Study J-1314 March 28, 2014

Memorandum 2014-15

Trial Court Unification: Publication of Legal Notice (Alternative Approaches)

In the initial memorandum for this study, Memorandum 2014-4,[1] the staff presented the statutes relying on judicial districts for notice publication, concerns about the reliance on judicial districts in notice publication statutes after trial court unification, and general descriptions for alternative approaches to address the issue of notice publication.

This memorandum clarifies the scope of this study in accordance with the Commission's direction at the February meeting and discusses a pending bill on a related topic. In addition, this memorandum analyzes the function that judicial districts serve in the notice publication statutes, fleshes out the discussion of alternative approaches presented in Memorandum 2014-4, and discusses the pros and cons of the different approaches.

In this memorandum, as in Memorandum 2014-4 and the notice publication statutes at issue in this study, the references to "judicial district" refer to the former municipal court districts.[2]

PENDING BILL AND DISCLAIMER

AB 2331 (Rendon), a recently introduced bill, affects one of the provisions at issue in this study. As introduced, this bill would amend Business and Professions Code Section 21707 as follows:

> After the expiration of the time given in the notice of lien sale, pursuant to subdivision (b) of Section 21705, or following the

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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2014-4, pp. 3-4; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 70 (1998) (hereafter, *"Revision of Codes"*).

> failure of a claimant to pay rent or obtain a court order pursuant to Section 21709, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the judicial district where the sale is to be held, the advertisement shall be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed ~~sale.~~ sale, or on a publicly accessible Internet Web site. The sale shall be conducted in a commercially reasonable manner. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

Upon becoming aware of this bill, the staff considered whether to continue working on this study in light of the restrictions placed upon the Commission's legislative activity. Specifically, an individual Commissioner or staff member is prohibited from advocating for "the passage or defeat of any legislation … in his or her official capacity as an employee or member."[3]

Given the current language of the bill, the staff has concluded that the work on this study can continue without violating this prohibition. While the staff believes work on this study can continue, continued vigilance will be necessary to ensure that, as the study proceeds and legislation is amended, the study does not interfere with this bill or other pending legislation.

To determine the appropriate course of action, the staff considered the contours of this study. In the staff's view, this study is intended to evaluate the legislative intent behind the existing notice publication provisions and ensure that the legislative intent is being achieved post-unification. To that end, the analysis in this study will focus on the provisions as they stand and the policy they establish.

The statute directing the Commission to conduct this study (Gov't Code § 70219) does not ask the Commission to reconsider the policy underlying the

3. See Gov't Code § 8288.

notice publication statutes. As such, this study will not consider the merits of the policy underlying the notice publication statutes, nor will this study entail taking a position that the policy underlying the statutes should or should not be changed. To the extent that the Legislature makes changes to the sections at issue that evince a different legislative intent, the staff and the Commission will need to consider this as the study proceeds and incorporate those changes into its work.

The staff will monitor the legislative developments on AB 2331 and any other legislation affecting the sections at issue in this study. The staff will update the Commission on future developments to ensure we remain in compliance with the statutory prohibition on advocacy. **Is the Commission comfortable with this approach?**

SCOPE OF STUDY

The Commission is charged with addressing notice issues related to the changes brought about by trial court unification.[4] The changes brought about by trial court unification do not disrupt the notice publication statutes, with one exception: the "judicial districts" referenced in those statutes are no longer used for municipal court elections or other municipal court business. Thus, the Commission must consider whether the references to "judicial district" in the notice publication statutes are achieving their intended purpose or whether they need to be modified.

The Commission's task in this study is a relatively narrow one. As indicated above, in the staff's view, this task does not extend to the issue addressed by AB 2331, nor does it address broader policy questions, including questions regarding the best medium for providing notice, the appropriate timing of notice, the required content for notice, or the remedies for inadequate notice. The Legislature has considered some of these broader policy questions in recent years[5] and the staff will continue to monitor legislative developments that may affect this study.

To the extent that broader changes to statutory notice requirements are warranted and would be appropriate for the Commission to study, the

4. *Revision of Codes*, *supra* note 2, at 86.
5. See, e.g., AB 642 (Rendon), as introduced February 20, 2013; SB 617 (Evans), as amended May 28, 2013; SB 1199 (Hancock), as introduced February 20, 2014.

Commission would likely need to have a separate source of authority to work on such topics.

FUNCTION OF JUDICIAL DISTRICTS IN NOTICE PUBLICATION STATUTES

To determine the appropriate approach to achieve the Legislature's intent, one must consider the function that judicial districts serve in the notice publication statutes. Although the staff has not done an exhaustive legislative history analysis, it seems clear that the "judicial district" references in the notice publication statutes are used as a means to achieve less-than-countywide local publication.

Although the purpose of local notice seems likely from the face of the statutes, the staff did consider and rule out another possible purpose for using "judicial district" in the notice publication statutes. Specifically, the staff considered whether these notices are strictly related to matters within the municipal court's original jurisdiction. The answer appears to be "no." The staff reviewed the former law on municipal court jurisdiction[6] and concluded that the matters encompassed by the notice publication statutes could, in most cases, fall within either the municipal court or superior court jurisdiction depending on the amount in controversy.

In addition, the following factors weigh in support of the judicial districts as a means to achieve less-than-countywide, local publication in the notice publication statutes.

Structure of Provisions

Generally, the notice publication statutes fall into three categories:

(1) A nested structure with "judicial district" as an intermediate step,
(2) "judicial district" as the initial place for notice publication, and
(3) "judicial district" as one of several options for local publication.[7]

These structures are addressed individually below.

As an initial matter, the staff notes that, as former municipal court districts, the "judicial districts" referred to in the notice publication statutes were necessarily no smaller than a city and no larger than a county.[8]

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6. Former Code Civ. Proc. § 86 (as enacted by 1997 Cal. Stat. ch. 527, § 2).
7. See also *infra* p. 8.
8. Former Cal. Const. art. VI, § 5(a) (see 1996 Cal. Stat. res. ch. 36).

Category #1: Nested Statutes with "Judicial District" as an Intermediate Step

Two of the provisions are structured so that the judicial district serves as an intermediate step between cities and counties for notice purposes.[9] For example, Code of Civil Procedure Section 701.540(g) says:

> Notice of sale shall be published … in a newspaper of general circulation published in the *city* in which the real property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the *judicial district* in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the *county* in which the real property or a part thereof is situated.[10]

In these cases, it seems clear that "judicial district" is used to achieve a certain level of localness (i.e., not as local as city, more local than county) in the publication requirements. The statutes require notice to be published in the most local alternative possible, preferring the city over the judicial district and the judicial district over the county.

Category #2: "Judicial District" as the Initial Place for Notice Publication

In other provisions, the judicial district is the initial place for notice publication. For example, Commercial Code Section 6105(b)(2) requires notice of a bulk sale to be published "at least once in a newspaper of general circulation in the *judicial district* in this state in which the tangible assets are located and in the *judicial district,* if different, in which the seller is located …."[11]

In situations where no newspaper of general circulation exists in the judicial district, the statutes either have a local-posting requirement[12] or require publication in a newspaper of general circulation in the county.[13]

For provisions where posting is required, the posting is focused locally (the neighborhood of the proposed sale[14] or the judicial district[15]) and appears to be

9. See Civ. Code § 2924f(b)(2); Code Civ. Proc. § 701.540.
10. Emphasis added.
11. Emphasis added.
12. See Bus. & Prof. Code § 21707; Rev. & Tax Code § 3702. Revenue and Taxation Code Section 3702 requires publication in two places: (1) a newspaper of general circulation published in the county seat and (2) a newspaper of general circulation published in the judicial district in which the property is situated.
13. See Civ. Code §§ 3440.1, 3440.5; Com. Code § 6105.

an alternative means of achieving notice locally. Given that both the publication and posting requirement focus on the area around the relevant sales, the general intent behind these requirements appears to be local notice.

The intent is less obvious for provisions that require publication in a newspaper of general circulation in the county when there is no such newspaper in the judicial district. However, it is notable that the Legislature did not select countywide publication as the initial means of notice and the judicial districts referenced in these statutes are necessarily contained within a single county. The fact that these provisions require less-than-countywide publication as the first step suggests that the Legislature considered it important to achieve local publication where possible.

Category #3: "Judicial District" as One of Several Options for Local Publication

One statute, Revenue and Taxation Code Section 3381, offers an alternate means for notice to sell property of delinquent taxpayers.[16] Where the Board of Supervisors or the tax collector (in charter counties) determines that the public interest, convenience, and necessity require local publication to afford adequate notice, the Board or tax collector can select from several different options for local publication, including judicial districts. Without such a determination, the notices are required to be published countywide. Therefore, the statute identifies judicial districts as a means of achieving local, less-than-countywide publication.

Legislative History on Business and Professions Code Section 21707

As noted in Memorandum 2014-4, one of the notice provisions relying on judicial district boundaries, Business and Professions Code Section 21707, was amended in 2010 to require countywide notice publication and amended again the following year to restore judicial districts as the notice boundaries.[17]

In 2009, AB 655 (Emmerson) was introduced. In its original version, AB 655 would have deleted the newspaper publication requirement in Business and Professions Code Section 21707 and replaced it with an advertising requirement that would permit notice "including, but not limited to, posting notice of sale at the facility or on the owner's self-service storage facility Internet Web site not less

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14. Bus. & Prof. Code § 21707.
15. Rev. & Tax Code § 3702.
16. See Rev. & Tax Code § 3381.
17. 2010 Cal. Stat. ch. 439, § 4 (AB 655 (Emmerson)); 2011 Cal. Stat. ch. 65, § 1 (SB 279 (Emmerson)).

than 10 days before the sale, advertising in a local publication in which sales of used personal property are advertised, or direct communications with potential buyers of used personal property by mail, delivery service, or electronic means."[18] This change was opposed by the California Newspaper Publishers Association (CNPA), who wrote:

> AB 655 mistakenly supposes a lien sale advertisement is merely an attempt to attract speculators. Lien sale advertisements, published in newspapers are designed to deputize the entire community on the issue. CNPA believes that published notices of lien sales in newspapers distributed in the judicial district in which the property is located provide the best way to inform the entire community that an important public event is to occur in the community – an event that severs an individual's legal relationship to personal property.[19]

After CNPA expressed its opposition, AB 655 was amended so as not to delete the newspaper publication requirement.[20] However, in its final amendment before enrollment (a month after the bill passed out of its last policy committee), AB 655 was amended to make the publication requirement countywide, rather than based on judicial district boundaries.[21]

The following year, SB 279 (Emmerson) was introduced to reverse this change. A policy committee analysis of this bill quotes the author characterizing SB 279 as a "clean-up measure to AB 655," which "would correct a provision that allows lien sales of property at self-storage facilities to be advertised in any newspaper of general circulation in the county where the lien sale is held."[22] Further, another bill analysis indicates that the amendment of AB 655 "erroneously replaced 'judicial district' with 'county.'"[23]

SB 279 was opposed by the California Self Storage Association, which raised concerns that "this is more than a fix of an erroneously changed word. … [T]his bill serves to shrink the area in which a self-storage facility can advertise, limits the number of venues for that advertisement and increases costs."[24] SB 279 was

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18. AB 655 (Emmerson), § 4 (as introduced February 25, 2009).
19. See Assembly Business and Professions Committee Analysis of AB 655, p. 3 (April 13, 2009) (quoting the California Newspaper Publishers Association).
20. See Assembly Judiciary Committee Analysis of AB 655, p. 5 (May 11, 2009).
21. See AB 655 (Emmerson), § 4 (as amended in Senate Aug. 18, 2010).
22. Senate Judiciary Committee Analysis of SB 279, p. 2 (Mar. 21, 2011) (quoting the bill's author).
23. Senate Floor Analysis of SB 279, p. 3 (Mar. 23, 2011).
24. See Assembly Judiciary Committee Analysis of SB 279, p. 3 (Jun. 13, 2011).

enacted into law, amending the notice publication requirement to the form it exists in today.[25]

Of note, one of the bill analyses for SB 279 directly states that the judicial districts offer a means of achieving local notice. It says: "The districts were maintained for publication purposes to ensure that public notices would target the smaller, presumably more interested, communities that make up judicial districts and that the message would not be lost by targeting an entire county."[26] This remark is strong evidence that the Legislature views judicial district publication requirements as a means of providing local notice generally.

ALTERNATIVE APPROACHES

Memorandum 2014-4 described four general approaches to addressing the issue of notice publication relying on former judicial district boundaries. These approaches, along with a brief description of the decision points required by the Commission to move forward with the approach, are discussed below.

Importantly, there may not be a one-size-fits-all approach that will address all of the different notice publication statutes. As discussed above, the notice publication statutes at issue fall into the following three general categories:

> *Category #1:* Nested structure with "judicial district" as an intermediate step (e.g., first in the city; if not the city, then the judicial district; if not the judicial district, then the county).[27]
>
> *Category #2:* "Judicial district" as the initial place for notice publication (this category could be further subdivided based on the secondary notice requirement, specifically whether it is a broader publication requirement or a non-publication requirement focused locally).[28]
>
> *Category #3:* "Judicial district" as one of several less-than-countywide options for notice publication.[29]

Different approaches may be appropriate for the different categories of statutes to ensure that local notice is effectively achieved in all cases.

25. 2011 Cal. Stat. ch. 65, § 1.
26. Assembly Judiciary Committee Analysis of SB 279, p. 3 (Jun. 13, 2011).
27. E.g., Civ. Code § 2924f(b)(2).
28. E.g., Civ. Code § 3440.1(h)(2).
29. E.g., Rev. & Tax Code § 3381.

Status Quo: No Change

The Commission could decide that no change is necessary. In this case, no recommendation would be required.

Benefits to this Approach

This approach would not disrupt current practice. For repeat players (including the governmental actors obligated to provide notice under the provisions in question), the judicial districts are presumably a known quantity. Further, under this approach, no legislative action is required. And, the parties providing notice pursuant to these provisions would be subject to the same requirements that currently govern notice publication.

Where these notice publication statutes are posing practical problems (see below), the stakeholders could seek to resolve these issues through the legislative process.

Disadvantages to this Approach

At pages 11-15 of Memorandum 2014-4, the staff identified several concerns with this approach:

- **Failure of these static boundaries to account for changing demographics.** The former municipal court boundaries, which before unification could be adjusted, are now frozen and cannot be modified to reflect demographic shifts. At this point, these boundaries are at least thirteen years old and possibly much older.
- **Burden of maintaining former judicial district boundaries.** Government Code Section 71042.6 requires the county recorder to maintain a map of the judicial districts. Devoting government resources to maintaining a map of outdated boundaries for the sole purpose of notice publication under a handful of statutes strikes staff as inefficient.
- **Challenge of accessing former judicial district boundaries.** The staff searched for several counties' maps of the former judicial districts online, but was not able to find such maps. In Memorandum 2014-4, the staff indicated that the lack of ready access to these maps places a not-insignificant burden on parties who need to use these boundaries.[30] The staff has since received comments from the California Self-Storage Association (see below) indicating that gaining access to these maps may be time-consuming and labor-intensive. Further, there may be practical

30. Memorandum 2014-4, pp. 13-14.

difficulties in discerning the exact judicial district boundaries from these maps.

- **Trap for the unwary created by relying on former judicial district boundaries.** Memorandum 2014-4 identified several possible pitfalls that would lead a person seeking to provide notice in accordance with the notice publication statutes to publish notice in the county, as opposed to the former municipal court district.[31]
- **Potentially serious consequences of a failure to determine the correct boundaries.** If notice is mistakenly published in the wrong area, the underlying action could be challenged by an interested party and require litigation to resolve the dispute.

After the Commission considered Memorandum 2014-4, the staff received additional information that accessing "judicial district" boundaries (see above) is indeed posing a practical problem. Erin King, Executive Director of the California Self Storage Association, indicated that she had previously contacted certain counties seeking judicial district maps.[32] The correspondence from Ms. King is provided in the Exhibit. She found it challenging to get access to these maps. Alameda charged a fee to access the map and took 20 days to respond to the initial request.[33] In one instance, the county could not provide a map responsive to her request.[34] Given her experience, Ms. King asks "[i]f the county clerk is the keeper of this information and we cannot access it how can we expect self storage operators to abide by the advertising requirement?"[35]

Ms. King also indicated that these maps themselves can pose practical challenges, as they can be difficult to use. Specifically, in Los Angeles County, Ms. King was permitted to view a "huge, delicate" map from 1969, but was not permitted to copy or order copies.[36] Ms. King noted that "[t]he maps I did receive wouldn't provide much help at all if my self storage facility fell near a boundary line. They were all difficult to read and lacked real details (city list by judicial district etc)."[37]

Given these existing practical problems, the staff recommends against the status quo approach. Does the Commission agree that the status quo should be changed?

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31. *Id.* at 14-15.
32. Exhibit, p. 1.
33. *Id.*
34. *Id.* at 1, 2.
35. *Id.* at 1.
36. *Id.*
37. *Id.*

Improved Status Quo: Retain Judicial Districts for Purposes of Publication, but Make Changes to Clarify and Improve Access to District Boundaries

To the extent that the Commission seeks to preserve these districts for notice publication, there are a number of improvements that could be made to ensure that the requirements are clear and that the boundary information is readily accessible. The staff suggests, at a minimum, that some of the simpler, clarifying changes would be a significant improvement over the status quo.

Possible Improvements to the Status Quo

As a general matter, the improvements range from relatively simple, technical changes to significant modifications that, while offering the opportunity to create a more robust framework, are likely not practicable given the considerable costs and relatively few statutes at issue. Although this list is not intended to be exhaustive, the following identifies several potential modifications, listed roughly in order of increasing complication and cost, that could be made to improve the notice publication statutes that rely on judicial districts to achieve local notice:

(1) *Adding statutory cross-references to ensure that parties providing notice under these statutes are aware that the former municipal court districts were preserved for publication purposes.* Such a change would assist persons who need to determine the correct boundaries for notice publication. For instance, Civil Code Section 3440.1 could be amended along the following lines:

> 3440.1. This chapter does not apply to any of the following:
>
> ….
>
> (h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:
>
> ….
>
> (2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district<u>, as described in Section 71042.5 of the Government Code,</u> in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district.…
>
> ….

(2) *Replacing "judicial district" with a different term that is less apt to cause confusion, like "publication district."* This change would alleviate possible confusion about the meaning of "judicial district" in these

provisions (i.e., whether the appropriate boundary in light of unification is the county). For example, Revenue and Taxation Code Section 3702 could be amended to read:

> 3702. The tax collector shall publish the notice of intended sale once a week for three successive weeks in a newspaper of general circulation published in the county seat and in a newspaper of general circulation published in the ~~judicial~~ publication district in which the property is situated. If the same newspaper of general circulation is published in both the county seat and in such district, or if the publication of the notice of sale is made in a newspaper which is determined pursuant to Section 3381 as most likely to afford adequate notice of the sale, a publication in such paper shall satisfy the requirements for publication set forth in this section. If there is no newspaper published in the county seat or in the ~~judicial~~ publication district, then publication may be made by posting notice in three public places in the county seat or in the ~~judicial~~ publication district, as the case may be, where no such newspaper is published. The publication shall be started not less than 21 days prior to the date of the sale.

The Commission could also propose a statutory definition of "publication district and perhaps insert cross-references to facilitate understanding of these requirements.

(3) *Requiring the judicial district boundary information be made available online.*

(4) *Requiring the development of a statewide map of judicial district boundaries.*

(5) *Permitting or requiring modification of the boundaries to reflect population shifts.*

The first two items (Items #1 and #2) are likely to be noncontroversial, as they are in the vein of technical, clarifying changes. The next two changes (Items #3 and #4) offer additional transparency, but also come with additional costs.

Finally, allowing or requiring the boundaries to be modified (Item #5) would be a major change. While such changes could ensure that these districts reflect population shifts, a framework for making such changes would be needed (e.g., process rules, substantive requirements for creating and changing district boundaries). Any modifications of districts would likely be costly and require significant time and effort.

Given the costs, requiring modification of judicial districts is likely to be controversial. Permitting, but not requiring, such modification might also be

controversial, but perhaps less so. Permitting modification, subject to appropriate standards, may result in little change in practice, as local governments may have little incentive to modify district boundaries.

Benefits to this Approach

The primary benefits of this approach are that the requirements will be more transparent and easier to administer than the status quo. For example, this approach could help avoid any confusion that may arise from references to "judicial district" that are meant to indicate *former* judicial districts. In addition, parties who are familiar with the current requirements will not be required to change their practices. This approach could be a one-size-fits-all solution to be used for all of the statutes at issue in this study.

Disadvantages to this Approach

Fundamentally, this approach perpetuates a reliance on outdated boundaries that likely have little connection with the current population distribution. In addition, the staff anticipates that there would be costs associated with simply improving access to the boundaries. Further, if the statutes are changed to permit or require updating the boundaries, the process of updating the boundaries would likely entail significant costs.

Eliminate References to Judicial Districts and Replace with Another Set of Boundaries for Notice Publication

Another option discussed in Memorandum 2014-4 is replacing the judicial district boundaries with another set of boundaries for notice publication. Examples given in the initial memorandum included supervisorial districts or assembly districts.

The staff wants to clarify that, under this approach, the alternatives are not necessarily limited to a specific set of districts. The California codes include several statutes that use relative proximity ("nearest to") for notice publication requirements.[38] Another related alternative is a mileage based requirement (i.e.,

38. See, e.g., Bus. & Prof. Code § 23986 (the relevant notice shall be published "in a newspaper of general circulation, other than a legal or professional trade publication, in the city in which the premises are situated, or if the premises are not in a city, the publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted"); Gov't Code § 6042 ("Where no newspaper of general circulation is published within the jurisdiction of the officer, then the publication, notice by publication, or official advertising shall be given or made in a newspaper of general circulation published nearest thereto.").

"within 10 miles of"). Either a relative-proximity or mileage-based requirement could serve as an option for replacing judicial districts.

Benefits to this Approach

Generally, this approach has the potential to resolve nearly all of the concerns with the status quo identified in Memorandum 2014-4.[39] First, the notice requirements would no longer rely on outdated districts. Presumably, the provisions crafted using this approach could be drafted in a manner that will be robust in the face of shifting population and will not require a separate district map to be maintained simply for notice. In addition, new requirements using this approach should be easier to understand and comply with, minimizing uncertainty. To the extent that a different set of districts is chosen to replace judicial districts, such boundaries would likely be more accessible online and through interactive maps. Similarly, basing the requirement on relative proximity or mileage would also provide clear guidance to parties providing notice according to these provisions.

Disadvantages to this Approach

As noted in Memorandum 2014-4, it is unlikely that a substitute set of notice boundaries would result in the same distribution as the former municipal court districts. One issue that the Commission may want to consider is the localness of notice under the current requirement versus the level of localness offered by an alternative.

Without exhaustive research, the staff cannot determine the exact number of counties that had less-than-countywide judicial districts. However, it appears that some, perhaps even a majority of, counties were not divided into multiple judicial districts (i.e., there was a single municipal court district and it was countywide). Thus, replacing the former municipal court district boundaries with another set of boundaries for notice publication has the potential to increase the localness of notice in certain areas (counties with only a single, countywide municipal court district), while reducing the localness of notice in other areas (counties with many municipal court districts). Similarly, employing a proximity or mileage-based rule to replace the former municipal court district boundaries

39. See Memorandum 2014-4, pp. 11-15.

for notice publication could, in practice, result in achieving a very different level of local notice than the current rule.

In addition, this approach offers many different options. Selecting an appropriate replacement for judicial districts may be a complicated endeavor, especially because of the distribution issue highlighted above. Given the differing structure of the statutes, this approach does not necessarily offer a one-size-fits-all solution.

Eliminate References to Judicial Districts without Replacing Them

The final alternative is to simply eliminate the references to judicial districts in the notice publication statutes. In some cases, this approach would provide a clear rule (e.g., countywide publication), while in others, the approach could establish a rule based on vague standards (e.g., in the area of, near).

Benefits to this Approach

The benefits of this approach are that it would eliminate both the reliance on outdated boundaries and the complicated question of what should replace those boundaries. While there may be nuanced issues in the drafting, the implementation of this approach would likely be relatively straightforward.

Disadvantages to this Approach

Generally, this approach is most problematic for statutes where the judicial district is the initial location for notice publication. Perhaps the most significant disadvantage is that, in some cases, the standards will be vague and may not be adequate to achieve local notice. Specifically, the level of localness that would be achieved without specific requirements in the statutes is unclear. And, without specific requirements, this approach may not provide sufficiently specific direction for persons who are required to provide notice. With such uncertainty, disputes about the sufficiency of notice may result.

PRELIMINARY STAFF COMMENTS

In the interest of advancing the discussion on this topic, the staff offers some preliminary comments on selecting a course of action. The staff wants to emphasize that these comments do not represent a staff recommendation for the appropriate course of action. Rather, they are intended to stimulate discussion by offering some specific thoughts for the Commission and stakeholders to consider.

As noted previously, the notice publication statutes fall into three general categories: (1) a nested structure with "judicial district" as an intermediate step, (2) "judicial district" as the initial place for notice publication, and (3) "judicial district" as one of several options for local publication. Of these categories, Category #3 appears to be the most straightforward to address, as explained below.

Category # 3 Statutes: "Judicial District" as One of Several Options for Local Publication

The only statute in this category is Revenue and Taxation Code Section 3381. Under that provision, "judicial districts" are one of several options for the Board of Supervisors or tax collector to use for local notice upon concluding that a certain tax notice should be distributed more locally than countywide.[40]

Because the former municipal court boundaries are no longer actively maintained for municipal court purposes and there are several other options for achieving local publication, it might make sense to delete "judicial district" from this statute without replacing it. Thus, Section 3381 could be amended along the following lines:

> **Rev. & Tax Code § 3381 (amended). Alternate means of notice of intent to sell property of delinquent taxpayers**
>
> 3381. In each county where the tax collector or, if the county is a chartered county, the board of supervisors determines that the public interest, convenience and necessity require the local publication of the delinquent list required by Section 3371, or the published notice of power and intent to sell required by Section 3361, in order to afford adequate notice, all items required to be published shall be published as provided in this article.
>
> After the determination, the tax collector or, if the county is a chartered county, the board of supervisors shall divide and distribute the items to be published and cause the same to be published either within (a) the municipal corporations, (b) the elementary, high school, or junior college districts, (c) the supervisorial districts, ~~(d) judicial districts, (e)~~ (d) tax districts, areas included in map books, or tax code areas, or ~~(f)~~ (e) by any annexation or annexations of same, or any combination of same, or any combination of those districts, annexations, areas included in map books, and code areas, within the county as they shall determine most likely to afford adequate notice to owners of the property.

40. See Rev. & Tax Code §§ 3363, 3373.

> Except as provided in this article, the publication shall be in the same manner as provided in Article 1.7 (commencing with Section 3371).
>
> The publication provided for in this article shall be made once a week for two successive weeks in a newspaper or newspapers of general circulation. The publication shall be made in a newspaper published not less frequently than once a week.

The statute would also benefit from subdivision labeling and other technical clean-up, which the staff did not show here because it would distract attention from the key substantive revision. **The staff welcomes comment on this possible approach.**

As an alternative, the staff notes that, if the Commission retains judicial districts or chooses to replace judicial districts in the other statutes, it may be appropriate to amend this statute accordingly (i.e., retain judicial district, replace judicial district with publication district or other alternative) to maintain consistency.

Category #1 Statutes: Nested Structure with "Judicial District" as an Intermediate Step

Category #1 consists of two statutes. Civil Code Section 2924f requires notice of a home foreclosure sale made under a power of sale contained in a deed of trust or mortgage. Code of Civil Procedure Section 701.540 requires notice of a sale of real property in enforcement of a judgment. Both of these statutes require notice to be published in the most local alternative possible, preferring the city over the judicial district and the judicial district over the county.

The judicial districts thus serve an intermediary function, offering a level of local publication that falls between citywide and countywide. Because of the practical difficulties relating to continued use of judicial districts, it might seem logical to eliminate that intermediate option.

In theory, such an approach would have a limited impact:

- The nested structure of the notice requirement in these statutes provides for notice both more local than the judicial district (i.e., citywide) and less local than the judicial district (i.e., countywide). Without the judicial district, there would still be a mechanism for achieving less-than-countywide notice in some cases.
- Eliminating the intermediate "judicial district" step would only affect a certain class of notices in practice (notices in a county with multiple judicial districts, where the location at issue is outside of a city with a newspaper of general circulation). Eliminating the

> "judicial district" step would not affect any notices published within a city; those would simply proceed as they do currently. In addition, in the counties that were not subdivided into multiple municipal court districts, this proposal would result in no change in practice, because "judicial district" publication is already countywide.

In practice, however, the impact might be substantial, because much land lies outside of city limits, especially in rural counties. **The staff welcomes input from stakeholders who provide notice under these statutes on how often publication by "judicial district" currently occurs under these statutes, as this information would be especially useful in determining how to address them.**

If publication by "judicial district" occurs frequently, then amending the Category #1 statutes to eliminate that alternative would represent a significant policy change: Publication in many instances would become countywide and thus less localized than in the past.

Unfortunately, however, the Category #1 nested statutes pose a particular challenge with regard to finding a substitute for "judicial district" that does not upset the current nested-notice structure of the statute. To avoid upsetting this structure, an ideal substitute would be larger than a city and smaller than a county. The substitute should ensure that publication occurs within the relevant county (i.e., the notice boundaries do not cross county lines). The substitute should ensure universal coverage (i.e., there is no land that is excluded from the boundaries altogether). The substitute should be persistent (i.e., boundaries will continue to be maintained in the future). Considering these criteria, the staff has not yet identified an optimal candidate for replacing judicial districts. **We encourage suggestions on this point.**

Category #2 Statutes: "Judicial District" as the Initial Place for Notice Publication

Category #2 consists of four statutes:

(1) Business & Professions Code § 21707 (notice requirement for self-storage facility lien sale).
(2) Civil Code § 3440.1 (exemption for debtor's conveyance of personal property without delivery from fraudulent transfer rules).
(3) Civil Code § 3440.5 (exemption of certain security agreements from fraudulent transfer rules).
(4) Commercial Code § 6105 (notice requirement for bulk sale).

These statutes pose a unique challenge, because they provide that the "judicial district" is the initial place of publication. Thus, a change to any of these statutes has the potential to impact *all* notices provided under the statute. **The Commission should bear that point in mind as it decides how to proceed.**

As yet, the staff does not have even preliminary thoughts to offer on the best means of approaching the Category #2 statutes. **We encourage input from stakeholders and other interested persons on the proper treatment of these provisions, and on any other aspect of this study.**

STAKEHOLDER OUTREACH

Since the February meeting, the staff has identified several organizations with an interest in the issues underlying the notices encompassed by this study. The staff has contacted these organizations to notify them of the study, provide them with Memorandum 2014-4, and give them general information about the Commission's process. These organizations include associations for counties, mortgage lenders, self-storage facilities, county recorders, county tax collectors and treasurers, consumers, and creditors.

As noted previously, the California Self Storage Association responded to the staff's initial email and provided information on their experience with seeking judicial district boundary information.[41] In addition, the staff met informally with representatives of the California Self Storage Association on March 26, 2014 at the association's request. The staff has not received any other correspondence from the stakeholders.

The staff will continue to identify and contact stakeholders. The staff welcomes any suggestions of organizations or persons who are interested in this study.

Respectfully submitted,

Kristin Burford
Staff Counsel

41. See Exhibit, pp. 1-5.

EMAIL FROM ERIN KING, EXECUTIVE DIRECTOR OF THE CALIFORNIA SELF STORAGE ASSOCIATION (2/24/14)

Hello Kristin,

Thank you for contacting the CA Self Storage Association. I am very excited about participating in this study and look forward to contributing where able. I will plan to attend the meeting on April 10th.

In 2011, when SB279 was introduced, I began to seek maps of the judicial districts in CA. Per Government code 71042.6 I started with the country recorders office in LA, San Diego, Orange County, Alameda and Sacramento. In short – finding these maps is no picnic. I even called the CA Newspaper Publishers Association asking for help finding the boundaries (considering they supported the bill) and they could not help me either.

My results:

- Alameda County – Map available from 1975 for a fee. It took 20 days to receive a response to my request.
- San Diego - "We don't know if this type of map is on our records." They referred me to San Diego Geographical Information Source – they finally mailed some maps to me for SD County although they are pretty old.
- Sacramento – No records matching my request exist **(See attached).**
- Orange County – Provided me with a B&W copy of the county with boundaries. Stated the last census was in 2010 and that the recorder does not have a copy of the map from that census. (not entirely sure what that means seeing as I received something).
- LA – I spent about two hours in the country clerks office looking at a map from 1969. The map was huge, delicate and I was not allowed to copy or order copies. It wasn't easy for the clerk to dig up.

***The maps I did receive wouldn't provide much help at all if my self storage facility fell near a boundary line. They were all difficult to read and lacked real details (city list by judicial district etc)*

My attempt to collect the judicial district information left me with one question: **If the county clerk is the keeper of this information and we cannot access it how can we expect self storage operators to abide by the advertising requirement?**

I have also attached a letter from one of my members who operates a self storage facility in the small town of Needles, CA. They are a perfect example of why the countywide requirement is a better solution.

Please let me know how else I can help or if you have any questions. Thank you again for contacting me.

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Janice M. Snyder
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Samantha Tali
Claire van Dam
Silvia B. Viarnes
Timothy D. Weinland
James R. Wood
Elizabeth H. Wright
James G. Wright

May 18, 2011

Erin King
California Self Storage Assoc.
4000 MacArthur Blvd, Suite 900
Newport Beach, CA 92660

Re: PRA Request PR279-4

Dear Ms. King:

You and I spoke by telephone on May 17, 2011 regarding your Public Records Act Request dated May 5, 2011, which was received by the Sacramento County Clerk Recorder on May 10, 2011. The purpose of my call was to clarify which document(s) you were seeking. During that conversation you confirmed that you were seeking a copy of the map showing the judicial districts as of the time of consolidation of the Sacramento Superior and Municipal Courts, as described in California Government Code Section 71042.6

Both the Sacramento County Clerk/Recorder and the Sacramento County Surveyor have reviewed their records and no documents responsive to your request exist in those records.

As a recommendation, you may wish to direct your inquiry to either the Presiding Judge of the Superior Court of the State of California for the County of Sacramento, or to the administrator of that court.

Sincerely,

John Reed
Deputy County Counsel

Cc: Craig Kramer

RESPONSE OF KRISTIN B. BURFORD (2/28/14)

Hi Erin,

Thank you for sharing your experience searching for judicial district boundaries. I am glad that your association will be able to participate in the study and provide feedback.

As you may have noticed, the initial study memo posed the question about the accessibility of these maps. While it sounds like your experience was a frustrating one, it is very helpful to know that finding these boundaries is indeed challenging in practice. I plan on attaching your email to the next memorandum in this study, so that the Commission will be aware of these issues too.

I have been contacted by Randy Pollock from your association about meeting. I will follow-up with him by phone.

I do have one follow-up clarifying question. In your email, you note that "the countywide requirement is a better solution." I wasn't sure if you were referring specifically to the SB 279 issue or if you support modifying the requirements to be countywide generally. The initial memo presents a handful of other options (including replacing judicial districts with another set of boundaries), so I wasn't sure if your statement was meant to express support for countywide publication over those over approaches.

Please feel free to contact me with additional information or any questions about the study.

Thanks again,
Kristin

REPLY FROM ERIN KING, EXECUTIVE DIRECTORS OF THE CALIFORNIA SELF STORAGE ASSOCIATION (2/28/14)

Hello Kristin,

Thank you for your response. I am excited to be included in this study. I/We support modifying the requirements to be countywide generally. My apologies for any confusion.

I noticed I forget to include the letter from our member as promised in my initial email. I believe this is a good example of the countywide publication being a better solution.

Gary and Suzanne Cramer
8475 Verdosa Dr.
Whittier, CA 90605
562-696-6738

May 16, 2011

Assembly Member Tony Mendoza
State Capitol,
Sacramento, CA 95814

Dear Assembly Member Mendoza,

We own two small storage facilities in the state of California. We are writing to state our strong opposition to SB279. This bill was proposed by the California Newspaper Publishers Association (CNPA) and is not the mere technical change to the Self-service Storage Facility Act (Business & Professions Code sections 21700 to 21716) that they suggest. This bill will reduce the number of publications where we can advertise our lien sales by restricting statutorily required advertising to newspapers of general circulation that circulate in the judicial district where the sell is held. We have more adverting choices under the current countywide requirement. We have been in the self storage business for 11 years and in our experience, fewer advertising options will mean higher advertising costs. This is unfair to us in one of the worst real estate downturns in a generation.

Rather than reducing the lien sale advertising options available to self storage operators, we would like the legislature to expand the options beyond newspapers of general circulation to other media outlets. Let us give you an example why. Presently we must pay $170 – 190 per auction to run an ad in the newspaper. You may think that is not much money however that is $170 we will never recover. That $170 ad is read by very few people....it is published in the town of Needles, Ca and if you are familiar with that town you would understand that it is a town with very little interest in lien sale notices. If the legislation was changed and it allowed us to post the notice of lien sale on publically accessible websites or advertise in publications that are actually read by auction buyers, we would have a better turn out for the auction. It would cost us less and in the end, the tenant may make more because any thing left over after the tenant's bill has been paid goes to the tenant.

The entire premise for the lien sale notice, it seems to us, is to help notify the tenant of the impending sale and to bring in buyers for the auction. In 99% of the cases, the tenant is not residing in the city where the lien sale publication will be advertised and so that premise is defeated. If you own a storage facility in a small town (as we do), advertising solely in that town defeats bringing in qualified buyers who would pay larger sums for the units. The owners lose....so do the tenants. The only one who appears to win is the newspaper.....How does that help to protect the tenant's rights? And the tenant is the one that this bill has been designed for.....

I respectfully ask that the legislature not pass SB279. It is unfair legislation that will not achieve its sponsor's stated purpose.

Sincerely,

Gary and Suzanne Cramer