

## First Supplement to Memorandum 2014-53

### **Trial Court Restructuring: Remaining Projects**

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The Law Revision Commission<sup>1</sup> is responsible for determining whether any provisions of law are obsolete as a result of:

- (1) The enactment of the Trial Court Employment Protection and Governance Act,<sup>2</sup>
- (2) The enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997,<sup>3</sup> or
- (3) The implementation of trial court unification.<sup>4</sup>

The Commission “shall recommend to the Legislature any amendments to remove those obsolete provisions.”<sup>5</sup> The Commission is also responsible for conducting several specific studies that were identified in its 1998 report on trial court unification.<sup>6</sup>

Much of this work has already been done. In this document, the staff describes the projects that still need to be completed. A chart summarizing the remaining work is attached as an Exhibit.

To provide context for discussion of the remaining projects, we begin by providing some background information on trial court restructuring and the Commission’s role in that process.

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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](http://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. See 2000 Cal. Stat. ch. 1010; Gov’t Code §§ 71600-71675.

3. 1997 Cal. Stat. ch. 850.

4. Gov’t Code § 71674.

5. *Id.*

6. See Gov’t Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-86 (1998) (hereafter, “*TCU: Revision of Codes*”).

## BACKGROUND INFORMATION ON TRIAL COURT RESTRUCTURING

California's trial court system was dramatically restructured around the turn of the century, and the Commission played an important role in that process.

At the direction of the Legislature, the Commission began working on trial court unification over twenty years ago, by preparing a report on the constitutional changes that would be necessary to unify the superior, municipal, and justice courts on a statewide basis.<sup>7</sup> The Legislature did not ask the Commission to evaluate the wisdom or desirability of unifying the trial courts, but only to provide guidance on how to revise the state Constitution to implement such a reform.<sup>8</sup>

The Commission completed the requested report in early 1994. Soon afterward, the voters approved a proposition eliminating justice courts from California's judicial structure.<sup>9</sup>

At about the same time, the concept of statewide unification stalled in the Legislature. Instead, the Legislature passed a measure that authorized unification on a county-by-county basis: The municipal and superior courts in a county could unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.<sup>10</sup>

The Legislature directed the Commission to determine how to revise the codes to implement this measure.<sup>11</sup> In response, the Commission prepared a massive report (560 pp.) on the statutory changes necessary to accommodate county-by-county unification.<sup>12</sup>

In addition to proposed legislation, the Commission's report included a list of "Issues in Judicial Administration Appropriate for Future Study."<sup>13</sup> The report recommended that the Legislature assign certain of those issues to the Commission,<sup>14</sup> and other issues to the Judicial Council.<sup>15</sup> The report also recommended that the two entities jointly conduct a study reexamining the

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7. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994); see also *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

8. See 1993 Cal. Stat. res. ch. 96.

9. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

10. See 1996 Cal. Stat. res. ch. 36 (SCA 4 (Lockyer)).

11. See 1997 Cal. Stat. res. ch. 102; 1998 Cal. Stat. res. ch. 91.

12. See *TCU: Revision of Codes*, *supra* note 6.

13. See *TCU: Revision of Codes*, *supra* note 6, at 82-86.

14. See *TCU: Revision of Codes*, *supra* note 6, at 85-86.

15. See *TCU: Revision of Codes*, *supra* note 6, at 84-85.

procedural distinctions between traditional superior court cases, traditional municipal court cases, and small claims cases (the “three-track” study).<sup>16</sup>

The county-by-county unification measure appeared on the ballot at a statewide election in June 1998.<sup>17</sup> The voters approved it, and the measure became operative the next day.

Soon afterwards, the Legislature enacted a bill revising the codes as the Commission recommended, to be workable regardless of whether the trial courts in a county voted to unify.<sup>18</sup> The Legislature also directed the Commission and the Judicial Council to conduct the studies identified in the Commission’s report, in the manner recommended.<sup>19</sup>

Courts began unifying during the summer of 1998. By early 2001, the trial courts in all of California’s 58 counties had unified. At that point, it became appropriate to further revise the codes to reflect the statewide elimination of the municipal courts (through unification in every county).

In addition to trial court unification, two other major reforms of the trial court system occurred during the same time period:

- The enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997, which made the state responsible for funding trial court operations, instead of the counties.<sup>20</sup>
- The enactment of the Trial Court Employment Protection and Governance Act (“TCEPGA”), effective January 1, 2001, under which trial court personnel became employees of their local court, instead of the state or county.<sup>21</sup>

Like trial court unification, these reforms necessitated extensive code revisions to reflect the new trial court structure.

In 2001, the Legislature directed the Commission to study and recommend legislation revising the codes to remove material made obsolete by these three major reforms of the trial court system.<sup>22</sup> The recommendation was due the following year.

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16. See *TCU: Revision of Codes*, *supra* note 6, at 82-83.

17. See Proposition 220.

18. See 1998 Cal. Stat. ch. 931 (SB 2139 (Lockyer)); see also 1999 Cal. Stat. ch. 344 (follow-up legislation); *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).

19. See 1998 Cal. Stat. ch. 931, § 257; see also Gov’t Code § 70219 & Comment; 2002 Cal. Stat. ch. 784, § 340.

20. 1997 Cal. Stat. ch. 850.

21. 2000 Cal. Stat. ch. 1010; Gov’t Code §§ 71600-71675.

22. See 2000 Cal. Stat. ch. 1010, § 14.

The Commission submitted a lengthy report (567 pp.) in response, recommending hundreds of statutory revisions, as well as a few constitutional changes.<sup>23</sup> The report pointed out that in addition to the numerous revisions proposed, “many other statutes require amendment or repeal, but are not included in this recommendation because (1) stakeholders have not yet reached agreement on key issues, (2) further research is required due to the complexity of the law, or (3) additional time is required to prepare appropriate revisions due to the volume of statutory material involved.”<sup>24</sup> The Commission therefore recommended removal of the deadline for its study, so that it could “continue its work in this area and recommend further cleanup of the statutes from time to time.”<sup>25</sup>

The Legislature enacted the legislation recommended by the Commission,<sup>26</sup> as well as a constitutional measure that the voters eventually approved.<sup>27</sup> As requested, the Legislature also eliminated the deadline for completion of the Commission’s study.<sup>28</sup>

Since then, the Commission has issued many additional reports on trial court restructuring,<sup>29</sup> and the Legislature has enacted virtually all of the legislation recommended in those reports.<sup>30</sup> The Commission has also completed work on

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23. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Reports 1 (2002) (hereafter, “TCR: Part 1”).

24. *Id.* at 5.

25. *Id.*

26. See 2002 Cal. Stat. ch. 784 (SB 1316 (Committee on Judiciary)).

27. See 2002 Cal. Stat. res. ch. 88 (ACA 15 (Wayne)) (Prop. 48, approved Nov. 5, 2002).

28. See Gov’t Code § 71674 (2002 Cal. Stat. ch. 784, § 360) & Comment.

29. See *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter, “TCR: Part 2”); *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 341 (2006) (hereafter, “TCR: Part 3”); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 37 Cal. L. Revision Comm’n Reports 149 (2007) (hereafter, “TCR: Bail Forfeiture (2007)”); *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007) (hereafter, “TCR: Part 4”); *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm’n Reports 195 (2007); *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm’n Reports 109 (2009) (hereafter, “TCR: Part 5”); *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm’n Reports 157 (2009) (hereafter, TCR: Court & County #1); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm’n Reports 265 (2011) (hereafter, “TCR: Bail Forfeiture (2011)”); *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm’n Reports 315 (2011) (hereafter, “TCR: Writ Jurisdiction”); see also *Civil Procedure: Technical Corrections*, 30 Cal. L. Revision Comm’n Reports 479 (2000); *Authority of Court Commissioner*, 33 Cal. L. Revision Comm’n Reports 673 (2003).

30. See 2003 Cal. Stat. ch. 149 (implementing recommendation on TCR: Part 2); 2007 Cal. Stat. ch. 43 (implementing recommendation on TCR: Part 3); 2008 Cal. Stat. ch. 56 (implementing recommendations on TCR: Part 4 and *Transfer of Case Based on Lack of Jurisdiction*); 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12 (partially implementing recommendation on TCR: Part 5); 2012 Cal. Stat. ch. 470 (implementing recommendations on TCR: Court & County #1, TCR: Writ

all but one of the “Issues in Judicial Administration Appropriate for Future Study” that the Legislature assigned to it.<sup>31</sup> Almost all of those studies resulted in the enactment of legislation,<sup>32</sup> but legislation proved unnecessary in a few instances.<sup>33</sup> In addition, the Commission and the Judicial Council jointly conducted the “three-track” study described in the Commission’s 1998 report on trial court unification.<sup>34</sup>

The Commission’s work in this area has ranged widely in character, and it has affected over 1,700 sections throughout the codes. The Commission has prepared a multitude of straightforward technical revisions,<sup>35</sup> addressed complex and challenging sets of issues,<sup>36</sup> and helped to resolve innumerable stakeholder concerns, some of which were relatively minor while others involved intense conflicts over limited resources or other sensitive matters.<sup>37</sup>

Although the Commission has already done an immense amount of work on trial court restructuring, more work remains to be done. The remaining projects are described below.

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*Jurisdiction*, and *TCR: Bail Forfeiture* (2011), and part of recommendation on *TCR: Part 5*); see also 2001 Cal. Stat. ch. 44 (implementing recommendation on *Civil Procedure: Technical Corrections*); 2004 Cal. Stat. ch. 49 (implementing recommendation on *Authority of Court Commissioner*).

31. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm’n Reports 507 (2000) (hereafter, “TCU: Issues Identified for Future Study”); *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm’n Reports 291 (2000); *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm’n Reports 281 (2000); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm’n Reports 307 (2000); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm’n Reports 333 (2002); *Trout Affidavit*, 30 Cal. L. Revision Comm’n Reports 319 (2000); *Expired Pilot Projects*, 30 Cal. L. Revision Comm’n Reports 327 (2000); *Law Library Board of Trustees*, 30 Cal. L. Revision Comm’n Reports 429 (2000); *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm’n Reports 223 (2001); see also *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm’n Reports 267 (2003).

32. See 2000 Cal. Stat. ch. 113 (implementing 2000 recommendation on *Stay of Mechanic’s Lien Enforcement Pending Arbitration*); 2000 Cal. Stat. ch. 167 (implementing recommendation on *Trout Affidavit*); 2000 Cal. Stat. ch. 688, § 7 (implementing recommendation on *Jurisdictional Classification of Good Faith Improver Claims*); 2001 Cal. Stat. ch. 44 (implementing recommendation on *Authority to Appoint Receivers*); 2001 Cal. Stat. ch. 52 (implementing recommendation on *Law Library Board of Trustees*); 2001 Cal. Stat. ch. 115 (implementing recommendation on *Expired Pilot Projects*); 2002 Cal. Stat. ch. 71 (implementing recommendation on *Cases in Which Court Reporter Is Required*); see also 2004 Cal. Stat. ch. 193 (implementing recommendation on *Obsolete Reporting Requirements*).

33. See *TCU: Issues Identified for Future Study*, *supra* note 32.

34. For information on the “three-track” study, see Memorandum 2011-36 and the other Commission materials at <http://www.clrc.ca.gov/J1321.html>. See also *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm’n Reports 443 (2000); 2001 Cal. Stat. ch. 812 (implementing recommendation on *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*).

35. For example, the bulky recommendation on *TCR: Part 1*, *supra* note 23, included many straightforward revisions, as well as some complicated and difficult ones.

36. See, e.g., *TCR: Writ Jurisdiction*, *supra* note 29.

37. See, e.g., *TCR: Bail Forfeiture* (2007), *supra* note 29; *TCR: Bail Forfeiture* (2011).

## REMAINING PROJECTS

In the discussion that follows, the remaining trial court restructuring projects are grouped into the following categories:

- (1) Studies in progress.
- (2) Projects to address when time permits (legislation likely).
- (3) Projects to address when time permits (may not result in legislation).
- (4) Premature projects.
- (5) Projects that might not be worth pursuing.

Within each category, the largest projects are described first, then the smaller ones. Deactivated projects (if any) are described last.

Based on past experience, it is difficult to estimate how long the remaining projects will take to complete. Statutory reforms often turn out to be more complex, time-consuming, or difficult than they initially appear. Occasionally, they require less work than anticipated. As shown below, the staff categorized the Commission's current study on *Trial Court Unification: Publication of Legal Notice* as a "mid-sized project," rather than a "major project" or a "small project." That should help provide a basis for comparison.

### **1. Studies in Progress**

The Commission is currently working on one matter, as described below.

#### *Trial Court Unification: Publication of Legal Notice (Mid-Sized Project)*

The Commission is responsible for studying publication of legal notice in a county with a unified superior court.<sup>38</sup> That study is in progress. The Commission will consider the comments on its tentative recommendation when it meets in December. Given the opposition of the Judicial Council, it may be necessary to reconsider the proposed approach.<sup>39</sup>

### **2. Projects To Address When Time Permits (Legislation Likely)**

The Commission should work on the following matters when time permits. These projects appear likely to result in legislation.

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38. See Gov't Code § 70219; *TCU: Revision of Codes*, *supra* note 6, at 86.

39. For further discussion of this study, see Memorandum 2014-53.

*Rights and Responsibilities of the County as Compared to the Superior Court (Part 2)*  
*(Major Project)*

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

A lot of this work has already been done, by the Commission and by others.<sup>40</sup> However, the Commission has not yet finished reviewing the codes alphabetically, methodically searching for provisions bearing on rights and responsibilities of a county with respect to trial court operations. For each such provision, it must analyze whether the provision requires revisions to reflect the switch from local to state funding of trial court operations.

Completing these searches and analyzing the results is a big, time-consuming project. The Commission is currently partway through the Government Code; there are still many more codes to review. Getting to the middle of the Government Code required over a year of staff attorney time, from the initial research in late 2009<sup>41</sup> through approval of a final recommendation in December 2010.<sup>42</sup> Further staff work was necessary to shepherd the proposed legislation through the legislative process. In addition, the Commission set aside some of the problematic code provisions for future attention, because they appeared to be controversial or to require further study.<sup>43</sup>

The Commission should resume this major project when time permits. In undertaking it, the Commission should be aware that allocation of rights and responsibilities between the courts and counties is a sensitive topic, because both

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40. See, e.g., 2002 Cal. Stat. ch. 221; 2002 Cal. Stat. ch. 784; 2003 Cal. Stat. ch. 296; 2005 Cal. Stat. ch. 75; 2010 Cal. Stat. ch. 212; 2012 Cal. Stat. ch. 470, §§ 8-10.

41. See Memorandum 2009-50.

42. See *TCR: Court & County #1*, *supra* note 29.

43. See Fam. Code §§ 3153, 9005 (this provision relates in part to court reporting; it may require analysis with court reporter compensation provisions, which are discussed below); Gov't Code §§ 1090, 1091, 1195, 1223, 1224, 1505, 1651, 6100, 6108, 6109, 12763, 24352, 68551, 71380, 71381, 71382, 71384, 72004; see also Penal Code § 1463.22; "Provisions Removed for Further Consideration (as of June 30, 2014)" (on file with Commission). Other provisions previously identified for attention, but not yet addressed, include: Gov't Code § 29802(a) (2d ¶); Prob. Code § 1470; Penal Code §§ 938.3 (this provision relates to court reporting; it may require analysis with court reporter compensation provisions, which are discussed below), 1205, 1207.

types of entities are fiscally strained and thus reluctant to assume any additional burdens or relinquish any source of income. While the proper allocation of aspects of trial court operations was carefully negotiated and resolved,<sup>44</sup> any ambiguities are likely to be contentious.

*Court Facilities (Major Project)*

When the Commission finalized its 2002 report on trial court restructuring, the courts and the counties were engaged in negotiations regarding court facilities. Instead of revising the statutes relating to court facilities, the Commission left such provisions intact, because issues remained unsettled and the facility transfers were not complete.<sup>45</sup>

Later in 2002, the Legislature enacted the Trial Court Facilities Act,<sup>46</sup> under which the transfer of trial court facilities was to be negotiated on a building-by-building basis between the state and each county from July 1, 2003, through June 30, 2007.<sup>47</sup> The Legislature later extended the deadline to December 31, 2009.<sup>48</sup> The Legislature also changed the rules for court facility transfers in various other respects.<sup>49</sup>

The December 2009 deadline for the facilities transfers has passed. To the best of the staff's knowledge, all of the transfers were completed by the deadline. When time permits, the Commission should commence its clean up of the pertinent statutes.

The Commission has previously identified some of those statutes.<sup>50</sup> Further research may uncover additional pertinent provisions.

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44. See Gov't Code § 77003 ("court operations" defined), 77200 (state funding of "court operations"); Cal. R. Ct. 10.810 (specifying which matters constitute "court operations").

45. See *TCR: Part 1, supra* note 23, at 21; see also *TCR: Part 2, supra* note 29, at 176-77.

46. Gov't Code §§ 70301-70403 (2002 Cal. Stat. ch. 1082).

47. Gov't Code § 70321.

48. See 2008 Cal. Stat. ch. 9 (AB 1491 (Jones)).

49. See *id.*; see also 2008 Cal. Stat. ch. 311 (SB 1407 (Perata)); 2009 Cal. Stat. ch. 10 (2d Ex. Sess.) (SB 12 (Steinberg)); 2014 Cal. Stat. ch. 452 (AB 619 (Garcia)).

50. See Code Civ. Proc. §§ 134, 216; Gov't Code §§ 25351.3, 25560.4, 26299.008, 68073.5, 70311, 70625 (partially derived from former Gov't Code § 76238), 71002, 71383 (contains cross-reference to Gov't Code § 71002), 73390, 73396, 73560-73561, 73660, 73661, 73698, 73698.6, 73730, 73732, 73750, 73756, 73770-73771, 73783.1, 73783.3, 73784, 73784.10, 73790, 73792, 73950, 73956, 74640, 74640.2, 74720, 74724, 74760, 74764, 74915, 74916, 74934, 74935.5, 74948, 74950, 74960, 74962, 76101.5, 76200, 76219, 76238, 76245.

Other provisions that might be relevant are: Gov't Code §§ 6520, 6546(o), 8878.99, 14672.5, , 24250, 24252, 24253, 24254, 24254.5, 25351, 25539.10, 26290.1, 26290.6, 26291.7, 26295.2, 26295.12, 26297, 26297.1, 26298, 26298.10, 26298.12, 26298.20, 26299.001, 26299.009, 26299.031, 26299.082, 29550(b)(7), 50531, 63010(q)(14), 65850(c)(2), 68085(d), 68085.1(c)(1)(D), 70622, 70624, 70625, 74602, 76000(a)(2),(d),(e), 76100, 76101, 76106, 76110, 76214, 76215, 76219, 76223, 76224, 76225, 76251, 76252, 77201(f), 77201.1(c), 77201.3(e), 77650-77655.

When the Commission begins working on this issue, it should keep in mind that a county might still be required to pay remittances to the state, based on the amount the county historically spent on its court facilities.<sup>51</sup> Accordingly, a provision that establishes an account for a county's courthouse fund might have ongoing relevance.

*Judicial Benefits (Major Project)*

Pursuant to its usual practice, the Commission circulated a tentative recommendation before finalizing its 2002 report on trial court restructuring.<sup>52</sup> The lengthy tentative recommendation included a number of provisions relating to judicial benefits.

Some of those provisions pertained solely to benefits of municipal court judges.<sup>53</sup> Others involved benefits of municipal or superior court judges, as well as employment terms for court personnel affected by the enactment of TCEPGA.<sup>54</sup> Still other provisions involved county control over benefits of superior court judges.<sup>55</sup> Similarly, other provisions appeared to involve county contribution to judicial retirement systems.<sup>56</sup>

The Commission received input expressing various concerns relating to judicial benefits. Due to those concerns, in March 2002 the Commission removed the judicial benefit provisions from its proposal, for further study. At about the same time, the Judicial Council created a Judicial Service Advisory Committee to study ways to improve judicial service, retention, compensation, and benefits.<sup>57</sup>

To the best of the staff's knowledge, the Judicial Service Advisory Committee never took any action with respect to the judicial benefit provisions that the Commission removed from its proposal. As part of a 2004 recodification of the Public Employees' Medical and Hospital Care Act, one of those provisions<sup>58</sup> was

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51. See Gov't Code §§ 70353-70356; see also Gov't Code §§ 70351-70370; bill digest for AB 1289 (Davis) (2011-2012).

52. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001).

53. Gov't Code §§ 73640, 73642, 73950, 73952, 74130, 74145, 74340, 74342, 74740, 74742, 77210; see also former Gov't Code § 22754.35.

54. See Gov't Code §§ 53200.3, 53214.5, 69893.7 (this provision relates in part to court reporting; it may require analysis with court reporter compensation provisions, which are discussed below), 69894.3, 69894.4.

55. See Gov't Code §§ 69907, 69909.

56. See Gov't Code §§ 75092, 75097, 75103, 75103.3, 75103.5, 75109.7, 75602, 75605, 75612.

57. See Cal. R. Ct. 10.57.

58. Former Gov't Code § 22754.35.

repealed and several other provisions<sup>59</sup> were amended to correct cross-references.<sup>60</sup> The other judicial benefit provisions remain in the codes unchanged.

A number of years ago, a court of appeal considered a challenge to the supplemental judicial benefits that Los Angeles County provides to its judges. The court of appeal ruled that those benefits were “compensation,” which could only be prescribed by the Legislature.<sup>61</sup>

The California Supreme Court denied review, and corrective legislation was quickly enacted.<sup>62</sup> Among other things, the corrective legislation directed the Judicial Council to prepare a report “analyzing the statewide benefits inconsistencies” for judges in California.<sup>63</sup>

The Judicial Council completed that report in compliance with the legislative deadline.<sup>64</sup> The report contemplated further investigation and action:

The council supports further investigation into this issue and a resolution of the inconsistencies that will not reduce the benefits currently provided to any judge. Therefore, the Judicial Council will later submit a second report to the Legislature that provides further information about the impact of the current approach to judicial benefits and, if appropriate, will make recommendations regarding options for reforming judicial benefits in order to move toward a more consistent approach that would better attract the most qualified judicial candidates and maintain the excellence of California’s judiciary.<sup>65</sup>

The staff has not researched what has happened since then. When the Commission turns to judicial benefits, that should be the first step.

In addressing this area, the Commission will have to be extremely careful. The topic is touchy and volatile. Any attempt to make revisions, even to remove apparently obsolete material, may encounter stiff resistance. In addition, provisions relating to benefits for municipal court judges might have continuing

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59. Gov’t Code §§ 73642, 73952, 74342, 74742.

60. See 2004 Cal. Stat. ch. 69.

61. See *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630, 84 Cal. Rptr. 3d 242 (2008).

62. See 2009 Cal. Stat. ch. 9 (2d Ex. Sess.) (SB 11 (Steinberg)).

63. See 2009 Cal. Stat. ch. 9, § 6.

64. See Judicial Council of California, *Historical Analysis of Disparities in Judicial Benefits: Report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and the Senate and Assembly Committees on Judiciary* (Dec. 15, 2009).

65. *Id.* at 2.

Appendix C of the 2009 Judicial Council report is entitled “Authorities Related to Benefits for Trial Court Judges.” It includes all of the code provisions mentioned in notes 53-56 *supra*, except (1) Government Code Section 77210 and (2) Government Code Sections 73640, 73950, 74130, 74340, and 74740, each of which merely describes the geographical application of an article that contains one or more provisions relating to judicial benefits.

relevance, even though the municipal courts no longer exist. People who served as municipal court judges might still have entitlements that are geared to such benefits.

*Leftover Material From TCR: Part 5 (Mid-Sized Project)*

In 2009, the Commission approved a final recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 5*.<sup>66</sup> All of the reforms have since been enacted except the proposed revisions of Government Code Sections 26806 and 69894.5, relating to court interpreters and translators.<sup>67</sup>

The proposed revisions to those Government Code sections encountered resistance in 2010 from the Judicial Council and the California Association of Clerks and Election Officials (“CACEO”). Their concerns were unrelated to trial court restructuring, so the Commission was not in a position to respond to them. Attempting to do so would have exceeded the Commission’s authority.

The staff thus asked the Judicial Council and CACEO whether those entities planned to introduce legislation addressing their concerns. CACEO’s representative replied that CACEO intended to introduce legislation in 2011 to address its concerns with Government Code Section 26806.

As anticipated, Assembly Member Wagner introduced Assembly Bill 810 in 2011, which addressed the matter. The bill was amended several times and progressed towards enactment, but stalled on the suspense file in Senate Appropriations, apparently due to fiscal concerns.

Government Code Sections 26806 and 69894.5 remain the same as when the Commission issued its recommendation. They still need to be revised to reflect trial court restructuring.

*Representation and Indemnification of Courts and Court Personnel (Mid-Sized Project)*

The tentative recommendation leading to the 2002 report on trial court restructuring included a number of provisions relating to indemnification and representation of judges and other trial court personnel.<sup>68</sup> At the time, the area was in flux and the Commission received several comments urging further study

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66. *TCR: Part 5, supra* note 29.

67. See 2010 Cal. Stat. ch. 212; 2012 Cal. Stat. ch. 470, §§ 8-10.

68. Gov’t Code §§ 811.9, 990.2, 26524, 26529, 27647, 27648. See Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001).

of the provisions.<sup>69</sup> Consequently, the Commission did not include these provisions in its final recommendation in 2002.

Later the same year, the Legislature enacted a bill on the subject, which was sponsored by the Judicial Council.<sup>70</sup> Another bill on the subject, amending Government Code Section 811.9, was enacted in 2005.<sup>71</sup>

The Commission needs to revisit the provisions identified in 2001 and determine what treatment is appropriate in light of recent legislation and implementation of trial court restructuring. Only two of those provisions<sup>72</sup> have been revised since the Commission last looked at them.

*Judicial Districts and Local Venue (Mid-Sized Project)*

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

In the tentative recommendation leading to the 2002 report on trial court restructuring, the Commission identified a number of provisions that raised issues relating to local venue. The Judicial Council formed a working group to study local venue issues, so the Commission did not include these provisions in its final recommendation.

Many of the local venue provisions were addressed in legislation sponsored by the Judicial Council in 2002 and 2003.<sup>73</sup> Further work regarding these provisions probably is not necessary.

But Code of Civil Procedure Section 398 concerns certain transfers of cases from one court to another. The Commission should examine it in light of the revisions that the Legislature made to Code of Civil Procedure Section 396a, which now refers to the “proper court location” for some lawsuits, not just the

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69. See Memorandum 2002-17, pp. 20-21, 22; First Supplement to Memorandum 2002-17, pp. 7, 10.

70. See 2002 Cal. Stat. ch. 1007 (AB 2321 (Hertzberg)).

71. See 2005 Cal. Stat. ch. 706 (AB 1742 (Committee on Judiciary)).

72. Gov’t Code §§ 811.9, 26529.

73. See 2002 Cal. Stat. ch. 806; 2003 Cal. Stat. ch. 449.

“proper court.” Section 398 also requires certain technical revisions.<sup>74</sup> Because it is a civil venue provision, it might make sense to handle it in the Commission’s planned study of civil venue.<sup>75</sup>

The staff should also search the codes for other references to “judicial district” that may require attention. The Commission already identified some such references in working on rights and responsibilities of the county as compared to the superior court (discussed above).<sup>76</sup>

*Judicial Disqualification (Mid-Sized Project)*

An appeal from a decision in a limited civil case is heard by the appellate division of the same superior court that rendered the decision.<sup>77</sup> In *Housing Authority of the County of Monterey v. Jones*,<sup>78</sup> the court of appeal considered whether a superior court judge who ruled on a pretrial matter in a limited civil case should have participated in appellate division review of a different aspect of the same case. After careful analysis of unclear provisions, the court of appeal concluded that such a dual role was improper.<sup>79</sup>

The court of appeal also suggested that

the Legislature might consider amendments to the judicial disqualification statutes that are specific to the predicament of post-unification superior court appellate division panels. ... [T]he promotion of objectivity and independence in appellate division assignments is reflected in the constitutional and statutory provisions and rules of court that were enacted or amended to create and address the superior court appellate division. The applicable judicial disqualification statutes should likewise promote this goal, and they should include more specific provisions to account for the dual roles in which superior court judges, especially in smaller counties, may find themselves when they seek to discharge their duties while on simultaneous assignments to both the trial court and the appellate division.<sup>80</sup>

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74. See Memorandum 2001-4, p. 7; Memorandum 2000-72, attachment pp. 10-11; Tentative Recommendation on *Civil Procedure: Technical Corrections* (Oct. 2000), pp. 11-12; First Supplement to Memorandum 2013-54, pp. 1-3 & Exhibit pp. 1-4; Email from B. Gaal to D. Boyer-Vine (1/22/14) (on file with Commission).

75. See Memorandum 2014-41, p. 22.

76. A related topic is to “research the impact of unification and the elimination of judicial districts on the composition of jury pools.” See Minutes (March 2002), p. 11. The Commission should look into this when time permits, but should not devote significant time to it unless problems are apparent.

77. Code Civ. Proc. §§ 77, 904.2.

78. 130 Cal. App. 4th 1029, 30 Cal. Rptr. 3d 676 (2005).

79. *Id.* at 1042.

80. *Id.*

The Commission should consider whether to follow-up on the court of appeal's suggestion.

### **3. Projects To Address When Time Permits (May Not Result in Legislation)**

The Commission should work on the following matters when time permits. These projects might not result in legislation.

#### *Compensation of Official Reporter (Major Project)*

Numerous provisions in the codes relate to court reporter compensation.<sup>81</sup> Many of these provisions were included in a staff draft of proposed legislation that the Commission sent to court reporter groups and the Judicial Council for review in 2001.<sup>82</sup> This step was a preliminary effort to investigate whether the enactment of TCEPGA rendered material in those provisions obsolete.

Negotiations regarding court reporter compensation were ongoing, however, and court reporter organizations considered it important to leave the statutes intact pending resolution of the compensation issues. A legal argument could be made that the statutes still have some effect despite the enactment of TCEPGA; whether that argument would succeed in court is debatable.<sup>83</sup> The Commission decided to defer further work on the matter.

Since then, a task force organized by the Judicial Council has issued a lengthy report on numerous issues pertaining to court reporters.<sup>84</sup> The task force presented its report to the Judicial Council in early 2005, but the Judicial Council did not adopt any of the task force recommendations at that time. Instead, it referred the proposals to appropriate committees "for review and for subsequent future consideration and discussion by the council."<sup>85</sup> As of early 2006, issues relating to court reporter compensation remained unsettled.

In 2006, the staff checked whether the stakeholders continued to believe that the court reporter compensation provisions, collectively, should be left in the codes without change. Key contacts include the California Court Reporters

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81. See, e.g., Fam. Code § 9005(d) (discussed in Memorandum 2010-24, p. 3; Minutes (June 2010), p. 5.); Gov't Code §§ 68114.8, 68525, 69893.7, 69894.6, 69903, 69947, 69948, 69948.5, 69949, 69952, 69953.5, 69955, 69956, 69990-69991, 69992-69992.2, 69993, 69994-69994.9, 69995-69999, 70000, 70313, 70010-70017, 70025, 70040-70062, 77064, 70100-70104, 70110-70113, 70125-70128, 70130-70134, 70136-70139; Penal Code § 938.3.

82. See Staff Draft, *Statutes Made Obsolete by Trial Court Restructuring: Official Reporter Statutes (Excluding County-Specific Municipal Court Statutes)* (July 16, 2001) (on file with Commission).

83. See Memorandum 2001-96.

84. See Final Report: Reporting of the Record Task Force (Feb. 18, 2005).

85. Judicial Council Meeting Minutes (Feb. 18, 2005), p. 6, available at <[www.courtinfo.ca.gov/jc/documents](http://www.courtinfo.ca.gov/jc/documents)>.

Association (“CCRA”), the California Official Court Reporters Association (“COCRA”), the American Federation of State, County and Municipal Employees (“AFSCME”), and Service Employees International Union (“SEIU”). The Judicial Council has consistently maintained that most if not all of the court reporter compensation provisions are obsolete in whole or in part due to the enactment of TCEPGA.

SEIU informed us that the entirety of the court reporter compensation provisions should be retained in the codes. Other court reporter groups took the same position.

The staff has not re-contacted the court reporter groups since 2006, but we have been repeatedly informed that they remain in conflict with the Judicial Council. It seems improbable that the court reporter groups and the Judicial Council will resolve their differences in the foreseeable future.

Recent bills attempting to repeal some of the court reporter compensation provisions were unsuccessful.<sup>86</sup> The Commission was not involved in those efforts. There have also been numerous other recent bills relating to court reporter issues, almost all of which have been defeated.<sup>87</sup>

Realistically, the stakeholders seem unlikely to resolve their differences in the near future. Despite the passage of time, they probably will not agree on which court reporter compensation provisions are obsolete and how those provisions should be revised.

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86. See AB 1630 (Olsen) (2011-2012); SB 1313 (Nielsen) (2013-2014).

87. For example, see:

- SB 705 (Block) (2013-2014) on use of existing electronic recording equipment for judicial notetaking. *Died.*
- AB 251 (Wagner) (2013-2014) on electronic recording in family law cases. *Died.*
- AB 365 (Mullin) (2013-2014) on court reporting. *Gutted.*
- AB 648 (Jones-Sawyer) (2013-2014) on court reporter fee for proceeding lasting one hour or less. *Enacted as 2013 Cal. Stat. ch. 454.*
- AB 655 (Quirk-Silva) (2013-2014) on court reporter salary fund. *Died.*
- AB 679 (Fox) (2013-2014) on sharing costs for certified shorthand reporter. *Died.*
- AB 788 (Wagner) (2013-2014) on transcript reproduction. *Died.*
- AB 803 (Wagner) (2011-2012) on electronic reporting. *Died.*
- AB 990 (Allen) (2011-2012) on court transcripts. *Died.*
- AB 1096 (Harkey) (2011-2012) on electronic reporting. *Died.*
- AB 2076 (Ma) (2011-2012) on official court reporter fee. *Died.*
- AB 2657 (Calderon) (2011-2012) on inaudible portions of electronic recording. *Enacted as 2012 Cal. Stat. ch. 170.*

To the best of the staff's knowledge, there has been no judicial guidance on the continued viability of those provisions. There does not appear to be any likelihood of receiving such guidance any time soon.

The Commission's role with regard to trial court restructuring is to clean out obsolete statutory material, not to broker a labor dispute involving significant policy differences between trial court personnel and the Judicial Council.<sup>88</sup> Nonetheless, perhaps the Commission could bring some closure to this matter.

For example, the Commission could investigate whether conditions have changed such that it is now possible to achieve some degree of consensus on how to handle some or all of the court reporter compensation provisions. Assuming that effort proves unsuccessful, the Commission could prepare an informational report for the Legislature, which describes the controversy in detail and perhaps offers some suggestions without seeking to resolve policy disputes that appear to be beyond the Commission's purview.

Before undertaking any effort along these lines, or otherwise attempting to address the court reporter compensation provisions, it will be especially important for the Commission to consult the judiciary committees, pursuant to the normal procedure for all new Commission projects.<sup>89</sup> Those committees may have views on whether the time is ripe for such a project, and whether it would be a good use of the Commission's limited resources.

*References to "Superior Court" (Major Project, If Fully Undertaken)*

This project involves checking all statutory references to "superior court," to determine whether it is necessary to add language regarding jurisdictional classification or appeal path. Such language would, for example, serve to make clear that a matter is to be treated as an unlimited civil case regardless of the amount in controversy and thus falls within the appellate jurisdiction of the court of appeal.

This is a huge project and preliminary work showed that it would be complex and difficult. Because the project would be so laborious, it might be best to adopt a general policy of leaving "superior court" references alone, absent concrete evidence that a particular "superior court" reference is causing problems.

That approach would be contrary to a prior Commission decision, in which "Commission members emphasized the need to review all superior court

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88. See Gov't Code § 71674.

89. See 2014 Cal. Stat. res. ch. 63 (SCR 83 (Monning)) (current resolution regarding Commission's Calendar of Topics).

references in the codes to uncover statutes requiring a jurisdictional classification provision as a result of trial court unification.”<sup>90</sup> Much time has passed in the interim. If significant problems have not yet surfaced, perhaps it is not necessary to take any action. The Commission should explore this matter and resolve how to handle it.

*Coordination and Consolidation (Small Project)*

In its 2002 report on trial court restructuring,<sup>91</sup> the Commission recommended amendments of several provisions relating to consolidation and coordination of cases.<sup>92</sup> Those amendments were enacted.

A couple of years later, a CEB treatise raised the possibility of establishing special guidelines for consolidation of a limited civil case with an unlimited civil case.<sup>93</sup> Among other things, the treatise noted that California Rule of Court 1520(c), “which established special procedures for transfer and consolidation of municipal court cases with superior court cases,”<sup>94</sup> had not yet been revised to reflect trial court unification.<sup>95</sup> The treatise also pointed out that “[b]ecause limited civil cases (like municipal court cases under former law) are tried under special procedures intended to help keep the costs of litigation within the grasp of litigants whose damages are \$25,000 or less (see CCP §§ 90-100), it is possible that the legislature, the Judicial Council, or the courts will develop consolidation rules specifically geared to these cases.”<sup>96</sup>

Rule 1520(c) was revised in 2005 and later “replaced” by California Rule of Court 3.520. The new rule relates solely to coordination of complex cases and

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90. Minutes (July 2002), p. 23.

91. *TCR: Part 1*, *supra* note 23.

92. Code Civ. Proc. §§ 403, 404, 404.3, 404.9.

93. *Civil Procedure Before Trial* § 43.28 (CEB 2004).

94. Former Rule of Court 1520(c) provided:

(c) [Transfer and consolidation] A motion to transfer and consolidate actions pending in the superior court and in a municipal or justice court of the same county under Code of Civil Procedure section 404 shall be submitted to a superior court in which one of the included actions is pending. The original moving papers shall be filed in the superior court action and copies shall be filed in each included action. The prevailing party shall prepare an order setting forth the disposition of the motion and shall serve and file the order in each included action. If transfer and consolidation are granted, the moving party shall take all necessary steps to effect the transfer of the action. The moving party shall complete the transfer no later than 90 days after the date the order of transfer is filed in the included action. If an included action is not transferred within the 90-day period, the order of transfer shall expire with respect to that action without prejudice to renewal of the motion to transfer and consolidate for good cause shown.

95. *Id.*

96. *Id.*

does not specifically address consolidation or coordination of a limited civil case with an unlimited civil case.

Cursory staff research disclosed other rules on consolidation and coordination, but these rules do not appear to address this matter either.<sup>97</sup> The same seems to be true of the statutes on consolidation and coordination.<sup>98</sup> However, a rule on “related cases” appears to contemplate that a limited civil case and an unlimited civil case may be treated as “related cases.”<sup>99</sup>

Before the Commission finishes its work on trial court restructuring, it should consider whether any further statutory reform relating to consolidation or coordination is needed. Perhaps it would be useful to make clear (1) whether a limited civil case can be consolidated with an unlimited civil case, (2) whether a limited civil case can be coordinated with an unlimited civil case, and (3) whether and, if so, how the economic litigation rules<sup>100</sup> apply in the event of such consolidation or coordination.

*Precedential Value of Appellate Division Decisions (Small Project)*

In 2008, Alex Cerul (then a clerk at the Appellate Division of Santa Clara County Superior Court) raised an issue relating to the precedential value of a decision rendered by the appellate division of a superior court. Specifically, he queried whether such a decision is binding precedent for all superior courts, or only for the particular superior court that rendered the decision.

Mr. Cerul pointed out that before restructuring, a municipal court order was appealed to the appellate department of the superior court, and a superior court order was binding precedent for all municipal courts. Now that the municipal courts have been absorbed into unified superior courts, he asked whether a decision rendered by the appellate division of a superior court has the same precedential value as a pre-unification decision rendered by the appellate department of a superior court.

Although this is a good question, the precedential value of court decisions may be a matter of common law or court rule, rather than statutory law. When time permits, the Commission should check on this and assess whether any statutory reform relating to this matter is needed.<sup>101</sup>

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97. See Cal. R. Ct. 3.350-3.550.

98. See Code Civ. Proc. §§ 403, 404-404.9, 1048.

99. See Cal. R. Ct. 3.300(h)(1)(B).

100. Code Civ. Proc. §§ 90-100.

101. For a pertinent discussion, see Assembly Committee on Judiciary Analysis of SCA 4 (June 19, 1996), p. 7 (point #7).

*Obsolete “Constable” References That Can Only Be Deleted by Vote of the People (Small Project)*

The “constable” references in Penal Code Sections 412 and 413 are obsolete. However, those references can only be deleted by a vote of the People because the sections were enacted as an initiative measure.<sup>102</sup>

Any proposal requiring a vote of the People entails a tremendous amount of effort and expense, no matter how simple the issue. Preparing such a measure solely for the purpose of deleting the obsolete “constable” references from Sections 412 and 413 would not be an effective use of resources.

Instead, it may be best to prepare a short recommendation explaining why those references are obsolete and proposing appropriate revisions of Sections 412 and 413. The Commission could publish the recommendation and provide it to the Judicial Council or others, so that the amendments of Sections 412 and 413 could be incorporated when a more substantial measure involving the courts or law enforcement is being submitted to the People.

#### **4. Premature Projects**

The following trial court restructuring projects appear to be premature, for the reasons described below.

*Organization of the Government Code (Mid-Sized Project)*

When it cleans up the statutes on court facilities and judicial benefits, or afterwards, the Commission should review the Government Code and consider whether some reorganization is warranted. Under the pre-unification, pre-TCEPGA organizational scheme, substantial portions of the Government Code were devoted to municipal court matters and employment terms for court personnel. That may no longer be appropriate.

In particular, it may be possible to consolidate two of the chapters in Title 8: Chapter 5 (“The Superior Courts”) and Chapter 8 (now entitled “Superior Courts;” previously entitled “Municipal Courts”). In considering that possibility, the Commission should check whether it is still necessary to retain each of the provisions that are now in Chapter 8. Some of those provisions may have become obsolete since the Commission last examined them and determined that they should be retained.

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102. See Memorandum 2002-14, p. 33.

*References to “Municipal Court” (Small Project)*

When the Commission has nearly completed its work on trial court restructuring, it should do a final check of codes to ensure that all references to “municipal court” have been satisfactorily addressed. At that point, it may be appropriate to delete some of the “municipal court” references that the Commission deliberately left in the codes earlier.<sup>103</sup>

## **5. Projects That Might Not Be Worth Pursuing**

The following projects were discussed at one time or another, but might not be worth pursuing.

*Reexamination of the Concept of a Limited Civil Case (Major Project, If Undertaken)*

In 2004, in connection with its work on trial court unification, the Commission commenced a study of equitable relief in a limited civil case.<sup>104</sup> The following year, the Commission approved a tentative recommendation proposing to expand the types of equitable relief awardable in a limited civil case in certain contexts.<sup>105</sup>

When it considered the comments on that tentative recommendation, the Commission decided to reexamine the concept of a limited civil case. The idea was to assess whether the complexity in the limited case system is worth the effort of trying to address problems in the system (e.g., determining the extent to which equitable relief should be awardable in a limited civil case). The study would involve preparing an overview of the role of the limited civil case in the unified court system. The study was to include

an analysis of the number of limited civil cases filed, the cost of economic litigation procedures compared with the cost of unlimited civil case litigation, the satisfaction level of the courts with the limited civil case system, and the approach taken in other jurisdictions that have a unified court system.<sup>106</sup>

The staff made some efforts to find a consultant to prepare a background report for this study. But no one was ever hired.

To the best of the staff’s knowledge, there currently is no impetus within the Judicial Council or the courts to reexamine the concept of a limited civil case. In

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103. See, e.g., Code Civ. Proc. § 85; Lab. Code § 3301; Penal Code § 1269; Rev. & Tax Code § 19280.

104. Study J-1323.

105. Tentative Recommendation on *Equitable Relief in a Limited Civil Case* (April 2005).

106. Minutes (Nov. 2005), p. 7.

fact, the Judicial Council's Small Civil Cases Working Group considered issues like this in 2011-12 and the effort did not lead anywhere. Without a driving force for this type of study, it might be best to drop the idea and devote the Commission's resources to other matters.

*"Unlimited Civil Case" Terminology (Small Project, If Undertaken)*

Before the term "unlimited civil case" was chosen, some statutes were revised to refer to a "civil case other than a limited civil case" or use similar phraseology. For purposes of consistency and graceful drafting, these provisions could be revised to use the term "unlimited civil case."<sup>107</sup>

Because this project would entail purely stylistic revisions, it might not be worth doing. There are probably better uses of the Commission's time.

*References to "Jurisdiction" (Essentially Deactivated Project)*

Many code provisions refer to "jurisdiction." It might be appropriate to revise some of these provisions in light of trial court unification.<sup>108</sup>

On considering the costs and benefits of systematically addressing this matter, however, the Commission adopted a "no review and very limited treatment" approach.<sup>109</sup> It directed the staff to "skip a systematic review of jurisdiction provisions and revise or delete specific jurisdiction references only if the staff is made aware of problems relating to them."<sup>110</sup>

The Commission has not been made aware of any problems involving references to "jurisdiction," "proper court," or "same court." Thus far, there does not seem to be any reason to revisit the "no review and very limited treatment" approach.

*Appellate and Writ Review under Trial Court Unification (Deactivated Project)*

As a result of unification of the superior and municipal courts, each superior court's appellate division reviews appeals and writs taken from its own court. This type of peer review creates at least an appearance of impropriety. More than a decade ago, the Commission conducted a study of the situation.<sup>111</sup>

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107. See Code Civ. Proc. § 88 & Comment.

108. See Memorandum 2002-34.

109. Minutes (July 2002), p. 23.

110. *Id.*

111. Study J-1310.

The Commission circulated a tentative recommendation to create a limited jurisdiction division within each court of appeal district, replacing the individual superior court appellate divisions.<sup>112</sup>

In late 2003, the Commission discontinued work on this project due to state budgetary constraints on court operations. The staff was to monitor developments in the area and alert the Commission if it appeared appropriate to reactivate the study.<sup>113</sup>

The state's budget situation is now rosier than it has been in some time. However, there does not seem to be strong discontent with the existing system for appellate and writ review. Absent such discontent, it is probably better to devote the Commission's resources to other projects.

#### SUMMARY

The remaining work on trial court restructuring can be summarized as follows:

##### **1. Studies in Progress**

- Publication of legal notice in a county with a unified superior court (mid-sized project)

##### **2. Projects To Address When Time Permits (Legislation Likely)**

- Rights and responsibilities of the county as compared to the superior court (part 2) (major project)
- Court facilities (major project)
- Judicial benefits (major project)
- Leftover material from *TCR: Part 5* (mid-sized project)
- Representation and indemnification of courts and court personnel (mid-sized project)
- Judicial districts and local venue (mid-sized project)
- Judicial disqualification (mid-sized project)

##### **3. Projects To Address When Time Permits (May Not Result in Legislation)**

- Compensation of official reporter (major project)
- References to superior court (major project, if fully undertaken)
- Coordination and consolidation (mid-sized project)

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112. See Tentative Recommendation on *Appellate and Writ Review Under Trial Court Unification* (Nov. 2001).

113. Minutes (Nov. 2003), p. 8.

- Precedential value of appellate division decisions (small project)
- Obsolete “constable” references that can only be deleted by a vote of the People (small project)

#### **4. Premature Projects**

- Organization of the Government Code (mid-sized project)
- References to “municipal court” (small project)

#### **5. Projects That Might Not Be Worth Pursuing**

- Reexamination of the concept of a limited civil case (major project, if undertaken)
- “Unlimited civil case” terminology (small project, if undertaken)
- References to “jurisdiction” (essentially deactivated project)
- Appellate and writ review under trial court unification (deactivated project)

Respectfully submitted,

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Trial Court Restructuring: Remaining Projects (as of Nov. 10, 2014)

PROJECTS NOT WORTH PURSUING?	PREMATURE	WHEN TIME PERMITS (MAY NOT RESULT IN LEGISLATION)	WHEN TIME PERMITS (LEGISLATION LIKELY)	STUDIES IN PROGRESS	LEGISLATION PENDING OR READY TO INTRODUCE
REEXAMINE CONCEPT OF LIMITED CIVIL CASE	reexamine organization of Gov't Code	COMPENSATION OF OFFICIAL REPORTER	RIGHTS AND RESPONSIBILITIES OF THE COUNTY VERSUS THE SUPERIOR COURT WITH RESPECT TO TRIAL COURT OPERATIONS (PART 2)	publication of legal notice	
<i>"unlimited civil case" terminology</i>	Revisit remaining references to "municipal court"	REFERENCES TO "SUPERIOR COURT"	COURT FACILITIES		
[references to "jurisdiction"]		coordination and consolidation	JUDICIAL BENEFITS		
[appellate and writ review under trial court unification]		<i>precedential value of appellate division decisions</i>	revisit <i>TCR: Part 5</i> leftovers (Gov't Code §§ 26806, 69894.5)		
		<i>obsolete "constable" references deletable only by vote of People</i>	representation and indemnification of courts and court personnel		
			judicial districts & local venue		
			judicial disqualification		

MAJOR PROJECTS • Mid-sized projects • *Small projects* • [Deactivated or essentially deactivated projects]