

Memorandum 2009-20

**Statutes Made Obsolete by Trial Court Restructuring: Part 5
(Discussion of Issues)**

The Commission is responsible for “determin[ing] whether any provisions of law are obsolete as a result of the enactment of [the Trial Court Employment Protection and Governance Act], the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions.” Gov’t Code § 71674. The Commission is also responsible for conducting several specific studies that were identified in its 1998 report on trial court unification. See Gov’t Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-86 (1998) (hereafter, “1998 Report”).

The Commission has already done extensive work on trial court restructuring, resulting in enactment of several major bills. Some work remains to be done, because stakeholders could not reach agreement on key issues, statutes were not ripe for clean-up, further research was necessary on complex legal matters, or additional time was required to prepare appropriate revisions due to the large volume of material involved. In this phase of the study (Part 5), the Commission will continue its work on trial court restructuring, addressing miscellaneous matters that remain unfinished.

This memorandum discusses the following topics:

- Definitions for purposes of the Trial Court Employment Protection and Governance Act (“TCEPGA”) (Gov’t Code § 71601)
- Writ jurisdiction
- Appellate jurisdiction of bail forfeiture
- Bank accounts (Gov’t Code §§ 53679, 71381)
- Marshals (Penal Code § 13510)

Additional topics will be covered in later memoranda.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The staff's goal is to prepare sufficient material for approval of a tentative recommendation at the June meeting (or possibly in August), so that the tentative recommendation can be circulated for comment, the Commission can finalize a recommendation in late 2009, and a bill can be introduced in 2010. This bill would only cover some of the subjects that still require attention. For a variety of reasons, it will not be feasible to complete all of the remaining work on this timetable. In fact, some subjects (such as court facilities) are still not ripe for the Commission to study. The Commission should move forward on matters that are ready for consideration, complete as much work as possible for next year, and then turn to the remaining projects.

For background purposes, this memorandum begins by summarizing the trial court restructuring work that the Commission has completed and the work that it has not yet done. We then discuss the specific topics identified above, starting with the definitions for purposes of TCEPGA (Gov't Code § 71601) and covering the other topics in the order listed.

SUMMARY OF WORK ALREADY COMPLETED

In response to Government Code Section 71674, the Commission has already completed much work on trial court restructuring. Since 2002, it has prepared several reports containing extensive legislation, which has been enacted into law. See *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 & ACA 15, approved by the voters Nov. 5, 2002 (Prop. 48); *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; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006) (hereafter, "TCR: Part 3"), implemented by 2007 Cal. Stat. ch. 43; *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm'n Reports 99 (2007), implemented by 2008 Cal. Stat. ch. 56; *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm'n Reports 195 (2007), implemented by 2008 Cal. Stat. ch. 56.

In addition, the Commission has completed all but one of the studies assigned to it by the 1998 Report and Government Code Section 70219. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm'n Reports 507 (2000) (summarizing status of studies assigned to Commission);

Authority to Appoint Receivers, 30 Cal. L. Revision Comm'n Reports 291 (2000), implemented by 2001 Cal. Stat. ch. 44; *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm'n Reports 307, implemented by 2003 Cal. Stat. ch. 113; *Expired Pilot Projects*, 30 Cal. L. Revision Comm'n Reports 327, implemented by 2001 Cal. Stat. ch. 167; *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm'n Reports 223 (2001), implemented by 2002 Cal. Stat. ch. 71. The remaining study relates to publication of legal notice in a county with a unified court. The Commission deferred work on that study so that interested parties could gain experience with legal publication in a unified superior court. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm'n Reports at 514.

The 1998 Report and Government Code Section 70219 also directed the Commission and the Judicial Council to conduct a joint study of the three-track court system, which draws procedural distinctions between traditional superior court cases, traditional municipal court cases, and small claims cases. The intent of the joint study was to reexamine the three-track system and its underlying policies in light of trial court unification. 28 Cal. L. Revision Comm'n Reports at 82-83. The study resulted in enactment of legislation that eliminated some of the procedural differences between traditional superior court cases and traditional municipal court cases. *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443, implemented by 2001 Cal. Stat. ch. 812. The joint study also resulted in preparation of materials relating to the jurisdictional limits of small claims cases and traditional municipal court cases (limited civil cases), which have been helpful to the Legislature in evaluating bills to adjust those limits. For details, see Memorandum 2005-41; Minutes (Nov. 2005), p. 6.

SUMMARY OF REMAINING WORK

Among the trial court restructuring topics that still require attention are the ones analyzed in this memorandum:

- Definitions for purposes of the Trial Court Employment Protection and Governance Act ("TCEPGA") (Gov't Code § 71601)
- Writ jurisdiction
- Appellate jurisdiction of bail forfeiture

- Bank accounts (Gov't Code §§ 53679, 71381)
- Marshals (Penal Code § 13510)

We hope to complete or at least make significant progress on each of these topics in the coming year.

Other topics that we might be able to address this year are:

- Judicial districts and local venue
- Court interpreters
- Rights and responsibilities of the county versus the superior court with respect to trial court operations

Each of these topics is described in Memorandum 2006-9. We will update the descriptions and provide further information and analysis in future memoranda.

Other trial court restructuring topics that are not fully resolved include:

- Representation and indemnification of court and court personnel
- Judicial disqualification
- References to superior court
- Obsolete "constable" references that can only be deleted by a vote of the People
- Coordination and consolidation
- Precedential value of appellate division decisions
- Publication of legal notice in county with unified superior court
- Court facilities
- Judicial benefits
- Organization of the Government Code
- Compensation of official reporter
- References to "municipal court"
- Reexamination of the concept of a limited civil case
- References to "jurisdiction"
- "Unlimited civil case" terminology
- Appellate and writ review under trial court unification

Some of this work is still premature. We will fit it into the Commission's schedule as time permits and circumstances allow. Almost all of these matters are described in Memorandum 2006-9. We will update those descriptions and provide additional detail later.

DEFINITIONS FOR PURPOSES OF TCEPGA (GOV'T CODE § 71601)

The Commission has made repeated attempts to amend Government Code Section 71601 to reflect the elimination of the municipal courts and make certain technical changes relating to the definition of “subordinate judicial officer.” See *TCR: Part 3*, 36 Cal. L. Revision Comm’n Reports at 367-71. These attempts have been unsuccessful for reasons unrelated to the merits of the Commission’s proposed reforms.

In 2007, a bill from another source amended Section 71601 to eliminate the obsolete reference to municipal courts. See 2007 Cal. Stat. ch. 130, § 136. Last year, the reference to “judge pro tempore” was deleted from the definition of “subordinate judicial officer.” See 2008 Cal. Stat. ch. 218, § 4.

The definition of “subordinate judicial officer” would be more clear, complete, and technically correct if it was further amended to make additional changes that the Commission proposed in the past. In particular, **Section 71601(i) should be amended as follows:**

71601. For purposes of this chapter, the following definitions shall apply:

....

(i) “Subordinate judicial officer” means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, child support commissioner, traffic trial commissioner, referee, traffic referee, ~~and juvenile court referee~~, and juvenile hearing officer.

....

Comment. Subdivision (i) of Section 71601 is amended to expressly refer to a child support commissioner, traffic trial commissioner, and juvenile hearing officer. See former Section 72450 (traffic trial commissioners), Fam. Code §§ 4250-4253 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers).

Subdivision (i) is also amended for consistency of terminology. See Gov’t Code § 70045.4 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264 (same).

This would be a technical amendment, unrelated to trial court restructuring. Because it was developed in the course of the Commission’s work on trial court restructuring, however, **it would be appropriate to incorporate the amendment into the Commission’s next proposal on that topic.**

WRIT JURISDICTION

In 2006, the Commission issued a tentative recommendation proposing a number of reforms relating to writ jurisdiction. The main focus of these reforms was to clarify the proper treatment of a writ petition in a small claims case after trial court unification. See *Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), pp. 9-13, 34-39.

The San Diego County Superior Court suggested changing some of the proposed language, and the Administrative Office of the Courts (“AOC”) informally told us that the Civil and Small Claims Advisory Committee of the Judicial Council had significant concerns about the proposal. See Memorandum 2006-44, pp. 7-9. The Commission therefore withdrew the writ-related reforms for further study, and proceeded with the other reforms that were in the tentative recommendation.

The Commission should now reexamine the writ-related issues and determine how to handle them. The issues can be divided into two categories: (1) whether to make a clarification and technical revisions of the existing statutes governing writ jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103), and (2) whether to add new provisions relating to writ jurisdiction in a small claims case. These points are discussed separately below.

Clarification and Technical Revisions of Existing Statutes Governing Writ Jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103)

Code of Civil Procedure Section 1068 authorizes a court, in specified circumstances, to issue a writ of certiorari to an “inferior tribunal, board, or officer.” Code of Civil Procedure Sections 1085 and 1103 are similar provisions relating to a writ of mandamus and a writ of prohibition.

To accommodate trial court unification, Section 1068 was amended on Commission recommendation to add subdivision (b), concerning issuance of a writ of certiorari by the appellate division of the superior court:

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Similar amendments were made to Sections 1085 and 1103.

These changes served to implement Article VI, Section 10, of the California Constitution, which, as amended to accommodate unification, mandates that “[t]he appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court *in causes subject to its appellate jurisdiction.*” (Emphasis added.) The amendments properly reflect the rule that limited civil cases, misdemeanors, and infraction cases are subject to the appellate jurisdiction of the appellate division. See Code Civ. Proc. § 904.2; Penal Code § 1466.

However, small claims cases are an exception to this rule. Although a small claims case is a type of limited civil case, it is not appealable to the appellate division. Rather, a small claims appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the case in the small claims division. See Code Civ. Proc. § 116.770(a); see also Code Civ. Proc. § 87 (if statute applicable to small claims case conflicts with statute applicable to limited civil case, statute applicable to small claims case governs).

Because the appellate division lacks jurisdiction of a small claims appeal, and the Constitution says the appellate division only has writ jurisdiction “in causes subject to its appellate jurisdiction,” the appellate division cannot constitutionally issue a writ relating to a ruling in a small claims case. This limitation on the jurisdiction of the appellate division is already implicit in Code of Civil Procedure Sections 1068, 1085, and 1103, which must be harmonized with constitutional constraints.

To prevent confusion, however, the constitutional limitation should be made explicit. The Commission tentatively recommended as much in 2006, and this point drew no specific criticism. **Section 1068 should be amended as follows:**

Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review

1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of review directed to the superior

court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. Subdivision (b) of Section 1068 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

Section 1068 is also amended to make a stylistic revision.

Similar revisions should be made in Sections 1085 and 1103, but those provisions also require a technical correction. Each of them contains an erroneous reference to a writ of review, which should be replaced with a reference to the correct type of writ (a writ of mandate in Section 1085; a writ of prohibition in Section 1103).

Thus, **Sections 1085 and 1103 should be amended as follows:**

Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate

1085. (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by ~~such~~ that inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of ~~review~~ mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1085 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not

within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

The second sentence of subdivision (b) is amended to refer to a writ of mandate instead of a writ of review.

Section 1085 is also amended to make a stylistic revision.

Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition

1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of ~~review~~ prohibition directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1103 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

The second sentence of subdivision (b) is amended to refer to a writ of prohibition instead of a writ of review.

If the Commission agrees with the amendments shown above, we will include them in the next tentative recommendation on trial court restructuring.

New Provisions Relating to Writ Jurisdiction in a Small Claims Case

Sometimes a litigant seeks an extraordinary writ with respect to a decision made by a small claims court. Before unification, a small claims litigant could seek such a writ from a judge of the superior court (not the appellate department of the superior court). *See, e.g., City and County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 340 (1983); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976). Such a writ could also be sought in the courts of appeal or the California Supreme Court where necessary to “secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them.” *Davis v. Superior Court*, 102 Cal. App. 3d 164, 168, 162 Cal. Rptr. 167 (1980); *see also Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993).

In the 2006 tentative recommendation, the Commission proposed to add some new provisions relating to writ jurisdiction in a small claims case after unification. These provisions were intended to: (1) make clear that when a writ petition is brought in a superior court challenging a ruling in a small claims case, the petition can only be considered by a judicial officer of the superior court other than the one who made the challenged ruling, and (2) codify *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 144-45, 105 Cal. Rptr. 2d 552 (2001), which held that “the appellate division of the superior court has ... extraordinary writ jurisdiction of postjudgment enforcement orders of the small claims court.”

For example, proposed Code of Civil Procedure Section 1068.5 would have provided:

Code Civ. Proc. § 1068.5 (added). Writ of review in small claims case

1068.5. (a) A writ of review directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division. Where a judicial officer of a superior court grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(b) Notwithstanding subdivision (a), a writ of review directed to the superior court with respect to a postjudgment enforcement order in a small claims case may be granted by an appellate court or by the appellate division of the superior court.

Comment. Section 1068.5 is added to clarify the proper treatment of a writ petition relating to a small claims case.

Subdivision (a) makes clear that if a writ of review is sought in superior court with respect to a ruling of the small claims division, the writ proceeding is to be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division. This parallels the treatment of a small claims appeal. See Section 116.770 (small claims appeal is to be heard by judicial officer of superior court other than officer who heard case in small claims division); see also Section 1068 Comment (200_) (appellate division lacks writ jurisdiction of judgment or prejudgment ruling in small claims case); *City & County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr. 340 (1983) (affirming decision of superior court judge on writ petition relating to small claims case, thus implicitly deciding that superior court judge had writ jurisdiction); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675 (1976) (same).

Subdivision (b) codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small claims case is a limited civil case. *Id.* at 138. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs. Section 87.

A special statute governs a small claims appeal (Section 116.770), so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case (Section 904.2) is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. Consequently, the situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

Because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case. *Id.* at 145; see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of Section 1068(b) as applied in the specific context of a postjudgment enforcement order in a small claims case.

Proposed Code of Civil Procedure Sections 1085.3 (relating to a writ of mandate) and 1103.5 (relating to a writ of prohibition) were similar to proposed Section 1068.5.

The State Bar Committee on Appellate Courts supported these reforms. See Memorandum 2006-44, pp. 7-8 & Exhibit p. 3. The San Diego County Superior Court “agree[d], *if modified*, with the proposed new Code Civ. Proc. §§ 1068.5,

1085.3 and 1103.5.” *Id.* at Exhibit p. 5 (emphasis added). The court expressed concern for comity and said that under the proposed new sections “the superior court is ordering itself to change its order.” *Id.* The court recommended that the last sentence of subdivision (a) of each section be revised as follows: “Where a judicial officer of a superior court grants a writ of review directed to ~~the superior court~~ a judicial officer of the superior court small claims division, the superior court small claims division is considered an inferior tribunal for purposes of this chapter.” *Id.*

AOC staff notified us that the Civil and Small Claims Advisory Committee of the Judicial Council had significant concerns about the proposed reforms. The committee did not submit written comments, because there was not time to obtain the necessary approval at a higher level within the Judicial Council. *Id.* at pp. 8-9. But AOC staff made clear that the committee desired an opportunity to thoroughly study the matter and would not be able to do so for awhile. AOC staff also indicated that it might be appropriate to differentiate between:

- (1) Writ review of an initial decision in a small claims case, which perhaps could be done by a superior court judge, and
- (2) Writ review of a decision made after a trial de novo, which perhaps should only be done by an appellate court.

Perhaps most importantly, AOC staff reported serious concern that any statutory reference to small claims writs might prompt a deluge of such writs.

Due to the concerns expressed, the Commission withdrew all of the writ-related reforms from its 2006 proposal. It now needs to reassess whether to proceed with proposed Sections 1068.5, 1085.3, and 1103.5 or some variant of those provisions, or drop the attempt to clarify small claims writ jurisdiction after unification.

To the best of the staff’s knowledge, the Judicial Council has not done any further work on this matter. We are trying to confirm this with a contact at the AOC. We will keep the Commission posted on what we learn.

Having had time to reflect on the situation, however, our inclination is to **drop the attempt to clarify small claims writ jurisdiction after unification**, at least until there is clear evidence of confusion or problems that the courts cannot solve. The courts might be able to effectively deal with the situation without further statutory guidance.

True, the Commission previously said that proposed Sections 1068.5(a), 1085.3(a), and 1103.5(a) might “be necessary to ensure that the superior court retains authority to consider a writ petition relating to a ruling of the small claims division.” Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), p. 12. The Commission referred to case law indicating that absent statutory authority, a superior court judge cannot constitutionally enjoin, restrain, or otherwise interfere with a judicial act of another superior court judge. See, e.g., *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004); *Ford v. Superior Court*, 188 Cal. App. 3d 737, 742, 233 Cal. Rptr. 607 (1986). The Commission stated that the “recommended new provisions would constitute the necessary statutory authority for a superior court judicial officer to consider a writ petition challenging a ruling made in the small claims division by another superior court judicial officer.” Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), p. 12.

It is possible, however, that such statutory authority could be found in existing law. In particular, because writ jurisdiction is linked to appellate jurisdiction, the necessary statutory authority could perhaps be implied in Code of Civil Procedure Section 116.770, which says that a small claims appeal “shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division.”

Moreover, there does not seem to be any way to effectively address the concern that proposed Sections 1068.5, 1085.3, and 1103.5 might prompt a deluge of small claims writs. The small claims division is intended to “resolve minor civil disputes expeditiously, inexpensively, and fairly” Code Civ. Proc. § 116.120(b). If challenges by way of writ became common in small claims cases, the forum would not operate expeditiously and inexpensively. And it is hard to deny that proposed Sections 1068.5, 1085.3, and 1103.5 might alert some people to the possibility of bringing a writ in a small claims case.

Further, the area is complicated and any reform would be challenging to effectively explain. The distinction between review of a postjudgment enforcement order in a small claims case and review of other small claims rulings would be particularly hard to present clearly.

For these reasons, **the staff’s gut feeling is that it would be better to leave the area alone, instead of trying to provide statutory clarification.** If the

Commission later receives clear evidence of a need for statutory guidance, it could always revisit its decision.

APPELLATE JURISDICTION OF BAIL FORFEITURE

After trial court unification, the Commission was alerted to confusion regarding appellate jurisdiction of bail forfeiture. After studying the issue, the Commission recommended that a bail forfeiture appeal be handled as it was before unification of the municipal and superior courts. See *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 37 Cal. L. Revision Comm'n Reports 149 (2007). Under this approach, if an appeal would have gone to the appellate department of the superior court before unification, it would be appealed to the appellate division of the superior court after unification. Similarly, if an appeal would have gone to the court of appeal before unification, it would be appealed to the court of appeal after unification.

Last year, AB 2166 (Tran) was introduced to implement the Commission's recommendation. The bill was supported by the Judicial Council. However, following opposition from the bail industry, the bill died in a committee.

The staff recently discussed clarification of appellate jurisdiction of bail forfeiture with AOC representatives. They are exploring options on the matter within the Judicial Council. **The staff recommends that the Commission defer reassessment of the issue while the Judicial Council explores options.** The staff will keep the Commission posted on developments at the Judicial Council.

BANK ACCOUNTS

This portion of the memorandum discusses references to municipal court bank accounts in Government Code Sections 53679 and 71381.

Background

In its first phase of work on trial court restructuring, the Commission studied three provisions relating to municipal court bank accounts: Government Code Sections 53679, 68084, and 71381. The Commission made no recommendation on these provisions because the area of superior court bank accounts was unsettled and involved substantive policy and fiscal issues. See Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 192, 196, 316.

Government Code Section 68084 has since been amended (not on Commission recommendation) so that it no longer refers to municipal court bank accounts. Section 68084 is briefly discussed below, as background for discussing Sections 53679 and 71381.

Government Code Section 68084

Before it was amended, the final paragraph of Section 68084 authorized municipal courts to deposit certain funds into private bank accounts, rather than with the county treasurer. Several superior courts expressed concern that removing that paragraph would remove implicit authority of superior courts to continue making deposits that would have been made by the municipal court. See Memorandum 2001-78, p. 14.

As amended, Section 68084 provides limited authority for a superior court to deposit money into specified bank accounts. A superior court must deposit money with the treasurer, subject to specified exceptions when the court may deposit money elsewhere, including bank accounts established by the Judicial Council. Section 68084 provides:

68084. (a) If any money is deposited with the clerk or judge of any superior court pursuant to any action or proceeding in the court, or pursuant to any order, decree, or judgment of the court, or when any money is to be paid to the court to be held in trust pursuant to any provision of this title or the Code of Civil Procedure, that money shall be deposited as soon as practicable after the receipt thereof with the treasurer and a duplicate receipt of the treasurer for it shall be filed with the auditor. The certificate of the auditor that a duplicate receipt has been filed is necessary before the clerk, judge, or party required to deposit the money is entitled to a discharge of the obligation imposed upon the clerk, judge, or party to make the deposit.

(b) If any money so deposited or paid is to be withdrawn or paid out, the order directing the payment or withdrawal shall require the auditor to draw a warrant for it and the treasurer to pay it.

(c) This section does not apply to the following:

(1) Money collected under Chapter 5.8 (commencing with Section 70600) on or after January 1, 2006.

(2) Fees and fines to which Section 68085.1 applies.

(3) Money deposited or held in a bank account established by the Judicial Council under subdivision (a) of Section 77009.

(d) This section shall apply to money held in a court trust account in a county treasury on or after January 1, 2006. Commencing January 1, 2006, the Judicial Council may require that money held in a court trust account in a county treasury be

deposited into an independent court bank account established under subdivision (a) of Section 77009.

Because Section 68084 now directly authorizes superior courts to make bank deposits, and specifies the bank accounts for that purpose, references to municipal courts in Sections 53679 and 71381 may be ripe for revision.

Government Code Section 53679

Section 53679 prescribes the types of bank account (e.g., an account of a state or national bank, or federal or state credit union) into which money received by a municipal court judge or officer may be deposited.

Before Section 68084 was revised, it could be construed to provide implicit authority for superior courts to continue depositing municipal court funds into bank accounts. If so, the provisions in Section 53679 governing deposits of municipal court funds had ongoing relevance, by specifying the bank accounts into which those funds could be deposited.

Section 53679 may no longer serve that purpose, as Section 68084 itself now specifies the bank accounts into which superior courts may deposit money. Section 68084, along with provisions it cross-references (Sections 68085.1 and 77009), appear to prescribe that superior court bank deposits may only be made into bank accounts established by the Judicial Council or the AOC. See Gov't Code § 68084 (a), (c).

Accordingly, it appears that the provisions of Section 53679 applicable to municipal court bank deposits are obsolete. **The staff therefore recommends revising Section 53679 as follows:**

Gov't Code § 53679 (amended). Deposits

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer ~~or a judge or officer of a municipal court shall, and all money coming into the possession of a judge or officer of a municipal court may,~~ be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, or employee, ~~or judge of the court.~~ For purposes of this section, an officer or employee of a local agency ~~and a judge or officer of a municipal court are~~ is prohibited from depositing local agency funds or money coming into ~~their~~ the officer's or employee's possession into a state or federal credit union if an officer or employee of the local agency, ~~or a judge or officer of a~~

~~municipal court~~, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article. For deposits in excess of the amount insured under any federal law a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

~~(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal court.~~

(e) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

~~(d)~~ (c) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to Articles 5 (commencing with Section 29400) or 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

Comment. Section 53679 is amended to reflect the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Government Code Section 71381

Section 71381 is part of a short article relating to a uniform accounting system that the Controller may establish for fines, penalties, forfeitures, and fees assessed by courts. See Gov't Code §§ 71380-71386. Before trial court unification, the system applied to both municipal and superior courts, among other specified bodies. See former Gov't Code § 71380 (1998 Cal. Stat. ch. 931 § 308). All but one section of the article has been revised to reflect that there no longer are any municipal courts.

Referring to the Controller's uniform accounting system, Section 71381 says:

71381. Such system may provide for bank accounts for each municipal court, in which money received by such court may be deposited and disbursed as provided therein, and for such records, reports, and procedures as the Controller may deem necessary to carry out the purposes of this article.

The article in which Section 71381 is located contains no parallel authority for the Controller to provide for bank accounts for the superior courts. That appears to be consistent with a legislative intent to limit superior court bank deposits,

allowing only deposits into the bank accounts specified under Government Code Section 68084.

Accordingly, **the staff tentatively recommends revising Section 71381 as follows:**

Gov't Code § 71381 (amended). Municipal court bank accounts

~~71381. Such system may provide for bank accounts for each municipal court, in which money received by such court may be deposited and disbursed as provided therein, and for such~~ The accounting system under this article may provide for any records, reports, and procedures as the Controller may deem necessary to carry out the purposes of this article.

Comment. Section 71381 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. For guidance on bank accounts for the superior courts, see Section 68084.

Because it has been eight years since unification was completed, and three years since Section 68084 was revised, we assume that accounts established pursuant to Section 71381 are no longer in use. **We solicit comment on whether this assumption is correct.**

MUNICIPAL COURT MARSHALS

Penal Code Section 13510 still contains references to marshals of the municipal court. The provision relates to standards and training by the Commission on Peace Officer Standards and Training ("POST") for local law enforcement officers.

In 2001, we explored the possibility of deleting the references to the municipal court as follows:

Penal Code § 13510 (amended). Rules establishing minimum standards

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals ~~of a municipal~~ who serve a superior court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department,

peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals ~~of a municipal~~ who serve a superior court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, and housing authority police departments.

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability.

Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter.

These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a).

Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, "primary responsibility" refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards that exceed the minimum standards established by the commission.

Comment. Section 13510 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

POST had concerns about the revisions, expressing that there were unresolved issues regarding the status of marshals and deputy marshals who are now employed by the superior court. Accordingly, the Commission postponed the revisions to provide POST an opportunity to research the matter. See Memorandum 2002-14, p. 34; Memorandum 2001-88, p. 11.

The staff recently contacted Bob Stresak, the legislative analyst at POST. Mr. Stresak informed the staff that the issues were moot, and that POST no longer had concerns with removing the references to municipal courts in Section 13510. Accordingly, **the staff recommends revising Section 13510 as shown above** (with revisions of the Comment to reflect the 2002 repeal of Section 5 of Article VI of the California Constitution).

Respectfully submitted,

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