

First Supplement to Memorandum 2018-63

**Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities
(Comments of Council of California County Law Librarians)**

The Council of California County Law Librarians (“CCCLL”) has submitted comments on the possibility of repealing Government Code Section 70394, which established a task force on county law libraries and directed the task force to “submit its report and recommendations to the Judicial Council and the Legislature on or before January 1, 2005.” CCCLL’s comments are attached as an Exhibit.

At page 10 of Memorandum 2018-63,¹ the staff pointed out that Section 70394 appears to be obsolete:

Section 70394 was not included in the Trial Court Facilities Act enacted in 2002. It was added to the chapter later, in response to concerns about law library funding.

The section appears to be obsolete and it might be sufficiently distinct from the original content of the Trial Court Facilities Act to repeal now. It is only tangentially related to trial court restructuring, but still perhaps within the scope of this study. The staff suspects that no one would object to addressing it here and doing so might be the most expedient way to handle it.²

The staff asked which of the following options the Commission would like to pursue:

- (1) Propose to repeal Section 70394 in the Commission’s tentative recommendation on court facilities.
- (2) Leave Section 70394 alone.

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. Footnote omitted.

- (3) Address Section 70394 in a study pursuant to the Commission's authority to correct technical or minor substantive statutory defects.³

As noted in the memorandum, the staff does not have strong feelings about which approach to take.⁴

CCCLL "agree[s] that Section 70394, as phrased, is obsolete"⁵ CCCLL cautions, however, that "the intent and purpose of that section remain as vital and urgent today as they were upon adoption."⁶

CCCLL explains that "[t]he need to determine an ongoing, stable, revenue source for California's County Law Libraries is both current and urgent."⁷ According to CCCLL, neither the task force established by Section 70394, nor a subsequent task force, nor a Commission on Civil Fees, made significant progress towards that goal.⁸ Rather,

ongoing funding for County Law Libraries has declined by nearly 40% from the level that Section 70394 found insufficient! Meanwhile, costs have increased by more than 60%.⁹

CCCLL thus says "the purpose of Section 70394 is anything but obsolete."¹⁰ CCCLL would like the Commission to point this out in its report:

We ask simply that you add a few words to the report acknowledging that "While adequate funding of County Law Libraries remains a current and vital issue, the specifics of section 70394 appear to be obsolete..." and "The Council of California County Law Librarians contend that the work of the task force established by Section 70394 was never completed and urgently seek development of an ongoing, stable and adequate funding source for County Law Libraries via a new task force or direct legislation." In this way, the Commission could properly convey that the wording of this statute is outdated, but the purpose and intent are not obsolete.¹¹

If the Commission decides to propose to repeal Section 70394 in its tentative recommendation on court facilities, it would be a simple matter to include language along the requested lines (not necessarily the exact wording suggested

3. See Section 8298.

4. See Memorandum 2018-64, p. 11.

5. Exhibit p. 1.

6. *Id.*

7. *Id.*

8. See *id.* at 2-3.

9. *Id.* at 3 (boldface in original).

10. *Id.*

11. *Id.* at 4.

by CCCLL) in the narrative portion of that proposal. To the best of the staff's knowledge, CCCLL's description of the funding situation is correct and we certainly never meant to imply that the problem had been solved.

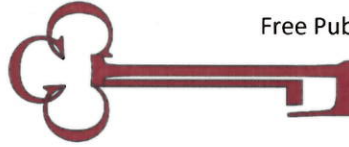
Sandra Levin, president of CCCLL, is planning to attend the upcoming meeting to help explain its point of view. An important question for the Commission is whether proposing to repeal Section 70394 would generate controversy that might jeopardize the enactment of the remainder of its proposal. That is not a serious concern at the tentative recommendation stage, but it will obviously become more important as the proposal progresses towards a bill. The Commission has consistently jettisoned controversial reforms from its trial court restructuring bills. It would be helpful to hear what Ms. Levin has to say about this point.

At the upcoming meeting, the Commission will need to decide:

- Whether to propose to repeal Section 70394 in its tentative recommendation on court facilities.
- If so, whether the preliminary part of the tentative recommendation should include language along the lines suggested by CCCLL.
- If not, whether to address Section 70394 in a study pursuant to its authority to correct technical or minor substantive statutory defects.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel



Honorable Chairperson Jane McAllister and Members of the
California Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Attn: Barbara Gaal (bgaal@clrc.ca.gov)

Reference: December 7, 2018, Agenda Item 6
Statutes Made Obsolete by Trial Court Restructuring
Government Code Section 70394 –Task Force on County Law Libraries

Dear Commissioners:

I am writing on behalf of the Council of California County Law Librarians (CCCLL) to address item 6 on your December 7, 2018 agenda (Statutes Made Obsolete by Trial Court Restructuring: Part 6, Study J-1405). Specifically, we are writing regarding the recommended repeal of Government Code Section 70394 –Task Force on County Law Libraries. While we agree that Section 70394, as phrased, is obsolete, the intent and purpose of that section remain as vital and urgent today as they were upon adoption. The need to determine an ongoing, stable, revenue source for California's County Law Libraries is both current and urgent. As explained below, the way the recommendation is stated in Study J-1405 implies the opposite, and we are therefore asking that you amend the wording.

Brief History

The Task Force created under Government Code Section 70394 was the first in a series of task forces that unfortunately never completed the intended task. The Task Force on County Law Libraries and Section 70394 were adopted based upon the following findings :

- (a) County law libraries are a vital adjunct to the state judicial system, providing many individuals with an opportunity to readily access essential legal documents and publications.

(b) The fiscal health of county law libraries, and the ability of county law libraries to provide adequate, up-to-date publications and services, have a considerable impact on the quality of justice dispensed to citizens of California.

(c) For many individuals, the county law libraries represent the most accessible and affordable option for access to legal documents and publications.

(d) Many county law libraries are not able to acquire and maintain current publications and electronic access to pertinent materials, nor are they able to hire necessary staff. The current funding structure does not allow for adequate financial planning and falls substantially short of meeting necessary expenditures.

(e) Current revenues appear to be insufficient to provide the funding necessary to adequately finance the acquisition of equipment, publications, and staff for county law libraries.”

Once convened, the Task Force on County Law Libraries recognized the need for an ongoing, stable, adequate source of funding for County Law Libraries and issued a report in May, 2005, stating, among other things that:

“County Law Libraries can no longer afford to depend primarily on the current funding mechanism. The task force recognized that it is inadequate and recognized the need to identify better supplemental funding mechanisms for the future.”

The Task Force expressed frustration with the scarcity of feasible solutions to the current funding mechanism for law libraries and its inability to identify additional specific funding options. The Task Force ceased work without achieving the stated purpose of identifying a stable, adequate source of funding for County Law Libraries. Indeed, all of the initial findings, as well as the conclusion of the task force, remain true today.

A second task force was then immediately established to address County Law Library Funding as part of the 2005 Uniform Civil Filing Fee Act (see Cal Govt. Code section 70601). Under the Act, the State eliminated any local control over Law Library revenues

as of 2008¹ and established the Uniform Filing Fee Task Force on Civil Fees (UCF Task Force). The UCF Task Force was to address a range of issues related to uniform fee structure, including how to accommodate funding for county law libraries.

In its February 2007 report the UCF Task Force also identified Law Library funding as a critical issue:

“Without immediate consideration of a filing fee increase or identification of alternative revenue sources, law libraries will not be able to fund their increased operating costs in 2008.”

The UCF Task Force then recommended another task force, this time a Commission on Civil Fees. The UCF Task Force became that Commission but met only once and then disbanded -- over the objection of CCCLL.

For more than a decade since, there has been no progress made toward identifying a stable, ongoing funding source for County Law Libraries and the work of the initial (and subsequent) task force has never been completed. **In fact, in the interim ongoing funding for County Law Libraries has declined by nearly 40% from the level that Section 70394 found insufficient!!** Meanwhile, costs have increased by more than 60%.

Wording of the CLRC Recommendation

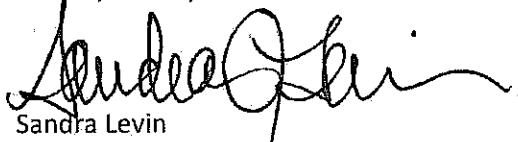
This Commission’s recommendation in Memorandum 2018-63 states that Section 70394 “appears to be obsolete” and that “staff suspects that no one would object” to the recommended repeal. CCCLL understands and appreciates the Commission’s desire to remove obsolete material from California’s Statutes. We further agree that the details of the particular Task Force established by Section 70394 are no longer current. However, we respectfully submit that the purpose of Section 70394 is anything but obsolete. **The need for an ongoing stable revenue source for California’s County Law Libraries is urgent, current and undeniable.** Moreover, the statement that “no one

¹ Up until 2005, the Legislature provided for local control over library revenue by periodically authorizing County boards of supervisors to increase filing fees to enable law libraries to fulfill their defined mission. From 1994 to 2005, 75% of all counties used this authority to raise the local law library portion of the civil filing fee to maintain an adequate level of funding and public access to legal resources. However, the Uniform Civil Fee and Standard Fees Schedule Act of 2005 (UCF) established a schedule for trial courts across the state and provided a sunset to the authority of counties to adjust filing fees.

would object" to determining the section obsolete, implies (presumably unintentionally) that there is a lack of interest in the subject matter and intent of the section.

We ask simply that you add a few words to the report acknowledging that "While adequate funding of County Law Libraries remains a current and vital issue, the specifics of section 70394 appear to be obsolete..." and "The Council of California County Law Librarians contend that the work of the task force established by Section 70394 was never completed and urgently seek development of an ongoing, stable and adequate funding source for County Law Libraries via a new task force or direct legislation." In this way, the Commission could properly convey that the wording of this statute is outdated, but the purpose and intent are not obsolete.

Thank you for your time and consideration.

A handwritten signature in black ink, appearing to read "Sandra Levin". The signature is fluid and cursive, with a large initial "S" and "L".

Sandra Levin

President, Council of California County Law Librarians