

## Memorandum 2021-63

**Statutes Made Obsolete by Trial Court Restructuring: Part 8  
(Comments on Tentative Recommendation)**

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The Commission's tentative recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 8* focuses on two topics:

- (1) Statutes relating to judicial benefits; and
- (2) Statutes relating to representation and indemnification of trial courts and trial court personnel.<sup>1</sup>

The Commission approved the tentative recommendation in late September.

A few days later, the staff posted it to the Commission's website and electronically distributed it to the Commission's extensive "J" mailing list (Judiciary and Civil Procedure). The staff also sent individualized email messages about the tentative recommendation to several Judicial Council staff attorneys, representatives of the California State Association of Counties ("CSAC"), a lobbyist for the California Judges Association ("CJA"), and the web contact for the Alliance of California Judges. At our request, Judicial Council staff included a message about the tentative recommendation in the October *Court News Update*, a Judicial Council publication that is distributed to all 58 trial courts. Judicial Council staff also put a reminder message in the November *Court News Update*.

The due date for submission of comments on the tentative recommendation was December 3. As yet, the Commission has not received any comments on it.

That is perhaps not too surprising, because the Commission sought and received comments from several sources in the course of developing the tentative recommendation, including San Bernardino County Superior Court (a letter and oral participation at a meeting), San Bernardino County (oral participation at a

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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.

meeting), and Los Angeles County Superior Court (multiple letters, some of which reflected input from other entities). The Commission also obtained some legislative history materials from State Archives, and the staff consulted an expert on court representation and indemnification issues (on a confidential basis).

Because of those early efforts to obtain knowledgeable input and use it in crafting the tentative recommendation, the Commission's proposal may be sound in its present form and thus relatively unlikely to elicit comments. The lack of comments might also be due in part to the subject matter: The topics covered in the tentative recommendation are important, but they are also complicated and require specialized knowledge to effectively address. There might only be a few sources that are comfortable evaluating the proposal, and some of those might prefer, for various reasons, not to publicly weigh in on the issues raised, at least at this time.

**The staff is thus uncertain whether it would be worthwhile to make further efforts to solicit comments on the tentative recommendation.** We recently sent follow-up messages to Judicial Council and CJA personnel, but have not yet received a response. **Is there anyone else that the staff should still contact?**

**Unless the Commission otherwise instructs, the staff will prepare a draft of a final recommendation for the January meeting.** Before taking that step, it would be helpful to have guidance on two points:

- (1) The tentative recommendation proposes to amend Government Code Section 990.2 to authorize the Judicial Council to obtain insurance for liability and defense of trial court officers and attachés, instead of the counties. An accompanying Note asks whether the Judicial Council needs this authority. The Note points out that “[i]f the authority is unnecessary, or is already provided by some other source, it may be appropriate to repeal Section 990.2, instead of amending it.

Because the Commission has not received any input establishing that the authority Section 990.2 provides is unnecessary, it seems best to proceed with the proposed amendment, rather than proposing to repeal the section. **Absent new input, is that approach acceptable to the Commission?**

- (2) In the reverse posture, the tentative recommendation proposes to repeal Government Code Section 26524, which directs a district attorney to provide representation for a superior or municipal court judge in specified circumstances. An accompanying Note explains that the section appears to have been superseded by

Government Code Section 811.9, which applies “[n]otwithstanding any other provision of law.” Among other things, Section 811.9 directs the Judicial Council to provide for representation or defense of trial courts and trial court personnel “through the county counsel, the Attorney General, or other counsel.” The Note asks whether there are circumstances under which the Judicial Council might want to fulfill that duty by using a district attorney. The Note points out that if so, then perhaps Section 26524 should be amended, not repealed.

In our most recent email to Judicial Council staff about the tentative recommendation, we specifically drew attention to this Note (as well as the Note accompanying the proposed amendment of Section 990.2). Thus, unless the Commission receives input indicating that Section 26524 is still needed, it seems safe to proceed with the proposed repeal of that section. **For purposes of preparing the draft recommendation, does the Commission agree with this approach?**

Respectfully submitted,

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