

Memorandum 2010-34

**Trial Court Restructuring: Rights and Responsibilities of the County
as Compared to the Superior Court (Draft of a Tentative Recommendation)**

This memorandum continues the Commission's trial court restructuring work on rights and responsibilities of the county as compared to the superior court. Background information related to this work is described in the attached draft of a tentative recommendation, at pages 1-2.

In this phase of the work, the staff has been searching the codes in alphabetical order for provisions that need revision to reflect the shift from county to state funding of trial court operations. We are now partway through the Government Code.

At previous meetings, the Commission approved numerous statutory revisions for inclusion in a tentative recommendation. See Minutes (August 2009), pp. 8-10; Minutes (Feb. 2010), pp. 7-10; Minutes (April 2010), p. 4; Minutes (June 2010), p. 5. These proposed revisions would address material found in our search, as well as some provisions left over from a 2001 tentative recommendation (*Statutes Made Obsolete by Trial Court Restructuring: Part 1* (Nov. 2001)).

To have this material ready for inclusion in a bill next year, the Commission needs to approve a tentative recommendation at its upcoming meeting. To that end, the staff has prepared a draft of a tentative recommendation, which is attached. **The Commission should review the attached draft and decide whether to approve it for circulation, with or without change.** We will continue our search as time permits, and eventually prepare another tentative recommendation with additional material.

The Commission has received the following comments on this study, which we have not previously discussed:

Exhibit p.

- Stacy Boulware Eurie, Sacramento County Superior Court (3/8/10) 1

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 Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

- Daryl E. Kennedy, Shasta County Superior Court (4/14/10)3
- Tracy Kenny, Administrative Office of the Courts (4/7/10)4
- Hon. Patrick Mahoney, San Francisco County Superior Court
(5/14/10)6

The Commission appreciates these comments. This memorandum describes and analyzes them.

First, the memorandum describes a general comment on several proposed revisions. Next, the memorandum discusses provisions on which we received specific comments (Educ. Code § 56159; Fam. Code §§ 1838, 3181; Gov’t Code §§ 24350, 68083). The memorandum then discusses an issue raised by the Commission that relates to two of those provisions (Gov’t Code §§ 24350, 68083). Finally, the memorandum discusses a few Notes in the draft that specially solicit comment.

The Commission should consider the issues raised and determine whether, and, if so, how to address them in its tentative recommendation.

GENERAL COMMENT

We received comments from Judge Patrick Mahoney on behalf of the San Francisco County Superior Court (hereafter, the “SF Superior Court”), relaying input from Court Commissioner Slabach. See Exhibit p. 6. Among that input was a general comment that the commissioner found none of the revisions proposed in Memorandum 2010-19 objectionable (Evid. Code § 754; Fam. Code §§ 1814, 1820, 1834, 1838, 1850, 3025.5, 3153, 3170, 3173, 3181, 3188, 6303). The SF Superior Court also provided specific comments on Family Code Sections 1838 and 3181, which are discussed later in this memorandum.

EDUC. CODE § 56159. COST ALLOCATION FOR INDIVIDUAL IN LICENSED CHILDREN’S INSTITUTION OR FOSTER FAMILY HOME

The Commission specially solicited comment on Education Code Section 56159, without drawing any tentative conclusions about whether or how that provision should be revised. See Memorandum 2010-5, p. 4.

The section is part of an article relating to an individual with exceptional needs who is placed in a licensed children’s institution or foster family home. See Educ. Code § 56155. The article applies only to an individual placed in such an

institution or home by a court, a regional center for the developmentally disabled, or a public agency, other than an educational agency.

Section 56159 allocates the cost of residential and non-educational services for the individual, depending on which entity places the individual in the institution. The section provides:

56159. If a district, special education local plan area, or county office does not make the placement decision of an individual with exceptional needs in a licensed children's institution or in a foster family home, the court, regional center for the developmentally disabled, or public agency, excluding an education agency, placing the individual in the institution, shall be responsible for the residential costs and the cost of noneducation services of the individual.

Thus, when a court — rather than a school district, special education local plan area, or county office of the superintendent of schools — places an individual in a licensed children's institution or foster family home, it appears the court is to pay for the residential and non-educational services provided to the individual. See Educ. Code §§ 56022 (“county office” means an office of the county superintendent of schools), 56025 (“district” means school district). (A special education local plan area is the area covered by a school district's local plan for educating individuals with exceptional needs. See Educ. Code § 56195.1(d).)

Before trial court restructuring, a court's payment for an individual's residential and non-educational services was essentially borne by the county because the county funded the courts. Due to the shift of funding and management responsibilities of the courts from the county to the state, the allocation of those costs to the court needs to be re-evaluated.

We received comments on Section 56159 from Tracy Kenny, an attorney for the Administrative Office of the Courts (hereafter, the “AOC”), and from Stacy Boulware Eurie, Presiding Judge of the Juvenile Court of the Sacramento County Superior Court.

Based on their comments, it appears that the cost of an individual's residential and non-educational services would no longer be allocated to the court.

The AOC concludes that “the court would never be in the position of paying these costs because the court is never the placing agency.” Exhibit p. 4. Consistent with that assessment, Presiding Judge Eurie is “unaware of any

matter wherein our court has been assigned the financial responsibility for the non-educational costs for such placements.” Exhibit p. 1.

A case cited by the AOC tends to support the view that the allocation of the cost to the court in Section 56159 is outdated. Under former law, a court could have made the placement decision, by directly placing an individual in a licensed children’s institution or foster family home. See *In re Robert A.*, 4 Cal. App. 4th 174, 187-88, 5 Cal. Rptr. 2d 438 (1992) (discussing predecessor statute to Welfare and Institutions Code Section 361.2). Alternatively, the court could have ordered the individual to be under the supervision of a probation officer or social worker, who could place the individual in such an institution or home. See *id.*

Importantly, the court was only considered to be the entity that made the placement decision when the court itself directly placed the individual in such an institution or home. See *id.* The court was *not* considered to be the entity that made the placement decision when a probation officer or social worker placed the individual in the institution or home. See *id.* Thus, Section 56159 would have allocated the cost of the individual’s residential and non-educational expenses to the court only when the court itself directly placed the individual in the institution or home.

Under current law, the court itself may no longer directly place the individual in a licensed children’s institution or foster family home. Instead, such placement is made by a social worker or probation officer. See, e.g., Welf. & Inst. Code §§ 361.2(e) (social worker in dependency case may place child in institution or home, among other places), 727(a) (probation officer in delinquency case may place child in institution or home, among other places).

As the AOC’s comments explain:

In dependency or delinquency cases in California, it is my understanding that the court is never the placing agency. At disposition, upon removal of the child from the parent’s custody, the court orders the care, custody and control of the child to be under the supervision of the social worker (in dependency) or probation officer (in delinquency). The social worker or probation officer is then responsible for placing the child. Thus, the child welfare agency or probation department is the placing agency, not the court. And these agencies are already included in [Education Code Section 56159], under the general category “public agency.”

See Exhibit p. 4.

Based on all of the above, it appears that the court no longer makes the placement decision that triggers application of Section 56159.

Furthermore, it appears that the court would not be authorized to pay for an individual's residential and non-educational services. Under the Lockyer-Isenberg Trial Court Funding Act (hereafter, "Trial Court Funding Act"), the state funds court operations. Gov't Code § 77003. However, the definition of such operations does not include payment for those services. See *id.*; Cal. R. Ct. 10.810.

Consequently, Section 56159 should no longer allocate payment for those services to the court. **The staff therefore recommends the following amendment:**

56159. If a district, special education local plan area, or county office does not make the placement decision of an individual with exceptional needs in a licensed children's institution or in a foster family home, the ~~court~~, regional center for the developmentally disabled, or public agency, excluding an education agency, placing the individual in the institution, shall be responsible for the residential costs and the cost of noneducation services of the individual.

Comment. Section 56159 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of "court operations"); *cf.* Cal. R. Ct. 10.810 (not listing payment of individual's residential and non-educational services as "court operation"). The amendment also reflects that the decision to place an individual with exceptional needs is no longer made by the court. See *In re Robert A.*, 4 Cal. App. 4th 174, 187-88, 5 Cal. Rptr. 2d 438 (1992) (explaining that former statutory law had permitted court to make such placement decision).

Consistent with this recommendation, the staff included the above amendment in the attached draft of a tentative recommendation. See Attachment p. 20. **The Commission should decide whether it wants to include this amendment.**

FAM. CODE § 1838. FAMILY CONCILIATION COURT PROCEEDINGS

Section 1838 governs family conciliation court proceedings. The section provides:

1838. (a) The hearing shall be conducted informally as a conference or a series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues in controversy.

(b) To facilitate and promote the purposes of this part, the court may, with the consent of both parties to the proceeding,

recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Aid under this subdivision shall not be at the expense of the court or of the county unless the board of supervisors of the county specifically provides and authorizes the aid.

Under subdivision (b), the cost of the aid of a medical or other specialist, scientific expert, or director of a religious denomination may be paid by the county or court if the board of supervisors “specifically provides and authorizes the aid.”

Due to the shift of responsibility for the courts from the county to the state, it is no longer appropriate for the county to provide or authorize payment by the court. It is unclear, however, whether the Trial Court Funding Act treats aid invoked by a court under Section 1838(b) as a court operation, paid by the state. It is thus unclear whether the court may pay for the aid. The Commission therefore specially solicited comment on whether the aid is a court operation. See Memorandum 2010-19, p. 15.

We received comments on Section 1838(b) from the SF Superior Court, relaying input by Court Commissioner Slabach. See Exhibit p. 6. The commissioner is unable to recall any request for reconciliation assistance under Section 1838(b), and thus suggests that the issue may be moot. *Id.* However, the commissioner writes that if the court were asked to facilitate a reconciliation, aid by a medical or other specialist should not be paid by the court or county. *Id.* The comments appear to suggest that the parties should always pay for the aid. *Id.*

Before trial court restructuring, the parties presumably paid for the aid, except when the board of supervisors authorized the county or court to pay for the aid and provided for such payment. Revisions to provide that the parties always pay for the aid would go beyond the Commission’s authority to recommend revisions to reflect trial court restructuring. The provision has an existing mechanism by which the aid may be paid with public funds, instead of by the parties. Revisions to reflect trial court restructuring should not disrupt the legislative policy decision for there to be a mechanism to pay for the aid with public funds.

Thus, the issue is whether trial court restructuring affected whether the county or court may pay for the aid. Whether it affected the county’s authority to pay is discussed first.

Section 1838(b) expressly authorizes the county, and the court, to pay for the aid. Because the county's authority is stated separately from the court's authority (i.e., the county *or* court may pay), it suggests that the county was granted such authority for reasons unrelated to its responsibility to fund and manage the courts. This indicates that trial court restructuring did not alter the county's authority to pay. Accordingly, the staff recommends retaining such authority.

The next question is whether trial court restructuring altered the court's authority to pay for the aid. Whether the court may pay depends on whether the aid is a "court operation," as defined in the Trial Court Funding Act and Court Rule 10.810. See Gov't Code § 77003.

Because the court may invoke the aid as part of the court's conciliation function, it seems that the aid could be a court operation.

But it isn't entirely clear whether the definition of "court operations" includes such aid. The definition does provide that an expert witness appointed for the court's own needs is a court operation. See Cal. R. Ct. 10.810(d), Function 10. But aid by an expert under Section 1838(b) does not appear to be aid by an expert witness. The expert does not provide testimony to help a court decide a case; instead, the aid by the expert is to help the parties conciliate.

However, the definition classifies "court-ordered forensic evaluations and *other professional services* (for the court's own use)" as court operations. See Cal. R. Ct. 10.810(d), Function 10 (emphasis added). Perhaps court-invoked aid under Section 1838(b) is a court operation, as a court-ordered professional service for its own use.

The definition of "court operations" also includes items relating to dispute programs, including conciliators. See Cal. R. Ct. 10.810(d), Function 6 (listing court operations relating to dispute resolution programs, including conciliators, but stating that "[a]ny other *services, supplies, and equipment*" are under Function 10) (emphasis added). Court-invoked aid under Section 1838(b) may fall under this classification, because the aid relates to resolving a dispute by conciliation.

If the aid is a court operation, Section 1838(b) should continue to allow the court to pay for the aid, with revisions to reflect the shift of funding court operations from the county to the state. To accomplish that, revisions should provide that (1) the payment should be made with court funds, instead of county funds, and (2) the payment should no longer be conditioned on the county's approval.

To determine whether court-invoked aid under Section 1838(b) is a court operation, further comments may be useful. In particular, it would be useful to have comments on whether the Trial Court Funding Act authorizes the court to pay for the aid.

Because the function of a tentative recommendation is to foster input, the staff recommends including an amendment that would preserve the court's authority to pay for the aid, with a Note soliciting comment on the issue:

1838. ...

(b) To facilitate and promote the purposes of this part, the court may, with the consent of both parties to the proceeding, recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Aid under this subdivision shall not be at the expense of the court unless the presiding judge specifically authorizes the aid, nor at the expense ~~of~~ of the county unless the board of supervisors of the county specifically provides and authorizes the aid.

Comment. Section 1838 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of trial court operations); see also Cal. R. Ct. 10.603(a) (responsibilities of presiding judge of superior court).

Note. The Commission seeks comment on any aspect of the amendment proposed above, but would especially appreciate input on whether aid invoked by a court under subdivision (b) is a court operation under the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Government Code Sections 77000-77655). See also Cal. R. Ct. 10.810(d) (listing "court operations").

This amendment would preserve the existing mechanism for the aid to be paid with public funds, but would reflect that the court's payment should no longer be made with county funds or conditioned on the county's approval.

Consistent with the foregoing recommendation, the staff has included the above amendment in the attached draft of a tentative recommendation. See Attachment pp. 25-26. **The Commission should decide whether it agrees with that step, or whether it would like to handle this matter differently.**

FAM. CODE § 3181. SEPARATE MEETINGS WITH MEDIATOR

Section 3181 requires a mediator to meet separately with each party, upon request by a party alleging domestic violence, as specified:

3181. (a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.

(b) Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.

We specially sought input on whether it is appropriate to provide that an agency charged with providing family court services, rather than the court, may require a party to complete an intake form before mediation begins. See Memorandum 2010-19, p. 25.

The SF Superior Court states that the provision does not need to be revised: “We have a lot of ‘agencies’ providing services to our litigants who may wish to (and probably should) require intake forms relating to Domestic Violence.” See Exhibit p. 6. That makes sense.

Based on those comments, the reference to an agency in Section 3181(b) does not appear to need revision to reflect trial court restructuring. **Accordingly, there is no need to include any revisions to Section 3181 in the tentative recommendation.**

GOV'T CODE §§ 24350 & 68083. COLLECTION OF FEES

To reflect trial court restructuring, the Commission has tentatively decided to relocate some material from Government Code Section 24350 to a new Government Code Section 68083. The material to be relocated relates to courts, and thus should be moved to a part of the code relating to courts, instead of counties. The relocation would be accomplished as follows:

Gov't Code § 24350 (amended). Collection of fees by county

SEC. ____. Section 24350 of the Government Code is amended to read:

24350. Each salaried officer of a county ~~or judicial district~~ shall charge and collect for the use of his or her county and pay into the county treasury on or before the fifth day of each month the fees allowed by law in all cases, except those or a percentage of them allowed him or her, and those which are a charge against the county. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.

Gov't Code § 68083 (added). Collection of fees by court

SEC. ____. Section 68083 of the Government Code is added, to read:

68083. Each salaried officer of a superior court shall charge, collect, and promptly deposit the fees allowed in each case, as provided by law. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.

See First Supplement to Memorandum 2009-50, pp. 4, 6; Minutes (Feb. 2010), pp. 7-8.

The Commission has received comments on these proposed revisions from Daryl Kennedy, General Counsel of the Shasta County Superior Court. In addition, the Commission itself raised an issue at the February meeting, which required staff research. The court's comments are discussed first, then the issue raised by the Commission.

Comments of the Shasta County Superior Court

The Shasta County Superior Court agrees with the general concept of the revisions proposed by the Commission. See Exhibit p. 3. But the court suggests a change to the last sentence of Section 68083, relating to a superior court officer's authority to refuse payment in coin. *Id.*

As the court points out, before trial court restructuring, Section 24350 applied to county and court officers alike. See *id.* Section 24350 thus authorized both county and court officers to refuse payment in coin for fees collected pursuant to the section. The section applied to "fees allowed by law in all cases," except fees or a percentage of them allowed to the officer, or fees that are a charge against the county. For reasons discussed at pages 5-6 of Memorandum 2009-50, those exceptions would not be continued in proposed new Section 68083. The court does not question the decision to omit the exceptions.

Rather, the court suggests that “the language of the proposed statute be broadened to clarify that superior court employees are not required to accept *any* payment in coin, rather than limiting the principle to payments of *fees*.” Exhibit p. 3 (emphasis added). Specifically, the court urges that the last sentence of proposed new Section 68083 be revised as follows:

68083. Each salaried officer of a superior court shall charge, collect, and promptly deposit the fees allowed in each case, as provided by law. No salaried officer ~~who collects fees pursuant to this section of a superior court~~ shall be required to accept ~~coin in~~ payment of ~~those fees~~ in coin.

Id.

The court “do[es] not believe that this would be a substantive change in the law.” Its comments explain that

prior to trial court restructuring, because superior court employees were county employees, *Government Code section 24350* authorized them to refuse payments of *fees* in coin. In addition, *Government Code section [24353]* authorized superior court employees to refuse *any* payment in coin for the same reason.

Id. (emphasis added). The comments refer in particular to the second sentence of Section 24353, which states: “No officer who collects *money as described in this section* shall be required to accept payment in coin.” *Id.* (emphasis added).

(Note: The full text of Section 24353 appears at pages 35-36 of the attached draft, because the Commission has tentatively decided that some material from that section should be relocated to a new Government Code Section 68083.5. That decision is not at issue here.)

The first sentence of Section 24353 refers not only to collection of fees, but also to fines and forfeitures. In light of that language, it would indeed seem, as the court’s comments assert, that the section authorized a superior court employee to refuse *any* payment in coin, not just a payment of fees.

However, Section 24353 was amended in 2005, as part of the bill enacting the Uniform Civil Fees and Standard Fee Schedule Act (AB 145 (Committee on Budget), 2005 Cal. Stat. ch. 75). A new sentence was added at the end of the section, stating: “On and after January 1, 2006, this section does not apply to money collected under Chapter 5.8 (commencing with Section 70600) of Title 8 of fees and fines to which Section 68085.1 applies.”

According to the Shasta County Superior Court,

It appears that the last sentence was intended to address issues regarding the place where moneys collected by the court are to be deposited. However, *an unintended consequence of the sentence is that superior court employees do not have express authority to refuse payments of the specified fees and fines in coin.*

Exhibit pp. 3-4 (emphasis added). The court urges the Commission to remedy this problem by broadening the language in proposed new Section 68083 relating to payments in coin. *Id.* at 4.

Analysis

The problem raised by the court was created by the enactment of the Uniform Fee Act. It is unrelated to trial court restructuring. Consequently, **the Commission does not have authority to address it.**

With regard to the *fines* referenced in the last sentence of Section 24353, that ends the analysis.

With regard to *fees*, however, there is more to consider. The court writes that due to the last sentence of Section 24353, “superior court employees do not have express authority to refuse payments of the specified *fees* ... in coin.” Exhibit pp. 3-4 (emphasis added).

It is true that such express authority no longer exists in Section 24353. But Section 24350 continues to provide blanket authority to refuse payment of *any* fee in coin. It applies to “the fees allowed by law in all cases,” and says that no salaried officer “who collects fees pursuant to this section shall be required to accept coin in payment of those fees.”

As to court officers, the Commission is proposing to move the existing substance of Section 24350 to a new Section 68083. The proposed new section would track the language now in Section 24350, as follows:

68083. Each salaried officer of a superior court shall charge, collect, and promptly deposit the fees allowed in each case, as provided by law. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.

That would expressly authorize a superior court officer to refuse coin in payment of fees collected “pursuant to this section,” which would apply to “fees allowed in each case, as provided by law.” Thus, the authorization to reject coin

in payment of fees would be broad, applying to “fees allowed in each case, as provided by law.”

Perhaps, however, that is not as clear as it should be. Use of the phrase “pursuant to this section” could imply a substantive limitation in the scope of the rule, when in fact, the section is intended to apply to fees in all cases. To make that broad scope clearer, the last sentence of proposed new Section 68083 could be revised to state:

68083. ... No salaried officer of a superior court shall be required to accept coin in payment of fees.

That should at least in part address the court’s concern, without overstepping our authority in this study. The revised text would more clearly state the authority of a superior court officer to reject payment of fees in coin, regardless of the law under which the fee is collected. **The staff believes that this would be an improvement.** If the Commission agrees, we would incorporate this change into the tentative recommendation. It is not included in the attached draft.

Issue Raised by the Commission

At the February meeting, the Commission raised an issue pertaining to proposed new Government Code Section 68083. Because Section 24350 exempts the collection of fees owed by the county, the Commission wondered whether Section 68083 should similarly exempt the collection of fees owed by the state. See Minutes (Feb. 2010), p. 8.

The staff’s research on the issue revealed that in 2005, the Legislature enacted a provision that made the state (as well as the county and other public entities) generally exempt from court fees. See Gov’t Code § 70633(c) (“[n]o fee shall be charged by the clerk for service to any municipality or county in the state, to the state government, nor to the United States of America or any of its officers acting in his or her official capacity,” subject to narrow exceptions provided in Section 70633(b)); see also Gov’t Code § 6103 (prohibiting state and its officers, and other specified public entities and officers, from paying fees for filing document or performance of official service, with specified exceptions).

Because these sections already generally exempt the state from paying fees, **there is no need to include a further exemption in proposed new Section 68083.** A wholesale exemption, like the one for a county in Section 24350, would be inappropriate, in light of the Legislature’s recent enactment of the carefully

tailored exemption cited above. The Commission should not disrupt that recent legislative policy choice. However, it might be helpful to **refer to the existing exemptions in the proposed Comment, as shown in underscore below:**

Comment. Section 68083 continues material formerly located in Section 24350, with revisions to reflect (1) the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution, and (2) the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200 (state funding of “court operations”).

The state and certain other governmental entities are generally exempt from payment of court fees. See Gov’t Code § 70633(c) (“[n]o fee shall be charged by the clerk for service to any municipality or county in the state, to the state government, nor to the United States of America or any of its officers acting in his or her official capacity,” subject to narrow exceptions provided in Section 70633(b)); see also Gov’t Code § 6103 (prohibiting state and its officers, and other specified public entities and officers, from paying fees for filing document or performance of official service, with specified exceptions).

If the Commission agrees, we will incorporate this change into the tentative recommendation.

NOTES SPECIALLY SEEKING COMMENT

Earlier in the study, the Commission specially sought input on several issues. In response, the Commission received comments on most, but not all, of those issues. For issues on which special input was sought but none was received, the staff suggests including a Note in the tentative recommendation to specially seek input on those issues. The staff has drafted such Notes, and included them in the attached draft. These Notes relate to proposed Code of Civil Procedure Section 631.2, shown on pp. 19-20 of the Attachment, and Government Code Section 71384, shown on p. 47 of the Attachment.

Additionally, the staff suggests including a Note to Family Code Section 1820, on which the Commission did not previously seek comment. The Note is shown on p. 25 of the Attachment.

The Commission should review the Notes and decide whether to include them, with or without change, in the tentative recommendation.

NEXT STEP

The Commission and interested persons should review the attached draft of a tentative recommendation. **At its upcoming meeting, the Commission should decide whether to approve the draft for circulation as a tentative recommendation, with or without change.**

Respectfully submitted,

Catherine Bidart
Staff Counsel



Law Revision Commission
RECEIVED

MAR 11 2010

File: _____

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
SITTING AS THE JUVENILE COURT

JUDGE STACY BOULWARE EURIE
PRESIDING JUDGE

9605 KEIFER BOULEVARD
SACRAMENTO, CALIFORNIA 95827
(916) 875-5200

March 8, 2010

Barbara Gaal, Chief Deputy Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: February 22, 2010 Request for Comment

Dear Ms. Gaal,

I am writing on behalf of the Sacramento Superior Court's Juvenile Court regarding the Law Revision Commission's request for comment. Specifically, I am writing with respect to Education Code section 56159, which provides that if the court orders a child with exceptional needs placed in a licensed children's institution or foster home, then the court itself is responsible for paying the non-educational costs associated with such a placement. As written, this particular code section fails to accurately reflect the division of responsibilities between the county and originating school district, the practical reality of financial divisions, and it is ineffective with respect to policy considerations.

As you are aware, there is a complex statutory system that directs that each originating school/educational district is responsible for paying the educational expenses for children residing in licensed children's institutions or foster homes and the county, not the court, is responsible for paying the living expenses for such children. Here in Sacramento, the debate surrounds which public agency (the county or the school district) is responsible for the transportation. I am unaware of any matter wherein our court has been assigned the financial responsibility for the non-educational costs for such placements.

With respect to the policy consideration, the court is responsible for making decisions regarding the needs of the child based upon the law, evidence and sound judgment. While we are mindful of budgetary restrictions, it is not one of the legally guiding factors in a decision. To shift or assign the cost of placing a child with exceptional needs in a licensed children's institution or foster home to the court would unduly burden the court with unnecessary conflict of interests.

Thank you for the opportunity to provide input to the Commission.

Respectfully,

A handwritten signature in black ink, reading "Stacy Boulware Eurie". The signature is written in a cursive, flowing style.

Stacy Boulware Eurie
Presiding Judge of the Juvenile Court

**EMAIL FROM DARYL KENNEDY, GENERAL COUNSEL OF THE SHASTA
COUNTY SUPERIOR COURT
(APRIL 14, 2010)**

Barbara Gaal
Chief Deputy Counsel
California Law Revision Commission

Dear Ms. Gaal:

Your February 22, 2010, letter to Presiding Judge Stephen H. Baker has been forwarded to me for comment. With your letter, you included the First Supplement to Memorandum 2009-50, which addresses issues regarding the collection of moneys by superior court personnel that arise due to obsolete statutory language.

I agree with the general concept, expressed at page 4 of the first supplement, of enacting proposed Government Code section 68083 to mirror current Government Code section 24350, but I would suggest the language of the proposed statute be broadened to clarify that superior court employees are not required to accept any payment in coin, rather than limiting the principle to payments of fees.

I do not believe this would be a substantive change in the law. As you know, prior to trial court restructuring, because superior court employees were county employees, Government Code section 24350 authorized them to refuse payments of fees in coin. In addition, Government Code section 24353 authorized superior court employees to refuse any payment in coin for the same reason. See the second sentence of section 24353.

Section 24353 was amended effective January 1, 2006, to include a reference to superior court employees, but at the same time, the statute was also made inapplicable to civil filing fees collected by the superior court and certain other fees and fines also collected by the superior court. See the last sentence of section 24353 as it is currently written.

It appears that the last sentence was intended to address issues regarding the place where moneys collected by the court are to be deposited. However, an unintended consequence of the sentence is that superior court employees do not have express authority to refuse payments of the specified fees and fines in coin. This anomaly could be readily addressed by changing the last sentence of proposed section 68083 to read:

“No salaried officer of a superior court shall be required to accept payment in coin.”

Thank you for your consideration.

Daryl E. Kennedy
General Counsel
Shasta County Superior Court
530-229-8160

**EMAIL FROM TRACY KENNY, ADMINISTRATIVE
OFFICE OF THE COURTS
(APRIL 7, 2010)**

Catherine-

Our folks have researched the issue that you raised with regard to Ed Code section 56159 which reads:

If a district, special education local plan area, or county office does not make the placement decision of an individual with exceptional needs in a licensed children's institution or in a foster family home, the court, regional center for the developmentally disabled, or public agency, excluding an education agency, placing the individual in the institution, shall be responsible for the residential costs and the cost of noneducation services of the individual.

Their conclusion is that the court would never be in the position of paying these costs because the court is never the placing agency. Here is the meat of the memo that I received:

In dependency or delinquency cases in California, it is my understanding that the court is never the placing agency. At disposition, upon removal of the child from the parent's custody, the court orders the care, custody and control of the child to be under the supervision of the social worker (in dependency) or probation officer (in delinquency). (See Welf. and Inst. Code secs. 361.2(e) for dependency and 727(a) for delinquency). The social worker or probation officer is then responsible for placing the child. Thus, the child welfare agency or probation department is the placing agency, not the court. And these agencies are already included in the statute, under the general category "public agency".

The courts have held that even in situations where the court makes a "specific placement order", directing the child welfare agency or probation department to place the child in a particular setting, the court does not take on the role of placing agency. Rather, it is exercising its oversight role, while the child welfare agency or probation department continues to play the role of placing agency. See *In re Robert A.* (1992) 4. Cal.App.4th 174.

Funding streams are in place for the county child welfare agencies and probation departments to pay for these costs (see Welf. and Inst. Codes sections 16513, 10100 *et seq* and 15200 *et seq*). To my knowledge, there are no such funding streams established for the courts to pay for children's placements, and this lack of funding has not been a problem, since the responsibility to pay for the placements lies squarely with the county agencies.

Thus the memo concludes:

I don't believe it is necessary to amend Education Code Sec. 56159. The agencies that should pay for the placements are already included in the section, under the general category "public agency".

If it is felt that a change is needed, I would suggest simply removing the reference to the courts from this statute, or removing it and adding “county child welfare agency” and “county probation department” to the list.

I hope this helps you as you analyze the section, I think the bottom line is that this isn't really an issue that fits within the trial court funding modernization umbrella because the court has never really been on the hook for these costs.

Please feel free to contact me if you have any questions.

Tracy

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"Serving the courts for the benefit of all Californians."

To Hon. James McBride

From Hon. Patrick Mahoney

Re California Law Revision Commission's April 13, letter regarding
Law Commission Study on Trial Court Restructuring

At my request, Commissioner Slabach reviewed to study given that is
our most experienced Family Court judicial officer. The following are
her comments:

I have now reviewed all the proposed amendments and
requests for input. I do not find any proposed amendments
objectionable.

As to the requests for input:

Page 15 Conciliation Court – This seems a moot issue. I can't
recall any requests for counseling services to help parties
reconcile their relationship in lieu of divorce. BUT, if we did,
neither the court nor the county should provide funding for an
outside "agency" or "service" such as medical or religious
personnel. I would assume they would be paid for by the
"litigants/reconciles."

Page 25 Mediation Intake – No revision is needed for Section
3181. We have a lot of "agencies" providing services to our
litigants who may wish to (and probably should) require intake
forms relating to Domestic Violence (e.g., Rally, VLSP, co-
parent counselors, evaluators, special masters, etc

The vast majority of the changes merely address language not
substance.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)

August 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **October 25, 2010.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
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SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, California's trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions.

By statute, the Law Revision Commission is responsible for recommending revisions to the codes to reflect trial court restructuring. The Commission has done extensive work in response to this directive, and several major recommendations have been enacted.

This tentative recommendation proposes additional statutory revisions to reflect trial court restructuring. The Commission identified most of the provisions in this tentative recommendation by systematically searching the codes for provisions that still need revision to reflect the shift from county to state funding of trial court operations. This tentative recommendation proposes revisions relating to the following topics:

- Funding of court operations.
- Management of courts and employment of court personnel.
- Accounting by the courts.
- References to a judicial district.
- Fines, forfeitures, and deposits relating to a violation of the Alcoholic Beverage Control Act (Bus. & Prof. Code § 25762).
- Money collected relating to a failure to provide proof of responsibility for a vehicle (Penal Code § 1463.22).

This tentative recommendation was prepared pursuant to Government Code Sections 70219 and 71674, and Resolution Chapter 98 of the Statutes of 2009.

1 TRIAL COURT RESTRUCTURING: RIGHTS AND
2 RESPONSIBILITIES OF THE COUNTY AS
3 COMPARED TO THE SUPERIOR COURT
4 (PART 1)

5 The trial court system in California was significantly restructured, beginning in
6 the late 1990s and continuing into the next decade. The major trial court
7 restructuring reforms include:

- 8 • State, as opposed to county, funding of trial court operations under the
9 Lockyer-Isenberg Trial Court Funding Act of 1997 (hereafter, the “Trial
10 Court Funding Act”).¹
- 11 • Trial court unification on a county-by-county basis, eventually occurring in
12 all counties. Trial court operations have been consolidated in the superior
13 court of each county and municipal courts no longer exist.²
- 14 • Enactment of the Trial Court Employment Protection and Governance Act
15 (hereafter, the “TCEPGA”), which established a new personnel system for
16 trial court employees.³ Under the TCEPGA, trial court employees are
17 employed by the court, rather than the county.⁴

18 As a result of these reforms, hundreds of sections of the California codes needed
19 to be revised. The Legislature directed the Law Revision Commission to
20 recommend revisions that would reflect these reforms.⁵

1. See 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655. An earlier trial court funding act made the state partially responsible for funding trial court operations. 1988 Cal. Stat. ch. 945. That act was known as the Brown-Presley Trial Court Funding Act. Its name is still used in Government Code Section 77000.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2000 Cal. Stat. ch. 1010; see Gov’t Code §§ 71600 (providing that Sections 71600-71675 are Trial Court Employment Protection and Governance Act). A special act relating to interpreters, the Trial Court Interpreter Employment and Labor Relations Act, was also enacted. See 2002 Cal. Stat. ch. 1047; Gov’t Code §§ 71800-71829.

4. See Gov’t Code §§ 71615(c)(5) (trial court as employer of all trial court employees); see also Gov’t Code §§ 71601(l) (“trial court employee” defined); 71645(a) (“On and after the implementation date of this chapter, this article shall become the employment, selection, and advancement system for all trial court employees within a trial court and shall become part of the sole trial court employee system, replacing any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date of this chapter.”).

5. Gov’t Code § 71674 (directing Commission to determine whether any provisions are obsolete as a result of trial court restructuring reforms and to report its recommendations and proposed statutory changes

1 The Commission has completed a vast amount of work on trial court
2 restructuring, and the Legislature has enacted several measures to implement the
3 Commission’s recommendations.⁶ In this work, the Commission has sought to
4 update the statutes without making any substantive changes other than those
5 necessary to reflect the trial court restructuring reforms.⁷ This tentative
6 recommendation is intended to continue that approach.

7 The Commission has recently focused on identifying provisions that still need to
8 be revised to reflect the enactment of the Trial Court Funding Act (i.e., to reflect
9 the shift from county funding to state funding of trial court operations). The
10 Commission is searching the codes systematically for key terms, including
11 “county” and “board of supervisors.”

12 This tentative recommendation proposes revisions to numerous statutes
13 identified through these systematic searches, as well as a few statutes previously
14 identified as requiring attention. The proposed revisions would not only address
15 material made obsolete by the enactment of the Trial Court Funding Act, but also
16 some material made obsolete by trial court unification or the enactment of the
17 TCEPGA.

18 This tentative recommendation proposes revisions relating to the following
19 topics:

- 20 • Funding of court operations.
- 21 • Management of courts and employment of court personnel.
- 22 • Accounting by the courts.
- 23 • References to a judicial district.

to the Legislature). The Commission is also authorized to make recommendations “pertaining to statutory changes that may be necessitated by court unification.” 2009 Cal. Stat. res. ch. 98; see also Gov’t Code § 70219.

6. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999); *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 (Proposition 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), implemented by 2007 Cal. Stat. ch. 43; *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (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; *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, ___ Cal. L. Revision Comm’n Reports ___ (2009), legislation pending as AB 2767 (Committee on Judiciary).

7. See, e.g., *Revision of Codes*, *supra* note 6; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 18-19, 28 (1994).

1 The Commission likewise recommends revising several other provisions to
2 reflect that “court operations” are now paid by the state, instead of the county,
3 under the Trial Court Funding Act.¹⁴

4 However, the extent of revisions needed to one such provision is not readily
5 apparent. Family Code Section 1838 governs family conciliation court
6 proceedings, which are designed “to effect a reconciliation of the spouses or an
7 amicable adjustment or settlement of the issues in controversy.”¹⁵ Subdivision (b)
8 provides that a court, upon the parties’ consent, may invoke the aid of a medical or
9 other specialist, scientific expert, or director of a religious denomination to which
10 the parties belong. Subdivision (b) further provides that the aid may be paid by the
11 county or court if the board of supervisors “specifically provides and authorizes
12 the aid.”

13 Because counties no longer fund court operations, it is no longer appropriate for
14 a county to provide or authorize payment by a court.¹⁶ It is unclear, however,
15 whether aid invoked by a court under subdivision (b) is a “court operation” under
16 the Trial Court Funding Act, and thus unclear whether the court may pay for the
17 aid.¹⁷

14. See, e.g., proposed amendments to Code Civ. Proc. §§ 631.2, 116.940; Evid. Code § 754; Fam. Code §§ 1834, 1838, 7553, 7556; Gov’t Code §§ 29603, 68098, 68551 & Comments *infra*; see also proposed amendment to Educ. Code § 56159 (reflecting that payment of individual’s residential and non-educational expenses is not court operation) & Comment *infra*.

The Commission also recommends a technical revision related to Code of Civil Procedure Section 631.2. Subdivision (a) of that provision is identical to Code of Civil Procedure Section 631.1. Accordingly, the Commission recommends deleting Section 631.1 as surplusage. See proposed repeal of Code Civ. Proc. § 631.1 & Comment *infra*.

15. See Fam. Code § 1838(a).

16. As to the authorization in subdivision (b) for the *county* to pay for the aid with *county* funds, the Commission recommends retaining that authorization. That would continue the legislative policy decision embodied in the provision for there to be a mechanism to pay for the aid with public funds. Whether a *court* may pay for the aid with *court* funds, however, depends on whether the aid is a court operation.

17. Because the court may invoke the aid as part of the court’s conciliation function, it might be reasonable to treat such aid as a court operation. But the definition of “court operations” does not expressly cover such aid.

The definition lists an expert witness appointed for the court’s needs as a court operation. See Cal. R. Ct. 10.810(d), Function 10 (“court-appointed expert witness fees (for the court’s needs)”). But aid by an expert under Section 1838(b) does not appear to be aid by an expert witness. The aid by the expert is to help the parties conciliate, rather than provide testimony to help a court decide a case.

The definition also classifies “court-ordered forensic evaluations and *other professional services* (for the court’s own use)” as a court operation. See Cal. R. Ct. 10.810(d), Function 10 (emphasis added). The Commission seeks input on whether the reference to professional services for the court’s use encompasses aid invoked by a court under Section 1838(b).

In addition, the definition lists items relating to dispute resolution programs, including conciliators, as court operations. See Cal. R. Ct. 10.810(d), Function 6 (listing court operations relating to dispute resolution programs, including conciliators, but stating that “[a]ny other *services*, supplies, and equipment are under Function 10) (emphasis added). The Commission would also appreciate input on whether court-

1 The Commission tentatively proposes revisions in accordance with the view that
2 the aid is a court operation.¹⁸ Given the lack of clarity on the matter, the
3 Commission encourages comment on whether the aid is a court operation for
4 which courts may pay.

5 MANAGEMENT OF COURTS AND
6 EMPLOYMENT OF COURT PERSONNEL

7 Trial court restructuring reforms transferred responsibility for managing the
8 courts and employing court personnel from the county to the court itself.

9 The Trial Court Funding Act relieved the county of responsibility for managing
10 the courts. Under that act, courts manage themselves under a decentralized
11 system.¹⁹

12 The TCEPGA relieved the county of responsibility for employing court
13 personnel. Pursuant to that act, the court itself employs and manages trial court
14 employees.²⁰

15 These reforms, along with the shift in funding court operations from the county
16 to the state, have several implications. For example, duties to manage the courts
17 should no longer be attributed to the county, and the county should no longer be
18 treated as the employer of court personnel. Additionally, the court should no
19 longer be classified as a county entity.

20 The Commission has identified several provisions that still need to be revised to
21 reflect these implications. An example is Family Code Section 1820, which relates
22 to family conciliation court services:

- 23 • Subdivision (a) authorizes a *county* to contract with another *county* to
24 provide joint family conciliation court services. Now that the county no
25 longer funds or manages the courts, subdivision (a) should authorize *courts*
26 themselves to contract with each other for such services.²¹
- 27 • Subdivision (b) says that the contract for such services may provide that the
28 treasurer of one participating *county* is the custodian over money made
29 available for the services. Subdivision (b) also authorizes payment from that
30 money upon audit by the appropriate *county* officer. Because money for the

invoked aid under Section 1838(b) falls under this classification, because the aid relates to dispute resolution by conciliation.

18. See proposed amendment to Fam. Code § 1838 & Comment *infra*.

19. See Gov't Code § 77001 (providing for local trial court management).

20. See Gov't Code § 71615(c)(5) (trial court as employer of all trial court employees); see also Gov't Code §§ 71601(l) ("trial court employee" defined), 71645 (duty of each court to develop personnel rules on hiring, promotion, transfer, and classification).

21. Family Code Section 1820(d) should be revised for a similar reason. That provision refers to a *county's* contract to provide joint conciliation court services. It should instead refer to a *court's* contract.

1 services would now come from courts' budgets managed by the courts
2 themselves, subdivision (b) should provide that one participating *court* may
3 serve as custodian of the money. Similarly, subdivision (b) should authorize
4 payment from that money upon audit by a *court* officer.

- 5 • Subdivision (c)(3) provides that family conciliation court staff, excluding
6 judges and other court personnel, may be considered employees of one
7 participating *county*, for specified purposes. Because court employees are no
8 longer county employees, subdivision (c)(3) should refer to employees of
9 one participating *court*, rather than a participating county.

10 The Commission recommends revisions to Section 1820 that would effectuate
11 those changes.²²

12 The Commission also recommends revisions to several other provisions, to
13 similarly reflect the transfer of responsibility for managing the courts and
14 employing court personnel.²³

15 ACCOUNTING BY THE COURTS

16 The Trial Court Funding Act provides that the Judicial Council, in consultation
17 with the Controller, is to maintain regulations for recordkeeping and accounting by
18 the trial courts, as follows:

19 *The Judicial Council, in consultation with the Controller, shall maintain*
20 *appropriate regulations for recordkeeping and accounting by the courts. The*
21 *Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs*
22 *of the trial courts are managed efficiently, effectively, and responsibly, and (2) all*
23 *moneys collected by the courts, including filing fees, fines, forfeitures, and*
24 *penalties, and all revenues and expenditures relating to court operations are*
25 *known. ...*²⁴

26 A few provisions relating to accounting and recordkeeping by the courts still
27 need to be revised to reflect that oversight responsibility is shared by the Judicial
28 Council and the Controller under the Trial Court Funding Act.

29 For example, Government Code Section 71380 provides that *the Controller* is
30 responsible for establishing and supervising a uniform accounting system for all
31 fines, penalties, forfeitures, and fees assessed by courts. To reflect the shared
32 oversight responsibility prescribed by the Trial Court Funding Act, the
33 Commission recommends revising the section to provide that the *Judicial Council*,

22. See proposed amendment to Fam. Code § 1820 *infra*.

23. See, e.g., proposed amendments to Fam. Code §§ 1814, 1850, 3025.5, 3170, 3173, 3188, 6303 & Comments *infra*. The proposed amendment to Family Code Section 3188 would also correct a technical error.

24. Gov't Code § 77206(a); see also Gov't Code § 77206(c) (authorizing Controller and Judicial Council to audit courts).

1 *in consultation with the Controller*, is responsible for establishing and supervising
2 the uniform accounting system.²⁵

3 The Commission likewise recommends revising other provisions to reflect that
4 oversight responsibility is shared by the Judicial Council and the Controller under
5 the Trial Court Funding Act.²⁶

6 REFERENCES TO A JUDICIAL DISTRICT

7 Several provisions that refer to a “judicial district” need revision to reflect trial
8 court restructuring reforms. Before those reforms, a statutory reference to a
9 judicial district usually was intended to refer to a judicial district of a municipal
10 court.²⁷

11 To accommodate unification of the municipal and superior courts on a county-
12 by-county basis, Code of Civil Procedure Section 38 was enacted.²⁸ Among other
13 things, the section governs the meaning of a reference to a judicial district in a
14 county in which unification has occurred (i.e., a county in which there is no longer
15 a municipal court). In such a county, a reference to a judicial district that relates to
16 a municipal court means the county, unless the provision or its context otherwise
17 requires.²⁹

18 Because unification has occurred in all counties,³⁰ and because most pre-
19 unification references to a judicial district related to a municipal court,³¹ a
20 reference to a judicial district now generally means the county.³²

25. See proposed amendment to Gov’t Code § 71380 & Comment *infra*.

26. See proposed amendments to Gov’t Code §§ 71381, 71382, 71384 & Comments *infra*.

The Commission also recommends revising Government Code Section 24352 to reflect the shared oversight of the Judicial Council and the Controller. The section applies to “[e]ach officer authorized to receive fees pursuant to this title.” That language encompasses a court officer, as well as a county officer. Section 24352 requires such officers to maintain a record of fees collected in accordance with *the Controller’s* guidelines. As to a court officer, however, this appears to be superseded by the recordkeeping requirement in the Trial Court Funding Act, which makes such an officer subject to regulations formulated by the *Judicial Council, in consultation with the Controller*. As a result, the Commission recommends revising Section 24352 to reflect that it no longer applies to a court officer. See proposed amendment to Gov’t Code § 24352 & Comment *infra*.

27. See *Revision of Codes, supra* note 6, at 70.

28. See 1998 Cal. Stat. ch. 931, § 20; see also *Revision of Codes, supra* note 6, at 132.

29. See Code Civ. Proc. § 38(d). In a county in which unification had not yet occurred, a reference to a judicial district that related to a municipal court meant the municipal court, unless the provision or its context otherwise required. See Code Civ. Proc. § 38(c).

30. See *supra* note 2.

31. See *Revision of Codes, supra* note 6, at 70.

32. See Code Civ. Proc. § 38(d). Note, however, that for limited purposes, such as traffic schools and publication of notice, former municipal court districts have ongoing relevance. See, e.g., Gov’t Code

1 The provisions in this recommendation that refer to a judicial district fall into
2 two categories: (1) provisions that refer to a judicial district alone, and
3 (2) provisions that refer to both a judicial district and a county in the same phrase.
4 Each category is discussed in turn below.

5 **Reference to a Judicial District Alone**

6 Three provisions in this recommendation refer to a judicial district alone. These
7 provisions pertain to matters to be determined by a County Boundary Review
8 Commission, including boundaries of municipal court districts within a county
9 when the county's boundaries change.³³

10 Because there are no more municipal courts, the references to a judicial district
11 are no longer necessary. Moreover, if the references were treated as references to
12 the county (under Code of Civil Procedure Section 38), the provisions pertaining
13 to the County Boundary Review Commission would direct it to determine
14 boundaries of counties within a county, which is nonsensical. Accordingly, the
15 provisions should be revised to remove the references to a judicial district.³⁴

16 **Reference to a Judicial District Alongside a Reference to a County**

17 Several provisions refer to both a judicial district and a county in the same
18 phrase, for example, "a county or judicial district," or "an officer of a county or
19 judicial district."

20 As explained above, a reference to a judicial district is generally to be treated as
21 a reference to the county.³⁵ Accordingly, a provision that refers to a "county or
22 judicial district" effectively refers twice to the county. The reference to a judicial
23 district is thus redundant. The Commission recommends deleting the redundant
24 references to a judicial district.³⁶

25 Before trial court restructuring, a reference to the county encompassed the
26 superior court. Due to trial court restructuring, many of the provisions that refer to
27 a county no longer contain material that is applicable to a superior court. Other
28 provisions, however, continue to contain material that is applicable to a superior
29 court. Each type of these provisions is discussed in turn below.

§ 71042.5 (preservation of municipal court district for purpose of publication within judicial district); Veh. Code § 11205(c) (requiring traffic violator school referral list to "be organized alphabetically in sections for each county and subsections for each judicial district within the county").

33. See Gov't Code §§ 23249, 23332, and 23535.

34. See proposed amendments to Gov't Code §§ 23249, 23332, 23535 & Comments *infra*.

35. See Code Civ. Proc. § 38(d); *Revision of Codes, supra* note 6, at 70.

36. See proposed amendments to Gov't Code §§ 1651, 1750, 24350, 24351, 24353, 25252.6, 25257, 27080.1, 29320, 29370, 29370.1, 29371, 29372, 29373, 29374, 29375, 29376, 29377, 29379, 31116 *infra*.

1 ***Provisions with Material that is No Longer Applicable to a Superior Court***

2 Many provisions that refer to “a county or judicial district” or use a similar
3 phrase contain material that is no longer applicable to a superior court. For most of
4 these provisions, no revision is needed, beyond deleting the reference to a judicial
5 district.³⁷

6 An exception is Government Code Section 29320, which refers not only to an
7 officer of a county or judicial district, but also expressly refers to an officer of a
8 superior court. The provision defines a county officer as an officer of a county,
9 superior court, or judicial district. The definition, however, applies only to an
10 article that governs a revolving fund of the county.³⁸ Money in that fund may not
11 be spent on any service or material unless it is a charge against the county.³⁹ As
12 the county no longer funds or manages the court, it seems unlikely that a court
13 officer could use this revolving fund. Accordingly, it appears the definition of a
14 county officer that applies to the revolving fund should no longer include a
15 superior court officer. The Commission therefore recommends deleting the
16 reference to a superior court officer from Section 29320.⁴⁰

17 ***Provisions with Material that Remains Applicable to a Superior Court***

18 Some provisions that refer to “a county or judicial district” or use a similar
19 phrase contain material that remains applicable to a superior court, as well as a
20 county. These provisions require revision beyond deleting the now redundant
21 reference to the judicial district.⁴¹ Because the reference to the county no longer
22 encompasses the superior court, a reference to the court needs to be added.⁴²

37. See, e.g., proposed amendments to Gov’t Code §§ 24351, 25252.6, 25257, 29370, 29370.1, 29371, 29372, 29373, 29374, 29375, 29376, 29377, 29379, 31116 *infra*. However, regarding the proposed amendments to Government Code Sections 25257 and 29370, the Commission seeks input on whether authority bestowed to the county in those provisions is authority possessed by courts, and if not, whether it should be. See Notes to proposed Gov’t Code §§ 25257, 29370 *infra*. Also, regarding the proposed amendment to Government Code Section 31116, the Commission seeks input on the effect of the TCEPGA on the section. See Note to proposed Gov’t Code § 31116 *infra*.

38. Gov’t Code § 29320.

39. Gov’t Code § 29326.

40. See proposed amendment to Gov’t Code § 29320 *infra*.

41. The deletion of the reference to a judicial district is explained in the text accompanying notes 30-32 & 35-36 *supra*.

42. See, e.g., proposed amendments to Gov’t Code §§ 1651, 1750, 27080.1 *infra*. Further adjustments are also needed to make these provisions apply properly to the court. For example, Government Code Section 1651 provides that a county is to pay the bond premium of an officer of a county or judicial district. Because the reference to an officer of a county encompassed an officer of a superior court, the requirement for a county to pay a county officer’s bond premium included a requirement to pay a superior court officer’s bond premium. Because the county no longer funds the court, the county should no longer pay a court officer’s bond premium. Instead, the court itself should pay a court officer’s bond premium. The

1 Some of the provisions, however, are located in a title of the Government Code
2 that relates to counties. An example is Government Code Section 24350, which
3 pertains to the collection of fees. Instead of adding a reference to the court in this
4 location, the Commission recommends relocating the material applicable to the
5 court to a new provision in the title of the Government Code that relates to
6 courts.⁴³

7 FINES, FORFEITURES, AND DEPOSITS
8 GOVERNED BY BUSINESS AND PROFESSIONS
9 CODE SECTION 25762

10 Business and Professions Code Section 25762 governs the distribution of fines,
11 bail forfeitures, and bail deposits, relating to a violation of the Alcoholic Beverage
12 Control Act.⁴⁴ The section provides that money from such fines, forfeitures, and
13 deposits is distributed based on which court — superior or municipal — collects
14 the money. The money collected by a *superior court* is to be paid to the county.⁴⁵
15 The money collected by a *municipal court* is to be deposited with the county, but
16 then distributed to a variety of governmental entities pursuant to a scheme set forth
17 in other sections.⁴⁶

18 Because municipal courts no longer exist, Section 25762 should no longer refer
19 to the municipal court as a way of directing where money is to be distributed.
20 However, revisions to remove references to the municipal court from Section

Commission therefore recommends revising the provision to provide that the court, rather than the county, is to pay a court officer's bond premium. See proposed amendment to Gov't Code § 1651 *infra*.

43. See proposed new Gov't Code § 68083 & Comment *infra*. The Commission similarly recommends relocating material in Government Code Section 24353 that is applicable to the superior court to the title of the Government Code that relates to courts. See proposed new Gov't Code § 68083.5 & Comment *infra*.

Due to these changes, another provision — Government Code Section 72004 — should be revised. Section 72004 provides that Sections 24350 and 24353 apply to the superior court. (Section 72004 also provides that other provisions apply to the court, but these other provisions do not contain material that remains applicable to a court). Because material applicable to a court in Sections 24350 and 24353 will be relocated to new provisions that will state expressly that they apply to the superior court, Section 72004 is no longer necessary. Accordingly, the Commission recommends repealing Section 72004. See proposed repeal of Gov't Code § 72004 & Comment *infra*.

44. See Bus. & Prof. Code § 25762; see also Bus. & Prof. Code § 23000 (providing that Sections 23000-25762 are Alcoholic Beverage Control Act).

45. See Bus. & Prof. Code § 25762 (providing that money “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”) (emphasis added).

46. See Bus. & Prof. Code § 25762 (providing that money collected by a municipal court is to be distributed pursuant to Penal Code Section 1463); see also Penal Code §§ 1463 (directing “[a]ll fines and forfeitures imposed and collected for crimes” to “be distributed in accordance with Section 1463.001”), 1463.001 (directing money to be distributed to variety of governmental entities).

1 25762 should preserve where money is distributed. This would be consistent with
2 the long-standing approach of revising statutes to reflect trial court restructuring
3 reforms, without making any substantive changes other than those necessary to
4 reflect those reforms.

5 As a result, the Commission recommends revising the provision to direct money
6 based on the *type of case* in which the money is collected, rather than which court
7 collects the money.⁴⁷ To accomplish that, money collected in a *type of case* that
8 was formerly heard by a *municipal court* would be directed in the same manner as
9 money that was formerly collected by a *municipal court*.⁴⁸ Money collected in a
10 *type of case* that was formerly heard by a *superior court* would be directed in the
11 same manner as money that was formerly collected by a *superior court*.⁴⁹ In sum,
12 the type of case in which the money is collected would be a proxy for
13 distinguishing which court would have collected the money before trial court
14 restructuring, and would be used to determine the distribution of that money.

15 MONEY GOVERNED BY PENAL CODE
16 SECTION 1463.22

17 Penal Code Section 1463.22 concerns the allocation of fines and forfeitures
18 relating to a conviction or bail forfeiture for a violation of Vehicle Code Section
19 16028, following their deposit with the county treasurer. Vehicle Code Section
20 16028 is violated by a failure to provide proof of financial responsibility for a
21 vehicle, upon demand by a peace officer or a traffic collision officer, as specified.

22 Penal Code Section 1463.22 allocates the fines and forfeitures to three
23 recipients:

- 24 • *The trial courts*.⁵⁰ A specified amount of the fines collected for a conviction
25 of Vehicle Code Section 16028 is to defray costs of the municipal and
26 superior courts in administering specified Vehicle Code sections.⁵¹ The

47. See proposed amendment to Bus. & Prof. Code § 25762 & Comment *infra*.

48. See proposed amendment to Bus. & Prof. Code § 25762(b) & Comment *infra*. Specifically, money collected in a type of case formerly heard by the *municipal court* would be deposited with the county, then distributed to a variety of governmental entities, as before. *Id.*

49. See proposed amendment to Bus. & Prof. Code § 25762(a), (c) & Comment *infra*. Specifically, money collected in a type of case formerly heard by the *superior court* would be paid to the county, as before. *Id.*

50. See Penal Code § 1463.22(a).

51. The specified sections are Vehicle Code Sections 16028, 16030, and 16031. Each of those sections was repealed by its own terms in the early 1990s. Similar provisions, however, were later enacted as new Vehicle Code Sections 16028 and 16030. See 1996 Cal. Stat. ch. 1126, §§ 6, 8. The Commission therefore recommends retaining the references to Sections 16028 and 16030, but deleting the reference to Section 16031. See proposed amendment to Penal Code § 1463.22(a) & Comment *infra*.

1 county treasurer is to deposit the amount into a special account. If it exceeds
2 the amount needed to defray the courts' costs, the county treasurer must
3 redeposit the excess money into the county treasury, for distribution
4 pursuant to a scheme set forth in other sections.⁵²

- 5 • *The Department of Motor Vehicles (hereafter, "the DMV")*.⁵³ A specified
6 amount of the fines collected for a conviction of Vehicle Code Section
7 16028 is to be placed into a special account, then transmitted for deposit into
8 the Motor Vehicle Account in the State Transportation Fund. This money is
9 intended to defray all of the DMV's costs in administering specified Vehicle
10 Code sections.⁵⁴
- 11 • *The General Fund*.⁵⁵ A specified amount of the fines collected for a
12 conviction of, or forfeiture of bail relating to, Vehicle Code Section 16028 is
13 to be deposited into a special account, then transmitted for deposit into the
14 General Fund.

15 To summarize, Penal Code Section 1463.22 ultimately allocates to the courts,
16 the DMV, and the General Fund, specified portions of revenue pertaining to a
17 violation of Vehicle Code Section 16028, which relates to a failure to provide
18 proof of financial responsibility for a vehicle.

19 Penal Code Section 1463.22 needs to be revised to reflect trial court
20 restructuring, as explained below.⁵⁶ The discussion first addresses revisions to
21 reflect trial court unification. It then analyzes whether revisions are needed to
22 reflect the Trial Court Funding Act.

52. See Penal Code §§ 1463 (directing "[a]ll fines and forfeitures imposed and collected for crimes" to "be distributed in accordance with Section 1463.001"), 1463.001 (directing money to be distributed to variety of governmental entities).

53. See Penal Code § 1463.22(b).

54. The specified sections are Vehicle Code Sections 16031, 16032, 16034, and 16035. Those sections were repealed by their own terms in the early 1990s. However, other provisions currently impose duties on the DMV that are similar to the duties that were imposed on the DMV by the repealed sections. See 1996 Cal. Stat. ch. 1126 (AB 650), § 8 (enacting Vehicle Code Section 16030); see also 1999 Cal. Stat. ch. 880 (SB 652), § 13 (amending Vehicle Code Section 16030); see also Veh. Code § 13365 (requiring DMV to suspend driving privileges upon receiving notice of failure to appear). Based on input from the DMV, it receives funding pursuant to Penal Code Section 1463.22 for administering the current provisions as it did for administering the repealed sections. See e-mails from Tom Weibel (Assistant Legislative Officer, DMV) in Commission Staff Memorandum 2010-5, Exhibit pp. 1-5. The Commission therefore recommends replacing the obsolete cross-references with cross-references to provisions that impose duties on the DMV that are similar to those that were imposed on the DMV by the repealed sections. See proposed amendment to Penal Code § 1463.22(b) & Comment *infra*.

55. See Penal Code § 1463.22(c).

56. The provision also needs to be revised to correct cross-references to Vehicle Code sections that have been repealed. See notes 51 & 54 *supra*.

1 **Revisions To Reflect Trial Court Unification**

2 Section 1463.22(a) refers to the municipal court, providing that a specified
3 amount of fines is “to defray costs incurred by the municipal and superior courts in
4 administering” specified Vehicle Code sections.

5 Following its unification with the superior court, the municipal court no longer
6 exists. Accordingly, the Commission recommends deleting the reference to the
7 municipal court.⁵⁷ The provision would thus direct to the superior court alone all
8 of the money that is designated to defray court costs. That is appropriate, as all
9 court costs of administering the specified sections are now incurred by the superior
10 court alone.

11 **Revisions To Reflect the Trial Court Funding Act**

12 Section 1463.22(a) directs the county treasurer to deposit the money designated
13 to defray court costs into a special account. The special account is not identified.
14 But it appears to be under the county treasurer’s control, because the county
15 treasurer is to redeposit any excess money into the county treasury, for
16 redistribution pursuant to a scheme set forth in other sections.⁵⁸

17 When the county funded the court, it made sense for the county treasurer to
18 control money allocated to defray court costs. Now that the county no longer funds
19 court operations, it may be appropriate to revise the statute to expressly give the
20 court itself control over that money.⁵⁹ If so, it is unclear where the money should
21 be deposited: into the Trial Court Trust Fund, a court bank account, or elsewhere.
22 Because the matter is unclear, the Commission has not yet recommended any
23 revision pertaining to deposits of money to defray court costs. The Commission
24 particularly encourages input on this issue.⁶⁰

57. See proposed amendment to Penal Code § 1463.22(a) & Comment *infra*. Additionally, the Commission recommends amending Section 1463.22(a) to correct cross-references to Vehicle Code sections that have been repealed. See notes 51 & 54 *supra*.

58. See Penal Code §§ 1463 (directing “[a]ll fines and forfeitures imposed and collected for crimes” to “be distributed in accordance with Section 1463.001”), 1463.001 (directing money to be distributed to variety of governmental entities).

59. Section 1463.22 already expressly provides that the money in the special account is to defray court costs. That statement of purpose may be sufficient to give the court control over the money, because existing Government Code sections facilitate deposits into an account separate from the county treasury. For example, Section 68085.9 authorizes a court, with the consent of the Administrative Director of the Courts and the county, to deposit money into a bank account separate from the county treasury. Also, Section 77009(b) provides that a court and county may agree for the court to “provide depository services in an account established by the Judicial Council for criminal fees, fines, and forfeitures, with the approval of the Administrative Director of the Courts.” Perhaps these existing provisions suffice and no further revisions are needed for fines relating to Penal Code Section 1463.22 to be deposited with the court. But it appears that county-by-county arrangements would be necessary.

60. See Note to proposed Penal Code Section 1463.22 *infra*.

1

FURTHER WORK

2

This tentative recommendation does not deal with all remaining statutes that need revision due to trial court restructuring. The Commission will continue to make recommendations on the subject as issues are resolved and time warrants. Failure to address a particular statute in this tentative recommendation should not be construed to mean that the Commission has decided the statute should be preserved. The statute may be the subject of a future recommendation by the Commission.

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IMPACT OF THE PROPOSED REFORMS

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The recommended legislation would update numerous statutes to reflect trial court restructuring. That would help avoid confusion and prevent disputes, thereby reducing litigation expenses and conserving judicial resources.

11

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PROPOSED LEGISLATION

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

3 SEC. _____. Section 25762 of the Business and Professions Code is amended to
4 read:

5 25762. (a) All fines and forfeitures of bail imposed for a violation of this
6 division and collected in any ~~court other than a municipal court~~ felony case after
7 the indictment or the legal commitment by a magistrate, or at or after the
8 sentencing hearing, shall be paid to the county treasurer of the county in which the
9 court is held.

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

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

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

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

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

30 Subdivision (c) makes clear how this section applies to a case in which both a felony and a
31 misdemeanor were charged. The case is to be treated as a felony, even if the felony charge was
32 dismissed. This is consistent with pre-unification practice. See generally *People v. Leney*, 213
33 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining
34 misdemeanor even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890,
35 897-98, 95 Cal. Rptr. 411 (1971) (same).

36 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
37 would specifically appreciate input on whether the amendment needs to address civil cases as
38 well as criminal cases. The Commission would also especially appreciate input on how the
39 section interrelates with other sections governing bail deposits, particularly Penal Code Section
40 1463.1 and Government Code Sections 53647.5, 53679, and 77009.

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

42 SEC. _____. Section 116.940 of the Code of Civil Procedure is amended to read:

1 116.940. (a) Except as otherwise provided in this section or in rules adopted by
2 the Judicial Council, which are consistent with the requirements of this section, the
3 characteristics of the small claims advisory service required by Section 116.260
4 shall be determined by each county, or by the superior court in a county where the
5 small claims advisory service is administered by the court, in accordance with
6 local needs and conditions.

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

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

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

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

19 (c) In any county in which the number of small claims actions filed annually is
20 1,000 or less as averaged over the immediately preceding two fiscal years, the
21 county or the superior court may elect to exempt itself from the requirements set
22 forth in subdivision (b). This If the small claims advisory service is administered
23 by the county, this exemption shall be formally noticed through the adoption of a
24 resolution by the board of supervisors. If the small claims advisory service is
25 administered by the superior court, this exemption shall be formally noticed
26 through adoption of a local rule. If a county or court so exempts itself, the county
27 or court shall nevertheless provide the following minimum advisory services in
28 accordance with rules adopted by the Judicial Council:

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

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

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

41 (e) Advisers may be volunteers, and shall be members of the State Bar, law
42 students, paralegals, or persons experienced in resolving minor disputes, and shall

1 be familiar with small claims court rules and procedures. Advisers may not appear
2 in court as an advocate for any party.

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

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

9 **Comment.** Section 116.940 is amended to reflect enactment of the Lockyer-Isenberg Trial
10 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See
11 Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of "court operations");
12 see also Cal. R. Ct. 10.810(d), Function 10 ("small claims advisor program costs").

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

17 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
18 would especially appreciate input on (1) the current division of responsibility for small claims
19 advisory services, and (2) whether the proposed amendment would be an appropriate allocation of
20 such responsibility.

21 **Code Civ. Proc. § 631.1 (repealed). Option to pay jury fees in civil case**

22 SEC. _____. Section 631.1 of the Code of Civil Procedure is repealed.

23 ~~631.1. Notwithstanding any other provision of law, the county may pay jury fees~~
24 ~~in civil cases from general funds of the county available therefor. Nothing in this~~
25 ~~section shall be construed to change the requirements for the deposit of jury fees in~~
26 ~~any civil case by the appropriate party to the litigation at the time and in the~~
27 ~~manner otherwise provided by law. Nothing in this section shall preclude the right~~
28 ~~of the county to be reimbursed by the party to the litigation liable therefor for any~~
29 ~~payment of jury fees pursuant to this section.~~

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

32 **Code Civ. Proc. § 631.2 (amended). Option to pay jury fees in civil case**

33 SEC. _____. Section 631.2 of the Code of Civil Procedure is amended to read:

34 631.2. (a) Notwithstanding any other provision of law, the county superior court
35 may pay jury fees in civil cases from general funds of the county court available
36 therefor. Nothing in this section shall be construed to change the requirements for
37 the deposit of jury fees in any civil case by the appropriate party to the litigation at
38 the time and in the manner otherwise provided by law. Nothing in this section
39 shall preclude the right of the county superior court to be reimbursed by the party
40 to the litigation liable therefor for any payment of jury fees pursuant to this
41 section. Nothing in this section shall preclude the right of the county to be
42 reimbursed by the party to the litigation liable therefor for any payment of jury
43 fees pursuant to this section as it read in Section 4 of Chapter 10 of the Statutes of

1 1988, or pursuant to former Section 631.1 as it read in Section 1 of Chapter 144 of
2 the Statutes of 1971.

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

7 **Comment.** Section 631.2 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
8 Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of “court
9 operations”); see also Cal. R. Ct. 10.810(d), Function 2 (jury services).

10 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
11 would especially appreciate input on whether Section 631.2 should refer to funds that the court
12 may use to pay jury fees in civil cases as “general funds of the court,” or whether the funds
13 should be referred to in some other way.

14 **Educ. Code § 56159 (amended). Individual in licensed children’s institution or foster family**
15 **home**

16 SEC. ____ . Section 56159 of the Education Code is amended to read:

17 56159. If a district, special education local plan area, or county office does not
18 make the placement decision of an individual with exceptional needs in a licensed
19 children’s institution or in a foster family home, the ~~court~~, regional center for the
20 developmentally disabled, or public agency, excluding an education agency,
21 placing the individual in the institution, shall be responsible for the residential
22 costs and the cost of noneducation services of the individual.

23 **Comment.** Section 56159 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
24 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-77655). See, e.g.,
25 Gov’t Code §§ 77003 (“court operations” defined), 77200 (state funding of “court operations”);
26 cf. Cal. R. Ct. 10.810 (not listing payment of individual’s residential and non-educational services
27 as “court operation”). The amendment also reflects that the decision to place an individual with
28 exceptional needs is no longer made by the court. See *In re Robert A.*, 4 Cal. App. 4th 174, 187-
29 88, 5 Cal. Rptr. 2d 438 (1992) (explaining that former statutory law had permitted court to make
30 such placement decision).

31 **Evid. Code § 754 (amended). Interpreter for individual who is deaf or hearing impaired**

32 SEC. ____ . Section 754 of the Evidence Code is amended to read:

33 754. (a) As used in this section, “individual who is deaf or hearing impaired”
34 means an individual with a hearing loss so great as to prevent his or her
35 understanding language spoken in a normal tone, but does not include an
36 individual who is hearing impaired provided with, and able to fully participate in
37 the proceedings through the use of, an assistive listening system or computer-aided
38 transcription equipment provided pursuant to Section 54.8 of the Civil Code.

39 (b) In any civil or criminal action, including, but not limited to, any action
40 involving a traffic or other infraction, any small claims court proceeding, any
41 juvenile court proceeding, any family court proceeding or service, or any
42 proceeding to determine the mental competency of a person, in any court-ordered
43 or court-provided alternative dispute resolution, including mediation and

1 arbitration, or any administrative hearing, where a party or witness is an individual
2 who is deaf or hearing impaired and the individual who is deaf or hearing impaired
3 is present and participating, the proceedings shall be interpreted in a language that
4 the individual who is deaf or hearing impaired understands by a qualified
5 interpreter appointed by the court or other appointing authority, or as agreed upon.

6 (c) For purposes of this section, “appointing authority” means a court,
7 department, board, commission, agency, licensing or legislative body, or other
8 body for proceedings requiring a qualified interpreter.

9 (d) For the purposes of this section, “interpreter” includes, but is not limited to,
10 an oral interpreter, a sign language interpreter, or a deaf-blind interpreter,
11 depending upon the needs of the individual who is deaf or hearing impaired.

12 (e) For purposes of this section, “intermediary interpreter” means an individual
13 who is deaf or hearing impaired, or a hearing individual who is able to assist in
14 providing an accurate interpretation between spoken English and sign language or
15 between variants of sign language or between American Sign Language and other
16 foreign languages by acting as an intermediary between the individual who is deaf
17 or hearing impaired and the qualified interpreter.

18 (f) For purposes of this section, “qualified interpreter” means an interpreter who
19 has been certified as competent to interpret court proceedings by a testing
20 organization, agency, or educational institution approved by the Judicial Council
21 as qualified to administer tests to court interpreters for individuals who are deaf or
22 hearing impaired.

23 (g) In the event that the appointed interpreter is not familiar with the use of
24 particular signs by the individual who is deaf or hearing impaired or his or her
25 particular variant of sign language, the court or other appointing authority shall, in
26 consultation with the individual who is deaf or hearing impaired or his or her
27 representative, appoint an intermediary interpreter.

28 (h) Prior to July 1, 1992, the Judicial Council shall conduct a study to establish
29 the guidelines pursuant to which it shall determine which testing organizations,
30 agencies, or educational institutions will be approved to administer tests for
31 certification of court interpreters for individuals who are deaf or hearing impaired.
32 It is the intent of the Legislature that the study obtain the widest possible input
33 from the public, including, but not limited to, educational institutions, the
34 judiciary, linguists, members of the State Bar, court interpreters, members of
35 professional interpreting organizations, and members of the deaf and hearing-
36 impaired communities. After obtaining public comment and completing its study,
37 the Judicial Council shall publish these guidelines. By January 1, 1997, the
38 Judicial Council shall approve one or more entities to administer testing for court
39 interpreters for individuals who are deaf or hearing impaired. Testing entities may
40 include educational institutions, testing organizations, joint powers agencies, or
41 public agencies.

42 Commencing July 1, 1997, court interpreters for individuals who are deaf or
43 hearing impaired shall meet the qualifications specified in subdivision (f).

1 (i) Persons appointed to serve as interpreters under this section shall be paid, in
2 addition to actual travel costs, the prevailing rate paid to persons employed by the
3 court to provide other interpreter services unless such service is considered to be a
4 part of the person's regular duties as an employee of the state, county, or other
5 political subdivision of the state. ~~Payment~~ Except as provided in subdivision (j),
6 payment of the interpreter's fee shall be a charge against the ~~county, or other~~
7 ~~political subdivision of the state, in which that action is pending court.~~ Payment of
8 the interpreter's fee in administrative proceedings shall be a charge against the
9 appointing board or authority.

10 (j) Whenever a peace officer or any other person having a law enforcement or
11 prosecutorial function in any criminal or quasi-criminal investigation or
12 proceeding questions or otherwise interviews an alleged victim or witness who
13 demonstrates or alleges deafness or hearing impairment, a good faith effort to
14 secure the services of an interpreter shall be made, without any unnecessary delay
15 unless either the individual who is deaf or hearing impaired affirmatively indicates
16 that he or she does not need or cannot use an interpreter, or an interpreter is not
17 otherwise required by Title II of the Americans with Disabilities Act of 1990
18 (Public Law 101-336) and federal regulations adopted thereunder. Payment of the
19 interpreter's fee shall be a charge against the county, or other political subdivision
20 of the state, in which the action is pending.

21 (k) No statement, written or oral, made by an individual who the court finds is
22 deaf or hearing impaired in reply to a question of a peace officer, or any other
23 person having a law enforcement or prosecutorial function in any criminal or
24 quasi-criminal investigation or proceeding, may be used against that individual
25 who is deaf or hearing impaired unless the question was accurately interpreted and
26 the statement was made knowingly, voluntarily, and intelligently and was
27 accurately interpreted, or the court makes special findings that either the individual
28 could not have used an interpreter or an interpreter was not otherwise required by
29 Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and
30 federal regulations adopted thereunder and that the statement was made
31 knowingly, voluntarily, and intelligently.

32 (l) In obtaining services of an interpreter for purposes of subdivision (j) or (k),
33 priority shall be given to first obtaining a qualified interpreter.

34 (m) Nothing in subdivision (j) or (k) shall be deemed to supersede the
35 requirement of subdivision (b) for use of a qualified interpreter for individuals
36 who are deaf or hearing impaired participating as parties or witnesses in a trial or
37 hearing.

38 (n) In any action or proceeding in which an individual who is deaf or hearing
39 impaired is a participant, the appointing authority shall not commence proceedings
40 until the appointed interpreter is in full view of and spatially situated to assure
41 proper communication with the participating individual who is deaf or hearing
42 impaired.

1 (o) Each superior court shall maintain a current roster of qualified interpreters
2 certified pursuant to subdivision (f).

3 **Comment.** Subdivisions (i) and (j) of Section 754 are amended to reflect enactment of the
4 Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code
5 §§ 77000-77655). See, e.g., Gov't Code §§ 77003 ("court operations" defined), 77200 (state
6 funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

7 **Fam. Code § 1814 (amended). Family conciliation court personnel**

8 SEC. ____ . Section 1814 of the Family Code is amended to read:

9 1814. (a) In each county in which a family conciliation court is established, the
10 superior court may appoint one supervising counselor of conciliation and one
11 secretary to assist the family conciliation court in disposing of its business and
12 carrying out its functions. ~~In counties which have~~ When superior courts by
13 contract have established joint family conciliation court services, the ~~superior~~
14 contracting courts ~~in contracting counties~~ jointly may make the appointments
15 under this subdivision.

16 (b) The supervising counselor of conciliation has the power to do all of the
17 following:

18 (1) Hold conciliation conferences with parties to, and hearings in, proceedings
19 under this part, and make recommendations concerning the proceedings to the
20 judge of the family conciliation court.

21 (2) Provide supervision in connection with the exercise of the counselor's
22 jurisdiction as the judge of the family conciliation court may direct.

23 (3) Cause reports to be made, statistics to be compiled, and records to be kept as
24 the judge of the family conciliation court may direct.

25 (4) Hold hearings in all family conciliation court cases as may be required by the
26 judge of the family conciliation court, and make investigations as may be required
27 by the court to carry out the intent of this part.

28 (5) Make recommendations relating to marriages where one or both parties are
29 underage.

30 (6) Make investigations, reports, and recommendations as provided in Section
31 281 of the Welfare and Institutions Code under the authority provided the
32 probation officer in that code.

33 (7) Act as domestic relations cases investigator.

34 (8) Conduct mediation of child custody and visitation disputes.

35 (c) The superior court, or contracting superior courts, may also appoint, ~~with the~~
36 ~~consent of the board of supervisors,~~ associate counselors of conciliation and other
37 office assistants as may be necessary to assist the family conciliation court in
38 disposing of its business. The associate counselors shall carry out their duties
39 under the supervision of the supervising counselor of conciliation and have the
40 powers of the supervising counselor of conciliation. Office assistants shall work
41 under the supervision and direction of the supervising counselor of conciliation.

1 (d) The classification and salaries of persons appointed under this section shall
2 be determined by:

3 (1) The ~~board of supervisors~~ superior court of the county in which a
4 noncontracting family conciliation court operates.

5 (2) The ~~board of supervisors~~ superior court of the county which by contract has
6 the responsibility to administer funds of the joint family conciliation court service.

7 **Comment.** Subdivision (a) of Section 1814 is amended to reflect enactment of the Lockyer-
8 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-
9 77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations"
10 defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810.

11 Subdivisions (c) and (d) are amended to reflect enactment of the Trial Court Employment
12 Protection and Governance Act, 2000 Cal. Stat. ch. 1010 (codified as Gov't Code §§ 71600-
13 71675). See, e.g., Gov't Code §§ 71620(a) (job classifications and appointments), 71623(a)
14 ("Each trial court may establish a salary range for each of its employee classifications.").

15 **Fam. Code § 1820 (amended). Joint family conciliation court services**

16 SEC. ____ . Section 1820 of the Family Code is amended to read:

17 1820. (a) A ~~county court~~ county court may contract with any other ~~county court~~ or ~~counties~~
18 ~~courts~~ courts to provide joint family conciliation court services.

19 (b) An agreement between two or more ~~counties courts~~ counties courts for the operation of a
20 joint family conciliation court service may provide that ~~the treasurer of~~ one
21 participating ~~county court~~ county court shall be the custodian of moneys made available for the
22 purposes of the joint services, and that the ~~treasurer~~ custodian court may make
23 payments from the moneys upon audit of the appropriate auditing officer or body
24 of the ~~county of that treasurer court~~.

25 (c) An agreement between two or more ~~counties courts~~ counties courts for the operation of a
26 joint family conciliation court service may also provide:

27 (1) For the joint provision or operation of services and facilities or for the
28 provision or operation of services and facilities by one participating ~~county court~~
29 county court under contract for the other participating ~~counties courts~~.

30 (2) For appointments of members of the staff of the family conciliation court
31 including the supervising counselor.

32 (3) That, for specified purposes, the members of the staff of the family
33 conciliation court including the supervising counselor, but excluding the judges of
34 the family conciliation court ~~and other court personnel~~, shall be considered to be
35 employees of one participating ~~county court~~.

36 (4) For other matters that are necessary or proper to effectuate the purposes of
37 the Family Conciliation Court Law.

38 (d) The provisions of this part relating to family conciliation court services
39 provided by a single ~~county court~~ county court shall be equally applicable to ~~counties courts~~
40 which contract, pursuant to this section, to provide joint family conciliation court
41 services.

42 **Comment.** Section 1820 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
43 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g.,

1 Gov't Code §§ 77001 (local trial court management), 77003 (“court operations” defined), 77200
2 (state funding of “court operations”); see also Cal. R. Ct. 10.810.

3 The section is also amended to reflect enactment of the Trial Court Employment Protection and
4 Governance Act, 2000 Cal. Stat. ch. 1010 (codified as Gov't Code §§ 71600-71675). See, e.g.,
5 Gov't Code § 71620(a) (job classifications and appointments).

6 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
7 would especially appreciate input on whether the proposed deletion of the language in (c)(3)
8 regarding “other court personnel” is appropriate. It appears to the Commission that this language
9 may be surplusage.

10 **Fam. Code § 1834 (amended). Assistance to family conciliation court petitioner**

11 SEC. ____ . Section 1834 of the Family Code is amended to read:

12 1834. (a) The clerk of the court shall provide, at the expense of the ~~county~~ court,
13 blank forms for petitions for filing pursuant to this part.

14 (b) The probation officers of the county and the ~~attaches~~ attachés and employees
15 of the family conciliation court shall assist a person in the preparation and
16 presentation of a petition under this part if the person requests assistance.

17 (c) All public officers in each county shall refer to the family conciliation court
18 all petitions and complaints made to them in respect to controversies within the
19 jurisdiction of the family conciliation court.

20 (d) The jurisdiction of the family conciliation court in respect to controversies
21 arising out of an instance of domestic violence is not exclusive but is coextensive
22 with any other remedies either civil or criminal in nature that may be available.

23 **Comment.** Subdivision (a) of Section 1834 is amended to reflect enactment of the Lockyer-
24 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-
25 77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 (“court operations”
26 defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810(d), Function 10
27 (“court operations” include “publications and legal notices, by the court”); *cf.* Cal. R. Ct.
28 10.810(d), Function 6 (listing “court operations” relating to dispute resolution programs,
29 including conciliators, but signaling that “[a]ny other related services, supplies, and equipment”
30 are allowable under Function 10”).

31 Subdivision (b) is amended to make a stylistic revision.

32 **Fam. Code § 1838 (amended). Family conciliation court proceedings**

33 SEC. ____ . Section 1838 of the Family Code is amended to read:

34 1838. (a) The hearing shall be conducted informally as a conference or a series
35 of conferences to effect a reconciliation of the spouses or an amicable adjustment
36 or settlement of the issues in controversy.

37 (b) To facilitate and promote the purposes of this part, the court may, with the
38 consent of both parties to the proceeding, recommend or invoke the aid of medical
39 or other specialists or scientific experts, or of the pastor or director of any religious
40 denomination to which the parties may belong. Aid under this subdivision shall
41 not be at the expense of the court unless the presiding judge specifically authorizes
42 the aid, nor at the expense ~~of~~ of the county unless the board of supervisors of the
43 county specifically provides and authorizes the aid.

1 **Comment.** Section 1838 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
2 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-77655). See, e.g.,
3 Gov’t Code §§ 77001 (local trial court management), 77003 (“court operations” defined), 77200
4 (state funding of “court operations”); see also Cal. R. Ct. 10.603(a) (responsibilities of presiding
5 judge of superior court).

6 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
7 would especially appreciate input on whether aid invoked by a court under subdivision (b) is a
8 court operation under the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
9 generally Gov’t Code §§ 77000-77655). See also Cal. R. Ct. 10.810(d) (listing “court
10 operations”).

11 **Fam. Code § 1850 (amended). Duties of Judicial Council**

12 SEC. _____. Section 1850 of the Family Code is amended to read:

13 1850. The Judicial Council shall do all of the following:

14 (a) Assist ~~counties~~ courts in implementing mediation and conciliation
15 proceedings under this code.

16 (b) Establish and implement a uniform statistical reporting system relating to
17 proceedings brought for dissolution of marriage, for nullity of marriage, or for
18 legal separation of the parties, including, but not limited to, a custody disposition
19 survey.

20 (c) Administer a program of grants to public and private agencies submitting
21 proposals for research, study, and demonstration projects in the area of family law,
22 including, but not limited to, all of the following:

23 (1) The development of conciliation and mediation and other newer dispute
24 resolution techniques, particularly as they relate to child custody and to avoidance
25 of litigation.

26 (2) The establishment of criteria to ensure that a child support order is adequate.

27 (3) The development of methods to ensure that a child support order is paid.

28 (4) The study of the feasibility and desirability of guidelines to assist judges in
29 making custody decisions.

30 (d) Administer a program for the training of court personnel involved in family
31 law proceedings, which shall be available to the court personnel and which shall
32 be totally funded from funds specified in Section 1852. The training shall include,
33 but not be limited to, the order of preference for custody of minor children and the
34 meaning of the custody arrangements under Part 2 (commencing with Section
35 3020) of Division 8.

36 (e) Conduct research on the effectiveness of current family law for the purpose
37 of shaping future public policy.

38 **Comment.** Subdivision (a) of Section 1850 is amended to reflect enactment of the Lockyer-
39 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-
40 77655). See, e.g., Gov’t Code §§ 77001 (local trial court management), 77003 (“court operations”
41 defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810.

42 **Fam. Code § 3025.5 (amended). Confidential court files**

43 SEC. _____. Section 3025.5 of the Family Code is amended to read:

1 3025.5. In any proceeding involving child custody or visitation rights, if a report
2 containing psychological evaluations of a child or recommendations regarding
3 custody of, or visitation with, a child is submitted to the court, including, but not
4 limited to, a report created pursuant to Chapter 6 (commencing with Section 3110)
5 of this part, a recommendation made to the court pursuant to Section 3183, and a
6 written statement of issues and contentions pursuant to subdivision (b) of Section
7 3151, that information shall be contained in a document that shall be placed in the
8 confidential portion of the court file of the proceeding, and may not be disclosed,
9 except to the following persons:

10 (a) A party to the proceeding and his or her attorney.

11 (b) A federal or state law enforcement officer, judicial officer, court employee,
12 or family court facilitator ~~for~~ of the superior court of the county in which the
13 action was filed, or an employee or agent of that facilitator, acting within the scope
14 of his or her duties.

15 (c) Counsel appointed for the child pursuant to Section 3150.

16 (d) Any other person upon order of the court for good cause.

17 **Comment.** Subdivision (b) of Section 3025.5 is amended to reflect enactment of the Lockyer-
18 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-
19 77655).

20 **Fam. Code § 3153 (amended). Compensation of court-appointed counsel**

21 SEC. _____. Section 3153 of the Family Code is amended to read:

22 3153. (a) If the court appoints counsel under this chapter to represent the child,
23 counsel shall receive a reasonable sum for compensation and expenses, the amount
24 of which shall be determined by the court. Except as provided in subdivision (b),
25 this amount shall be paid by the parties in the proportions the court deems just.

26 (b) Upon its own motion or that of a party, the court shall determine whether
27 both parties together are financially unable to pay all or a portion of the cost of
28 counsel appointed pursuant to this chapter, and the portion of the cost of that
29 counsel which the court finds the parties are unable to pay shall be paid by the
30 ~~county~~ court. The Judicial Council shall adopt guidelines to assist in determining
31 financial eligibility for ~~county~~ court payment of counsel appointed by the court
32 pursuant to this chapter.

33 **Comment.** Subdivision (b) of Section 3153 is amended to reflect enactment of the Lockyer-
34 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-
35 77655). See, e.g., Gov't Code §§ 77003 (“court operations” defined), 77003(a)(4) (“court
36 operations” include “counsel appointed by the court to represent a minor pursuant to Chapter 10
37 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code”), 77200 (state
38 funding of “court operations”); see also Cal. R. Ct. 10.810(d), Function 7 (“court operations”
39 include “[e]xpenses for court-appointed counsel as specified in Government Code § 77003”).

40 **Fam. Code § 3170 (amended). Custody and visitation mediation and domestic violence cases**

41 SEC. _____. Section 3170 of the Family Code is amended to read:

1 3170. (a) If it appears on the face of a petition, application, or other pleading to
2 obtain or modify a temporary or permanent custody or visitation order that
3 custody, visitation, or both are contested, the court shall set the contested issues
4 for mediation.

5 (b) Domestic violence cases shall be handled by Family Court Services in
6 accordance with a separate written protocol approved by the Judicial Council. The
7 Judicial Council shall adopt guidelines for services, other than services provided
8 under this chapter, that courts or counties may offer to parents who have been
9 unable to resolve their disputes. These services may include, but are not limited to,
10 parent education programs, booklets, video recordings, or referrals to additional
11 community resources.

12 **Comment.** Subdivision (b) of Section 3170 is amended to reflect the Lockyer-Isenberg Trial
13 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655).

14 **Fam. Code § 3173 (amended). Mediation of dispute on existing custody or visitation order**

15 SEC. ____ . Section 3173 of the Family Code is amended to read:

16 3173. (a) Upon ~~the adoption of a resolution by the board of supervisors~~ an order
17 of the presiding judge of a superior court authorizing the procedure in that court, a
18 petition may be filed pursuant to this chapter for mediation of a dispute relating to
19 an existing order for custody, visitation, or both.

20 (b) The mediation of a dispute concerning an existing order shall be set not later
21 than 60 days after the filing of the petition.

22 **Comment.** Subdivision (a) of Section 3173 is amended to reflect enactment of the Lockyer-
23 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-
24 77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 (“court operations”
25 defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.603(a)
26 (responsibilities of presiding judge of superior court).

27 **Fam. Code § 3188 (amended). Confidential mediation program**

28 SEC. ____ . Section 3188 of the Family Code is amended to read:

29 3188. (a) Any court selected by the Judicial Council under subdivision (c) may
30 voluntarily adopt a confidential mediation program that provides for all of the
31 following:

32 (1) The mediator may not make a recommendation as to custody or visitation to
33 anyone other than the disputing parties, except as otherwise provided in this
34 section.

35 (2) If total or partial agreement is reached in mediation, the mediator may report
36 this fact to the court. If both parties consent in writing, where there is a partial
37 agreement, the mediator may report to the court a description of the issues still in
38 dispute, without specific reference to either party.

39 (3) In making the recommendation described in Section 3184, the mediator may
40 not inform the court of the reasons why it would be in the best interest of the
41 minor child to have counsel appointed.

1 (4) If the parties have not reached agreement as a result of the initial mediation,
2 this section does not prohibit the court from requiring subsequent mediation that
3 may result in a recommendation as to custody or visitation with the child if the
4 subsequent mediation is conducted by a different mediator with no prior
5 involvement with the case or knowledge of any communications, as defined in
6 Section 1040 of the Evidence Code, with respect to the initial mediation. The
7 court, however, shall inform the parties that the mediator will make a
8 recommendation to the court regarding custody or visitation in the event that the
9 parties cannot reach agreement on these issues.

10 (5) If an initial screening or intake process indicates that the case involves
11 serious safety risks to the child, such as domestic violence, sexual abuse, or
12 serious substance abuse, the ~~court~~ mediator may provide an initial emergency
13 assessment service that includes a recommendation to the court concerning
14 temporary custody or visitation orders in order to expeditiously address those
15 safety issues.

16 (b) This section shall become operative upon the appropriation of funds in the
17 annual Budget Act sufficient to implement this section.

18 (c) This section shall apply only in four or more ~~counties~~ superior courts
19 selected by the Judicial Council that currently allow a mediator to make custody
20 recommendations to the court and have more than 1,000 family law case filings
21 per year. The Judicial Council may also make this section applicable to additional
22 ~~counties~~ superior courts that have fewer than 1,000 family law case filings per
23 year.

24 **Comment.** Paragraph (5) of subdivision (a) of Section 3188 is amended to make a technical
25 correction. An erroneous reference to “the court” is replaced with a reference to “the mediator.”

26 Subdivision (c) of Section 3188 is amended to reflect enactment of the Lockyer-Isenberg Trial
27 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-77655). See, e.g.,
28 Gov’t Code § 77001 (local trial court management); see also Fam. Code § 3183(a) (authorizing
29 mediator to make recommendations, except as provided in Section 3188, to court consistent with
30 local rules).

31 **Fam. Code § 6303 (amended). Support person for domestic violence victim**

32 SEC. ____. Section 6303 of the Family Code is amended to read:

33 6303. (a) It is the function of a support person to provide moral and emotional
34 support for a person who alleges he or she is a victim of domestic violence. The
35 person who alleges that he or she is a victim of domestic violence may select any
36 individual to act as a support person. No certification, training, or other special
37 qualification is required for an individual to act as a support person. The support
38 person shall assist the person in feeling more confident that he or she will not be
39 injured or threatened by the other party during the proceedings where the person
40 and the other party must be present in close proximity. The support person is not
41 present as a legal adviser and shall not give legal advice.

42 (b) A support person shall be permitted to accompany either party to any
43 proceeding to obtain a protective order, as defined in Section 6218. Where the

1 party is not represented by an attorney, the support person may sit with the party at
2 the table that is generally reserved for the party and the party’s attorney.

3 (c) Notwithstanding any other provision of law to the contrary, if a court has
4 issued a protective order, a support person shall be permitted to accompany a party
5 protected by the order during any mediation orientation or mediation session,
6 including separate mediation sessions, held pursuant to a proceeding described in
7 Section 3021. ~~The Family Court Services, and any~~ agency charged with providing
8 family court services, shall advise the party protected by the order of the right to
9 have a support person during mediation. A mediator may exclude a support person
10 from a mediation session if the support person participates in the mediation
11 session, or acts as an advocate, or the presence of a particular support person is
12 disruptive or disrupts the process of mediation. The presence of the support person
13 does not waive the confidentiality of the mediation, and the support person is
14 bound by the confidentiality of the mediation.

15 (d) In a proceeding subject to this section, a support person shall be permitted to
16 accompany a party in court where there are allegations or threats of domestic
17 violence and, where the party is not represented by an attorney, may sit with the
18 party at the table that is generally reserved for the party and the party’s attorney.

19 (e) Nothing in this section precludes a court from exercising its discretion to
20 remove a person from the courtroom when it would be in the interest of justice to
21 do so, or when the court believes the person is prompting, swaying, or influencing
22 the party protected by the order.

23 **Comment.** Subdivision (c) of Section 6303 is amended to reflect enactment of the Lockyer-
24 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-
25 77655). See, e.g., Gov’t Code §§ 77001 (local trial court management), 77003 (“court operations”
26 defined), 77200 (state funding of “court operations”); see also Fam. Code § 3170(b) (requiring
27 domestic violence cases to be handled by Family Court Services according to approved protocol
28 by Judicial Council); Cal. R. Ct. 5.215(b) (“This rule sets forth protocol for Family Court
29 Services’ handling of domestic violence cases consistent with requirement of Family Code
30 section 3170(b).”), Cal. R. Ct. 5.215(h)(1) (“Family Court Services staff must advise the party
31 protected by a protective order of the right to have a support person attend any mediation
32 orientation or mediation sessions, including separate mediation sessions, under Family Code
33 section 6303.”).

34 **Fam. Code § 7553 (amended). Compensation of expert witness**

35 SEC. ____ . Section 7553 of the Family Code is amended to read:

36 7553. (a) The compensation of each expert witness appointed by the court shall
37 be fixed at a reasonable amount. It shall be paid as the court shall order. ~~The~~
38 Except as provided in subdivision (b), the court may order that it be paid by the
39 parties in the proportions and at the times the court prescribes, or that the
40 proportion of any party be paid by the county, and that, after payment by the
41 parties or the county or both, all or part or none of it be taxed as costs in the action
42 or proceeding.

43 (b) If the expert witness is appointed for the court’s needs, the compensation
44 shall be paid by the court.

1 **Comment.** Section 7553 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
2 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g.,
3 Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200
4 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("court
5 operations" include "court-appointed expert witness fees (for the court's needs)").

6 The amendment reflects that an expert whose compensation is governed by Section 7553 may
7 be appointed by the court for the court's needs. See Sections 7551 (providing that "court may
8 upon its own initiative" order genetic test), 7552 (providing for genetic tests and appointment of
9 other experts), 7556(a) (providing that order for tests may be made "on the court's initiative").

10 **Fam. Code § 7556 (amended). Application of part to criminal actions**

11 SEC. _____. Section 7556 of the Family Code is amended to read:

12 7556. This part applies to criminal actions subject to the following limitations
13 and provisions:

14 (a) An order for the tests shall be made only upon application of a party or on
15 the court's initiative.

16 (b) The compensation of the experts, other than an expert witness appointed by
17 the court for the court's needs, shall be paid by the county under order of court.
18 The compensation of an expert witness appointed for the court's needs shall be
19 paid by the court.

20 (c) The court may direct a verdict of acquittal upon the conclusions of all the
21 experts under Section 7554; otherwise, the case shall be submitted for
22 determination upon all the evidence.

23 **Comment.** Section 7556 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
24 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g.,
25 Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200
26 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("court
27 operations" include "court-appointed expert witness fees (for the court's needs)").

28 **Gov't Code § 1651 (amended). Payment of bond premium**

29 SEC. _____. Section 1651 of the Government Code is amended to read:

30 1651. The premium or charge for bonds given by surety companies for the
31 officers, herein named, and for their deputies, clerks, assistants or subordinate
32 officers shall be paid as follows:

33 (a) State officers, by the State.

34 (b) County officers, by the county.

35 (c) Officers of a ~~judicial district~~ superior court, by the ~~county in which the~~
36 ~~district is situated~~ court.

37 (d) School districts or other special district officers, by the school district or
38 other special district, respectively.

39 (e) City officers, by the city.

40 **Comment.** Section 1651 is amended to reflect:

41 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
42 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
43 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
44 reference to "judicial district" generally meant "municipal court district").

1 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
2 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
3 court employees).

4 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
5 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
6 (“court operations” defined), 77200 (state funding of “court operations”).

7 **Gov’t Code § 1750 (amended). Resignation by specified officers**

8 SEC. ____ . Section 1750 of the Government Code is amended to read:

9 1750. Resignations shall be in writing, and made as follows:

10 (a) By the Governor and Lieutenant Governor, to the Legislature, if it is in
11 session; and if not, then to the Secretary of State.

12 (b) By all officers commissioned by the Governor, to the Governor.

13 (c) By Senators and Members of the Assembly, to the presiding officers of their
14 respective houses, who shall immediately transmit the resignation to the Governor.

15 (d) By all officers of a county ~~or judicial district~~ or special district other than an
16 air pollution control district which includes territory in more than one county or a
17 school district, not commissioned by the Governor, to the clerk of the board of
18 supervisors of their respective counties, unless by the terms of the act under which
19 a district is formed appointment to vacancies is made by other than the board of
20 supervisors, in which case the resignation shall be submitted to the appointing
21 body.

22 (e) By officers of a superior court, to the presiding judge.

23 (f) By officers of a municipal corporation, to the clerk of the legislative body of
24 their corporation.

25 ~~(f)~~ (g) By all other appointed officers, to the body or officer that appointed them.

26 **Comment.** Section 1750 is amended to reflect:

27 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
28 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
29 Revision Comm’n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
30 reference to “judicial district” generally meant “municipal court district”).

31 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
32 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
33 court employees).

34 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
35 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
36 (“court operations” defined), 77200 (state funding of “court operations”).

37 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
38 would especially appreciate input on who should receive written resignation by a superior court
39 officer. Specifically, should it be provided to the presiding judge of the superior court (or court
40 clerk, or court executive officer, or some other person at the court)? Or should the resignation be
41 provided to the board of supervisors, as before trial court restructuring? Or should the resignation
42 be provided to both a person at the superior court and to the board of supervisors?

43 **Gov’t Code § 23249 (amended). County Boundary Review Commission’s determination of**
44 **boundaries and districts**

45 SEC. ____ . Section 23249 of the Government Code is amended to read:

- 1 23249. The commission shall determine:
- 2 (a) An equitable distribution, as between the transferring county and the
- 3 accepting county, of the indebtedness of each affected county.
- 4 (b) The fiscal impact of the proposed boundary change in each affected county.
- 5 (c) The economic viability of each affected county if the proposed boundary
- 6 change is effected.
- 7 (d) The final boundary lines between the two affected counties as they will exist
- 8 if the proposed boundary change is effected.
- 9 (e) A procedure for the orderly and timely transition of services, functions and
- 10 responsibilities from the transferring county to the accepting county.
- 11 (f) The division of both affected counties into five supervisorial districts. The
- 12 boundaries of the districts shall be established in a manner that results in a
- 13 population in each district which is as equal as possible to the population in each
- 14 other district within the county.
- 15 (g) The division of both affected counties into a convenient and necessary
- 16 number of ~~judicial~~, road and school districts, the territory of which shall be
- 17 defined. To the extent possible, existing ~~judicial~~, road and school districts located
- 18 within the territory which is to be transferred shall be maintained.

19 **Comment.** Subdivision (g) of Section 23249 is amended to reflect unification of the municipal

20 and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

21 See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 70

22 (1998) (explaining that before trial court unification, statutory reference to "judicial district"

23 generally meant "municipal court district"). For provisions relating to boundaries of a court of

24 appeal district, see Sections 23394 (court of appeal district in new county) and 69100 (court of

25 appeal districts in existing counties).

26 **Gov't Code § 23332 (amended). County Boundary Review Commission's determination of**

27 **proposed county's boundaries and districts**

- 28 SEC. _____. Section 23332 of the Government Code is amended to read:
- 29 23332. The commission shall determine all of the following:
- 30 (a) A fair, just, and equitable distribution, as between each affected county and
- 31 the proposed county, of the indebtedness of each affected county.
- 32 (b) The fiscal impact of the proposed county creation on each affected county.
- 33 (c) The economic viability of the proposed county.
- 34 (d) The final boundaries of the proposed county, pursuant to Sections 23337,
- 35 23337.5, and 23338.
- 36 (e) A procedure for the orderly and timely transition of service functions and
- 37 responsibilities from the affected county or counties to the proposed county.
- 38 (f) The division of the proposed county into five supervisorial districts. The
- 39 boundaries of the districts shall be established in a manner which results in a
- 40 population in each district which is as equal as possible to the population in each
- 41 of the other districts within the county.
- 42 (g) The division of the proposed county into a convenient and necessary number
- 43 of ~~judicial~~, ~~road~~, road and school districts, the territory of which shall be defined.

1 To the extent possible, existing ~~judicial, road,~~ road and school districts located
2 within the territory of the proposed county shall be maintained.

3 (h) Which county offices shall be filled by election at the subsequent election of
4 officials for an approved county conducted pursuant to Article 4.5 (commencing
5 with Section 23374.1), and which of the offices shall be filled by appointments
6 made by the board of supervisors of the approved county. At a minimum, the
7 county offices to be filled by election shall be those which by law, are required to
8 be filled by election.

9 (i) That the boundaries of the proposed county do not create a territory
10 completely surrounded by any affected county.

11 (j) The location of the county seat of the proposed county.

12 (k) The appropriations limit for the proposed county in accordance with Section
13 4 of Article XIII B of the California Constitution.

14 The commission shall not be required to make any other determinations.

15 **Comment.** Subdivision (g) of Section 23332 is amended to reflect unification of the municipal
16 and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.
17 See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 70
18 (1998) (explaining that before trial court unification, statutory reference to "judicial district"
19 generally meant "municipal court district"). For provisions relating to boundaries of a court of
20 appeal district, see Sections 23394 (court of appeal district in new county) and 69100 (court of
21 appeal districts in existing counties).

22 **Gov't Code § 23535 (amended). County Boundary Review Commission's determination of**
23 **consolidated county's boundaries and districts**

24 SEC. _____. Section 23535 of the Government Code is amended to read:

25 23535. The commission shall determine:

26 (a) The fiscal impact of the proposed consolidation on the affected counties.

27 (b) A procedure for the orderly and timely transition of services, functions and
28 responsibilities from each affected county to the consolidated county.

29 (c) The division of the proposed consolidated county into five supervisorial
30 districts.

31 (d) The division of the proposed consolidated county into a convenient and
32 necessary number of ~~judicial,~~ road and school districts, the territory of which shall
33 be defined.

34 (e) The county officers to be elected at the election provided for in Section
35 23550.

36 (f) The location of the county seat of the proposed consolidated county.

37 **Comment.** Subdivision (d) of Section 23535 is amended to reflect unification of the municipal
38 and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.
39 See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 70
40 (1998) (explaining that before trial court unification, statutory reference to "judicial district"
41 generally meant "municipal court district"). For provisions relating to boundaries of a court of
42 appeal district, see Sections 23394 (court of appeal district in new county) and 69100 (court of
43 appeal districts in existing counties).

1 **Gov't Code § 24350 (amended). Collection of fees**

2 SEC. _____. Section 24350 of the Government Code is amended to read:

3 24350. Each salaried officer of a county ~~or judicial district~~ shall charge and
4 collect for the use of his or her county and pay into the county treasury on or
5 before the fifth day of each month the fees allowed by law in all cases, except
6 those or a percentage of them allowed him or her, and those which are a charge
7 against the county. No salaried officer who collects fees pursuant to this section
8 shall be required to accept coin in payment of those fees.

9 **Comment.** Section 24350 is amended to reflect (1) unification of the municipal and superior
10 courts pursuant to former Section 5(e) of Article VI of the California Constitution, and
11 (2) enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
12 generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200
13 (state funding of “court operations”). The material relating to a salaried officer of a superior court
14 is relocated to Section 68083, because an officer of the superior court is no longer an officer of
15 the county.

16 **Gov't Code § 24351 (amended). Deposit of trust money**

17 SEC. _____. Section 24351 of the Government Code is amended to read:

18 24351. Unless otherwise specifically provided for by law, each officer of a
19 county ~~or judicial district~~ shall on the certificate of the auditor immediately deposit
20 in the county treasury all trust money coming into ~~his~~ the officer's possession
21 officially. Trust money so deposited shall be withdrawn only on a warrant issued
22 by the county auditor drawn ~~upon an order of the court into which the money was~~
23 ~~paid, or~~ upon requisition of the officer depositing the money ~~where no court~~
24 ~~proceedings are had.~~

25 **Comment.** Section 24351 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
26 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). For guidance
27 regarding trust money deposited in court, see, e.g., Sections 68084 and 77009.

28 The section is also amended to make it gender-neutral.

29 **Gov't Code § 24352 (amended). Monthly record of fees or compensation and fines collected**

30 SEC. _____. Section 24352 of the Government Code is amended to read:

31 24352. ~~Each~~ A county officer authorized to receive fees pursuant to this title
32 shall keep, in accordance with the guidelines of the Controller, a monthly record
33 of all fees or compensation and fines of whatever nature, kind, or description,
34 collected or chargeable. The record shall be open to public inspection during
35 office hours.

36 **Comment.** Section 24352 is revised to reflect enactment of the Lockyer-Isenberg Trial Court
37 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections
38 77003 (“court operations” defined), 77200 (state funding of “court operations”); see also Sections
39 77009(f) (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts),
40 77206 (same).

41 **Gov't Code § 24353 (amended). Collection of money payable into county treasury**

42 SEC. _____. Section 24353 of the Government Code is amended to read:

1 24353. Each officer of a county ~~or of a superior court~~ authorized to collect
2 money shall pay into the county treasury all money collected by him or her, or
3 under his or her control, that is payable into the treasury in a timely manner, and
4 shall remit fee, fine, and forfeiture data within 35 days after the end of the month
5 in which they are collected to the county auditor and treasurer in the form they
6 require. No officer who collects money as described in this section shall be
7 required to accept payment in coin. If the county auditor finds that an officer of the
8 county ~~or an officer of the court~~ has failed to comply with the requirements for
9 payment of moneys pursuant to this section or Section 68101, which directly
10 results in the assessment of a financial penalty pursuant to Section 68085, the
11 county department ~~or superior court~~ that failed to comply shall reimburse the
12 county general fund in an amount equal to the actual penalty. With the approval of
13 the treasurer as provided in Section 27080.1, each depositing officer may deposit
14 directly into the treasurer's active account all money payable into the county
15 treasury. ~~On and after January 1, 2006, this section does not apply to money~~
16 ~~collected under Chapter 5.8 (commencing with Section 70600) of Title 8 or fees~~
17 ~~and fines to which Section 68085.1 applies.~~

18 **Comment.** Section 24353 is amended to reflect (1) enactment of the Lockyer-Isenberg Trial
19 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655), and (2)
20 enactment of the Trial Court Employment Protection and Governance Act, 2000 Cal. Stat. ch.
21 1010 (see Sections 71600-71675). The material relating to an officer of a superior court is
22 relocated to Section 68083.5, because an officer of the superior court is no longer an officer of the
23 county.

24 **Gov't Code § 25252.6 (amended). Revolving cash trust fund**

25 SEC. ____ . Section 25252.6 of the Government Code is amended to read:

26 25252.6. The board of supervisors may in its discretion establish and determine
27 the amount of, or may by resolution authorize the county auditor to establish and
28 determine the amount of, a revolving cash trust fund for the purpose of eliminating
29 delays which adversely affect the official operation of offices and departments of
30 the county ~~or of judicial districts therein~~ resulting from regular deposits in and
31 withdrawals from a trust fund established for the use of any such county officer or
32 department head. The amount of the revolving cash trust fund shall not exceed the
33 amount of the trust fund. The revolving cash trust fund shall be used by the officer
34 or department head for payment of services, expenses or other charges which are
35 legally payable out of the deposits in the trust fund.

36 **Comment.** Section 25252.6 is amended to reflect:

37 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
38 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
39 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
40 reference to "judicial district" generally meant "municipal court district").

41 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
42 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
43 court employees).

1 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
2 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
3 (“court operations” defined), 77200 (state funding of “court operations”).

4 The section is also amended to make a stylistic revision.

5 For provisions authorizing the board of supervisors to establish a revolving fund for use by a
6 marshal who serves the superior court and is a county officer, see Section 71267.

7 **Gov’t Code § 25257 (amended). Collection of money payable to county**

8 SEC. ____ . Section 25257 of the Government Code is amended to read:

9 25257. Any department, officer, or employee of a county ~~or a judicial district in~~
10 ~~the county~~, charged by law with the collection of any county or district tax
11 assessment, penalty, cost, or license fees, ~~or any judicial district fine, assessment,~~
12 ~~or penalty, or any money~~, which is due and payable to the county or district for
13 any reason, may apply to the board of supervisors for a discharge from
14 accountability for the collection thereof if the amount is too small to justify the
15 cost of collection, the likelihood of collection does not warrant the expense
16 involved, or the amount thereof has been otherwise lawfully compromised or
17 adjusted.

18 **Comment.** Section 25257 is amended to reflect:

19 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
20 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
21 Revision Comm’n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
22 reference to “judicial district” generally meant “municipal court district”).

23 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
24 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
25 court employees).

26 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
27 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
28 (“court operations” defined), 77200 (state funding of “court operations”).

29 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
30 would especially appreciate input on whether the superior court has the same authority as that
31 given to county officers and employees in Section 25257, and, if not, whether it should have such
32 authority.

33 **Gov’t Code § 27080.1 (amended). County depository**

34 SEC. ____ . Section 27080.1 of the Government Code is amended to read:

35 27080.1. Where the county treasurer has entered into a contract for the deposit
36 of moneys with a depository pursuant to Section 53682, the county treasurer may
37 authorize any county officer ~~or judicial district~~, required to deposit into the county
38 treasury all money collected by him or her ~~or the district~~, to deposit that money
39 directly into the depository with whom the county treasurer has entered into the
40 contract. The county treasurer may also authorize any superior court officer to
41 deposit money collected by the officer that is payable to the county treasury into
42 the depository. All deposits made under authority granted by the treasurer pursuant
43 to this section shall be made in the form as required by the treasurer, and receipts
44 for those deposits shall be given in accordance with Section 27009.

1 **Comment.** Section 27080.1 is amended to reflect:

2 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
3 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
4 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
5 reference to "judicial district" generally meant "municipal court district").

6 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
7 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
8 court employees).

9 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
10 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
11 ("court operations" defined), 77200 (state funding of "court operations").

12 (4) Enactment of Section 68083.5 (authorizing officer of county or superior court, with county
13 treasurer's approval under Section 27080.1, to deposit into treasurer's active account). See also
14 2005 Cal. Stat. ch. 75, § 48 (enacting former Section 24353, which authorized officer of county
15 or superior court, with county treasurer's approval under Section 27080.1, to deposit into
16 treasurer's active account).

17 **Gov't Code § 29320 (amended). "Officer of county" defined**

18 SEC. ____ . Section 29320 of the Government Code is amended to read:

19 29320. As used in this article, "officer of the county" includes any elective or
20 appointive officer of a county, ~~superior court, or judicial district~~ and any person in
21 charge of any office, department, service, or institution of the county, or a division
22 or branch thereof.

23 **Comment.** Section 29320 is amended to reflect:

24 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
25 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
26 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
27 reference to "judicial district" generally meant "municipal court district").

28 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
29 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
30 court employees).

31 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
32 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
33 ("court operations" defined), 77200 (state funding of "court operations").

34 See also Section 71267 & Comment (revolving fund for marshal).

35 **Gov't Code § 29370 (amended). County officers' cash difference fund**

36 SEC. ____ . Section 29370 of the Government Code is amended to read:

37 29370. The board of supervisors may establish a county officers cash difference
38 fund for the use of any county officer or administrative head of any county
39 department ~~or judicial district~~ handling county funds by adopting a resolution
40 setting forth the amount of the fund. Certified copies of the resolution shall be
41 transmitted to the county auditor and to each county officer or administrative head
42 of a county department ~~or judicial district~~ who has such fund.

43 **Comment.** Section 29370 is amended to reflect:

44 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
45 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
46 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
47 reference to "judicial district" generally meant "municipal court district").

1 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
2 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
3 court employees).

4 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
5 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
6 (“court operations” defined), 77200 (state funding of “court operations”).

7 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
8 would especially appreciate input on whether the superior court is authorized to establish a cash
9 difference fund akin to the fund authorized under Section 29370. If the court lacks such authority,
10 should it be given that authority? Further, if the court currently has, or should be given authority
11 to establish a fund akin to the one authorized under Section 29370, should rules comparable to the
12 ones in the article containing Section 29370 govern the fund (i.e., Sections 29370.1-29390.1)?

13 **Gov’t Code § 29370.1 (amended). County auditor**

14 SEC. ____ . Section 29370.1 of the Government Code is amended to read:

15 29370.1. As an alternative to Section 29370, the board of supervisors may, by
16 resolution, authorize the county auditor to perform the functions of the board in
17 establishing, increasing, reducing, or discontinuing any county officers cash
18 difference fund.

19 The resolution adopted by the board of supervisors may set the amount of the
20 fund. If the board of supervisors adopts the resolution, the county auditor shall do
21 all of the following:

22 (a) Be subject to the same requirements and limitations otherwise prescribed for
23 the board of supervisors in this article.

24 (b) In lieu of acting by resolution, act by signed statement having the same
25 content otherwise prescribed in this article for resolutions.

26 (c) Render a written report to the board of ~~supervisers~~ supervisors at the end of
27 each fiscal year identifying the cash difference funds in existence during the fiscal
28 year, the amount of those funds, and the officer using the fund. The board of
29 supervisors may require the county auditor to give an account of the cash
30 difference fund at any other time.

31 The county auditor shall send a copy of his or her signed statement to each
32 county officer or administrative head of a county department ~~or judicial district~~
33 who has the fund.

34 **Comment.** Section 29370.1 is amended to reflect:

35 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
36 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
37 Revision Comm’n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
38 reference to “judicial district” generally meant “municipal court district”).

39 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
40 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
41 court employees).

42 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
43 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
44 (“court operations” defined), 77200 (state funding of “court operations”).

45 The section is also amended to make a spelling correction.

1 **Gov't Code § 29371 (amended). Overage fund**

2 SEC. _____. Section 29371 of the Government Code is amended to read:
3 29371. If the board elects to establish a cash difference fund, it shall by the same
4 resolution also establish an overage fund for the use of each county officer or
5 administrative head of a county department ~~or judicial district~~ affected.

6 **Comment.** Section 29371 is amended to reflect:

7 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
8 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
9 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
10 reference to "judicial district" generally meant "municipal court district").

11 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
12 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
13 court employees).

14 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
15 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
16 ("court operations" defined), 77200 (state funding of "court operations").

17 **Gov't Code § 29372 (amended). Warrant**

18 SEC. _____. Section 29372 of the Government Code is amended to read:
19 29372. Upon the adoption of the resolution, the auditor shall draw ~~his~~ a warrant
20 in favor of the county officer or administrative head of a county department ~~or~~
21 ~~judicial district~~ in the amount set forth in the resolution, and the treasurer shall pay
22 the warrant. The county officer or administrative head of a county department ~~or~~
23 ~~judicial district~~ shall use this fund only for cash deficits pursuant to this article.

24 **Comment.** Section 29372 is amended to reflect:

25 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
26 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
27 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
28 reference to "judicial district" generally meant "municipal court district").

29 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
30 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
31 court employees).

32 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
33 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
34 ("court operations" defined), 77200 (state funding of "court operations").

35 The section is also amended to make it gender-neutral.

36 **Gov't Code § 29373 (amended). Daily written report**

37 SEC. _____. Section 29373 of the Government Code is amended to read:
38 29373. Any person in any county office, or department, ~~or judicial district~~ in
39 which a cash difference fund has been established who receives and disburses
40 money placed in ~~his~~ the person's custody as directed by law or by official
41 authority, shall render a written report to the county officer or administrative head
42 of a county department ~~or judicial district~~ at the close of each business day, setting
43 forth the exact sum of any cash deficit or overage in ~~his~~ the person's account for
44 that day. Failure to report any cash deficit or overage at the close of the business
45 day in which it occurred is a violation of this article.

1 **Comment.** Section 29373 is amended to reflect:

2 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
3 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
4 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
5 reference to "judicial district" generally meant "municipal court district").

6 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
7 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
8 court employees).

9 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
10 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
11 ("court operations" defined), 77200 (state funding of "court operations").

12 The section is also amended to make it gender-neutral.

13 **Gov't Code § 29374 (amended). Cash deficit reimbursement**

14 SEC. _____. Section 29374 of the Government Code is amended to read:

15 29374. If a cash deficit is reported to the county officer or administrative head of
16 a county department, ~~or judicial district, he~~ the county officer or administrative
17 head shall immediately reimburse the cash charged to the person in the amount of
18 the cash deficit. The reimbursement shall not exceed the amount in the cash
19 difference fund unless that fund is replenished by the board of supervisors, and in
20 any event is not to exceed the sum appropriated by the board.

21 **Comment.** Section 29374 is amended to reflect:

22 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
23 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
24 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
25 reference to "judicial district" generally meant "municipal court district").

26 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
27 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
28 court employees).

29 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
30 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
31 ("court operations" defined), 77200 (state funding of "court operations").

32 The section is also amended to make stylistic revisions.

33 **Gov't Code § 29375 (amended). Deposit of overage**

34 SEC. _____. Section 29375 of the Government Code is amended to read:

35 29375. If an overage is reported to the county officer or administrative head of a
36 county department ~~or judicial district~~ involved, ~~he~~ the county officer or
37 administrative head shall immediately deposit the overage in the overage fund in
38 the county treasury.

39 **Comment.** Section 29375 is amended to reflect:

40 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
41 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
42 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
43 reference to "judicial district" generally meant "municipal court district").

44 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
45 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
46 court employees).

1 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
2 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
3 (“court operations” defined), 77200 (state funding of “court operations”).

4 The section is also amended to make it gender-neutral.

5 **Gov’t Code § 29376 (amended). Account of cash difference fund**

6 SEC. _____. Section 29376 of the Government Code is amended to read:

7 29376. Each county officer or administrative head of a county department or
8 ~~judicial district~~ having a cash difference fund shall upon demand of the auditor or
9 the board of supervisors give an account of the cash difference fund.

10 **Comment.** Section 29376 is amended to reflect:

11 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
12 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
13 Revision Comm’n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
14 reference to “judicial district” generally meant “municipal court district”).

15 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
16 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
17 court employees).

18 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
19 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
20 (“court operations” defined), 77200 (state funding of “court operations”).

21 **Gov’t Code § 29377 (amended). Application to replenish cash difference fund**

22 SEC. _____. Section 29377 of the Government Code is amended to read:

23 29377. If the cash difference fund becomes exhausted, the county officer or
24 administrative head of a county department or ~~judicial district~~ involved may make
25 a written application to the board of supervisors to have it replenished. In ~~his~~ the
26 application, ~~he~~ the county officer or administrative head shall itemize each cash
27 deficit as to amount, date of occurrence and the name of the person whose account
28 was reimbursed from the fund.

29 **Comment.** Section 29377 is amended to reflect:

30 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
31 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
32 Revision Comm’n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
33 reference to “judicial district” generally meant “municipal court district”).

34 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
35 Sections 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
36 court employees).

37 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
38 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
39 (“court operations” defined), 77200 (state funding of “court operations”).

40 The section is also amended to make stylistic revisions.

41 **Gov’t Code § 29379 (amended). Discontinuance of cash difference fund**

42 SEC. _____. Section 29379 of the Government Code is amended to read:

43 29379. The board may at any time discontinue the cash difference fund. If the
44 cash difference fund is discontinued, the county officer or administrative head of a

1 county department ~~or judicial district~~ shall immediately give an account thereof
2 and deposit any balance in that fund ~~in~~ into the county general fund.

3 **Comment.** Section 29379 is amended to reflect:

4 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
5 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.
6 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
7 reference to "judicial district" generally meant "municipal court district").

8 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
9 Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial
10 court employees).

11 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
12 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
13 ("court operations" defined), 77200 (state funding of "court operations").

14 The section is also amended to make a stylistic revision.

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

16 SEC. _____. Section 29603 of the Government Code is amended to read:

17 29603. The sums required by law to be paid to ~~the grand and trial~~ jurors and
18 witnesses in criminal cases tried in a superior ~~or municipal~~ court, other than expert
19 witnesses appointed by the court for the court's needs pursuant to Section 730 of
20 the Evidence Code, are county charges.

21 **Comment.** Section 29603 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
22 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See Sections
23 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R.
24 Ct. 10.810(d), Functions 2 (jury services) & 10 ("court-appointed expert witness fees (for the
25 court's needs)"). The reference to grand jurors is retained because grand jury expenses and
26 operations are not court operations. See Section 77003(a)(7); see also Cal. R. Ct. 10.810(b)(6) &
27 (d), Function 2 (civil and criminal grand jury costs unallowable). Likewise, the fees for a lay
28 witness, or an expert who is not court-appointed, are not a court operation and thus remain a
29 county charge. See Section 77003; see also Cal. R. Ct. 10.810.

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

32 **Gov't Code § 31116 (amended). Travel expenses of county applicants**

33 SEC. _____. Section 31116 of the Government Code is amended to read:

34 31116. For the purpose of facilitating the recruitment of professional and
35 technically trained persons to fill positions for which there is a shortage of
36 qualified applicants, a county may expend county funds to pay reasonable travel
37 expenses of applicants for county ~~or judicial district~~ employment in traveling,
38 from any point within the continental United States, to and from the place or
39 places at which the applicants are to be examined or interviewed. Such payments
40 shall be authorized only upon a determination by the board of supervisors that the
41 expenditure is necessary to recruit qualified persons needed by the county ~~or~~
42 ~~judicial district~~.

43 **Comment.** Section 31116 is amended to reflect:

44 (1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article
45 VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L.

1 Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory
2 reference to “judicial district” generally meant “municipal court district”).

3 (2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g.,
4 Sections 71601(*l*) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial
5 court employees).

6 (3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
7 generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003
8 (“court operations” defined), 77200 (state funding of “court operations”).

9 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
10 would especially appreciate input on its preliminary interpretation of the effect of the Trial Court
11 Employment Protection and Governance Act (hereafter, “the Act”) on Section 31116. The
12 provisions in the Act relating to hiring do not appear to authorize courts to pay applicants’ travel
13 expenses. See, e.g., Sections 71620, 71622, 71640-71645. The Commission currently interprets
14 the lack of such authority in the Act — a comprehensive scheme governing trial court
15 employment — to indicate an intent that courts not pay for such expenses. *Cf.* Gov’t Code
16 § 71645(a) (providing that Sections 71640-71645 of the Act “replac[e] any aspects of county
17 employment, selection, and advancement systems applying to trial court employees” that
18 previously applied to such employees). The Commission would appreciate input from
19 knowledgeable sources about whether that interpretation is correct.

20 **Gov’t Code § 68083 (added). Collection of fees**

21 SEC. _____. Section 68083 is added to the Government Code, to read:

22 68083. Each salaried officer of a superior court shall charge, collect, and
23 promptly deposit the fees allowed in each case, as provided by law. No salaried
24 officer who collects fees pursuant to this section shall be required to accept coin in
25 payment of those fees.

26 **Comment.** Section 68083 continues material formerly located in Section 24350, with revisions
27 to reflect (1) unification of the municipal and superior courts pursuant to former Section 5(e) of
28 Article VI of the California Constitution, and (2) enactment of the Lockyer-Isenberg Trial Court
29 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections
30 77003 (“court operations” defined), 77200 (state funding of “court operations”).

31 **Note.** The Commission seeks input on any aspect of the amendment proposed above, but
32 would especially appreciate input on the following point: Section 24350 requires an officer to pay
33 into the county treasury “the fees allowed by law in all cases, *except those or a percentage of*
34 *them allowed him or her ...*” (Emphasis added.) Is any court officer still permitted to receive a
35 percentage of the fees collected by the officer? Proposed Section 68083 assumes that no court
36 officer is still subject to such an arrangement. The Commission seeks to confirm that assumption.

37 **Gov’t Code § 68083.5 (added). Collection of money payable into county treasury**

38 SEC. _____. Section 68083.5 is added to the Government Code, to read:

39 68083.5. Each officer of a superior court authorized to collect money shall pay
40 into the county treasury all money collected by that officer, or under the officer’s
41 control, that is payable into the treasury in a timely manner, and shall remit fee,
42 fine, and forfeiture data within 35 days after the end of the month in which they
43 are collected to the county auditor and treasurer in the form they require. No
44 officer who collects money as described in this section shall be required to accept
45 payment in coin. If the county auditor finds that an officer of the court has failed
46 to comply with the requirements for payment of moneys pursuant to this section or

1 Section 68101, which directly results in the assessment of a financial penalty
2 pursuant to Section 68085, the superior court that failed to comply shall reimburse
3 the county general fund in an amount equal to the actual penalty. With the
4 approval of the treasurer as provided in Section 27080.1, each depositing officer
5 may deposit directly into the treasurer’s active account all money payable into the
6 county treasury. On and after January 1, 2006, this section does not apply to
7 money collected under Chapter 5.8 (commencing with Section 70600) of Title 8 or
8 fees and fines to which Section 68085.1 applies.

9 **Comment.** Section 68083.5 continues material formerly located in Section 24353 relating to an
10 officer of the superior court. That material is relocated from Title 3 (“Government of Counties”) to
11 this title (“The Organization and Government of Courts”) because an officer of the superior
12 court is no longer an officer of the county. See the Trial Court Employment Protection and
13 Governance Act, 2000 Cal. Stat. ch. 1010 (codified as Sections 71600-71675). See, e.g., Sections
14 71601(l) (“trial court employee” defined), 71615(c)(5) (trial court as employer of all trial court
15 employees).

16 **Gov’t Code § 68098 (amended). Witness fees in criminal cases**

17 SEC. _____. Section 68098 of the Government Code is amended to read:

18 68098. Witness’ fees in criminal cases in superior ~~and municipal~~ courts, other
19 than fees for expert witnesses appointed by the court for the court’s needs pursuant
20 to Section 730 of the Evidence Code, are charges against the same funds as grand
21 jurors’ fees in ~~such~~ criminal cases.

22 **Comment.** Section 68098 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
23 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See Sections 77003
24 (“court operations” defined), 77200 (state funding of “court operations”); see also Cal. R. Ct.
25 10.810(b)(6) & (d), Functions 2 (jury services) & 10 (“court-appointed expert witness fees (for
26 the court’s needs”).

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

29 Section 68098 is further amended to make a stylistic revision.

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

31 SEC. _____. Section 68551 of the Government Code is amended to read:

32 68551. The Judicial Council is authorized to conduct institutes and seminars
33 from time to time, either regionally or on a statewide basis, for the purpose of
34 orienting judges to new judicial assignments, keeping them informed concerning
35 new developments in the law and promoting uniformity in judicial procedure.
36 ~~Such~~ Those institutes and seminars shall include, without being limited thereto,
37 consideration of juvenile court proceedings, sentencing practices in criminal cases,
38 and the handling of traffic cases. Actual and necessary expenses incurred by a
39 superior ~~and municipal~~ court ~~judges~~ judge at any ~~such~~ institute or seminar under
40 this section shall be a charge against the ~~county~~ court to the extent that funds are
41 available therefor.

42 **Comment.** Section 68551 is amended to reflect enactment of the Lockyer-Isenberg Trial Court
43 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See Sections 77003

1 (“court operations” defined), 77200 (state funding of “court operations”); Cal. R. Ct. 810(d),
2 Function 10 (training fees for court personnel).

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

5 The section is further amended to make stylistic revisions.

6 **Gov’t Code § 71380 (amended) Uniform accounting system for courts**

7 SEC. ____ . Section 71380 of the Government Code is amended to read:

8 71380. The Judicial Council, in consultation with the Controller, shall establish,
9 supervise, and as necessary revise a uniform accounting system, including a
10 system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by
11 courts, and their collection and appropriate disbursement, shall be properly and
12 uniformly accounted for. The accounting system shall apply to superior courts,
13 together with probation offices, central collection bureaus and any other agencies
14 having a role in this process.

15 **Comment.** Section 71380 is amended to reflect enactment of the Trial Court Funding Act,
16 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See Section 77206 (responsibilities
17 of Judicial Council and Controller for fiscal affairs of trial courts).

18 **Gov’t Code § 71381 (amended). Records, reports, and procedures of accounting system**

19 SEC. ____ . Section 71381 of the Government Code is amended to read:

20 ~~71381. Such system may provide for bank accounts for each municipal court, in~~
21 ~~which money received by such court may be deposited and disbursed as provided~~
22 ~~therein, and for such~~ The accounting system under this article may provide for any
23 records, reports, and procedures as the ~~Controller~~ Judicial Council, in consultation
24 with Controller, may deem necessary to carry out the purposes of this article.

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

28 Section 71381 is also amended to reflect enactment of the Trial Court Funding Act, 1997 Cal.
29 Stat. ch. 850 (see generally Sections 77000-77655). See Section 77206 (responsibilities of
30 Judicial Council and Controller for fiscal affairs of trial courts).

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

32 SEC. ____ . Section 71382 of the Government Code is amended to read:

33 71382. Every judge of a superior court, or the clerk of any ~~such~~ superior court,
34 who willfully fails to keep accounts pursuant to the system or to account for the
35 money paid into and disbursed by the court pursuant to the system established by
36 the ~~Controller~~ Judicial Council, in consultation with the Controller, pursuant to
37 this article is guilty of a misdemeanor.

38 **Comment.** Section 71382 is amended to reflect enactment of the Trial Court Funding Act,
39 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See Section 77206 (responsibilities
40 of Judicial Council and Controller for fiscal affairs of trial courts).

41 Section 71382 is also amended to make a stylistic revision.

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

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

3 71384. The system established pursuant to this article may provide for the
4 deposit of all money collected by superior courts in ~~the county treasury accounts~~
5 as provided by law, for disbursement from ~~it those accounts~~, and for the audit of
6 ~~such the~~ accounts by the ~~county auditor~~ Controller and the Judicial Council as
7 provided in Section 77206.

8 **Comment.** Section 71384 is amended to reflect enactment of the Trial Court Funding Act,
9 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See Sections 77003 (“court
10 operations” defined), 77200 (state funding of “court operations”).

11 For examples of key provisions governing deposit of money collected by a superior court, see
12 Sections 53679, 68084, 68085.1, 68085.9, and 77009, and Penal Code Sections 1463.1 and
13 1463.001.

14 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
15 would especially appreciate input on the following: As amended, Section 71384 would not
16 specify precisely where money collected by the superior courts is to be deposited. The Comment
17 would refer to some of the provisions governing deposit of money collected by a superior court.
18 As there are many such provisions, the Comment lists only a few key examples. Should other
19 provisions should be listed instead of, or in addition to, the ones included in the Comment?

20 **Gov't Code § 72004 (repealed). Disposition of fees collected by officer**

21 SEC. _____. Section 72004 of the Government Code is repealed.

22 ~~72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply~~
23 ~~to officers of superior courts and to the disposition of fees collected by those~~
24 ~~officers.~~

25 **Comment.** Section 72004 is repealed because it is no longer necessary. Before trial court
26 restructuring, it made certain provisions (Sections 24350-24356, 29350, and 29351) applicable to
27 superior court officers and the disposition of fees by those officers. The substance of some of
28 those provisions is no longer, or never has been, pertinent to courts. See Sections 24351, 24351.5,
29 24352, 24355.2, 24356, 29350, 29351. The pertinent material from the remaining provisions has
30 been moved, and expressly applies to a superior court officer and the disposition of fees collected
31 by the officer. See Section 68083 & Comment (continuing court-related material formerly located
32 in Section 24350); Section 68083.5 & Comment (continuing court-related material formerly
33 located in Section 24353).

34 **Penal Code § 1463.22 (amended). Fees deposited pursuant to Section 1463**

35 SEC. _____. Section 1463.22 of the Government Code is amended to read:

36 1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the
37 county treasurer pursuant to Section 1463, seventeen dollars and fifty cents
38 (\$17.50) for each conviction of a violation of Section 16028 of the Vehicle Code
39 shall be deposited by the county treasurer in a special account and allocated to
40 defray costs of ~~municipal and~~ superior courts incurred in administering Sections
41 16028, and 16030, ~~and 16031~~ of the Vehicle Code. Any moneys in the special
42 account in excess of the amount required to defray those costs shall be redeposited
43 and distributed by the county treasurer pursuant to Section 1463.

1 (b) Notwithstanding Section 1463, of the moneys deposited with the county
2 treasurer pursuant to Section 1463, three dollars (\$3) for each conviction for a
3 violation of Section 16028 of the Vehicle Code shall be initially deposited by the
4 county treasurer in a special account, and shall be transmitted once per month to
5 the Controller for deposit in the Motor Vehicle Account in the State
6 Transportation Fund. These moneys shall be available, when appropriated, to
7 defray the administrative costs incurred by the Department of Motor Vehicles
8 pursuant to ~~Sections 16031, 16032, 16034, and 16035~~ Section 16030 of the
9 Vehicle Code, and the administrative costs incurred by the Department of Motor
10 Vehicles pursuant to Section 13365 of the Vehicle Code when the underlying
11 charge is an infraction under Article 2 (commencing with Section 16020) of
12 Chapter 1 of Division 7 of the Vehicle Code, or a misdemeanor under the same
13 article. It is the intent of this subdivision to provide sufficient revenues to pay for
14 all of the department's costs in administering those ~~sections~~ provisions of the
15 Vehicle Code.

16 (c) Notwithstanding Section 1463, of the moneys deposited with the county
17 treasurer pursuant to Section 1463, ten dollars (\$10) upon the conviction of, or
18 upon the forfeiture of bail from, any person arrested or notified for a violation of
19 Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a
20 special account and shall be transmitted monthly to the Controller for deposit in
21 the General Fund.

22 **Comment.** Section 1463.22 is amended to reflect unification of the municipal and superior
23 courts pursuant to former Section 5(e) of Article VI of the California Constitution.

24 The section is further amended to reflect the repeal of cross-referenced provisions in the
25 Vehicle Code, and the enactment of similar provisions in that code. See 1996 Cal. Stat. ch. 1126,
26 §§ 6, 8 (enacting Vehicle Code Sections 16028 and 16030); 1984 Cal. Stat. ch. 1322, §§ 9, 12, 13,
27 15, 16 (enacting former Vehicle Code Sections 16028, 16031, 16032, 16034 and 16035, which
28 were later repealed by their own terms).

29 **Note.** The Commission seeks comment on any aspect of the amendment proposed above, but
30 would especially appreciate input on whether subdivision (a) should continue to provide that
31 funds to defray court costs are under the county treasurer's control, given the shift of funding
32 court operations from the county to the state. See Gov't Code § 77003 and Cal. R. Ct. 10.810
33 ("court operations" defined); see also Gov't Code §§ 77009 (Trial Court Operations Fund), 77200
34 (state funding of "court operations").

35 If not, how should subdivision (a) be amended? Specifically, which entity should control the
36 funds to defray court costs, and where should the funds be deposited?