Study J-1407 April 29, 2021

Memorandum 2021-22

Statutes Made Obsolete by Trial Court Restructuring (Part 8): References to "Superior Court" (Discussion of Issues)

A major unfinished project on the Commission's "to do" list for trial court restructuring is to check all statutory references to "superior court," to determine whether it is necessary to add language regarding jurisdictional classification or appeal path. This memorandum discusses that project and seeks general guidance on how to handle it.

The memorandum begins by providing some historical background on the origins of this project. Next, the memorandum describes some preliminary work on the project, which was done in 2002. The memorandum concludes by providing the staff's current perspective on the project, requesting the Commission's guidance on it, and discussing a related side issue.

HISTORICAL BACKGROUND

To grasp the nature of the project at hand, it is necessary to know how civil cases were treated before trial court unification, and how such treatment was modified after trial court unification. Those points are discussed below.

Pre-Unification Trial Court System

In the late 1990's, California had two types of trial courts: municipal courts and superior courts.[1]

1. See former Cal. Const. art. VI, §§ 4, 5, 10, which are reproduced in *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 71-73, 76-77 (1994) (hereafter, *"TCU: Constitutional Revision"*). California also had justice courts until the mid-1990's, when they were eliminated pursuant to a ballot measure approved by the voters. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

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.

There could be one or more municipal courts within a county.[2] They were courts of limited jurisdiction: They only had jurisdiction of causes specified by statute.[3] The maximum amount-in-controversy was $25,000,[4] and certain other types of relief could not be awarded in a municipal court case.[5] An appeal from a judgment in a municipal court case (other than a small claims case, which is beyond the scope of this memorandum) was to the appellate department of the local superior court.[6] Municipal court cases were generally resolved pursuant to special rules known as economic litigation procedures.[7]

Each county also had a superior court, which had "original jurisdiction in all causes except those given by statute to [the municipal courts]."[8] There was no maximum amount-in-controversy in the superior court, nor was the superior court subject to the limitations on types of relief that applied in the municipal courts. Except in a death penalty case, an appeal from a superior court judgment was to the appropriate court of appeal.[9] Economic litigation procedures did not apply in the superior courts.[10] Most filing fees were higher in a superior court case than in a municipal court case.[11]

Post-Unification Trial Court System

In 1998, the voters passed a constitutional amendment that permitted the municipal and superior courts in each county to unify their operations in the superior court upon a vote of a majority of the county's municipal court judges and a majority of the county's superior court judges.[12] By early 2001, the trial courts in all of California's 58 counties had unified.[13] Each county now has a unified superior court, which handles all trial court operations in that county.

The Legislature directed the Commission to review the codes and determine how to revise them to reflect these changes.[14] In that work, the Commission's

2. See former Cal. Const. art. VI, § 5.
3. See former Cal. Const. art. VI, § 10.
4. See former Code Civ. Proc. § 86.
5. See Code Civ. Proc. § 580 Comment & authorities cited therein.
6. See former Code Civ. Proc. § 77.
7. See former Code Civ. Proc. §§ 90-100.
8. Former Cal. Const. art. VI, § 10.
9. Former Cal. Const. art. VI, § 11.
10. See former Code Civ. Proc. § 91.
11. See, e.g., former Gov't Code §§ 26820.4 ($185 filing fee for first paper in superior court case), 72055 ($90 filing fee for first paper in municipal court case).
12. See 1996 Cal. Stat. res. ch. 36 (SCA 4 (Lockyer)) (Prop. 220, approved June 2, 1998).
13. See https://www.courts.ca.gov/documents/unidate.pdf.
14. See 1997 Cal. Stat. res. ch. 102; Gov't Code 71674. This work occurred in two phases. First, the codes were revised to accommodate county-by-county unification of the trial courts. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998) (hereafter,

guiding principle was to "generally preserve existing procedures in the context of unification."[15] In other words, the Commission sought to preserve the pre-unification procedural distinctions between municipal and superior court cases, while making those procedures workable in a unified superior court.

To achieve that objective, it was necessary to differentiate between former municipal court cases and former superior court cases.[16] That was done by adding a new provision to the codes (Code of Civil Procedure Section 85), which serves to identify the types of cases formerly brought in municipal court and calls them "limited civil cases."[17] The key language is as follows:

> 85. An action or special proceeding *shall be treated as a limited civil case if all of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied:*
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> (a) The amount in controversy does not exceed twenty-five thousand dollars ($25,000). As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.
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> (b) The relief sought is a type that may be granted in a limited civil case.
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> (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court, including, but not limited to, the following provisions:
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> ….[18]

To assist in applying this provision, another statute was amended to specify the types of relief that could not be awarded in a limited civil case (the same types of relief that could not be awarded in a municipal court case).[19] In addition, numerous statutes throughout the codes were amended to replace a reference to

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"TCU: Revision of Codes"). After the unification process was complete in all counties, the codes were further revised to reflect the elimination of the municipal courts. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, *"TCR: Part 1"*).

15. *TCU: Revision of Codes*, *supra* note 14, at 60.
16. See *id.* at 64.
17. *Id.*
18. Emphasis added.
19. See Code Civ. Proc. § 580(b).

a municipal court case with a reference to a "limited civil case."[20] Of particular note, the statutes relating to jurisdiction of an appeal from a municipal court judgment,[21] economic litigation procedures,[22] and municipal court filing fees were amended to apply to limited civil cases.[23]

Thus, a limited civil case is treated the same way as a municipal court case. Similarly, an "unlimited civil case" is a case that would have been within the jurisdiction of the superior court before trial court unification; it is now treated the same way as a traditional superior court case.[24]

The constitutional provision on appellate jurisdiction (Article VI, Section 11, of the California Constitution) further ensures that courts treat a traditional superior court case the same way that they did before unification. As amended by the 1998 unification measure, it says that except in death penalty cases, "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."[25] In other words, if a type of case was appealable to the court of appeal on June 30, 1995, the California Constitution guarantees that such a case is still appealable to the court of appeal.

Decision to Review Statutory References to "Superior Court"

In revising the codes as discussed above, the Commission had to examine every statutory reference to municipal court, to determine whether to replace it with a reference to a limited civil case. The Commission did not, however, have to examine every statutory reference to superior court.

Because the jurisdiction of the municipal courts had to be constitutionally specified by statute, the traditional municipal court civil cases (the newly-named limited civil cases) could be readily identified by searching the codes for "municipal court." Then traditional superior court civil cases could be defined as everything else, without having to enumerate them.[26]

That was important, because the codes contain thousands of references to the superior courts. Having to review each of them would have greatly slowed the

20. See, e.g., *TCU: Revision of Codes, supra* note 14, at 140-44 (amendment of former Code Civ. Proc. § 86).
21. See *id.* at 209-10 (amendment of former Code Civ. Proc. § 904.2).
22. See *id.* at 146-47 (amendment of former Code Civ. Proc. § 91).
23. See, e.g., *id.* at 377-78 (amendment of former Gov't Code § 72055).
24. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305, 325 (2006).
25. Emphasis added.
26. See Code Civ. Proc. § 88.

process of making the codes workable in a unified court system. Instead, the Commission was able to focus on key provisions that required adjustment, such as the provision governing appellate jurisdiction of traditional superior court cases.[27]

After the Commission completed its initial, urgent work on updating the codes to reflect county-by-county unification[28] and the subsequent elimination of the municipal courts,[29] it began to turn to other trial court restructuring matters that for one reason or another required more time to address.[30] One of those projects focused on statutory references to "jurisdiction." After considering a staff memorandum on that subject, the Commission decided to adopt a "no review and very limited treatment approach" to such provisions (i.e., staff should skip a systematic review of them and revise or delete specific jurisdiction references only if the staff learns of problems relating to them).[31] At the same time, however, the Commission "emphasized the need to *review all superior court references in the codes* to uncover statutes requiring a jurisdictional classification provision as a result of trial court unification."[32]

The provision that triggered the Commission's concern about superior court references was Elections Code Section 16441, which provides:

> 16441. If the nomination contested is for an office including a political subdivision of more than one county, *the superior court* of any county within the political subdivision *has jurisdiction,* and the contestant may file in any county within the political subdivision. There shall be no change of venue therefrom to any other county within the political subdivision.[33]

The section was enacted in 1994 and has never been amended.

When the section was first enacted, the statement that "the superior court … has jurisdiction" was sufficient to readily indicate that the election contest would be subject to traditional superior court procedures, not the procedures used in

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27. See *TCU: Revision of Codes, supra* note 14, at 207-09 (amendment of former Code Civ. Proc. § 904.1).
28. See *TCU: Revision of Codes, supra* note 14.
29. See *TCR: Part 1, supra* note 14.
30. See *TCR: Part 1, supra* note 14, at 5 ("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.").
31. Minutes (July 2002), p. 23.
32. *Id.* (emphasis added).
33. Emphasis added.

the municipal courts. Once the municipal and superior courts unified, however, that point was no longer obvious from the statutory language alone.

The superior courts now have jurisdiction of both traditional superior court cases and traditional municipal court cases, so stating that "the superior court … has jurisdiction" does not necessarily imply that traditional superior court procedures apply. Instead, deducing that conclusion requires a reader to examine the text of the section *and* do at least one of the following:

- Check whether the matter at hand meets the requirements for a limited civil case that are specified in Code of Civil Procedure Section 85. Here, the relief sought is not described in a statute that "classif[ies] an action or special proceeding as a limited civil case or that provide[s] that an action or special proceeding is within the original jurisdiction of the municipal court." The matter is thus an unlimited civil case and traditional superior court procedures apply.
- Check when the section was enacted. Here, the section predates unification and says "the superior court has jurisdiction." In combination, those facts establish that traditional superior court procedures apply.
- Consider whether the surrounding statutory context sheds any light on the situation. Here, Elections Code Section 16900 makes clear that a judgment in the elections contest would be appealable to the court of appeal, so the contest must be an unlimited civil case and traditional superior court procedures apply.

It would be easier to reach the same conclusion if Section 16441 directly stated that election contest is an unlimited civil case. That was why the Commission asked the staff to review all superior court references and assess whether to add such language.

PRELIMINARY WORK ON THE PROJECT IN 2002

In 2002, former staff attorney Lynne Urman did some preliminary work on this project. She analyzed a sample of fifty code sections that referred to the superior court, and prepared a 44-page internal memorandum presenting her views. The work was complex, painstaking, and laborious.

In most instances, she concluded that there was no need to specify a jurisdictional classification. Among the code sections in this category was Elections Code Section 16441, the section that prompted the Commission to request this project.

For about one-third of the sections in the sample, Ms. Urman was more inclined to specify a jurisdictional classification, though oftentimes she was on the fence rather than firmly convinced. For example, she suggested the following amendment of Code of Civil Procedure Section 1250.010, relating to eminent domain cases:

> **Code Civ. Proc. § 1250.010 (amended). Eminent domain proceedings in superior court**
>
> 12050.010. (a) Except as otherwise provided in Section 1230.060 and in Chapter 12 (commencing with Section 1273.010), all eminent domain proceedings shall be commenced and prosecuted in the superior court.
>
> (b) A proceeding brought pursuant to this section is an unlimited civil case.

She analyzed the situation as follows:

> ANALYSIS: The statutes before unification vested jurisdiction of eminent domain cases in the superior court. Although such actions are really "possession" actions, because they involve compensation some people, such as pro pers, may think that the value amount determines the jurisdictional classification. Perhaps, therefore, we should state that these are unlimited civil cases since the procedures are not clear on that point. E.g., Section 1250.110 says an eminent domain proceeding is commenced by "filing a complaint with the court." Section 1250.120 says the form and contents of the summons shall be "as in civil actions generally."

Somewhat similarly, she provided the following analysis of three Probate Code provisions in the sample (Sections 800,[34] 7050,[35] and 17000[36]):

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34. Probate Code Section 800 provides:

> 800. The court in proceedings under this code is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure.

35. Probate Code Section 7050 provides:

> 7050. The superior court has jurisdiction of proceedings under this code concerning the administration of the decedent's estate.

36. Probate Code Section 17000 provides:

> 17000. (a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.
>
> (b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following:
>
> (1) Actions and proceedings to determine the existence of trusts.
>
> (2) Actions and proceedings by or against creditors or debtors of trusts.
>
> (3) Other actions and proceedings involving trustees and third persons.

ANALYSIS: Probate jurisdiction has always been vested in the superior court; the municipal courts had no power to act with regard to these matters. Is there a need to specify that these matters are unlimited civil cases?

Arguments against specifying a jurisdictional classification: (1) These matters do not fall within the list of actions that may proceed as limited civil cases (see CCP § 86). (2) The Probate Code specifies detailed procedures applicable to probate proceedings. (3) The Cal. Constitution, Article 6, § 11 (as currently written) and CCP § 904.1(a)(10) place appellate jurisdiction of probate proceedings in the court of appeal.

Arguments in favor of specifying a jurisdictional classification: (1) Some of the participants in these proceedings may be pro pers who do not know the history of probate jurisdiction. (2) The rules of practice applicable to civil actions, including discovery, apply to probate proceedings, except to the extent the Probate Code provides applicable rules (§ 1000). (3) What's the harm in specifying a jurisdictional classification?

If we decide to specify a jurisdictional classification, I recommend adding a general provision at the start of the Probate Code applicable to all proceedings under the Code, rather than insert it in all the sections that reference the superior court's jurisdiction. For example:

Prob. Code § 800.5 (added). Jurisdictional classification

800.5. A proceeding under this code is an unlimited civil case.

[Alternatively], should the Legislature choose to make some [probate] proceedings limited civil cases in the future, we might want to draft something like [this]:

Prob. Code § 800.5 (added). Jurisdictional classification

800.5. A proceeding under this code is an unlimited civil case, except as expressly provided otherwise by statute.

[H]owever, such a change might necessitate a change to Article VI, § 11 of the Cal. Constitution.

Many of Ms. Urman's analyses were complicated and involved ambiguities. She raised numerous questions about the situations and how to handle them. The staff can provide additional examples in a future memorandum if the Commission wants to see them.

The Commission has not done any further work on this topic since Ms. Urman's preliminary research in 2002.

CURRENT PERSPECTIVE AND REQUEST FOR GUIDANCE

Examining each statutory reference to "superior court" as the Commission directed in 2002 would be a huge project and would consume an enormous amount of Commission resources. A search for "superior court" in the Legislative Counsel's statutory database yields over 14,000 code sections. Assuming it took Lynne Urman a week to prepare her memorandum analyzing fifty code sections (we suspect it actually took longer), it would take about 280 weeks of staff time (over five years) just to do a preliminary analysis of all 14,000+ superior court references, much less present the issues to the Commission and eventually develop a final recommendation. Moreover, the jurisdictional concepts are not easy to explain, so effectively shepherding such a proposal through the legislative process would be challenging, burdensome, and perhaps unsuccessful.

There does not seem to be a pressing need or demand for this magnitude of effort. The existing statutes are not wrong, they are just less-than-ideal because they do not provide explicit guidance on jurisdictional classification. As best we can tell, none of the fifty code sections Lynne Urman examined in 2002 (or surrounding material) has since been amended to specify a jurisdictional classification, nor have many other sections been amended along these lines. A recent Westlaw search of statutory references to "unlimited civil case" yielded only fifteen code sections.

While Ms. Urman rightfully expressed concern for pro per litigants, there are many treatises, manuals, and online self-help resources on probate law, family law, eminent domain, and other types of legal matters. These materials may provide sufficient, readily-accessible guidance on jurisdictional classification, which is based on the less-explicit but legally-binding guidance in the codes, the legislative history, and the constitutional provision on appellate jurisdiction (Article VI, Section 11, of the California Constitution).

The staff therefore suggests that the Commission **follow the same approach to "superior court" references that it previously adopted to "jurisdiction" references: No review and very limited treatment.** Under that approach, the staff would skip a systematic review of statutory references to "superior court" and only examine such a reference if the Commission or staff learns that it is presenting a problem relating to jurisdictional classification.

Would the Commission like to follow this approach? Would it like to handle this project differently?

In either case, **the Commission should also decide whether it would like to hear more about the situations that Lynne Urman considered potentially problematic.** Would it prefer to postpone such work until such time, if any, that the theoretical problems she identified materialize and come to the Commission's attention?

SIDE ISSUE: OBSOLETE REFERENCES TO THE "COURTS OF THE COUNTY"

Before ending this discussion, there is a side issue for the Commission to consider. One of the code sections that Lynne Urman examined (Business and Professions Code Section 6092.5) directs the presiding judge of a superior court to "notify *the courts* and judges in the county" that an attorney has been disciplined in certain ways.[37] That reference is obsolete due to trial court unification. Municipal courts no longer exist and there is only one superior court in each county. The section should be amended to reflect as much:

> **Bus. & Prof. Code § 6092.5 (amended). Duties of disciplinary agency**
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> SEC. ____. Section 6092.5 of the Business and Professions Code is amended to read:
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> 6092.5. In addition to any other duties specified by law, the State Bar shall do all of the following:
>
> (a) Promptly notify the complainant of the disposition of each matter.
>
> (b) Notify all of the following of a lawyer's involuntary enrollment as an inactive licensee and termination of that enrollment, or any suspension or disbarment, and the reinstatement to active license of a suspended or disbarred attorney:
>
> (1) The presiding judge of the superior court in the county where the attorney most recently maintained an office for the practice of law, with a request that the judge notify the ~~courts and~~ judges in the county.
>
> (2) The local bar association, if there is one, in the county or area where the attorney most recently maintained an office for the practice of law.

37. Bus. & Prof. Code § 6092.5(b)(1) (emphasis added).

(3) The appropriate disciplinary authority in any other jurisdiction where the attorney is admitted to practice.

(c) Upon receipt of the certified copy of the record of conviction of a lawyer, as provided by subdivision (c) of Section 6101, promptly forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted.

(d) Maintain permanent records of discipline and other matters within its jurisdiction, and compile statistics to aid in the administration of the system, including, but not limited to, a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings which have been transcribed, and other records as the State Bar or court require to be maintained.

(e) Expunge records of the State Bar as directed by the California Supreme Court.

(f) Pursuant to directions from the California Supreme Court, undertake whatever investigations are assigned to it.

(g) Provide information to prospective complainants regarding the nature and procedures of the disciplinary system, the criteria for prosecution of disciplinary complaints, the client security fund, and fee arbitration procedures.

(h) Inform the public, local bar associations and other organizations, and any other interested parties about the work of the State Bar and the right of all persons to make a complaint.

(i) Make agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters. These agreements may be used by the State Bar in any subsequent proceeding involving the lawyer.

Comment. Subdivision (b) of Section 6092.5 is amended to reflect unification of the municipal and superior courts pursuant to former Article VI, Section 5(e), of the California Constitution.

Another code section in Lynne Urman's sample contains a similar reference, which is obsolete for the same reasons. Specifically, the last paragraph of Penal Code Section 2620 (currently unlabeled) refers to "the *courts* of the county" in which an order for temporary removal of a person from state prison is issued.[38]

38. Emphasis added.

That reference could be fixed as shown in the amendment below, which would also clean up some other technical problems in the section:

Penal Code § 2620 (amended). Order for person's temporary removal from state prison

SEC. ____. Section 2620 of the Penal Code is amended to read:

2620. (a) When it is necessary to have a person imprisoned in the state prison brought before any court to be tried for a felony, or for an examination before a grand jury or magistrate preliminary to ~~such~~ trial for a felony, or for the purpose of hearing a motion or other proceeding, to vacate a judgment, an order for the prisoner's temporary removal from ~~said~~ prison, and for the prisoner's production before ~~such~~ the court, grand jury, or magistrate, must be made by the superior court of the county in which ~~said~~ the action, motion, or examination is pending or by a judge ~~thereof; such~~ thereof. The order shall be made only upon the affidavit of the district attorney or defense attorney, stating the purpose for which ~~said~~ that person is to be brought before the court, grand jury, or magistrate or upon the court's own motion. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, grand jury, or magistrate, to safely keep the prisoner, and when the prisoner's presence is no longer required to return the prisoner to the prison from whence the prisoner was ~~taken; the~~ taken. The expense of executing ~~such~~ that order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

~~Such order~~ (b) An order pursuant to subdivision (a) shall recite the purposes for which ~~said~~ that person is to be brought before the court, grand jury, or magistrate, and shall be signed by the judge making the order and sealed with the seal of the court. The order must be to the following effect:

County of ____ (as the case may be).

The people of the State of California to the warden of ____:

An order having been made this day by me, that A.B. be produced in the ____ court (or before the grand jury, as the case may be) to be prosecuted or examined for the crime of ____, a felony (or to have ~~said~~ that motion heard), you are commanded to deliver the prisoner into the custody of ____ for the purpose of (recite purposes).

Dated this ____ day of ____, ~~19~~20__.

(c) When a prisoner is removed from a state prison under this section, the prisoner shall remain in the constructive custody of the warden thereof. During the prisoner's absence from the prison, the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the ~~courts~~ superior court of the county from which the original order directing removal issued. A copy of the written order directing the prisoner to appear before ~~any such~~ that court shall be forwarded by the district attorney to the warden of the prison having protective custody of the prisoner.

Comment. Section 2620 is amended to reflect unification of the municipal and superior courts pursuant to former Article VI, Section 5(e), of the California Constitution.

The section is also amended to insert subdivision labels and make other technical corrections.

Would the Commission like to include these proposed amendments in a tentative recommendation on statutes made obsolete by trial court restructuring?

Respectfully submitted,

Barbara Gaal
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