 2001 tentative recommendation but omitted from the final recommendation because the area was unsettled and under negotiation. One of these (Gov't Code § 68084) has since been amended to deal with the issues. The Commission should examine the other two provisions (Gov't Code §§ 53679, 71381) and determine whether revisions are necessary.

Court Appearance by Two-Way Electronic Audiovideo Communication

Penal Code Sections 977 and 977.2 permit use of two-way electronic audiovideo communication for certain court appearances under specified circumstances. The 2001 tentative recommendation proposed to amend these provisions to reflect trial court unification. The Los Angeles County Superior Court pointed out a problem with the Commission's proposed approach, however, and suggested an alternative approach. See First Supplement to Memorandum 2002-17, pp. 18-19; Memorandum 2002-14, Exhibit p. 59. Rather than incorporating the alternative approach into its final recommendation, the Commission deleted the two provisions from the proposal so that it could seek input on the alternative approach before recommending it to the Legislature. The Commission needs to follow-up on this plan.

Definition of “Employee” for Purposes of County Employees Retirement Law

Government Code Section 31469(b) defines “employee” for purposes of the County Employees Retirement Law. In the 2001 tentative recommendation, the Commission proposed to amend this provision as follows:

31469. ... (b) “Employee” includes any officer or attache of any superior court ~~or municipal court~~ which has been brought within the operation of this chapter.

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

The Commission included a Note explaining that this amendment would parallel the treatment of the provision in 1998, when the reference to justice court judges was deleted. The Note solicited comment on (1) whether it is still necessary to refer to a municipal court officer or attache, (2) whether the reference to a justice court judge should be reinserted, and (3) whether Section 31469(b) was superseded by Government Code Section 71624.

Both the Los Angeles County Superior Court and the Contra Costa County Superior Court submitted comments urging the Commission to leave Section 31469(b) alone. See Memorandum 2002-14, Exhibit pp. 22-23, 55; First Supplement to Memorandum 2002-17, pp. 12-13. The Commission therefore omitted the provision from its final recommendation, but did not resolve whether leaving the provision intact was an appropriate long-term solution.

Subdivision (e) of same provision contains an obsolete cross-reference to former Education Code Section 873.1. The Commission could propose an amendment to fix that cross-reference and include a Note soliciting comment on whether subdivision (b) should still be left as is. That might be an effective way to determine the appropriate long-term treatment of subdivision (b) without generating undue concern. We suspect that subdivision (b) remains useful in its current form, but the Commission should confirm as much.

Definitions for Purposes of TCEPGA (Gov’t Code § 71601)

The Commission’s 2002 recommendation on trial court restructuring included a proposed amendment of Government Code Section 71601, which defines various terms for purposes of TCEPGA. That amendment was chaptered out by another bill amending the same section, so the Commission tried again to amend Section 71601 in 2003. The amendment was again chaptered out. In 2005, an

amendment incorporating some of the revisions recommended by the Commission was included in a bill, but the bill was vetoed by the Governor for reasons unrelated to the revisions recommended by the Commission. The author of that bill has just introduced a new bill proposing to amend Section 71601. See AB 1797 (Bermudez). The staff will keep track of this legislation and continue to seek enactment of the Commission's ill-fated amendment of Section 71601.

Marshals and Sheriffs (Penal Code § 13510)

Penal Code Section 13510 still references "marshals or deputy marshals of a municipal court." We deferred treatment of this section in 2002, because the Commission on Peace Officer Standards and Training wanted an opportunity to research the matter. See Memorandum 2002-14, p. 34. There has since been ample opportunity to consider the point; it is time to resolve the proper treatment of this provision.

Minor Motor Vehicle Offenses

The 2001 tentative recommendation proposed to amend Welfare and Institutions Code Section 603.5 to delete municipal court references. The tentative recommendation included a Note soliciting comment on whether further revisions were necessary to reflect enactment of Vehicle Code Section 40215, which provides for an administrative hearing of a parking violation by a minor. The Los Angeles County Superior Court commented that further revisions regarding motor vehicle offenses were in order. See First Supplement to Memorandum 2002-17, p. 24; Memorandum 202-14, Exhibit p. 15. The Commission therefore removed the provision from the proposal for further study. The Commission should consider the situation and figure out how to amend the provision.

Similarly, in 2001 the Commission directed the staff to investigate and analyze whether Code of Civil Procedure Section 86 properly addresses appeals arising from parking tickets, toll road tickets, and municipal code violations. See Memorandum 2001-4, Exhibit p. 3; Minutes (Feb. 2001), p. 16 (available from the Commission, www.clrc.ca.gov). It might make sense to look into this matter at the same time that we examine Welfare and Institutions Code Section 603.5.

The Commission should bear in mind, however, that in both contexts the concerns regarding motor vehicle offenses are not strictly related to trial court restructuring. The concerns might be worth addressing if that is easy to do, but we should not get too sidetracked by them, particularly if they involve

jurisdictional classification issues that would become moot if the concept of a limited civil case is eliminated.

Municipal Court Action Specifying Number, Qualifications, or Compensation of Municipal Court Officers or Employees

Government Code Section 71617 provides:

71617. To the extent this chapter applies to a municipal court, any action by the municipal court specifying the number, qualification, or compensation of officers or employees of the municipal court which differs from that prescribed by the Legislature pursuant to Section 5 of Article VI of the California Constitution shall remain in effect for a period of no more than two years unless prescribed by the Legislature within that period.

In the first phase of its work on trial court restructuring, the Commission decided to defer work on this provision until February 8, 2003, or later (i.e., two years after unification of the last remaining municipal court). That date has passed and the provision is ripe for Commission consideration.

Transfer of Case Based on Lack of Subject Matter Jurisdiction

Code of Civil Procedure Section 396 pertains to transfer of a case for lack of subject matter jurisdiction. On Commission recommendation, the provision was amended in 2002 to delete two paragraphs. At the time, the Commission solicited comment on whether the entire provision should be repealed. Although the Los Angeles County Superior Court said repeal was appropriate, the Contra Costa County Superior Court said the provision was not yet ripe for repeal. See Memorandum 2002-17, pp. 11-12; Memorandum 2002-14, Exhibit pp. 19, 50. The Commission should revisit this matter now that several years have gone by.

Trial Court Funding Act of 1985

During the first phase of the Commission's work on trial court restructuring, the Los Angeles County Superior Court alerted the Commission to Government Code Section 16265.6, which concerns implementation of the Trial Court Funding Act of 1985. The court suggested repealing the provision as obsolete. First Supplement to Memorandum 2002-17, p. 9; Memorandum 2002-14, Exhibit p. 53. The Commission decided to look into this provision and related sections at a later date.

Government Code Section 71674 only directs the Commission to determine whether statutes were made obsolete by enactment of the Lockyer-Isenberg Trial

Court Funding Act of 1997, not earlier trial court funding measures. But the issue raised by the court is reasonably related to the Commission's work on trial court restructuring and falls within the Commission's authority to correct technical and minor substantive statutory defects pursuant to Government Code Section 8298.

PREMATURE OR LOW PRIORITY PROJECTS

Some major and some smaller projects relating to trial court restructuring are still premature or should be made low priority for other reasons.

Compensation of Official Reporter

Numerous provisions in the codes relate to court reporter compensation. These include: Gov't Code §§ 68114.8, 68525, 69893.7, 69894.6, 69903, 69947, 69948, 69948.5, 69949, 69953.5, 69955, 69956, 69990-69991, 69992-69992.2, 69993, 69994-69994.9, 69995-69999, 70000, 70313, 70010-70017, 70025, 70040-70062, 770064, 70100-70104, 70110-70113, 70125-70128, 70130-70134, 70136-70139; Penal Code § 938.3.

In the first phase of this study, the Commission took preliminary steps to investigate whether the enactment of TCEPGA rendered material in these provisions obsolete. Negotiations regarding court reporter compensation were ongoing, however, and court reporter organizations considered it important to leave the statutes intact pending resolution of the compensation issues. A legal argument could be made that the statutes still have some effect despite the enactment of TCEPGA; whether that argument would succeed in court is debatable. See Memorandum 2001-96 (available from the Commission, www.clrc.ca.gov). The Commission decided to defer further work on the matter.

Since then, a task force organized by the Judicial Council has issued a lengthy report on numerous issues pertaining to court reporters. See Final Report: Reporting of the Record Task Force (Feb. 18, 2005). The report was presented to the Judicial Council early last year, but the Judicial Council did not adopt any of the task force recommendations at that time. Instead, it directed that the proposals be referred to appropriate committees "for review and for subsequent future consideration and discussion by the council." Judicial Council Meeting Minutes (Feb. 18, 2005), p. 6, *available at* <www.courtinfo.ca.gov/jc/documents>. Issues relating to court reporter compensation remain unsettled.

We are in the process of checking whether the stakeholders continue to believe that the court reporter compensation provisions, collectively, should be left in the codes without change. Key contacts include the California Court Reporters Association (“CCRA”), the California Official Court Reporters Association (“COCRA”), the American Federation of State, County and Municipal Employees (“AFSCME”), and Service Employees International Union (“SEIU”). The AOC has consistently maintained that most if not all of the court reporter compensation provisions are obsolete in whole or in part due to the enactment of TCEPGA.

SEIU has informed us that the entirety of the court reporter compensation provisions should be retained in the codes. Preliminary discussion with a CCRA representative suggests that CCRA might take the same position. Based on the input so far, it looks like the Commission should continue to defer further study of these provisions. There is no use expending effort on this matter until the stakeholders agree that there is at least some obsolete material to delete.

Court Facilities

Another major project that remains premature relates to court facilities. When the Commission finalized its 2002 recommendation on trial court restructuring, the courts and the counties were engaged in negotiations regarding court facilities. Instead of revising statutes relating to court facilities, the Commission left such provisions intact. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1, 21 (2002). Pertinent provisions include: Code Civ. Proc. § 134; Gov’t Code §§ 25351.3, 25560.4, 26299.008, 68073.5, 70311, 73390, 73396, 73560-73561, 73660, 73661, 73698, 73698.6, 73730, 73732, 73750, 73756, 73770-73771, 73783.1, 73783.3, 73784, 73784.10, 73790, 73792, 73950, 73956, 74640, 74640.2, 74720, 74724, 74760, 74764, 74915, 74916, 74934, 74935.5, 74948, 74950, 74960, 74962, 76101.5, 76200, 76219, 76238, 76245.

Later in 2002, the Legislature enacted the Trial Court Facilities Act (2002 Cal. Stat. ch. 1082), under which the transfer of trial court facilities was to be negotiated on a building-by-building basis between the state and each county from July 1, 2003, through June 30, 2007. Because facilities issues remained unsettled and facility transfers were not complete, the Commission continued to defer work on the provisions relating to facilities. See *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169, 176-77 (2003).

According to Eraina Ortega of the Judicial Council's Office of Governmental Affairs, the process of transferring court facilities from the counties to the state has been going slowly. Only four facility transfers are complete. As yet, no county has transferred all of its court facilities. But the work is ongoing and progress is being made.

It is not yet time for the Commission to review the code provisions relating to court facilities. The staff will continue to monitor this situation and will notify the Commission when the area appears ready for attention.

References to "Superior Court"

The codes are replete with provisions that refer to the superior court. Some of those references require adjustment to reflect trial court unification.

For example, suppose a provision states that the superior court has jurisdiction of a particular matter. Before unification, any case brought in the superior court was within the appellate jurisdiction of the court of appeal. After unification, superior court jurisdiction encompasses some cases that are subject to economic litigation procedures or small claims procedures; those cases are not within the appellate jurisdiction of the court of appeal. Thus, it may no longer be sufficient for the provision to state that the superior court has jurisdiction of the matter. It might be necessary to amend the provision to clarify the jurisdictional classification — i.e., to make clear that the matter is to be treated as an unlimited civil case (and thus falls within the appellate jurisdiction of the court of appeal) regardless of the amount-in-controversy.

To assess the extent of this problem and the effort required to address it, several years ago the staff analyzed a sampling of provisions that refer to the superior court. We found that each provision required detailed analysis, the provisions did not fall into any easily-applied pattern, and the work was tremendously time-consuming. Reviewing all of the superior court references in the codes would be a huge project.

Rather than doing that burdensome work now, the staff proposes to defer it until after the Commission has reexamined the concept of a limited civil case. If that reexamination results in elimination of the concept of a limited civil case, then it would become unnecessary to review the codes for provisions referring to the superior court that require clarification of jurisdictional classification.

References to “Jurisdiction”

Many code provisions refer to “jurisdiction.” It might be appropriate to revise some of these provisions in light of trial court unification. See Memorandum 2002-34 (available from the Commission, www.clrc.ca.gov).

The Commission considered this matter several years ago and decided to adopt a “no review and very limited treatment” approach. Minutes (July 2002), p. 23. In other words, “staff should skip a systematic review of jurisdiction provisions and revise or delete specific jurisdiction references only if the staff is made aware of problems relating to them.” *Id.*

Unless the Commission directs otherwise, we would continue to follow this approach to “jurisdiction” references. We would follow the same approach with regard to statutory references to the “proper court” or the “same court.”

Coordination and Consolidation

The Commission’s 2001 tentative recommendation on trial court restructuring proposed amendments of several provisions relating to consolidation and coordination of cases (Code Civ. Proc. §§ 403, 404, 404.3, 404.9). The Commission also solicited comment on whether further revisions relating to consolidation or coordination were necessary. The Commission received some input on this point, but decided to proceed with the amendments in the tentative recommendation and no further revisions. See Memorandum 2002-17, pp. 7, 12-14. Those amendments were enacted.

A CEB treatise raises the possibility of establishing special rules for consolidation of a limited civil case with an unlimited civil case. *Civil Procedure Before Trial* § 43.28 (CEB 2004). That idea was not raised earlier.

Instead of looking into this idea right now, it seems preferable to defer the project until after the Commission has finished reexamining the concept of a limited civil case. The project would be unnecessary if that reexamination results in elimination of the concept of a limited civil case.

“Unlimited Civil Case” Terminology

When the Commission redrafted the codes to reflect trial court unification in 1998, it introduced the term “limited civil case” to refer to a cause traditionally within the jurisdiction of the municipal court. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 64-65, 138-40 (1998). The Commission did not propose a term to refer to a cause traditionally within the

jurisdiction of the superior court. It simply used the phrase “civil case other than a limited civil case” or a similar reference.

In cleanup legislation the following year, the Commission introduced the term “unlimited civil case” to refer to a cause traditionally within the jurisdiction of the superior court. See Code Civ. Proc. § 88 & Comment. The Commission did not revise the codes to systematically use that term rather than the earlier, more cumbersome phrases.

Such systematic cleanup could still be done, but this is a low priority matter. The statutes are workable if not elegant in their present form. Again, the project would be unnecessary if the concept of a limited civil case is eliminated. The Commission should complete its reexamination of the concept of a limited civil case before devoting resources to cleanup along these lines.

If the Commission does undertake such cleanup at some point, it will need to be careful to keep criminal cases in mind. In some places, it may be necessary to refer to felonies or to misdemeanors and infractions, as well as to civil cases.

Obsolete “Constable” References that Can Only be Deleted by Vote of the People

The “constable” references in Penal Code Sections 412 and 413 are obsolete. Unfortunately, however, those references can only be deleted by a vote of the People, because the sections were enacted as an initiative measure. See Memorandum 2002-14, p. 33. From past experience, the staff is well aware that any proposal requiring a vote of the People entails a tremendous amount of effort, no matter how simple, straightforward, and innocuous that proposal might be. It would be a mistake to prepare and pursue a measure consisting solely of amendments deleting the obsolete “constable” references from Sections 412 and 413. We will keep our eyes open for a vehicle on which such amendments could ride piggyback.

References to “Municipal Court”

When the Commission is close to having completed all of its work on trial court restructuring, we should do a final check of the codes to make sure that all “municipal court” references have been satisfactorily addressed. By then, it might be appropriate to delete some of the “municipal court” references that the Commission has deliberately left in the codes. See, e.g., Code Civ. Proc. § 85; Lab. Code § 3301; Penal Code § 1269; Rev. & Tax Code § 19280.

Organization of the Government Code

After the Commission has completed substantive work on trial court restructuring, it should review the organization of the Government Code and reorganize the material in a logical manner. The pre-unification, pre-TCEPGA organizational scheme, in which substantial portions of the code were devoted to municipal court matters and employment terms for trial court personnel, may be inappropriate once virtually all of those provisions are repealed.

RELATED STUDY: PUBLICATION OF LEGAL NOTICE IN COUNTY WITH UNIFIED SUPERIOR COURT

In addition to its work on trial court restructuring, the Commission is responsible for a related study on publication of legal notice in a unified superior court.

Some statutes call for publication of legal notice within a particular judicial district within a county. For example, Civil Code Section 3440.1 pertains to certain transfers of personal property. At least 10 days before such a transfer, a notice of intended transfer must be published “in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district.” Civ. Code § 3440.1(h)(2). Other similar statutes are: Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax Code §§ 3381, 3702.

When the Commission redrafted the codes in 1998 to accommodate trial court unification, it dealt with these provisions by proposing to amend former Government Code Section 71042.5 to specify that upon “unification of municipal and superior courts in a county, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.” This amendment was enacted and “preserve[d] the effect of statutes that specify publication by judicial district, rather than by county.” Former Section 71042.5 Comment.

(The article containing former Section 71042.5 was repealed in 2002, but former Section 71042.5 was reenacted as Section 71042.5 without substantive change. See Section 71042.5 Comment.)

The Commission recognized that preservation of judicial districts for purposes of publication might not be a satisfactory long term solution. The approach does “not account for changing demographics.” *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 86 (1998). The Commission thus recommended further study of “[p]ublication of legal notice in a county with a unified superior court.” *Id.* The Legislature directed the Commission to do this work. Gov’t Code § 70219.

The Commission has been “deferring work on this study until interested parties gain experience with legal publication in a unified superior court.” *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm’n Reports 507, 514 (2000). We do not think it is quite time to begin work on this study, but the Commission should keep it in mind and perhaps turn to it in a couple of years.

RELATED INACTIVE STUDY: APPELLATE AND WRIT REVIEW UNDER TRIAL COURT UNIFICATION

As a result of unification of the superior and municipal courts, each superior court’s appellate division reviews appeals and writs taken from its own court. This type of peer review creates at least an appearance of impropriety. Several years ago, the Commission commenced a study of the situation (Study J-1310).

The Commission circulated a tentative recommendation to create a limited jurisdiction division within each court of appeal district, replacing the individual superior court appellate divisions. See *Tentative Recommendation on Appellate and Writ Review Under Trial Court Unification* (Nov. 2001) (available from the Commission, www.clrc.ca.gov).

In late 2003, the Commission discontinued further work on this project due to state budgetary constraints on court operations. The Commission directed the staff to continue to monitor developments in the area and to alert the Commission if it appears appropriate to reactivate the study. *Minutes* (Nov. 2003), p. 8 (available from the Commission, www.clrc.ca.gov).

PROPOSED PLAN OF ACTION

As with the other phases of this study, much of the work outlined above can be done at the staff level, because it does not involve significant policy decisions that need to be made by the Commission. Unless the Commission otherwise

directs, we will begin to work on the major, mid-sized, and small projects as staff resources permit. We will seek Commission input as needed and eventually present a draft of a tentative recommendation for the Commission to review. Our goal is to finalize a proposal resolving many of these matters in time for introduction in the Legislature in 2007. We will leave the premature and low priority projects for later consideration.

Respectfully submitted,

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