

Memorandum 2009-35

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

The Commission is responsible for reviewing the codes and recommending legislation to remove material made obsolete by trial court restructuring. Gov't Code § 71674. The Commission has completed much of this assignment and is making progress on the work that remains unfinished. A number of the remaining issues are addressed in Memorandum 2009-34, which presents a draft of a tentative recommendation for the Commission to review.

This memorandum begins to address another unfinished matter. It focuses on provisions that pertain to rights and responsibilities of the county as compared to the superior court with respect to trial court operations.

In the memorandum, the staff presents several statutory reforms for the Commission to consider. If the Commission tentatively approves some or all of these reforms (with or without revisions), the reforms could either be incorporated into the same tentative recommendation that is presented for approval in Memorandum 2009-34, or included in another tentative recommendation to be prepared later. **The Commission should consider this point after it reviews the suggested reforms.**

OVERVIEW

The Lockyer-Isenberg Trial Court Funding Act (hereafter, the "Trial Court Funding Act") was enacted in 1997. Under it, responsibility for funding of trial court operations was transferred from the counties to the state. See 1997 Cal. Stat. ch. 850.

When this Act was passed, numerous provisions throughout the codes referred to rights and responsibilities of a county with respect to various aspects of trial court operations. For example, certain court-related fees were to be paid to the county treasury, certain court-related duties were to be performed by the

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county clerk, and certain court-related authority was given to the board of supervisors.

Such provisions need reassessment in light of the switch from local to state funding of trial court operations. In some instances, it would no longer be appropriate to refer to the county; the reference should be changed to the superior court.

A lot of work on this topic has already been done, in legislation drafted by the Commission and by other sources. See 2002 Cal. Stat. ch. 221; 2002 Cal. Stat. ch. 784; 2003 Cal. Stat. ch. 296; 2005 Cal. Stat. ch. 75.

In a massive tentative recommendation issued in 2001, the Commission also identified some other provisions that appeared to require such attention. See Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 53-54 (Bus. & Prof. Code § 25762), 80-81 (Code Civ. Proc. § 116.940), 185 (Gov't Code § 29603), 198 (Gov't Code § 68098), 208 (Gov't Code § 68551), 316 (Gov't Code § 71384), 322 (Gov't Code § 72004), 595-96 (Harb. & Nav. Code § 664), 656 (Penal Code § 1463.22), 707-08 (Veh. Code § 42008); see also *id.* at 180 (Gov't Code § 26806, which is addressed in Memorandum 2009-34). For various reasons, the Commission deferred treatment of some of these provisions altogether, and addressed the other provisions in a limited manner, deferring consideration of the aspects pertaining to the rights and responsibilities of a county. Six of these provisions are analyzed below; the remainder will be analyzed as time permits.

In addition to the provisions left over from the 2001 tentative recommendation, there might be other code provisions that still present issues relating to rights and responsibilities of a county with respect to various aspects of trial court operations. When the Commission prepared that tentative recommendation, the staff did not have time to systematically search the codes for provisions referring to rights and responsibilities of a county with respect to trial court operations. At that time, it was also premature to revise such provisions, because stakeholder negotiations were ongoing. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1, 7-8, 13, 23-24 (2002) (hereafter, "TCR: Part 1").

Now, however, it should be possible to complete the clean-up of code provisions referring to rights and responsibilities of a county with respect to trial court operations. To ensure that all such provisions are reviewed and revised if necessary, the staff has begun systematically searching the codes to uncover

pertinent provisions not previously identified for attention. We will report on the results of those searches in a future memorandum.

Before beginning to analyze the leftover provisions from the 2001 tentative recommendation, it is important to describe an ongoing Judicial Council project that might have implications for the Commission's work in this area.

TASK FORCE ON CRIMINAL AND TRAFFIC-RELATED COURT-ORDERED DEBTS

Pursuant to Penal Code Section 1463.02, the Judicial Council has been organizing a task force to evaluate criminal and traffic-related court-ordered debts. The task force has been directed to:

- (1) Identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties and assessments imposed under law.
- (2) Identify the distribution of revenue derived from those debts.
- (3) Consult with state and local entities that would be affected by a simplification and consolidation of criminal and traffic-related court-ordered debts.
- (4) Evaluate and make recommendations to the Judicial Council for consolidating and simplifying the imposition of criminal and traffic-related court-ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues, but with no intention of redistributing funds in a way that will have a detrimental effect on those entities.

Penal Code § 1463.02(b). The objective is to prepare legislation similar to the Uniform Civil Fees and Standard Fee Schedule Act.

Such a reform appears to be much-needed. As a concurring opinion in a recent case points out, California's "increasingly complex system of fines, fees, and penalties ha[s] a negative impact on the criminal justice system." *People v. Castellanos*, __ Cal. App. 4th __, 2009 WL 2245904 (No. B210705, decided July 29, 2009) (Kriegler, J., concurring). The same opinion went on to explain:

[T]he patchwork nature of the ever-growing financial penalties in criminal actions has created a system that begins to match the complexity of the federal income tax. . . . It is doubtful that criminal trial lawyers and trial court judges have the ability to keep track of the myriad of charges that now attach to criminal convictions. This case is a good example of the situation — one \$10 fine generates seven additional penalties, each of which is separately stated in the Penal or Government Codes.

From the institutional viewpoint of the criminal justice system, the current approach is problematic. The penalties in a criminal action, including any financial penalties, should be easily identifiable. Prosecutors should be able to clearly determine the financial consequences of a case when assessing punishment and negotiating case settlements. Defense counsel should be able to clearly and concisely explain the possible financial charges to the client to ensure that when a guilty or no contest plea is entered, the defendant does so with full knowledge of its economic consequences. And trial courts should not have to search the Penal, Government, or Health and Safety Codes in an attempt to identify mandatory fines, fees, or penalties, some of which may have no logical connection to a pending case.

This is not a trifling matter. This court deals with issues surrounding the imposition of financial charges on a regular basis. Undoubtedly, the trial courts expend precious resources in attempting to properly impose the mandated penalties. The expansive criminal justice system in California generates large amounts of revenue for the state and local governments. *It ought to do so in a more straightforward manner.*

Id. (emphasis added).

Jody Patel of the Administrative Office of the Courts (“AOC”) is in charge of the task force project, which is just getting underway. The staff has been in contact with her, and we are taking steps to coordinate efforts. She informed us that the starting point for the task force will be the lengthy list of fee-related provisions in a document prepared by the State Controller (“Manual of Accounting and Audit Guidelines for Trial Courts — Appendix C”) (hereafter, “the Controller’s Appendix C”). We have a copy of Revision 20 of that document (a newer version may be forthcoming soon), and we have included Ms. Patel on the mailing list for this study. In completing its work on provisions that refer to rights and responsibilities of a county with respect to trial court operations, **the Commission should not duplicate the efforts of the task force or proceed at cross-purposes with the work of that group.**

GENERAL OBSERVATIONS REGARDING THE TRIAL COURT FUNDING SYSTEM

Before turning to the leftover provisions from the 2001 tentative recommendation, it might also be helpful to make some general observations regarding the trial court funding system.

Criminal and traffic-related fines, fees, and penalties are not the only complicated aspect of that system. In general, the statutory scheme is complicated, and difficult to fully decipher and understand.

Among the pertinent statutory provisions are Government Code Sections 24350-24356, 29350-29351, 53679, 68084-68085.9, 71380-71386, 72004, and 77000-77400, and Penal Code Sections 1463-1465.8. Some of these provisions were added by the Trial Court Funding Act, other provisions have already been adjusted to reflect the enactment of that Act, and still other provisions may require adjustments that have not yet been made.

There does not seem to be any treatise or other source that provides a good, detailed explanation of the trial court funding system. Despite considerable research, the staff is still learning how the system works and we are not yet familiar with all of its complexities.

The staff encourages knowledgeable persons to share their expertise on this matter with the Commission or its staff. Any such assistance would be most appreciated.

LEFTOVER PROVISIONS FROM THE 2001 TENTATIVE RECOMMENDATION

Ten provisions were left over from the 2001 tentative recommendation (plus Government Code Section 26806, which is addressed in Memorandum 2009-34). Six of those provisions are analyzed below:

- Business and Professions Code Section 25762.
- Code of Civil Procedure Section 116.940.
- Government Code Sections 29603 and 68098.
- Government Code Section 68551.
- Government Code Section 71384.

The remaining provisions (Gov't Code § 72004; Harb. & Nav. Code § 664; Penal Code § 1463.22; Veh. Code § 42008) will be analyzed later.

Bus. & Prof. Code § 25762. Fines, Bail Forfeitures, and Bail Deposits for Violation of the Alcoholic Beverage Control Act

Business and Professions Code Section 25762 relates to fines and bail forfeitures imposed for a violation of the Alcoholic Beverage Control Act (Bus. & Prof. Code § 23000 *et seq.*). The section provides:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

Before trial court unification, this section meant that a fine or bail forfeiture imposed and collected by a *superior* court for a violation of the Alcoholic Beverage Control Act was to “be *paid* to the county treasurer of the county in which the court is held.” (Emphasis added.) In contrast, a fine or bail forfeiture imposed and collected by a *municipal* court for a violation of the Alcoholic Beverage Control Act, or money deposited as bail in a municipal court, was to “be *deposited* with the county treasurer of the county in which the court is situated and *the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.*” (Emphasis added.) Pursuant to Penal Code Sections 1463 and 1463.001, such money would be split among a variety of governmental entities in a complicated manner.

Revisions Proposed in the 2001 Tentative Recommendation

In the 2001 tentative recommendation, the Commission proposed to amend Section 25762 as follows:

Bus. & Prof. Code § 25762 (amended). Fines and forfeitures of bail

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court ~~other than a municipal court~~ shall be paid to the county treasurer of the county in which the court is held.

~~All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.~~

Comment. Section 25762 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The tentative recommendation also included a note soliciting comment on the provision:

Note: Comment Requested

The Commission is reviewing whether county treasury provisions remain viable, given the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). These matters are also being examined by a Joint Court-County Working Group on Trial Court Funding. The Commission solicits comment on the proper treatment of Business and Professions Code Section 25762.

Response to the 2001 Tentative Recommendation

In response to the tentative recommendation, both the San Diego County Superior Court and the Los Angeles County Superior Court objected to the proposed amendment of Section 25762. The San Diego County Superior Court wrote:

Proposed amendments would eliminate the misdemeanor fine distribution to the city, county and state under PC § 1463, and instead provide that all revenue for violations of B&P laws relating to minors and alcohol be deposited with the county treasury. This section should be amended to provide that fines and forfeitures of bail be distributed pursuant to PC § 1463.

Memorandum 2002-14, Exhibit p. 15.

Similarly, the Los Angeles County Superior Court said:

Removing language regarding the municipal court in the first paragraph is fine. However, the proposed deletion of the entire second paragraph relating to the depositing and distribution of fines and forfeitures under PC § 1463 is highly problematic since without this section, the Court would have no authority to deposit fines and forfeitures with the county treasurer and no authority to disburse and distribute said fines.

Id. at Exhibit p. 46.

Due to these concerns, the Commission removed the proposed amendment of Section 25762 from its proposal, to permit further study. See Memorandum 2002-17, pp. 4-5; Minutes (March 2002), p. 10.

Analysis

Although Section 25762 relates to criminal fines, it is not listed in the Controller's Appendix C. If the Judicial Council task force expresses interest in the provision and conveys an intent to remove the material made obsolete by trial court restructuring, the Commission should refrain from addressing the provision.

Until such time, however, the Commission should explore the proper means of amending the provision to reflect trial court restructuring.

Revisions to reflect the switch from county-funding to state-funding of trial court operations do not appear necessary, because the provision relates to fines, forfeited bail, and bail deposits derived from enforcement of the Alcoholic Beverage and Control Act. Enforcement of that Act does not appear to be a "court operation," so the payments and deposits under Section 25762 should continue to go to the county treasury. As best we can tell, it would be improper to redirect those payments and deposits from the county treasury to a court-controlled account. See Gov't Code § 77003; Cal. R. Ct. 10.810.

It is clear, however, that revisions of Section 25762 are needed to reflect the elimination of the municipal courts through unification. The reference to "any court other than a municipal court" and the reference to "any municipal court" appear to be obsolete.

In implementing trial court unification, one of the Commission's guiding principles has been "to preserve existing rights and procedures despite unification." *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998). In other words, the Commission "has tried to maintain the pre-unification status quo, while making the law workable in a unified court system." *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305, 312 (2006).

To follow that principle in amending Section 25762, the Commission should preserve the distinction in treatment between cases formerly handled by the superior courts, and cases formerly handled by the municipal courts. **That could perhaps be achieved as follows:**

Bus. & Prof. Code § 25762 (amended). Fines, bail forfeitures, and bail deposits for violation of Alcoholic Beverage Control Act

25762. (a) All fines and forfeitures of bail imposed for a violation of this division and collected in any ~~court other than a municipal court~~ felony case after the indictment or the legal commitment by a

magistrate, or at or after the sentencing hearing, shall be paid to the county treasurer of the county in which the court is held.

(b) All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any ~~municipal court~~ misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate, shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

(c) For purposes of this section, a case in which both a felony and a misdemeanor were charged shall be treated as a felony case.

Comment. Section 25762 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. The amendment seeks to preserve the pre-unification status quo with regard to the distribution of fines and bail forfeitures collected for violations of the Alcoholic Beverage Control Act (“the Act”).

Subdivision (a) is amended to replace the reference to such fines and bail forfeitures imposed and collected in “any court other than a municipal court.” The amendment tracks the criminal jurisdiction of the superior court as it existed before trial court unification.

Similarly, subdivision (b) is amended to replace the reference to fines, bail forfeitures, and bail deposits under the Act “in any municipal court.” The amendment generally tracks the criminal jurisdiction of the municipal court as it existed before trial court unification.

Subdivision (c) makes clear how this section applies to a case in which both a felony and a misdemeanor were charged. The case is to be treated as a felony, even if the felony charge was dismissed. This is consistent with pre-unification practice. See generally *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890, 897-98, 95 Cal. Rptr. 411 (1971) (same).

In drafting this amendment, the staff assumed that all of the fines subject to Section 25762 are imposed in criminal cases. We have not thoroughly researched this point, but a preliminary review of the Alcoholic Beverage Control Act seems to support the staff’s assumption. **Comments on this point would be especially helpful.**

The language used in the amendment to distinguish between criminal cases formerly handled by superior courts and criminal cases formerly handled by municipal courts is essentially the same as in the Commission’s recommendation

on *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 37 Cal. L. Revision Comm'n Reports 149, 167-68 (2007). Before trial court unification, the division of responsibility was as follows:

- (1) The superior court tried felony cases that were prosecuted by indictment. The superior court also tried the later stages of felony cases that were prosecuted by complaint. The early stages of such cases were conducted before a magistrate in municipal court; the superior court took over if the defendant was legally committed by the magistrate at the preliminary hearing. In addition, if a felony defendant pled guilty before being legally committed by a magistrate, the superior court could conduct the sentencing hearing and subsequent proceedings (a municipal court could also do so, but only if it was a noncapital case).
- (2) The municipal court did more than handle the early stages of felony cases prosecuted by complaint (and certain felony sentencings). The municipal court also had jurisdiction of misdemeanor and infraction cases.

Thus, the reference to fines and bail forfeitures imposed and collected under the Act in "any court other than a municipal court" would be replaced with a reference to fines and bail forfeitures imposed and collected under the Act in "any felony case after the indictment or the legal commitment by a magistrate, or at or after the sentencing hearing." Similarly, the reference to fines, bail forfeitures, and bail deposits under the Act "in any municipal court" would be replaced with a reference to fines, bail forfeitures, and bail deposits under the Act "in any misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate." **If the Commission approves the above amendment for inclusion in a tentative recommendation, it should explain these points in the preliminary part of the tentative recommendation.**

Finally, to the extent that Section 25762 applies to "money deposited as bail," it is not readily apparent how the provision is intended to interrelate with the provisions on bail deposits that are discussed in Memorandum 2009-34 (Gov't Code §§ 53647.5, 53679, 77009; Penal Code § 1463.1). **The staff welcomes comments on this point, particularly suggestions regarding any revisions that might be needed to properly coordinate the provisions.** If ambiguities existed before trial court restructuring, attempting to eliminate them might exceed the Commission's authority to recommend removal of material made obsolete by

trial court restructuring. But if there are ambiguities that stem from trial court restructuring, the Commission may be able to address them.

Code Civ. Proc. § 116.940. Small Claims Advisory Services

Code of Civil Procedure Section 116.940 is a key provision governing small claims advisory services. The section specifies minimum requirements and various other rules for a small claims advisory service.

Revisions Proposed in the 2001 Tentative Recommendation

In the 2001 tentative recommendation, the Commission proposed to amend Section 116.940 to reflect unification of the municipal and superior courts, and to give the superior courts responsibility for small claims advisory services, instead of the counties. The latter reform was intended to reflect the enactment of the Trial Court Funding Act and promulgation of California Rule of Court 810 (which has since been recodified as Rule 10.810), listing “small claims advisor program costs” as a “court operation.”

The amendment proposed by the Commission read as follows:

Code Civ. Proc. § 116.940 (amended). Advisory services

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each ~~county~~ superior court in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) ~~Adjacent~~ Superior courts in adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the ~~county~~ superior court may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a ~~resolution by the board of supervisors~~ local rule. If a ~~county~~ court so exempts itself, the ~~county~~ court shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each ~~municipal superior court, the court clerk's office of each superior court in a county in which there is no municipal court, the county administrator's office, other~~ appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors shall not appear in court as an advocate for any party.

(f) Advisors and other court employees and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided under this chapter.

Comment. Section 116.940 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 10.

The tentative recommendation also included a note soliciting comment on the proper treatment of the provision.

Response to the 2001 Tentative Recommendation

In response to the tentative recommendation, the AOC reported that issues relating to the proper allocation of responsibility for small claims advisory services remained unresolved. "[W]hile it may be clear that Rule 810 identifies the program as a cost to the court, it [is] not clear that the court is always paying for the program, or at least the full costs of the program." Memorandum 2002-14, Exhibit p. 27. "[S]ome programs are run by a county agency or through a county contract or other arrangement." *Id.* The AOC cautioned that the Commission's proposed amendment "could jeopardize the arrangements in a number of counties which have chosen to supplement funding for the program, especially

in this current fiscal climate.” *Id.* The AOC also pointed out that the provision governing use of filing fees for small claims advisory services (Code Civ. Proc. § 116.910) was still a subject of negotiation between the courts and the counties. *Id.* The AOC therefore asked the Commission not to proceed with the amendment of Section 116.940 in 2002. *Id.*

The Los Angeles County Superior Court expressed similar concerns. It said that the proposed amendment

transfers responsibility for advisory services from the county to the court. In Los Angeles, these are currently provided through the county’s Department of Consumer Affairs. This would require a shift of personnel, budgeting, processing, and changes to the California Rules of Court and Local Rules. It would also require negotiations between the county and the court re: transition of responsibility. This function should remain with the county in order to avoid conflict of interest for the court.

Memorandum 2002-14, Exhibit p. 48.

Due to those concerns, the Commission removed the proposed amendment of Section 116.940 from its proposal for further study. See Memorandum 2002-17, pp. 8-9; Minutes (March 2002), p. 10.

Subsequent Revisions

Since then, Section 116.940 has been amended to delete the municipal court references and make various other changes. See 2002 Cal. Stat. ch. 806, § 6; 2005 Cal. Stat. ch. 618, § 6. The revisions did not, however, affect the division of responsibility between the court and the county.

With adjustments to account for the subsequent revisions of Section 116.940 and recodification of the court rule on “court operations,” the amendment that the Commission previously proposed would read:

Code Civ. Proc. § 116.940 (amended). Advisory services

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each ~~county~~ superior court in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be

limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent Superior courts in adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the ~~county superior court~~ may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a ~~resolution by the board of supervisors~~ local rule. If a ~~county court~~ so exempts itself, the ~~county court~~ shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, ~~the county administrator's office,~~ other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

Comment. Section 116.940 is amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(d), Function 10 ("small claims advisor program costs").

Analysis

The staff is attempting to find out what developments have occurred since 2002 with regard to the division of responsibility between courts and counties for small claims advisory services. **Any information on this point would be helpful.**

One significant development relates to Code of Civil Procedure Section 116.231, which sets the filing fees for small claims cases and specifies how much of that money is to be allocated to small claims advisory services. In 2007, that provision was amended to expressly acknowledge that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services. See 2007 Cal. Stat. ch. 738, § 3 (AB 1248).

It might be appropriate to amend Section 116.940 in a similar manner — i.e., to expressly acknowledge that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services. **That could be done as follows:**

Code Civ. Proc. § 116.940 (amended). Advisory services

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county, or by the superior court in a county where the small claims advisory service is administered by the court, in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties, or superior courts in adjacent counties, may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county or the superior court may

elect to exempt itself from the requirements set forth in subdivision (b). This If the small claims advisory service is administered by the county, this exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If the small claims advisory service is administered by the superior court, this exemption shall be formally noticed through adoption of a local rule. If a county or court so exempts itself, the county or court shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, ~~the county administrator's office,~~ other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

(g) Nothing in this section precludes a court or county from contracting with a third party to provide small claims advisory services as described in this section.

Comment. Section 116.940 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(d), Function 10 ("small claims advisor program costs").

As amended, Section 116.940 makes explicit that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services. For a similar provision, see Section 116.230 (filing fees for small claims cases).

Informal discussions with AOC staff suggest that this amendment is on the right track. In recent years, many courts have been assuming increasing responsibility for small claims advisory services. But such services remain under county control in some places (notably Los Angeles County). To avoid disrupting existing programs that may be functioning well, the statutory scheme should recognize that small claims advisory services can be provided by either a court or a county (or a third party retained by a court or a county), with funding and decision-making authority allocated accordingly.

We will update the Commission with whatever additional information we learn before the next Commission meeting. Absent significant new information, we suggest that **the amendment shown directly above be included in a tentative recommendation, with a note specifically requesting input on (1) the current division of responsibility for small claims advisory services, and (2) whether the proposed amendment would be an appropriate allocation of such responsibility.**

Gov't Code §§ 29603, 68098. Witness and Juror Fees

Government Code Sections 29603 and 68098 relate to witness and juror fees. The two sections are discussed together because they interrelate.

Revisions Proposed in the 2001 Tentative Recommendation

The 2001 tentative recommendation would have amended Government Code Section 29603 as follows:

Gov't Code § 29603 (amended). Payments to jurors and witnesses

29603. The sums required by law to be paid to ~~the grand and trial~~ jurors and witnesses in criminal cases tried in a superior ~~or municipal~~ court are county charges.

Comment. Section 29603 is amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (jury services). The reference to grand jurors is retained because grand jury expenses and operations are not court operations. Cal. R. Ct. 810(b)(6); *cf.* Cal. R. Ct. 810(d), Function 2 (grand jury selection).

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

A note pointed out that county treasury provisions were under study, and solicited comment on the proper treatment of Section 29603.

The tentative recommendation also included the following amendment of Government Code Section 68098:

Gov't Code § 68098 (amended). Witness fees in criminal cases

68098. Witness' fees in criminal cases in superior ~~and municipal~~ courts are charges against the same funds as jurors' fees in such cases.

Comment. Section 68098 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Again, a note pointed out that county treasury provisions were under study, and solicited comment on the proper treatment of Section 68098.

Response to the 2001 Tentative Recommendation

In response to the tentative recommendation, the Contra Costa County Superior Court alerted the Commission that the proposed amendment to Section 68098 appeared inconsistent with the proposed amendment to Section 29603. The court wrote that the proposed amendment to Section 68098

is in conflict with GC 29603. The latter specifies that the county pays witness fees in criminal cases. With trial court funding, juror fees became a state cost, but witness fees did not. The exception to this is noted in California Rule of Court 810 (see Function 10), where the court is authorized to pay for *court-appointed expert witness fees (for the court's needs)*.

Memorandum 2002-14, Exhibit p. 23 (emphasis in original).

Due to those comments, the Commission removed the proposed amendments to Sections 29603 and 68098 from its proposal for further study. See First Supplement to Memorandum 2002-17, pp. 11-12; Minutes (March 2002), p. 10.

Analysis

On reassessment of Sections 29603 and 68098, the staff agrees with the analysis of the Contra Costa Superior Court.

After enactment of the Trial Court Funding Act, the proper treatment of witness and juror fees depends on whether those fees are "court operations" and thus should be paid by the state, instead of by the county. Government Code Section 77003 and California Rule of Court 10.810 specify what constitutes "court operations." With respect to witness and juror fees, they provide:

- **Civil and criminal grand jury costs.** These costs are not “court operations.” See Gov’t Code § 77003(a)(7); Cal. R. Ct. 10.810(b)(6) & (d), Function 2 (stating that civil and criminal grand jury costs are unallowable).
- **Trial jury costs.** Most costs of trial juries are “court operations.” See Cal. R. Ct. 10.810(d), Functions 2 & 9. Juror parking is unallowable. See Cal. R. Ct. 10.810(d), Function 2.
- **Court-appointed expert witness fees.** Fees for an expert witness appointed by the court pursuant to Evidence Code Section 730 are a “court operation.” See Cal. R. Ct. 10.810(d), Function 10 (referring to “court-appointed expert witness fees (for the court’s needs)”).
- **Other witness fees.** These fees are not listed as a “court operation.” See Gov’t Code § 77003; Cal. R. Ct. 10.810.

To conform with these rules on what constitutes a “court operation,” **Section 29603 should be amended to reflect that the county is no longer responsible for paying trial jurors or court-appointed expert witness fees:**

Gov’t Code § 29603 (amended). Payments to jurors and witnesses

29603. The sums required by law to be paid to ~~the grand and trial~~ jurors and witnesses in criminal cases tried in a superior ~~or municipal~~ court, other than expert witnesses appointed by the court pursuant to Section 730 of the Evidence Code, are county charges.

Comment. Section 29603 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(d), Functions 2 (jury services) & 10 (“court-appointed expert witness fees (for the court’s needs)”). The reference to grand jurors is retained because grand jury expenses and operations are not court operations. See Section 77003(a)(7); Cal. R. Ct. 10.810(b)(6) & (d), Function 2 (civil and criminal grand jury costs unallowable). Likewise, the fees for a lay witness, or an expert who is not court-appointed, are not a court operation and thus remain a county charge. See Section 77003; Cal. R. Ct. 10.810.

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

Similarly, **Section 68098 should be amended to differentiate between court-appointed experts and other types of witnesses, and between grand jurors and trial jurors:**

Gov't Code § 68098 (amended). Witness fees in criminal cases

68098. Witness' fees in criminal cases in superior ~~and municipal~~ courts, other than fees for expert witnesses appointed by the court pursuant to Section 730 of the Evidence Code, are charges against the same funds as grand jurors' fees in such criminal cases.

Comment. Section 68098 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(b)(6) & (d), Functions 2 (jury services) & 10 ("court-appointed expert witness fees (for the court's needs)").

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

Section 68098 is further amended to make a stylistic revision.

Related Provisions That Require Revisions To Reflect Trial Court Restructuring (Code Civ. Proc. §§ 631.1, 631.2)

In researching Sections 29603 and 68098, the staff discovered two other provisions on jury fees that appear to need revision to reflect enactment of the Trial Court Funding Act. These provisions are Code of Civil Procedure Sections 631.1 and 631.2, which overlap to a large degree.

Section 631.2 provides:

631.2. (a) Notwithstanding any other provision of law, *the county* may pay jury fees in civil cases from general funds of *the county* available therefor. Nothing in this section shall be construed to change the requirements for the deposit of jury fees in any civil case by the appropriate party to the litigation at the time and in the manner otherwise provided by law. Nothing in this section shall preclude the right of *the county* to be reimbursed by the party to the litigation liable therefor for any payment of jury fees pursuant to this section.

(b) The party who has demanded trial by jury shall reimburse *the county* for the fees and mileage of all jurors appearing for voir dire examination, except those jurors who are excused and subsequently on the same day are called for voir dire examination in another case.

(Emphasis added.) Section 631.1 is identical to Section 631.2(a), but it was enacted earlier. The staff has been unable to figure out why it remains in the code despite the overlap with Section 631.2(a). We suspect this might have been an oversight that occurred when a pilot project that began in Santa Clara County ended and reforms were extended statewide, first on a temporary basis and later

on a permanent basis. See 1980 Cal. Stat. ch. 1216, § 2; 1981 Cal. Stat. ch. 432, § 1; 1982 Cal. Stat. ch. 284, § 2; 1988 Cal. Stat. ch. 10, §§ 3, 4.

We tentatively recommend that Section 631.1 be repealed as surplusage:

Code Civ. Proc. § 631.1 (repealed). County option to pay jury fees in civil case

~~631.1. Notwithstanding any other provision of law, the county may pay jury fees in civil cases from general funds of the county available therefor. Nothing in this section shall be construed to change the requirements for the deposit of jury fees in any civil case by the appropriate party to the litigation at the time and in the manner otherwise provided by law. Nothing in this section shall preclude the right of the county to be reimbursed by the party to the litigation liable therefor for any payment of jury fees pursuant to this section.~~

Comment. Section 631.1 is repealed as surplusage, because it is identical to Section 631.2(a). This is not a substantive change.

We further recommend that Section 631.2 be amended to reflect the enactment of the Trial Court Funding Act and the classification of trial jury fees as a “court operation.” **That could perhaps be done as follows:**

Code Civ. Proc. § 631.2 (amended). County option to pay jury fees in civil case

631.2. (a) Notwithstanding any other provision of law, the ~~county~~ county superior court may pay jury fees in civil cases from general funds of the ~~county~~ county court available therefor. Nothing in this section shall be construed to change the requirements for the deposit of jury fees in any civil case by the appropriate party to the litigation at the time and in the manner otherwise provided by law. Nothing in this section shall preclude the right of the ~~county superior court~~ to be reimbursed by the party to the litigation liable therefor for any payment of jury fees pursuant to this section. Nothing in this section shall preclude the right of the county to be reimbursed by the party to the litigation liable therefor for any payment of jury fees pursuant to this section as it read in Section 4 of Chapter 10 of the Statutes of 1988, or pursuant to former Section 631.1 as it read in Section 1 of Chapter 144 of the Statutes of 1971.

(b) The party who has demanded trial by jury shall reimburse the ~~county superior court~~ for the fees and mileage of all jurors appearing for voir dire examination, except those jurors who are excused and subsequently on the same day are called for voir dire examination in another case.

Comment. Section 631.2 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003

“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(d), Function 2 (jury services).

If Section 631.2 were amended in this manner, it would refer to “general funds of the court” that are available for payment of jury fees in civil cases. The staff is not sure whether this reference would be appropriate, or whether some other language should be used instead. **Comments on this point would be particularly helpful.**

Gov’t Code § 68551. Reimbursement of Judges’ Expenses for Attending Institutes and Seminars

Government Code Section 68551 concerns Judicial Council institutes and seminars for judges. The last sentence of the provision states: “Actual and necessary expenses incurred by superior and municipal court judges at any such institute or seminar shall be a charge against the county to the extent that funds are available therefor.”

Revisions Proposed in the 2001 Tentative Recommendation

The 2001 tentative recommendation proposed to delete the last sentence of Section 68551:

Gov’t Code § 68551 (amended). Institutes and seminars

68551. The Judicial Council is authorized to conduct institutes and seminars from time to time, either regionally or on a statewide basis, for the purpose of orienting judges to new judicial assignments, keeping them informed concerning new developments in the law and promoting uniformity in judicial procedure. Such institutes and seminars shall include, without being limited thereto, consideration of juvenile court proceedings, sentencing practices in criminal cases and the handling of traffic cases. ~~Actual and necessary expenses incurred by superior and municipal court judges at any such institute or seminar shall be a charge against the county to the extent that funds are available therefor.~~

Comment. Section 68551 is amended to reflect enactment of Section 69505 (business-related travel expenses of trial court judges and employees).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Court 810(d), Function 10 (training fees for court personnel).

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

As stated in the Comment, the proposed amendment was intended to reflect trial court unification and the enactment of the Trial Court Funding Act. The proposed amendment was also intended to reflect the enactment of Government Code Section 69505, which governs business-related travel expenses of trial court judges and employees. Section 69505 provides:

69505. Notwithstanding any other provision of law to the contrary, the following procedures shall apply for business-related travel expenses of judges and employees of the trial courts:

(a) The Administrative Director of the Courts shall annually recommend policies and schedules for reimbursement of travel expenses and procedures for processing these requests, which shall be approved by the Judicial Council and shall be followed by the trial courts.

(b) Each court shall develop a system for presentation and approval of requests that shall ensure that requests are reviewed in an impartial and appropriate manner and that conforms to the policies, schedules, and procedures approved by the Judicial Council.

(c) The cost of the approved requests shall be paid from that court's Trial Court Operations Fund.

Because Section 69505 governs "business-related travel expenses of judges," the Commission reasoned that the last sentence of Section 68551 was unnecessary and could be deleted.

Response to the 2001 Tentative Recommendation

The Los Angeles County Superior Court objected to the proposed amendment of Section 68551. The court pointed out that "nothing in the trial court restructuring provisions ... suggests a policy determination that reimbursement for attendance at such programs should no longer be expressly provided." Memorandum 2002-14, Exhibit p. 56. In the court's view, deletion of the last sentence of Section 68551 "would constitute such a determination." *Id.*

The court also said "it might be argued that 'travel expenses' is more limited than 'expenses incurred in attending seminars and institutes' and the latter term ought to be given continuing effect." *Id.* The court urged the Commission to amend Section 68551 to "provide that the charge for such expenses is against the court rather than the county." *Id.*

Due to those concerns, the Commission removed the proposed amendment of Section 68551 from its proposal for further study. See First Supplement to Memorandum 2002-17, pp. 15-16; Minutes (March 2002), p. 10. The Commission

was not inclined to implement the court's suggestions without providing ample opportunity for review and discussion by all of the interested parties.

Analysis

The Los Angeles County Superior Court made clear that its concerns could be addressed by revising the last sentence of Section 68551 to reflect the enactment of the Trial Court Funding Act, instead of deleting that sentence altogether. The court's suggestion seems reasonable, at least based on the information currently at hand.

The approach could be implemented by amending Section 68551 along the following lines:

Gov't Code § 68551 (amended). Institutes and seminars

68551. The Judicial Council is authorized to conduct institutes and seminars from time to time, either regionally or on a statewide basis, for the purpose of orienting judges to new judicial assignments, keeping them informed concerning new developments in the law and promoting uniformity in judicial procedure. ~~Such~~ Those institutes and seminars shall include, without being limited thereto, consideration of juvenile court proceedings, sentencing practices in criminal cases, and the handling of traffic cases. Actual and necessary expenses incurred by a superior and municipal court judge ~~judges~~ judge at any ~~such~~ institute or seminar under this section shall be a charge against the ~~county~~ court to the extent that funds are available therefor.

Comment. Section 68551 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Court 810(d), Function 10 (training fees for court personnel).

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

The section is further amended to make stylistic revisions.

By including this proposed amendment in a tentative recommendation, the Commission could provide the opportunity for review and discussion that it considered essential when the Los Angeles County Superior Court raised objections in 2002.

Gov't Code § 71384. Deposit of Money Collected and Audit of Accounts

Government Code Section 71380 directs the Controller to "establish, supervise, and as necessary revise a uniform accounting system, including a

system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for.” Government Code Section 71384 provides guidance on the implementation of this uniform accounting system. Before trial court unification, that section said that the system “may provide for the deposit of all money collected by municipal courts in the county treasury, for disbursement from it, and for the audit of such accounts by the county auditor.”

Revisions Proposed in the 2001 Tentative Recommendation

The 2001 tentative recommendation included the following amendment of Section 71384:

Gov’t Code § 71384 (amended). Deposit of money collected and audit of accounts

SEC. ____ . Section 71384 of the Government Code is amended to read:

71384. The system established pursuant to this article may provide for the deposit of all money collected by ~~municipal~~ superior courts in the county treasury, for disbursement from it, and for the audit of such accounts by the county auditor.

Comment. Section 71382 [sic] is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The tentative recommendation also included a note soliciting comment on the provision:

Note: Comment Requested

The Commission is reviewing whether county treasury provisions remain viable, given the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and Governance Act, and other changes to the structure of the trial courts. See Gov’t Code §§ 77003 and Cal. R. Ct. 810 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). These matters are also being examined by a Joint Court-County Working Group on Trial Court Funding. The Commission solicits comment on the proper treatment of Government Code Section 71382 [sic].

Response to the 2001 Tentative Recommendation

The Commission did not receive any comments specifically directed to the proposed amendment of Section 71384. The Commission did receive a request from the AOC and the California State Association of Counties to defer action on

certain provisions concerning deposits into the county treasury. See Memorandum 2002-14, pp. 8-9. But Section 71384 was not on that list. See *id.* at 9.

The Commission therefore decided to proceed with the proposed amendment of Section 71384 (with the numerical error in the Comment corrected), while recognizing that clean-up of the county treasury aspects of that provision was premature. See *id.* at 8-9; *TCR: Part 1*, 32 Cal. L. Revision Comm'n Reports at 23-24, 319. The amendment was enacted. See 2002 Cal. Stat. ch. 784, § 357.

Analysis

Section 71384 needs to be considered in context. It is in an article entitled "Uniform Accounting System for Courts," which begins with a section (Section 71380) directing *the Controller* to establish and supervise a uniform accounting system for the superior courts.

Under the Trial Court Funding Act, however, "*the Judicial Council* may regulate the budget and fiscal management of the trial courts." Gov't Code § 77206(a) (emphasis added). That rule applies "[n]otwithstanding any other provision of law." *Id.* The Judicial Council's role is further described as follows:

77206. (a) *The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for recordkeeping and accounting by the courts. The Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly, and (2) all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations are known. The Judicial Council may delegate their authority under this section, when appropriate, to the Administrative Director of the Courts.*

Id. (emphasis added).

The Controller maintains authority to conduct audits of court revenues and expenses, at the request of the Legislature. But the Judicial Council may also conduct such audits:

(c) *The Controller, at the request of the Legislature, may perform and publish financial and fiscal compliance audits of the reports of court revenues and expenditures. The Controller shall report the results of these audits to the Legislature and the Judicial Council. The Judicial Council or its representative may perform audits and reviews of all court financial records wherever they may be located.*

Gov't Code § 77206(c) (emphasis added).

To reflect this allocation of authority between the Judicial Council and the Controller, **Section 71380 should perhaps be amended as follows:**

Gov't Code § 71380 (amended). Uniform accounting system for courts

71380. The Judicial Council, in consultation with the Controller, shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for. The accounting system shall apply to superior courts, together with probation offices, central collection bureaus and any other agencies having a role in this process.

Comment. Section 71380 is amended to reflect enactment of the Trial Court Funding Act. See Section 77206 (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts).

If Section 71380 were so amended, **then Section 71384 could be amended along the following lines:**

Gov't Code § 71384 (amended). Deposit of money collected and audit of accounts

71384. The system established pursuant to this article may provide for the deposit of all money collected by superior courts in ~~the county treasury~~ accounts as provided by law, for disbursement from ~~it those accounts~~, and for the audit of ~~such the~~ accounts by the county auditor, Controller and the Judicial Council as provided in Section 77206.

Comment. Section 71384 is amended to reflect enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations).

For examples of key provisions governing deposit of money collected by a superior court, see Sections 53679, 68084, 68085.1, 68085.9, and 77009, and Penal Code Sections 1463.1 and 1463.001.

This amendment would not attempt to specify precisely where money collected by the superior courts is to be deposited. The Comment would simply refer to some of the provisions governing deposit of money collected by a superior court. There are many such provisions, so we have only listed a few key ones as examples. **We encourage input on whether other provisions should be listed instead of, or in addition to, the ones included in the Comment.**

Finally, two other provisions in the same article should also be revised to reflect the Trial Court Funding Act’s allocation of authority between the Judicial Council and the Controller. One of these provisions, Section 71381, is already

included in the draft tentative recommendation attached to Memorandum 2009-34. **The amendment in that draft should be replaced with the following:**

Gov't Code § 71381 (amended). Controller's accounting system

~~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 Judicial Council and 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.

Section 71381 is also amended to reflect enactment of the Trial Court Funding Act. See Section 77206 (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts).

Similarly, **Section 71382 should be amended along the following lines:**

Gov't Code § 71382 (amended). Failure of judge or clerk to keep proper accounts

71382. Every judge of a superior court, or the clerk of any ~~such~~ superior court, who willfully fails to keep accounts pursuant to the system or to account for the money paid into and disbursed by the court pursuant to the system established by the Judicial Council and Controller pursuant to this article is guilty of a misdemeanor.

Comment. Section 71382 is amended to reflect enactment of the Trial Court Funding Act. See Section 77206 (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts).

Section 71382 is also amended to make a stylistic revision.

NEXT STEP

If the Commission tentatively approves some or all of the reforms discussed above, with or without revisions, then it should consider how to proceed with those tentative proposals.

One possibility would be to incorporate some or all of the reforms into the same tentative recommendation that is presented for approval in Memorandum 2009-34. That would have the advantage of moving the reforms quickly towards enactment. The importance of this should not be underestimated, because trial court restructuring occurred some time ago and the codes should be cleaned up to prevent confusion.

But the draft tentative recommendation attached to Memorandum 2009-34 does not include these reforms. The Commission would either have to (1) trust the staff to incorporate the reforms without an opportunity for Commission review before the tentative recommendation is released, or (2) delay approval of the tentative recommendation to the October meeting, so that a draft incorporating the reforms could be prepared for Commission review. If approval of the tentative recommendation were delayed, it would be difficult or perhaps impossible to finalize the proposal in time to be introduced in the Legislature in 2010. That would delay all of the reforms in the proposal, not just the ones discussed in this memorandum.

Another possibility would be to include the reforms from this memorandum in a different tentative recommendation, to be prepared later. Depending on how things develop, that tentative recommendation could also include other material, such as reforms relating to the other provisions left over from the 2001 tentative recommendation. If that tentative recommendation was approved in October or December, it might be possible to obtain input and finalize a recommendation by mid-spring. That would be after the bill introduction deadline, but it might still be possible to amend the proposed reforms into a pending bill, such as a bill containing the reforms from the draft attached to Memorandum 2009-34. If necessary, the proposed reforms relating to rights and responsibilities for court operations could be introduced in the Legislature in 2011 instead of 2010. Then the Commission's legislative program would include significant trial court restructuring bills in both years.

The staff recommends that the reforms from this memorandum be incorporated into a tentative recommendation to be prepared later, instead of being added to the draft attached to Memorandum 2009-34. That would allow the Commission to group them with other, similar reforms, and perhaps refine them before they are circulated as a tentative recommendation, while still leaving open the possibility of prompt enactment.

Respectfully submitted,

Catherine Bidart
Staff Counsel

Barbara Gaal
Chief Deputy Counsel