Memorandum 2020-29

Statutes Made Obsolete by Trial Court Restructuring (Part 7):
Completion of Studies Under Government Code Section 70219

When the Commission drafted legislation to revise the codes to accommodate county-by-county trial court unification, it identified some issues in judicial administration that were appropriate for future study.¹ Government Code Section 70219 directs the Commission and the Judicial Council to study those issues, with responsibility divided as specified in the Commission’s 1998 report on revision of the codes.

The studies required by Section 70219 all appear to be done. The staff therefore prepared a draft of a tentative recommendation proposing to repeal that section as obsolete. The draft is attached for Commissioners and interested persons to review.

Michael Giden (Managing Attorney, Legal Services) of the Judicial Council provided some of the information presented in the attached draft. The staff is grateful for his assistance.

After reviewing the attached draft and considering any input on it, the Commission needs to decide whether to approve the draft as a tentative recommendation, to be posted to the Commission’s website and widely distributed for comment. Unless the Commission otherwise directs, the staff will insert a comment deadline of September 1, 2020, which would permit consideration of any comments at the meeting scheduled for September 10. That should be sufficient for a minor proposal like this one.

¹. See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm’n Reports 51, 82-86 (1998).

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.
The staff further suggests that absent input or concerns warranting discussion, the Commission treat this matter as a consent item at the upcoming July 9 meeting.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel
Trial Court Restructuring Clean-Up: Completion of Studies Under Government Code Section 70219

July 2020

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN [INSERT DUE DATE].

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

California Law Revision Commission

c/o UC Davis School of Law

Davis, CA 95616

<commission@clc.ca.gov>
SUMMARY OF TENTATIVE RECOMMENDATION

Government Code Section 70219 directs the Judicial Council and the Law Revision Commission to undertake certain studies relating to judicial administration. The Judicial Council and the Commission have completed those studies as assigned. Section 70219 is thus obsolete and the Commission recommends that it be repealed.

This tentative recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 158 of the Statutes of 2018.
TRIAL COURT RESTRUCTURING CLEAN-UP: COMPLETION OF STUDIES UNDER GOVERNMENT CODE SECTION 70219

In its 1998 report on revision of the codes to implement trial court unification, the Law Revision Commission identified a number of topics for future study.¹ The Legislature subsequently enacted Government Code Section 70219, which directs the Judicial Council and the Commission to undertake those studies and share responsibility for them in the manner suggested in the Commission’s report.²

The Judicial Council and the Commission conducted the assigned studies as directed and all of the work is complete. Section 70219 thus appears to be obsolete and ready for repeal, as explained in more detail below.

Assigned Studies and Work Performed

The studies assigned by Section 70219 fall into the following categories:

- A reexamination of the three-track system for civil cases, to be jointly conducted by the Judicial Council and the Commission.
- Studies primarily assigned to the Judicial Council, to conduct in consultation with the Commission.
- Studies primarily assigned to the Commission, to conduct in consultation with the Judicial Council.

Each category is described and discussed in order.

---


² Government Code Section 70219 provides:

70219. On submission by the California Law Revision Commission of its report to the Governor and the Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and the Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law.

Joint Study of the Three-Track System for Civil Cases

In its report on revision of the codes to implement trial court unification, the Commission sought to preserve existing procedural distinctions between traditional superior court cases (now known as unlimited civil cases), traditional municipal court cases (now known as limited civil cases), and small claims cases (a special category of limited civil cases). The Commission “strongly recommended,” however, that the Legislature “direct a study reexamining this three-track system and its underlying policies in light of unification.”

The Commission explained that such a study “may entail elimination of unnecessary procedural distinctions, reassessment of the jurisdictional limits for small claims procedures and economic litigation procedures, and reevaluation of which procedures apply to which type of case.” The Commission recommended that this study be jointly conducted by the Judicial Council and the Commission.

By enacting Section 70219, the Legislature approved that approach. The section specifically directs the Judicial Council and the Commission to conduct the studies identified in the Commission’s report, assume primary or joint responsibility for those studies as outlined in that report, and consult with each other in conducting the assigned studies.

As directed, the Judicial Council and the Commission jointly reexamined the three-track system for civil cases. In particular, they conducted a project in which they identified and proposed to eliminate some unnecessary procedural differences between limited civil cases and unlimited civil cases. The proposed legislation was enacted.

The Judicial Council and the Commission also jointly studied the jurisdictional limits for a small claims case and a limited civil case. As a first step, the Judicial Council hired a consulting firm to conduct empirical research and prepare a background study summarizing its findings. Upon consideration of the consultant’s 2002 report, the Commission prepared and widely circulated a tentative recommendation proposing to increase the jurisdictional limits for both types of cases. The Commission received

3. See TCU: Revision of Codes, supra note 1, at 64-65, 82.
4. Id. at 82.
5. Id. at 82-83.
6. Id. at 83.
7. For the text of Section 70219, see supra note 2.
extensive input, but consensus among the stakeholders proved difficult to reach and work
on the joint study stopped in early 2004.\textsuperscript{12}

Several bills modifying the jurisdictional limits for a small claims case have since been
enacted.\textsuperscript{13} The joint study by the Judicial Council and the Commission helped pave the
way for those bills and related improvements (such as reforms relating to temporary
judges, self-represented litigants, and litigants who do not speak English).\textsuperscript{14} The Judicial
Council took positions on and helped to shape the jurisdictional bills,\textsuperscript{15} but the
Commission stayed on the sidelines as required by its governing statute.\textsuperscript{16}

The jurisdictional limit for a limited civil case remains unchanged.\textsuperscript{17} Although some
recent Judicial Council subgroups re-explored the possibility of revising that limit, they
did not find sufficient support for such a reform.\textsuperscript{18}

\textbf{Studies Primarily Assigned to the Judicial Council}

Under Section 70219, the following studies were primarily assigned to the Judicial
Council, to conduct in consultation with the Commission:\textsuperscript{19}

\textit{Obsolete statutes relating to prior court and personnel restructurings.} The
Commission’s 1998 report cited two code sections to illustrate this problem.\textsuperscript{20} Both of
those provisions have since been repealed.\textsuperscript{21}

\begin{itemize}
  \item[12.] See CLRC Staff Memorandum 2004-3; First Supplement to CLRC Staff Memorandum 2004-3;
  CLRC Staff Memorandum 2004-40; CLRC Minutes (Feb. 2004), pp. 7-8; see also CLRC Staff
  Memorandum 2014-41, p. 9 (explaining that project was tabled a decade earlier, circumstances
  warranting reactivation of the project had not materialized, and “it seems reasonable to consider
  the matter closed.”).
  \item[13.] See 2005 Cal. Stat. ch. 600 (SB 422 (Simitian)); 2005 Cal. Stat. ch. 618 (AB 1459
  (Canciamilla)); 2006 Cal. Stat. ch. 150, § 1 (AB 2455 (Nakanishi); 2008 Cal. Stat. ch. 157, § 4 (SB 1432
  (Margett)); 2011 Cal. Stat. ch. 64 (SB 221 (Simitian)).
  \item[14.] See, e.g., 2005 Cal. Stat. ch. 600, § 1 (legislative findings referring to consultant’s report for joint
  study); 2005 Cal. Stat. ch. 618, § 1 (same); Assembly Committee on Judiciary Analysis of AB 1459
  (April 26, 2005), pp. 5-6 (referring to joint study); Assembly Committee on Judiciary Analysis of SB 411
  (June 28, 2005), pp. 5-6 (same); CLRC Staff Memorandum 2004-40 (describing Judicial Council projects
  addressing concerns expressed in joint study); CLRC Staff Memorandum 2005-41 (discussing 2005 bills
  and impact of joint study).
  \item[15.] See, e.g., Senate Committee on Judiciary Analysis of AB 1459 (June 28, 2005), pp. 1, 5-6; Senate
  Committee on Judiciary Analysis of SB 221 (April 12, 2011), pp. 3-6.
  \item[16.] See Gov’t Code § 8288; see also CLRC Staff Memorandum 99-85, p. 2 (“The Commission does
  not take positions on bills; it speaks to the Legislature through its own recommendations and bills.”).
  \item[17.] See Code Civ. Proc. §§ 85, 86, 86.1.
  \item[18.] See, e.g., https://www.courts.ca.gov/documents/SPR18-11.pdf (Judicial Council’s invitation to
  comment on proposal by its Civil and Small Claims Advisory Committee to increase jurisdictional limit
  for limited civil cases from $25,000 to $50,000, as recommended by its Commission on Future of
  California’s Court System); CLRC Staff Memorandum 2011-36, p. 4 & Exhibit p. 1 (describing ideas
  being explored by Judicial Council’s Small Civil Cases Working Group).
  \item[19.] See \textit{TCU: Revision of Codes, supra} note 1, at 84-85.
  \item[20.] See \textit{id.} at 84 n.116 (citing Gov’t Code §§ 71003, 71040.5).
\end{itemize}
Superior court sessions, both general and special. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders.22 The proposed legislation was enacted.23

Number of authorized commissioners and referees in a county in which the courts have unified. In 2000, the Judicial Council co-sponsored the enactment of the Trial Court Employment Protection and Governance Act (“TCEPGA”).24 Among other things, this legislation includes a code section that governs appointment of subordinate judicial officers (“SJOs”) after trial court unification.25 Later, the Judicial Council studied the balance between judges and SJOs and made recommendations on conversion of SJO positions to judgeships.26 Legislation on the matter was enacted.27

Reorganization of statutes governing court fees. The statutes governing court fees were standardized and reorganized through the enactment of the Uniform Civil Fees and Standard Fee Schedule Act of 2005.28 They are now consolidated in a single chapter of the Government Code.29

Eligibility of judges to serve on the small claims advisory committee. This topic was addressed in a 1999 clean-up bill on trial court unification.30 Among other things, that


25. See Gov’t Code § 71622; see also TCR: Part 1, supra note 20, at 12 (TCEPGA “has established far-reaching provisions relating to subordinate judicial officers that eclipse much of existing law relating to authorization and appointment of subordinate judicial officers.”).


27. 2007 Cal. Stat. ch. 722, § 3 (AB 159 (Jones)) (adding Section 69615 to Gov’t Code); see also 2010 Cal. Stat. ch. 690, § 2 (AB 2763 (Committee on Judiciary)) (amending Gov’t Code § 69615); https://www.courts.ca.gov/documents/csjo.pdf (summarizing situation).

28. See 2005 Cal. Stat. ch. 75 (AB 145 (Committee on Budget)).

29. See Gov’t Code §§ 70600-70678.

bill amended the provision governing the composition of the small claims advisory committee.\textsuperscript{31}

_Catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995._ With the exception of death penalty cases, the courts of appeal have appellate jurisdiction “when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.”\textsuperscript{32} To aid in interpretation of this constitutional requirement, the Commission’s 1998 report raised the possibility of creating a catalogue of the types of cases that were within the appellate jurisdiction of the courts of appeal on June 30, 1995.\textsuperscript{33}

As directed by the Legislature, the Judicial Council investigated this topic, in consultation with the Commission.\textsuperscript{34} In mid-1999, the Appellate Advisory Committee of the Judicial Council concluded that “rather than constructing a catalogue in the abstract, it was best to wait for the issue to be ripe and better defined.”\textsuperscript{35}

In 2001, the Commission revisited the concept of creating a catalogue.\textsuperscript{36} This concept faded from consideration as the Judicial Council and the Commission explored broader ideas relating to appellate and writ review under trial court unification.\textsuperscript{37}

The Commission circulated a tentative recommendation on the subject, which proposed a set of constitutional and statutory reforms, including deletion of the constitutional reference to “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995.”\textsuperscript{38} The Judicial Council’s Ad Hoc Task Force on the Superior Court Appellate Divisions developed its own proposal, which took a different approach.\textsuperscript{39}

Neither approach gained traction and the efforts were eventually set aside.\textsuperscript{40}

The Commission is not aware of any current interest in developing a catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995. The lack of


\textsuperscript{32} Cal. Const. art. VI, § 11 (emphasis added).

\textsuperscript{33} See _TCU: Revision of Codes, supra_ note 1, at 84.

\textsuperscript{34} See, e.g., CLRC Staff Memorandum 99-31; First Supplement to CLRC Staff Memorandum 99-31; CLRC Staff Memorandum 99-73; CLRC Minutes (June 1999), p. 11; CLRC Minutes (Oct. 1999), p. 9.

\textsuperscript{35} CLRC Staff Memorandum 99-73, Exhibit p. 1.

\textsuperscript{36} See CLRC Staff Memorandum 2001-56, pp. 2-6.


\textsuperscript{38} See Tentative Recommendation on Appellate and Writ Review Under Trial Court Unification (Nov. 2001).

\textsuperscript{39} See Ad Hoc Task Force on the Superior Court Appellate Divisions, Report to the Appellate Process Task Force on the Superior Court Appellate Divisions (May 2001).

\textsuperscript{40} See CLRC Minutes (Nov. 2003), p. 8; see also CLRC Staff Memorandum 2003-38.
interest is likely due to the possibility of transferring, rather than dismissing, an appeal brought in the wrong court.41

Consolidation of jury commissioner functions for the courts in each county. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders.42 The proposed legislation was enacted.43

Magistrate as judicial officer of the state or judicial officer of a particular court.44 Statutory clarification of this point was deemed unnecessary.45 The Commission is not aware of any current concerns relating to this matter.

Correction of county-specific statutes after unification in that county. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders.46 The proposed legislation was enacted.47

Pursuant to other sources of authority,48 the Commission is continuing to review and make recommendations relating to statutes made obsolete by trial court restructuring, including county-specific statutes.49 Section 70219’s directive to study and correct county-specific statutes is no longer necessary.50

Reexamination of the statutes governing jury selection. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders.51 The proposed legislation was enacted.52

41. See, e.g., People v. Nickerson, 128 Cal. App. 4th 33, 26 Cal. Rptr. 3d 563 (2005) (ordering transfer of case from court of appeal to appellate division); Gov’t Code § 68915 (“No appeal taken to the Supreme Court or to a court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein, as if regularly appealed thereeto.”); see also CLRC Staff Memorandum 2001-56, pp. 5-6 (discussing authority to transfer); CLRC Staff Memorandum 2001-2, Exhibit p. 6 (AOC memorandum reporting existence of consensus that “any problems occurring in this area could be resolved by transfer of an appeal filed in the wrong court to the appropriate court.”).

42. See TCR: Part 2, supra note 22, at 177-78.

43. See 2003 Cal. Stat. ch. 79.

44. See generally CLRC Staff Memorandum 1997-66, p. 23.

45. See CLRC Staff Memorandum 2001-2, Exhibit pp. 6-7 (AOC memorandum reporting on Judicial Council activities).

46. See TCR: Part 2, supra note 22, at 177-78.

47. See TCR: Part 1, supra note 21, at 16-17.


49. See, e.g., Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities, 46 Cal. L. Revision Comm’n Reports 25 (2019); Trial Court Restructuring Clean-Up: Obsolete References to Marshals, 46 Cal. L. Revision Comm’n Reports 105 (2019).

50. See, e.g., CLRC Staff Memorandum 2001-2, Exhibit pp. 7-8 (AOC memorandum discussing work on county-specific statutes to be done by Commission).

Studies Primarily Assigned to the Commission

Under Section 70219, the following studies were primarily assigned to the Commission, to conduct in consultation with the Judicial Council: 53

Obsolete statutes relating to expired pilot projects or other expired programs. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. 54 The proposed legislation was enacted. 55

Whether to conform the statutory provisions on circumstances for appointment of a receiver. The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input. 56 The proposed legislation was enacted. 57

Procedure for good faith improver claims. The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input. 58 The proposed legislation was enacted. 59

Procedure for obtaining a stay of a mechanic’s lien foreclosure action pending arbitration. The Commission studied this topic and issued a recommendation in 2000. 60

The following year, the proposed legislation was included in a bill with some other reforms, 61 but later deleted to permit further study in light of a new court decision. 62

Thereafter, the Commission approved a revised recommendation. 63 A bill to implement the revised recommendation was introduced in 2003. 64 To address concerns raised in the legislative process, the bill was amended to implement the substance of the original recommendation instead. It was enacted as so amended. 65

Clarification of provisions relating to obtaining counsel for a defendant in a criminal case. The Commission’s 1998 report pointed out that certain statutes on appointment of

52. See 2002 Cal. Stat. ch. 784 (SB 1316 (Committee on Judiciary)).
53. See TCU: Revision of Codes, supra note 1, at 85-86.
55. See 2001 Cal. Stat. ch. 115 (SB 153 (Knight)).
56. See Authority to Appoint Receivers, 30 Cal. L. Revision Comm’n Reports 291 (2000).
57. See 2001 Cal. Stat. ch. 44 (SB 562 (Morrow)).
59. See 2000 Cal. Stat. ch. 688, § 7 (AB 1669 (Committee on Judiciary)).
62. See CLRC Staff Memorandum 2001-93.
64. See AB 113 (Ackerman), as introduced on Feb.3, 2003.
counsel for a criminal defendant “appear to be somewhat dated, and their interrelation is unclear.” The report suggested that a “clearer statutory statement of the governing rules may be appropriate.”

Upon further study as directed by the Legislature, the Commission became concerned that some of the statutes might conflict with a defendant’s constitutional right of self-representation. The Commission decided not to propose legislation in this area, because such a proposal would entail analysis beyond the scope of the technical clean-up originally envisioned when the Legislature authorized the study.

Role of court reporter in a county in which the courts have unified, particularly in a criminal case. Citing several statutes, the Commission’s 1998 report noted that “[e]xisting statutes governing functions of court reporters may be problematic as applied in a county in which the courts have unified, particularly in criminal cases.” The Commission studied this matter and recommended statutory revisions to address the problems identified. The proposed legislation was enacted.

Appealability of order of recusal in a criminal case. The Commission studied and proposed legislation on the appealability of an order of recusal in a criminal case. The proposed legislation was enacted.

Publication of legal notice in a county with a unified superior court. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. The proposed legislation was enacted.

Resolving the numbering conflict in the two Chapters 2.1 (commencing with Section 68650) of Title 8 of the Government Code. The Legislature fixed this problem by

66. TCU: Revision of Codes, supra note 1, at 85 n.128 (referring to Penal Code §§ 859, 859a, 859b, 860).
67. Id.
68. See CLRC Staff Memorandum 1999-12.
69. See id.; see also CLRC Minutes (June 1999), p. 9.
70. TCU: Revision of Codes, supra note 1, at 86 n.129 (referring to Code Civ. Proc. § 274c, Gov’t Code § 72194.5 & Penal Code § 869).
72. See 2002 Cal. Stat. ch. 71 (SB 1371 (Morrow)). Although the court reporter issues assigned by Section 70219 have been resolved, the statutes governing court reporter compensation still contain material made obsolete by trial court restructuring. See CLRC Staff Memorandum 2020-15. The Commission is authorized to study those statutes pursuant to other sources of authority. See Gov’t Code § 71674; 2018 Cal. Stat. res. ch. 158 (item #12). The situation is complicated and the Commission will proceed with the statutory clean-up when it appears feasible to do so.
75. See 2016 Cal. Stat. ch. 2881 (AB 2881 (Committee on Judiciary)).
enacting the 1998 bill on maintenance of the codes. There was no need for the Commission to do anything further.

Default in an unlawful detainer case. The Commission studied and proposed legislation on default in an unlawful detainer case. The proposed legislation was enacted.

Whether to make revisions regarding the repository for the duplicate of an affidavit pursuant to Fish and Game Code Section 2357. The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input. The proposed legislation was enacted.

Recommendation and Request for Comments

Because all of the studies required by Government Section 70219 are done, the Commission tentatively recommends that the section be repealed as obsolete. The Commission welcomes comments on this matter. Comments can be in any format and should be sent to bgaal@clrc.ca.gov. To receive optimal consideration, they should be submitted by [insert due date].

---

76. See 1998 Cal. Stat. ch. 485, §§ 94-100.5 (AB 2803 (Committee on Judiciary)).
77. See 1999 Cal. Stat. ch. 344, § 19 (correcting cross-references in Code Civ. Proc. § 1167.3); TCU Follow-Up, supra note 28, at 663.
79. See 2000 Cal. Stat. ch. 167, § 1 (SB 1487 (Knight)).
80. See proposed repeal of Gov’t Code § 70219 & Comment infra.
PROPOSED LEGISLATION

Gov’t Code § 70219 (repealed). Judicial Council and Law Revision Commission studies
and recommendations

SECTION 1. Section 70219 of the Government Code is repealed.

70219. On submission by the California Law Revision Commission of its report to the
Governor and the Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997
recommending statutory changes that may be necessitated by court unification, the
Judicial Council and the California Law Revision Commission shall study and make
recommendations to the Governor and the Legislature on the issues identified in the
report as appropriate for future study, including consideration of the experience in
counties in which the courts have unified. Each agency shall assume primary or joint
responsibility for the studies and recommendations as outlined in the report, and each
agency shall consult with the other in the studies and recommendations. This section does
not limit any authority of the Judicial Council or the California Law Revision
Commission to conduct studies and make recommendations authorized or directed by
law:

Comment. Section 70219 is repealed as obsolete. All of the assigned studies have been
completed. See Trial Court Restructuring Clean-Up: Completion of Studies Under Government
Code Section 70219, ___ Cal. L. Revision Comm’n Reports ___ (202x).