

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT

Trial Court Unification:
Constitutional Revision (SCA 3)

January 1994

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

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This report will appear in Volume 24 of the Commission's *Reports, Recommendations, and Studies*.

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NOTE

This report includes an explanatory Comment to each section of the legislation enacted on Commission recommendation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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STATE OF CALIFORNIA

PETE WILSON, Governor

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January 7, 1994

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

Resolution Chapter 96 of the Statutes of 1993 directs the California Law Revision Commission to report concerning the appropriate composition of the amendment to the State Constitution contained in Senate Constitutional Amendment No. 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts.

The Commission submits herewith its report, together with initial statutory changes necessitated by trial court unification. In one or more subsequent reports, the Commission will make recommendations relating to the substantial statutory changes necessitated by trial court unification, if approved by the voters.

The report is limited to recommendations concerning implementation of trial court unification. The Commission has not been authorized to report concerning the wisdom or desirability of trial court unification.

The Commission finds the structure of SCA 3 basically sound to accomplish its objective of trial court unification. The Commission recommends a number of significant revisions of SCA 3, which are discussed in the report. Draft constitutional and statutory language is proposed.

Respectfully submitted,

Sanford M. Skaggs
Chairperson

TRIAL COURT UNIFICATION: CONSTITUTIONAL REVISION (SCA 3)

SUMMARY OF REPORT

This report makes recommendations relating to the appropriate composition of the amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, together with initial statutory changes necessitated by trial court unification. The report is made pursuant to 1993 Cal. Stat. res. ch. 96. A subsequent report or reports will make recommendations relating to the substantial statutory changes necessitated by trial court unification, if approved by the voters.

The report is limited to recommendations concerning implementation of trial court unification. The Commission has not been authorized to report to the Legislature concerning the wisdom or desirability of trial court unification.

SCA 3 would eliminate the existing trial court system of superior, municipal, and justice courts in favor of a single trial level court called the district court, operative July 1, 1995. Each county would have a district court, although mechanisms are provided for coordination among small counties and branch operations in large counties. As a transitional matter, each existing trial court would become a district court and the judges, officers, and employees of each court would become judges, officers, and employees of the district court.

The Commission finds the structure of SCA 3 basically sound to accomplish its objective of trial court unification. The Commission recommends the following significant revisions, which are discussed in this report. Draft constitutional and statutory language is proposed.

(1) **Court Name.** The name of the unified trial court should be the “superior court” rather than the “district court.” (Cal. Const. Art. VI, § 1)

(2) **Branches and Circuits.** A constitutional provision governing division of the unified trial court into branches and consolidation into circuits is unnecessary and could upset the current balance of separation of powers. The current practice of legislative, judicial, and county arrangements for superior court locations appears to operate satisfactorily; no change in this practice is necessitated by trial court unification. (Cal. Const. Art. VI, § 4)

(3) **Independence of Appellate Division.** The Constitution should foster the independence of the unified trial court’s appellate division by requiring that appointments to the appellate division be made by the Chief Justice for a specified term and by mandating that the Judicial Council adopt rules to promote the independence of the appellate division. (Cal. Const. Art. VI, § 11)

(4) **Jurisdiction of Appellate Division.** Jurisdiction of the appellate division of the unified trial court should include misdemeanors and civil causes determined by statute or by Judicial Council rule not inconsistent with statute. As an initial matter, the current statutory appeal and review structure should be maintained. (Cal. Const. Art. VI, §§ 11, 23)

(5) **Writs.** Writ jurisdiction within the unified trial court for review of proceedings in the unified court should be located in the appellate division of the court. (Cal. Const. Art. VI, § 10)

(6) **Jury Size.** Authority of the Legislature to prescribe an eight-person jury rather than a twelve-person jury in civil causes in municipal and justice courts should be preserved in the unified trial court. (Cal. Const. Art. I, § 16)

(7) **Elections.** Election of a judicial appointee filling a vacancy in the unified court should occur at the next general

election after the third January 1 following the vacancy. Judges should be elected countywide, but the Legislature should have authority to vary this arrangement in a county by providing for retention elections or other appropriate election procedures to the extent necessary to comply with the Voting Rights Act. The Attorney General should seek immediate preclearance of the countywide election system under the Voting Rights Act for the four counties in which preclearance is required. (Cal. Const. Art. VI, § 16; Statute)

(8) **Authority of Attorney General.** The authority of the Attorney General to enforce matters currently within the original jurisdiction of the superior court should be maintained but not expanded as a result of trial court unification. (Cal. Const. Art. V, § 13)

(9) **Transition.** As a transitional matter, statewide and local court rules should be adopted in advance of the operative date of trial court unification, including provision for appropriate education of judges in the unified trial court. A process should be adopted for making advance organizational and personnel decisions in each court; the Commission will make a supplementary recommendation with specific language on this point after receipt of a study commissioned by the Judicial Council. The Constitution should authorize urgency legislation affecting officers, employees, salaries, and other transitional matters. (Cal. Const. Art. VI, § 23; Statute)

(10) **Operative Date.** The operative date of trial court unification should be extended to January 1, 1996, in order to allow sufficient time for legislative action on statutory revision.

(11) **Severability.** A severability clause should be added to SCA 3.

TRIAL COURT UNIFICATION: CONSTITUTIONAL REVISION (SCA 3)

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TRIAL COURT UNIFICATION: CONSTITUTIONAL REVISION (SCA 3)

BACKGROUND

Referral of Study to Law Revision Commission

The Legislature has directed the California Law Revision Commission to study the proposed amendment to the California Constitution contained in Senate Constitutional Amendment No. 3 (Lockyer) of the 1993-94 Regular Session,¹ concerning unification of the trial courts:

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for study by the California Law Revision Commission the proposed amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, with recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification.²

The scope of this study is limited to recommendations concerning implementation of trial court unification. The Commission has not been authorized to report to the Legislature concerning the wisdom or desirability of trial court unification, and has not considered the question.

The immediate focus of the study is the constitutional language necessary to achieve trial court unification. Conforming statutory revisions will also be required, but need

1. Cited in this report as SCA 3. The text of the measure, as amended July 16, 1993, is set out in Appendix 1 to this report.

2. 1993 Cal. Stat. res. ch. 96.

not be made immediately except to the extent necessary to enable pre-operative date implementation activities.

SCA 3 (Lockyer)

SCA 3 (Lockyer) would eliminate the existing trial court system of superior, municipal, and justice courts in favor of a single trial level court called the “district “court, operative July 1, 1995. Each county would have a district court, although mechanisms are provided for coordination among small counties and branch operations in large counties. As a transitional matter, each existing trial court would become a district court and the judges, officers, and employees of each court would become judges, officers, and employees of the district court.

The Legislature has also enacted as part of the 1993 budget package the following language:

The Legislature finds and declares that the efficiencies that would result from the enactment and adoption of Senate Constitutional Amendment 3 of the 1993-94 Regular Session would yield substantial cost savings to both counties and the state.³

Methodology of Study

The Commission has followed its standard process on this study, but in a condensed time frame. Policy issues have been identified, possible solutions and their pros and cons discussed, initial decisions on the issues made, implementing language drafted and refined, a tentative recommendation circulated for comment, comments on the tentative recommendation considered and revisions made, and a final report submitted to the Legislature.

All Commission deliberations occurred at public meetings. The Commission held regular meetings between October

3. 1993 Cal. Stat. ch. 70, § 10.

1993 and January 1994, devoted almost exclusively to the trial court unification study. The Commission will adopt a meeting schedule beyond June 1994 for the statutory revision portion of the work if SCA 3 is approved by the voters.

The Commission has sought participation from various persons and organizations involved in or directly affected by the structure of the trial court system, not limited to the judicial branch. The resources of the Judicial Council were made available to the Commission for this study.

Available Resources

There is a wealth of information on trial court reorganization, consolidation, and unification, both in California and in other jurisdictions. These materials contain much useful information, and the Commission has made extensive use of them. Among the key resources consulted were the following studies and reports:

California Unified Trial Court Feasibility Study (Booz, Allen & Hamilton 1971)

To Meet Tomorrow: The Need for Change (Advisory Commission to the Joint Committee on the Structure of the Judiciary 1975)

Literature on Court Unification: An Annotated Bibliography (Carbon & Berkson 1978)

California Trial Court Reorganization Proposals 1970-1990, Parallel Column Analysis (State Bar of California n.d.)

Standards Relating to Court Organization (American Bar Association 1990)

Impediments to Coordination as Listed in Individual Coordination Plans (Judicial Council of California 1992)

Bibliography of Literature on Trial Court Unification (National Center for State Courts 1993)

Correspondence to Senator Lockyer and to Judicial Council Concerning SCA 3 (various authors 1993)

Memoranda on SCA 3 (various state and local bar association committees 1993)

Analyses of SCA 3 (various legislative committees 1993)

Trial Court Unification Under SCA 3 (Joint Hearing of the Senate and Assembly Committees on Judiciary 1993)

Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council (Warren & Kelso 1993)

Particularly useful was the last of these items, Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council (Warren & Kelso 1993).⁴ This report was developed through a joint effort of the Judicial Council's standing advisory committees of presiding judges and court administrators. The joint committee was chaired by Judge Roger K. Warren, presiding judge of the Sacramento Superior and Municipal Courts. Professor J. Clark Kelso of McGeorge School of Law acted as reporter. The report developed by the joint committee was adopted by the Judicial Council in revised form.

The report builds on earlier court unification studies and on input from the judiciary concerning SCA 3. The Commission believes the 1993 Judicial Council Report pulls together the main issues on trial court unification in a compact and useful manner, and has given the report careful consideration.

Interim Hearing

On October 8, 1993, the Senate and Assembly Committees on Judiciary held a joint interim hearing on trial court unification under SCA 3 in San Diego, in conjunction with the State Bar convention.⁵ The hearing was well-attended, both by Judiciary Committee members and by witnesses and other interested persons. There was a variety of support and opposition to SCA 3 expressed at the hearing, engendering a lively discussion among witnesses and committee members.

4. Cited in this report as 1993 Judicial Council Report.

5. The California Legislature has published a transcript of the hearing as *Joint Hearing on Trial Court Unification Under SCA 3* (October 8, 1993).

Among the specific issues of greatest concern at the hearing, apart from general support for or opposition to the concept of unification, were electoral subdistricting and the impact of the Voting Rights Act on judicial elections, the effect of unification on criminal review procedures and rights of defendants, the possibility of losing local and accessible justice, and possible increased use of non-judge hearing officers.

Overarching these specific concerns were several key structural and philosophical questions:

(1) Should the constitutional amendment spell out the implementing details of unification? Or should it merely establish the principle of unification and leave the details to later statutes or court rules? A number of legislators expressed the view that the Constitution should be a general document, and that the only practical way to achieve court reform is to establish the general principle first and deal with the details later. A number of witnesses at the hearing were not content to leave this matter to later resolution, arguing that the details are everything and should be spelled out in advance.

(2) Should many matters of court organization and administration be left to the judicial branch or should they be subject to legislative control? There was some concern expressed at the hearing that trial court unification should not serve as a vehicle by which the judicial branch increases its authority at the expense of the legislative branch.

(3) Should details of court organization and procedure that are left to the judicial branch be controlled by individual courts or by the Judicial Council? There was some concern about centralization and bureaucratization of judicial operations at the expense of local control.

The Law Revision Commission has borne these concerns in mind as it formulated its recommendations to the Legislature on trial court unification.

GENERAL PRINCIPLES IN FORMULATING RECOMMENDATIONS CONCERNING SCA 3

The Commission has adhered to a number of guiding principles in its basic approach to this study.

The Commission has avoided consideration of the advantages and disadvantages of trial court unification, consistent with the narrow legislative directive to report concerning the structure of the constitutional amendment and necessary statutory changes. The Commission is familiar with the debate over the wisdom of unification, and has taken the arguments on all sides into consideration in formulating its recommendations on SCA 3. But the Commission makes no recommendation concerning the merits of the concept. Its recommendations are limited to implementation of the concept.

The Commission has restricted its recommendations to those immediately required to implement trial court unification. Many of the earlier unification proposals have sought ways, in addition to trial court unification, to address the underlying problem of judicial overload. The Commission has felt it necessary to limit its consideration to solutions to specific problems presented by trial court unification.

The trial court unification recommendations should not serve as an occasion to revise jury trial, appeal, or other fundamental procedural rights of litigants. The recommendations seek to implement the structure and organization of trial court unification as a matter of court administration, without altering existing rights.

The trial court unification recommendations need not seek to shift the existing balance of power between the legislative

and judicial branches of government. Regardless of the merits of the existing constitutional allocation of authority to control matters of court organization and operations, a change in the existing situation should not be injected as an element in the debate over trial court unification.

To the extent issues can be dealt with by statute rather than in the Constitution, the Commission recommends that this be done. The Constitution should set out only the basic structure of the judicial system and the details should be left to implementing legislation. This will enable deferral of the difficult transitional personnel problems that could otherwise mire the entire project. Once the concept of unification is established, there will be an incentive for all affected persons and groups to reach workable solutions and forge practical compromises on the issues.

The Commission's recommendations deal with the appropriate composition of the constitutional amendment for trial court unification. One or more future reports will deal with statutory changes that may be necessitated by trial court unification, if approved by the voters.

SINGLE TRIAL LEVEL COURT

SCA 3 would replace the existing scheme of superior, municipal, and justice courts with a single trial level court system of district courts. The Commission has considered whether the name "district court" is the best choice for the unified court. The Commission is concerned about possible confusion with the federal district courts, as well as with the state courts of appeal (which are organized by "district," and until recently were denominated "district courts of appeal").⁶

Among the other names considered were "county court," "trial court," "unified court," and "circuit court." Each of

6. Cal. Const. Art. VI, § 3.

these possibilities has advantages and disadvantages. "County court," for example, implies limited jurisdiction and provinciality, as well as improperly suggesting exclusive county control and funding. "Trial court" is unduly narrow in its suggestion that the function of the court is limited to conducting trials. "Circuit court" is misleading in its implication that the court serves more than one county, and creates the possibility of confusion with federal circuit courts.

Ultimately the Commission concluded that the preferable name is "superior court." The name would avoid the possibility of confusion with other courts, would convey the right image, would simplify transition, and perhaps most important, would save money.

This choice also has disadvantages, including the possibility of confusion about the court's jurisdiction in light of the history of the name, the implication of the existence of a lower or inferior court, and the complication of historical research. However, the name "superior court" has important benefits that outweigh all other considerations:

(1) The name is already familiar and people will know that the state trial court is referred to. The name creates no new risk of confusion with other courts or the possibility of misfiled documents.

(2) It will save money in terms of stationery, forms, signage, and the like that will not need to be changed.

(3) The task of making conforming changes in the Constitution and statutes will be greatly simplified. For example, there are more than 3,000 references to the superior court in more than 1,600 statutes that would likely not require revision because of unification.⁷

7. A simple statutory statement could be made that any reference to the "superior court" means the "district court." However, this is not a satisfactory solution in the long run.

(4) Use of the existing name could assuage the substantial concern that exists about possible degradation of the quality of justice in a unified court system, and imply that the entire trial court system is being upgraded to superior court, or highest, trial court status.

(5) The implication that municipal and justice courts are being abolished and the superior court expanded may help insulate the proposed constitutional amendment from legal challenge in a number of areas.⁸

COUNTY STRUCTURE

The trial court structure under existing law is based on a county organizational scheme. In each county there is a superior court⁹ and one or more municipal or justice courts¹⁰ depending on population. SCA 3 would continue the county-based structure in the unified trial court.

Other structures have been proposed, including division of the state into several very large trial court districts, and division into many small districts, on the theory that a trial court's territorial jurisdiction should generally depend on distribution of population centers, geographic features, and political boundaries.

The Commission believes that the structure of the unified trial court should be based on the county, for the reasons elaborated in the 1993 Judicial Council Report:¹¹

(1) Ever since 1879, county lines have been used as the jurisdictional boundaries for California's trial court of general jurisdiction.

8. See, e.g., discussions below of "Voting Rights Act" and "Compensation of Judges."

9. Cal. Const. Art. VI, § 4.

10. Cal. Const. Art. VI, § 5.

11. 1993 Judicial Council Report at 26.

(2) Counties are familiar governmental units for members of the public who deal with the courts and vote in elections.

(3) Superior court administrative structures are based on county lines, and any change in the territorial jurisdiction would require a fresh analysis of the administrative needs of every trial court.

(4) Public agencies that frequently interact with trial courts (e.g., prosecutors, public defenders, corrections, and law enforcement agencies) are organized on a county basis.

(5) Continued county funding of some court operations makes county lines the most natural division between unified courts.

There is widespread agreement with the county-based trial court structure. It is the historical pattern, is generally workable, doesn't require a massive reorganization task, and conforms with current concepts of proper trial court structure.¹²

GEOGRAPHIC DISTRICTS

Branch Operations

Remote parts of physically large counties may currently be served by branch superior courts or by municipal or justice courts. Unification should not affect this, since the existing courts would become part of the unified court system. SCA 3 provides as a transitional matter that "each preexisting superior, municipal, and justice court location shall be retained as a district court location."¹³ This is the simplest and most direct way to deal with the matter, and the Commission recommends it.

The Legislature has explicit authority to provide for municipal and justice court organization.¹⁴ Statutes largely delegate

12. See, e.g., ABA Standards Relating to Court Organization § 1.12(c) (trial courts geographic structure).

13. Proposed Cal. Const. Art. VI, § 16.5.

14. Cal. Const. Art. VI, § 5.

decisions concerning the court structure to the counties.¹⁵ The Constitution is silent as to superior court locations and branches, but legislation deals with superior court districts, branches, and sessions to some extent.¹⁶

SCA 3 addresses this matter in the unified court by providing that the Legislature may divide the unified court into one or more branches. The Commission has devoted extensive consideration to the question whether the determination of branch court locations properly belongs to the legislative branch, the judicial branch, or the counties.

The Commission has concluded that resolution of this issue is not required by trial court unification. The practice of determining superior court branch locations through an amalgam of legislative, judicial, and county action now operates without express constitutional language, and should be able to operate in the same way after trial court unification. Allocation of authority in the Constitution would change the existing balance of governmental powers. It would also rigidify the decision-making process at a time when trial court funding and relative responsibilities of governmental entities are changing.

The Commission therefore recommends revision of SCA 3 to maintain the existing constitutional silence on this issue. Any other action could generate a constitutional debate that is unnecessary in the context of trial court unification.

Los Angeles County

Many commentators on court unification have made the point that Los Angeles County is so populous and the number

15. See, e.g., Gov't Code §§ 71040, 74021.

16. See, e.g., Gov't Code §§ 68604, 69742, 69746-69748.1, 69751.5, 69752. Existing statutes on superior court branches appear to be constitutional. *Compare* County of Madera v. Gendron, 59 Cal. 2d 798, 382 P.2d 342, 31 Cal. Rptr. 302 (1963), with *In re Brady*, 65 Cal. App. 345, 224 P. 252 (1924). *See also* 8 B. Witkin, Summary of California Law *Constitutional Law* § 604, at 58 (9th ed. 1988).

of judges serving it so great that a unified trial court for that county would be unmanageable. They suggest that in Los Angeles County the unified court would need to be divided into several independent districts.¹⁷

There are a number of obvious problems with creating separate court districts within a county. Who will determine where the lines should be drawn, and on what criteria? Will the boundary lines be clear to persons having to use the courts? The Commission sees no real advantage to creating independent judicial districts as opposed to branches within a large county. All the arguments for a countywide basis of trial court organization apply as strongly in a large county such as Los Angeles as in a less populous county.¹⁸ The Commission recommends no change in this arrangement in response to trial court unification.

Circuits

SCA 3 deals with the question of achieving efficiency in the unified court in less populous counties: “The Legislature may provide that one or more judges serve more than one district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes.”¹⁹

This provision offers the opportunity for counties to join into circuits served by the same judges, but would appear to require that each county remain a separate judicial district. An argument could be made that several small counties should be allowed to unify their courts for greatest efficiency.

17. Existing statutes provide for creation of superior court “districts” by the board of supervisors with the approval of a majority of the superior court judges in Los Angeles County. Gov’t Code §§ 69640-69650. These districts, however, are functional units and not independent court systems.

18. See discussion above of “County Structure.”

19. Proposed Cal. Const. Art. VI, § 4.

Problems with this approach are that it will make the courts inconvenient and inaccessible for many persons, and make the judicial officers too remote from their electoral constituencies. There appears to be little support for multi-county districts. Administrative flexibility can be achieved by inter-county coordination activities (including cross-assignment of judges).

The Commission has concluded that constitutional authority to create multi-county districts is not needed. The possibility that efficiency could be improved by creating multi-county districts does not override the arguments that favor making the unified court coterminous with the county. Unification itself should make each small county court system more efficient than it is now.

With respect to the narrower provision of SCA 3 that the Legislature may authorize regional resource sharing or administrative coordination between courts of different counties, the Commission again recommends constitutional silence. Trial court unification would create no need for this type of activity that doesn't already exist, and in fact would decrease the need by enlarging the court in each county. Whether this matter is properly within legislative, judicial, or county control is again a fundamental question of separation of powers. Consistent with the Commission's basic approach to limit its recommendations to those immediately required to implement trial court unification and not to address general matters of court reform,²⁰ the proposed constitutional amendment on trial court unification should not make an issue of circuit operations.

20. See discussion above of "General Principles in Formulating Recommendations Concerning SCA 3."

ORIGINAL JURISDICTION

Subject Matter Divisions

Unification of trial courts will result in the unified court having original jurisdiction of all causes. The broad range of issues presented to the unified court judges may as a practical matter necessitate some specialization within the courts, but creation of specialized departments within the trial court is not a matter of constitutional dimension. The Legislature may require special trial court divisions by statute, and the judicial branch may provide for them by court rule.²¹

Writ Jurisdiction

Under existing law the superior court has original jurisdiction, along with the appellate courts, in proceedings for extraordinary relief in the nature of habeas corpus, mandamus, certiorari, and prohibition.²² This jurisdiction includes authority to issue extraordinary writs to the municipal and justice courts. This scheme requires revision in a unified court since it is not appropriate to have trial court judges of equal dignity in the same court issuing writs directed to one another.

It would be possible to leave extraordinary writs for review of trial court proceedings to the appellate courts. The Commission understands that there are approximately 1,000 writs issued annually from the superior courts to the municipal and justice courts. These are primarily for bail (habeas corpus), discovery, and speedy trial matters.

21. See Cal. Const. Art. VI, § 6 (Judicial Council rules for practice and procedure “not inconsistent with statute”). See also 1993 Judicial Council Report at 27: “[T]he creation of divisions or departments within the district court is a matter more properly dealt with by the judiciary itself through state-wide or local rules of court or by the Legislature through statutes.... There appears to be no principled reason for creating [divisions] by constitutional provision, but creating Small Claims Court, Family Conciliation Court and Juvenile Court by statutory provisions.”

22. Cal. Const. Art. VI, § 10.

The Commission has concluded that the workload of the courts of appeal is so great that it would be inadvisable to shift writ review of trial court proceedings completely to the appellate level. The unified trial courts should have appellate divisions,²³ and it is appropriate that the appellate divisions have writ review capacity over the trial courts.

APPELLATE JURISDICTION

Under existing law, appeals from municipal and justice court judgments are made to the superior court, and appeals from superior court judgments are made to the courts of appeal.²⁴ Unification will require modification of this system, since there will no longer be upper and lower trial courts.

The appellate departments of the superior courts annually dispose of approximately 6,000 appeals from the municipal and justice courts, exclusive of small claims “appeals” (rehearings). The courts of appeal annually dispose of about 22,000 appeals from the superior courts. If the number of appeals from trial court judgments in the unified court roughly equals the combined number of existing superior court, municipal court, and justice court appeals, the court of appeals workload could increase by about 25%.

However, the Commission must alert the Legislature to the possibility that trial court unification may increase the workload of the courts of appeal by substantially more than this as a consequence of trial courts concentrating their resources on cases within the appellate jurisdiction of the courts of appeal, thereby processing a greater volume of these cases in a shorter time. If this occurs, significant changes in the existing appellate system may be required.

23. See discussion below of “Appellate Jurisdiction.”

24. Cal. Const. Art. VI, § 11.

The Commission has considered a number of alternatives for handling appeals in the unified trial court.

All Appeals to Courts of Appeal with Workload Adjustment

All appeals could be made to the courts of appeal. In this event, measures would be necessary to deal with the expected increased workload of the courts of appeal. Suggestions to handle the increased workload of the court of appeal under this proposal include:

- (1) Increase the size of the court of appeal.
- (2) Allow disposition of some cases without written opinions.
- (3) Make acceptance of an appeal discretionary with the court of appeal.
- (4) Limit appealability of small claims matters.
- (5) Limit appealability of traffic matters.
- (6) Eliminate review under Penal Code Sections 995 and 1538.5.

The Commission believes as a matter of policy that trial court unification should not be the occasion for making substantial changes in the Constitution affecting fundamental concepts of justice and reviewability. Written opinions are fundamental to the development of a sound body of interpretive law. Review of matters now within the original jurisdiction of the municipal and justice courts should not be too remote or formal, but should be available locally, immediately, and inexpensively. Trial court unification should not be accomplished at the expense of the fairness that has been built into the California judicial system over the years. Any necessary changes should be the result of a careful statutory revision.

Upper and Lower Divisions Within District Court

A number of commentators on SCA 3 have argued for separate trial divisions within the unified court — an upper

and lower division with jurisdictions the same as those of the superior court and of the municipal and justice courts. Thus the status quo could easily be preserved for the current appeals system (as well as other distinctions between the superior courts and municipal courts such as the economic litigation procedures).

Advocates of this proposal argue that under this scheme the trial courts would in fact be unified. All judges would be equal, but might be assigned to either the upper division or lower division (and presumably could be rotated between them). The proposal would ensure preservation of the existing constitutional scheme of appeals from the higher jurisdiction trial courts to the courts of appeal.

The Commission agrees with the 1993 Judicial Council Report critique of this proposal. The purpose of trial court unification is to create one trial court, not to perpetuate a division between trial level courts. Although constitutional divisions within a unified court would not create the same degree of separation that now exists between superior courts and municipal and justice courts — in particular, there would be unified administrative control — requiring constitutionally separate divisions within a unified court would be inimical to the concept of unification. Only partial unification would be achieved.

A variety of trial court procedures can be maintained without creating separate jurisdictional divisions of the trial court. Creation of divisions or departments within the unified court is a matter properly dealt with by the judiciary itself through statewide or local rules of court or by the Legislature through statutes.²⁵ There appears to be no reason for creating divisions

25. See, e.g., Code Civ. Proc. §§ 116.110-116.950 (Small Claims Court); Fam. Code §§ 1800-1852 (Family Conciliation Court); Welf. & Inst. Code §§ 200-987 (Juvenile Court).

by constitutional provision, but creating Small Claims Courts, Family Conciliation Courts, and Juvenile Courts by statute.

Appeals Between Counties

Appeals from matters formerly within the jurisdiction of the municipal and justice courts might be made to the trial court in an adjoining county, rather than internally within the unified court. This proposal would avoid the problem inherent in having peer review among colleagues of equal standing who serve on the same court.

The Commission does not recommend this approach. It still involves a judge or panel of judges overruling the decision of a judge of equal rank. It also inconveniences the parties. The concept of an appellate capacity in the trial court in part is to provide easy accessibility of review within the county. And cross-county appeals undoubtedly would create management problems, particularly where the workload and staffing of adjoining counties differ substantially.

Appellate Jurisdiction in Unified Court

One approach to the issue of appeals from causes currently within the jurisdiction of the municipal and justice courts is to provide for appellate jurisdiction within the unified court. This is suggested in the 1993 Judicial Council Report, which notes that there is sufficient authority to create an appellate department in the unified court by court rule, as is done now in the superior court.

The primary concern with appellate jurisdiction within the unified court is the problem of conflicts of interest arising in peer review. A judge should not be in a position of having to reverse a judge of equal rank. There may be a collegiality or deference on the court that will destroy the independent judgment necessary for a fair review.

SCA 3 addresses this problem by creating a constitutional appellate division in the unified trial court. Although an

appellate division could be created by statute or court rule, the Commission believes SCA 3 is correct in its constitutional establishment of an appellate division. The existing superior court appellate department works because the appellate department exercises review over lower court cases, not over other superior court cases. To ensure proper functioning of an appellate department staffed by judges of the same jurisdiction as the judges being reviewed, a constitutional hierarchy is desirable. This will avoid the dilemma of judges of equal rank claiming the constitutional right to reverse (and possibly overrule reversals of) each other.

An added way to ensure independence within the trial court setting is to mandate that appointments to the appellate division be made by the Chief Justice and that they be for a specified term.²⁶ The Judicial Council can be required to adopt rules that will promote independence. The rules might set forth relevant factors to be used by the Chief Justice in making appointments to the appellate division, including criteria such as length of service as a judge, reputation within the district, and degree of separateness of the appellate department's workload from the judge's regular assignments (e.g., a unified court judge who routinely handles large numbers of misdemeanors should ordinarily not serve in the appellate department). In addition, appointments might include judges assigned from other counties if necessary for proper operation of the appellate division in a small county.

Definition of Appellate Jurisdiction

SCA 3 does not specify which causes would go to the appellate division and which would go to the court of appeal.²⁷ Implementing legislation might, but is not required

26. See Code Civ. Proc. § 77.

27. A technical defect in SCA 3 is that it permits the Legislature to define the jurisdiction of the district court's appellate division, but it does not withdraw jurisdiction

to, provide for lower court appeals for the same causes that are now within the jurisdiction of the municipal and justice courts.

The 1993 Judicial Council Report would remove authority to define appellate jurisdiction from the Legislature and vest it in the Judicial Council, with approval of the Supreme Court. The report indicates that while the Legislature indirectly controls appellate jurisdiction now by defining the jurisdiction of the municipal and justice courts, this is really incidental: "As a practical matter, however, the Legislature exercises little control over appellate jurisdiction since the reassignment of a class of cases from the original jurisdiction of the superior court to the original jurisdiction of the municipal and justice courts has such significant implications entirely apart from which court has appellate jurisdiction."²⁸

Removal of decisions concerning appellate jurisdiction from the legislative branch and vesting them in an administrative agency within the judicial branch would signal a major shift in constitutional policy. The Commission has not seen any documentation or demonstration of a need for this change, and does not recommend it as part of trial court unification.

The Commission believes that both the existing constitutional authority of the Legislature to define the appeal path of causes within the trial court, and the existing statutory allocation of workload between the courts of appeal and appellate divisions of the superior courts, should be maintained to the extent practicable in the context of trial court unification.²⁹

in those matters from the court of appeal. As a result, appellate jurisdiction would be concurrent. That defect should be cured if the SCA 3 approach is pursued.

28. 1993 Judicial Council Report at 38.

29. The existing criminal appellate jurisdiction of the superior court is easily defined to include misdemeanors. The existing civil appellate jurisdiction of the superior court generally covers causes where the amount at issue is less than \$25,000 (except family and probate matters), but this may vary with legislation affecting the municipal and justice court jurisdiction.

Recommendation

The Commission recommends creation of a constitutional appellate division in the unified court. The criminal jurisdiction of the appellate division should include misdemeanor appeals, parallel to the current criminal appellate jurisdiction of the superior courts. The civil jurisdiction of the appellate division should be defined by the Legislature or by court rule not inconsistent with statute. As a transitional matter the trial court appellate division would handle appeals for causes currently appealable from the municipal and justice courts to the superior courts. Non-appeal review matters, such as small claims rehearings and criminal review proceedings, should continue to be heard by individual superior court judges as they are now.³⁰ This can be accomplished without an overly extensive redrafting of existing statutes.

JUDGES

Existing Superior, Municipal, and Justice Court Judges

SCA 3 provides that existing superior, municipal, and justice court judges will become the initial judges of the unified trial court. Their terms of office would not be affected by their succession to office as unified court judges.³¹ The Commission believes this is a sensible approach. Issues of qualifications, assignment, and compensation — both transitional and permanent — must be addressed.

Qualifications of Judges

Municipal and justice court judges must have five years of experience as attorneys or judges and superior court judges

30. See discussion below of “Practice and Procedure.”

31. The transitional provision provided in SCA 3 by its terms is repealed five years after it becomes operative. This could cause a problem for a judge in the sixth and final year of a holdover term. This should be corrected by extending the repealer beyond the date when it could affect a sitting judge.

must have 10 years of experience.³² In the past justice court judges were not required to be attorneys, but that requirement was changed in 1975. There are no longer any non-attorney justice court judges serving, and by July 1, 1995 (the operative date of SCA 3), no current judge of any California trial court will have less than 10 years of experience as a judge or attorney.

SCA 3 would require unified court judges to have 10 years of experience. This requirement is appropriate, and would conform to existing circumstances in the trial courts. A savings clause should be added to the constitutional amendment to cover the possibility that a judge having less than 10 years' experience may be elected³³ before the operative date of SCA 3.³⁴ Any shortcomings of such a judge can be addressed by appropriate assignment to causes within the judge's competence.

A major concern regarding trial court unification is whether the quality of justice will decline due to elevation of municipal and justice court judges (whose jurisdiction and scope of judicial experience is limited) to the court of general jurisdiction. The 10-years experience requirement works a rough measure of quality, but experience alone does not guarantee it.

There is also concern about loss of the lower courts as training grounds for future superior court judges. It should be noted, however, that approximately half of California's current superior court judges have never seen experience in municipal or justice court, having been appointed or elected directly to the superior court bench. Most of the over 600

32. Cal. Const. Art. VI, § 15.

33. The Commission understands that as a matter of practice the Governor now appoints only persons with the requisite 10 years' experience.

34. No action is necessary with respect to California Constitution Article VI, Section 15.5. That provision grandparents former non-attorney justice court judges and expires by its own terms on January 1, 1995, before the operative date of SCA 3.

current municipal court judges went through rigorous screening processes similar to those for superior court judges.

Experience in the municipal or justice court does not differ dramatically from that in the superior court. Many superior court cases result in verdicts within the jurisdictional limits of the lower courts. Moreover, municipal and justice court judges frequently sit on superior court matters by assignment.

The work of the municipal and justice courts is in many respects as important as, or more important than, that of the superior courts, since more people come into contact with the municipal and justice courts. Trial court unification would eliminate the perception that because municipal and justice courts are “inferior” trial courts, they render a lower level of justice than the superior courts.

Just as municipal and justice court judges are of variable quality, so too are superior court judges. There is no clear measure of judicial quality. Trial court unification would afford presiding judges greater flexibility in making assignments, such that they could better match judges’ skills to their caseloads. Peremptory challenges are available in an appropriate case to diminish the impact of a less qualified judge.³⁵

A further means of safeguarding the quality of decisionmaking is greater emphasis on educating judges to perform their tasks. The constitutional amendment should make clear the authority of the Judicial Council to mandate appropriate judicial education in the transition to a unified court.

With these means of control available, the Commission believes that elevating municipal and justice court judges to the unified court bench, as contemplated in SCA 3, would not pose a serious threat to the quality of judicial decisionmaking in California.

35. Code Civ. Proc. § 170.6.

Judicial Diversity

A concern with trial court unification is that loss of municipal and justice courts may impair an avenue by which historically excluded groups such as women and minorities have been able to get access to the bench.

The data indicate that 218 trial court judges are women, representing approximately 16% of the trial court judges. Thirteen percent of superior court judges are women, and 18% of municipal court judges are women. Of the 46 justice court judges, only one is a woman. Statistics showing what percentage of women now sitting on the superior court began their judicial careers in the municipal or justice court are not available, but overall about half of the superior court judges came through that route.

One hundred eighty-nine judges, or approximately 14% of the state trial court bench, are minority, divided about equally between the superior court and municipal court. Of the 46 justice court judges, only three are minority members. Statistics are not available to show how many of the minority superior court judges began as municipal or justice court judges.

The few available statistics are inconclusive on whether unification will make it more difficult for women or minority lawyers to become judges. The statistics do suggest that the current system of appointment of justice court judges by the county board of supervisors rather than the Governor results in a substantially lower proportion of women and minority judges. Eliminating the appointment authority of county boards of supervisors (by eliminating the position of justice court judge) should result in a greater proportion of women and minority judges. However, this segment represents a small percentage (3%) of the total judge corps.

Assignment of Judges

Trial court unification assumes a flexible system under which the presiding judge may assign judges according to workload and available resources. A practical concern is that some incumbent superior court judges may resist handling smaller cases such as traffic or small claims. The possibility of assignment to smaller cases could also make it harder to recruit new judges.

It is likely in the unified court that more experienced and capable judges will be assigned to handle more complex cases. The Commission believes that judicial candidates will not be deterred by the possibility that less experienced or less capable judges may be relegated to traffic or small claims matters.

The Commission does not oppose, for transitional purposes, a statute or court rule immunizing incumbent superior court judges from hearing cases currently within the municipal and justice court jurisdiction for the duration of their terms.³⁶ Such an immunity could help make trial court unification more acceptable to sitting superior court judges, and it is likely that any inefficiencies resulting from the immunity would be minor and short-lived.

Any statute or rule immunizing sitting superior court judges from hearing cases currently within the municipal or justice court jurisdiction without their consent should make clear that

36. California Constitution Article VI, Section 6, permits the Chief Justice to provide for assignment of a judge to another court, but "only with the judge's consent if the court is of lower jurisdiction." This provision would not provide a basis for an incumbent superior court judge to resist assignment by the presiding judge to a cause in the unified court that was formerly within the municipal and justice court jurisdiction. Arguments based on the state or federal prohibitions of bills of attainder, ex post facto laws, or laws impairing the obligation of contracts have not been successful. *Cf.* *McComb v. Commission on Judicial Performance*, 19 Cal. 3d Spec. Trib. Supp. 1 (1977); *Crawford v. Payne*, 12 Cal. App. 2d 485, 55 P.2d 1240 (1936); *Commonwealth v. Gamble*, 62 Pa. 343 (1869); *Booth v. United States*, 291 U.S. 339, 351 (1933) ; 46 Am. Jur. 2d *Judges* § 22 (1969). California cases under the federal contract clause have generally involved pension rights. See, e.g., *Olson v. Cory*, 27 Cal. 3d 532, 609 P.2d 991, 164 Cal. Rptr. 217 (1980).

the business of the court as a general matter should be distributed among the judges in accordance with their abilities and to facilitate efficient utilization of judicial resources. There should be no implication that former municipal and justice court judges cannot be assigned to matters currently within the superior court jurisdiction, as they are now.³⁷

Residency Requirements

Existing law purports to require each superior court judge to reside “within the county of the court for which he is elected or appointed.”³⁸ This requirement may be improper since the California Constitution³⁹ sets the qualifications for superior court judges and does not include a residency requirement.⁴⁰

The Constitution does allow the Legislature to prescribe qualifications for municipal and justice court judges.⁴¹ Most municipal court judges must be “residents eligible to vote in the judicial district or city and county in which they are elected or appointed.”⁴² There is some confusion as to how to apply the residency requirement for municipal court judges in a county having a unified municipal court district with separate divisions. Justice court judges do not have to live in any particular district; they need only reside in the county in which they serve.⁴³

37. See Cal. Const. Art. VI, § 6 (assignment of judges to other courts).

38. Gov’t Code § 69502.

39. Cal. Const. Art. VI, § 15.

40. See, e.g., *People v. Chessman*, 52 Cal. 2d 467, 500, 341 P.2d 679 (1959); *Wallace v. Superior Court*, 141 Cal. App. 2d 771, 298 P.2d 69 (1956); *People v. Bowen*, 231 Cal. App. 3d 783, 283 Cal. Rptr. 35 (1991).

41. Cal. Const. Art. VI, § 5.

42. Gov’t Code § 71140; see also Gov’t Code §§ 71140.2, 71140.3 (providing that in certain counties, municipal court judges need not live in their respective districts, so long as they live somewhere in their assigned county); *Wall v. Municipal Court*, 223 Cal. App. 3d 247, 249, 272 Cal. Rptr. 702 (1990).

43. Gov’t Code § 71701; *Osborne v. LaFont*, 60 Cal. App. 3d 875, 130 Cal. Rptr. 443 (1976); B. Witkin, *California Procedure Courts* § 9, at 20 (3d ed. 1985).

Consistent with the existing constitutional treatment of superior court judges, SCA 3 does not include authority for the Legislature to impose additional qualifications such as residency requirements for judges in the unified trial court. This is also consistent with the constitutional treatment of appellate judges, and with separation of powers concepts.⁴⁴ The Commission recommends no departure from SCA 3 on this point.

Compensation of Judges

The Legislature has authority to set compensation for judges,⁴⁵ subject to limitation on salary reductions during a judge's term of office.⁴⁶ Currently the compensation of a superior court judge is \$99,297 per year and the compensation of a municipal or justice court judge is \$90,680 per year.⁴⁷

Unification of trial courts implies equalization of trial judge salaries. However, this is a statutory, not a constitutional matter, and the Commission therefore makes no specific proposal at this time. This should be part of the statutory implementation of trial court unification.

Retirement allowances of judges are also subject to legislative control⁴⁸ and are linked to judicial salaries.⁴⁹ Changes in judicial salaries as a result of unification may require adjustment in retirement allowance formulas.⁵⁰ There may be

44. Imposition of a residency requirement may restrict the pool of available judicial talent by precluding otherwise well-qualified persons from filling judicial vacancies outside their respective counties of residence.

45. Cal. Const. Art. VI, §§ 5, 19.

46. Cal. Const. Art. III, § 4(b); *Olson v. Cory*, 27 Cal. 3d 532, 537-38, 609 P. 2d 991, 164 Cal. Rptr. 217 (1980).

47. Gov't Code §§ 68202-68203.

48. Cal. Const. Art. VI, § 20.

49. Gov't Code § 75076.

50. The 1993 Judicial Council Report, for example, recommends that a municipal court judge who retired prior to unification should receive retirement benefits based on

Contract Clause considerations that limit the ability to adjust retirement allowance formulas of current retirees. Retirement allowance formulas under unification should be addressed as part of the statutory revision and not as part of the constitutional amendment.

SELECTION OF JUDGES

Term of Office

SCA 3 would provide a six-year term of office for unified court judges. This is consistent with the six-year term applicable to superior court judges under the Constitution⁵¹ and to municipal and justice court judges by statute.⁵² It would make the term of office a constitutional matter for all judges. The Commission believes this treatment is appropriate.

Election Following Appointment

When a judge is appointed to fill a superior court vacancy, the judge must stand for election to a full term at the next general election after January 1 following the vacancy.⁵³ The situation with municipal court judges is governed by statute and is more complex. As a general rule, municipal court judges must stand for election at the general election next preceding expiration of the term to which they are appointed to fill a vacancy.⁵⁴

With trial court unification a single procedure must be adopted. The 1993 Judicial Council Report suggests that a middle ground would be appropriate, requiring election during the third year after appointment to fill a vacancy. This

91% of the salary of a sitting district court judge (which represents the present salary differential between superior court judges and municipal and justice court judges).

51. Cal. Const. Art. VI, § 16(c).

52. Gov't Code § 71145.

53. Cal. Const. Art. VI, § 16(c).

54. Gov't Code §§ 71141, 71180; *cf.* Gov't Code § 71180.3 (justice court).

represents a compromise between the immediate election of superior court judges and delayed election of municipal court judges.

The compromise position would avoid thrusting a person who accepts a unified court judicial appointment into an immediate countywide election campaign. This is a particular concern for many municipal and justice court judges whose constituencies are now limited to a district within the county. In a large county such as Los Angeles, the problem for both the judge and the electorate is accentuated. An election only a few months after appointment “usually is too short a time in which to become known to the bar and the public. The fact that an appointed judge would have to stand for election so quickly has been an impediment to attracting the best qualified candidates to serve as trial court judges.”⁵⁵

Voters should have an opportunity to make a determination based on a judge’s record. The Commission agrees with the 1993 Judicial Council Report and recommends that a judicial vacancy in the unified court be filled by appointment, with an election held at the next general election after the third January 1 following the vacancy. Benefits of this change may also include improved recruitment of top appointees, decreased likelihood that a judge would be voted out of office based on the judge’s political views, and reduced incentive for a judge to decide a case based on how popular the decision would be with the electorate.

Electoral Districts

Under SCA 3 the unified court is a countywide court, which implies a countywide election for each judge. At present superior court judges are elected countywide, but municipal and justice court judges are elected by district.⁵⁶ The Com-

55. 1993 Judicial Council Report at 43.

56. Cal. Const. Art. VI, § 16(b).

mission understands that in 20 counties the municipal court has been consolidated into one district, where countywide elections occur. But in counties currently divided into separate municipal districts, the control of local voters over the judges would be diminished.

Countywide elections not only raise the cost of financing and conducting campaigns for some judges, but also suggest the possibility of challenges based on the Voting Rights Act.⁵⁷ Countywide elections create the concern that heavily populated areas of a county may control judicial elections at the expense of more rural areas, and that judges serving parts of the county will be selected by voters remote from the areas where they sit. Local judicial elections are problematic for most voters who know little about the candidates; to make the unified court elections countywide could worsen the problem.

But the option of creating smaller electoral districts within the county has even more serious drawbacks. It would create a system whereby a part of the electorate could select a judge for the remainder of the county, thereby disenfranchising the rest of the electorate. Superior court judges who currently serve and run countywide would need to be assigned to a district. It makes little sense to elect a judge in an electoral district if the judge may never see a case arising in that district. To require assignment of a unified court judge to the electoral district from which the judge is elected would destroy a key element of trial court unification — to allow greater flexibility in judicial assignments.

Since 1879, judges elected to California's trial court of general jurisdiction have run in countywide elections. Electoral districting within the county may encourage an inappropriate public expectation that a judge "represents" the district and should side with district interests in litigation, compromising judicial independence and impartiality.

57. See discussion below of "Voting Rights Act."

The Commission agrees with the 1993 Judicial Council Report that the best approach is to enact an electoral scheme that makes sense in terms of constitutional structure and the relationship of an independent judiciary to electors. The most natural boundaries for the unified trial courts — based on history and the public’s common understanding — are the existing county boundaries.

Voting Rights Act

The Voting Rights Act of 1965⁵⁸ may restrict the state’s ability to adopt the most workable election scheme for the unified trial courts. The Act contains two major provisions regarding discrimination in voting practices. Section 2 of the Act prohibits election procedures that result in a denial or abridgment of the right of any citizen of the United States to vote on account of race, color, or membership in a language minority group.⁵⁹ Section 5 of the Act requires covered jurisdictions to submit any changes in voting procedures to preclearance (either judicial or administrative).⁶⁰ Both of these sections apply to judicial elections.⁶¹

Presently, superior court electoral and jurisdictional lines follow county lines. Municipal and justice court electoral and jurisdictional lines are drawn more narrowly to reflect the geographic areas and populations they serve. After unification, unified court jurisdictional and electoral lines will follow county lines. Judicial independence and integrity are best served by a countywide electoral scheme under which judges are elected by all qualified electors in the county.

58. 42 U.S.C. § 1973 *et seq.*

59. 42 U.S.C. § 1973(a).

60. 42 U.S.C. § 1973c.

61. *Houston Lawyer’s Association v. Attorney General*, 111 S. Ct. 2376 (1991); *Chisom v. Roemer* 111 S. Ct. 2354 (1991) (Section 2 case); *Clark v. Roemer*, 111 S. Ct. 2096 (1991) (Section 5 case).

Depending on past voting patterns and other circumstances, and future interpretations of the applicability of the Voting Rights Act to judicial elections, countywide elections may present issues under the Voting Rights Act in some communities. For example, if a municipal court judge who presently sits in a predominantly minority district is required to run in a countywide election after unification, a claim of vote dilution may be presented.⁶² Moreover, four counties in California — Kings, Merced, Monterey, and Yuba — are subject to preclearance requirements.

The Voting Rights Act problem is not merely academic. The Monterey County proposal to consolidate municipal and justice court elections countywide was challenged in 1993 by minority voters and held invalid for failure to comply with the Voting Rights Act preclearance requirements. Most informed observers have concluded that challenges to electoral changes under a unified court are certain to be made, although the likelihood of a successful challenge is unclear.

Approximately 14% of the state trial court bench is minority, compared with approximately 7% of the bar eligible for selection to the bench⁶³ and 43% of the state population as a whole. Of the 189 minority judges, 91 sit on the superior court and run for election countywide; of the 95 minority municipal court judges, 21 run countywide. Thus 59% of sitting minority judges now run and are elected on a countywide, rather than district, basis. There is some indication that minority judicial candidates as a rule do better in countywide than in district elections.

The statutory test applied in a Voting Rights Act challenge to an election is whether under the “totality of circumstances”

62. *See, e.g.*, *Rogers v. Lodge*, 458 U.S. 613 (1982) (at-large system).

63. The number of minority lawyers who have the requisite experience — 10 years for superior court and five years for municipal or justice court — is relatively smaller than minority bar membership as a whole.

there is an abridgment or denial of the right to vote on account of race, or color, or membership in a language minority group.⁶⁴ The Supreme Court has stated that among the total circumstances to be considered is the state's interest in linking the electoral base with the jurisdiction of the judge,⁶⁵ balanced against such factors as bloc voting patterns, minority concentration and cohesiveness, historical election results, and other factors that may pertain to a particular county.⁶⁶

Under these standards powerful challenges to existing superior court election patterns could probably be brought in several counties in California. Countywide elections under trial court unification could trigger a Voting Rights Act challenge by a judge or constituency. But given the geographic dispersion of minority populations and the considerable undertaking involved in mounting a Voting Rights Act case, a statewide challenge appears impractical and therefore unlikely.

Whether challenges against a reasonable judicial election system would be successful is unclear. There are federal appellate cases going opposite directions on the issue of a change of electoral districts from municipal to countywide.⁶⁷ Experts believe the matter ultimately will be settled by the United States Supreme Court, but it is not certain how soon that will occur.

The Commission has reviewed a number of possible approaches to judicial elections in a unified court in light of the uncertainty caused by the Voting Rights Act.

64. 42 U.S.C. § 1973(b).

65. *Houston Lawyer's Association v. Attorney General*, 111 S. Ct. 2376 (1991).

66. *Thornburg v. Gingles*, 478 U.S. 30 (1986).

67. *Compare Nipper v. Smith*, 1 F.3d 1171 (11th Cir. 1993), with *League of United Latin American Citizens v. Clements*, 999 F.2d 831 (5th Cir. 1993).

Countywide Electoral Districts. The Judicial Council makes a strong case that countywide elections are essential to a unified court, and any Voting Rights Act violations found in a particular county should be dealt with individually in a way unique to that county. They note the arguments favoring countywide election under the Act and conclude that its application in each case will be highly factual and intensely local.

Retention Elections. It has been argued that retention elections would not be subject to challenge under the Voting Rights Act. This argument is based on the fact that the existing cases applying the Act to judicial elections involve contested elections. The cases speak in terms of the ability of minority voters to elect the candidate of their choice, a concept that is less meaningful for retention elections than for contested elections. However, gubernatorial appointment processes, and even merit selection systems, are currently under challenge,⁶⁸ and at least one federal trial court has held retention elections subject to the Voting Rights Act.⁶⁹

The Commission does not believe that trial court unification should serve as the occasion for a fundamental change in the nature of judicial elections such as adoption of retention elections. Such a change would greatly complicate the ballot issues relating to SCA 3 and perhaps lead to its defeat for reasons unrelated to trial court unification itself. The existing constitutional provision allows the electors of a county, by majority of those voting and in a manner the Legislature provides, to adopt retention elections for superior court judges.⁷⁰ The Legislature has not provided procedures, nor has any county adopted superior court retention elections.

68. See Smith & Gamel, *Judicial Election and Selection Procedures Challenged Under Voting Rights Act*, 76 *Judicature* 154 (1992).

69. *Bradley v. Election Board*, 797 F. Supp. 694 (S.D. Ind. 1992).

70. Cal. Const. Art. VI, § 16(d) (last ¶).

Retention elections may be a useful alternative to contested elections, however, where necessary to comply with the Voting Rights Act.

Cumulative Voting. One way to preserve the advantages of countywide elections while protecting minority voting rights would be by a semi-proportional vote system, such as cumulative voting. All candidates would run at large, but each voter would be able to cumulate votes for a single candidate or a few candidates. This system is familiar in corporate director elections. It has also been used in political elections in some jurisdictions including Illinois, and has been employed in some elections in the South as a remedy under the Voting Rights Act. Drawbacks include: (1) Semi-proportional voting allows any small but organized block, not necessarily a protected racial minority but more likely a splinter faction with a political agenda, to win a seat. (2) It tends to favor elite and organized groups over the general voting public, and intensifies political activity. (3) It is most useful in a context of electing one member to a deliberative board where the elected official can influence the collective decision, not for trial judgeships where the elected official generally acts alone on matters not affecting the public at large. (4) Practical problems would arise, such as mechanized ballot tallying difficulties, disqualification of ballots casting more than the allotted number of votes, and the like.

Preclearance of Unification Plan. Any changes in voting rights must be precleared in the four counties where preclearance is required, or be subject to challenge. However, preclearance does not settle any issues in a subsequent Voting Rights Act challenge. To minimize problems, the unification plan should be submitted for preclearance in the four required counties.⁷¹

71. Preclearance should be sought by the Attorney General, as the state's chief legal officer. 42 U.S.C. § 1973c; Cal. Const. Art. V, § 13.

Keep Existing Electoral Districts. Another alternative would be to make no changes in judicial election voting rights. Thus, elections for the seats of current superior court judges would continue to be countywide after unification, and elections for the seats of current municipal and justice court judges would continue to be by existing electoral districts after unification. In any given election a person wishing to run for a unified court judgeship would choose to run either for a countywide seat or for a district seat, either of which would have countywide jurisdiction. Any changes in numbers of judgeships — either increases or decreases — would be at the countywide level rather than the district level. However, this approach would not cure the problems associated with judicial elections by district — creation of judgeships with countywide authority but only local accountability, and the appearance and possibility of local bias and favoritism.

Electoral Districts Within County. Three possible configurations of smaller than countywide electoral districts that could satisfy the Voting Rights Act have been suggested.

(1) **Multiple unified courts within counties.** Instead of having one unified court serving the entire county, a large county such as Los Angeles could be divided into several independent judicial districts, each having its own court system. Judicial elections within each unified court district would be district-wide. The district lines would be drawn to avoid dilution of minority voter influence. Dividing a county into more than one unified judicial district creates other concerns with funding, facilities, etc., in addition to the difficulties of drawing and periodically redrawing boundaries based on minority voting patterns.

(2) **Election by branch.** It is contemplated that branch courts will be established where the circumstances of the particular county warrant. Judicial elections could be by branch rather than countywide. Branch boundaries could be established

with voting rights considerations in mind, rather than convenience, venue, and judicial business considerations. But this would tend to defeat the purpose of establishing branches.

(3) Election by electoral district for countywide service. The court could be a countywide court, with each judge standing for election in a specified voting district in the county before a limited constituency. This, and similar options, raise the practical question of how the boundaries will be drawn and who will draw them. Use of supervisorial districts is an option, but is only workable in counties where the number of judges is an even multiple of the number of supervisors. It is clear that drawing appropriate electoral boundaries would be a difficult and painstaking task, and would almost certainly be the subject of a Voting Rights Act challenge in any case.

Additionally, these options create the problems noted by the Judicial Council where a judge is elected locally to serve on a countywide court:

Electoral sub-districting would result in some district judges being exclusively accountable to certain residents of the district and other judges of the same court being exclusively accountable to an entirely different constituency. Electoral sub-districting thus creates the semblance of bias and favoritism towards the interests of a narrow constituency rather than the fact and appearance of judicial fairness based upon electoral accountability to the broadest range of people within the court's jurisdiction. Electoral sub-districting threatens to politicize the trial bench and undermine judicial impartiality. Judges should be accountable to all those within the court's jurisdiction, not just some.

Electoral sub-districts would likely result in a public expectation not only that the trial judge would primarily serve the interests of those within the sub-district but also that the judge would be assigned to any court facility located within the sub-district and to cases arising within the sub-district. Tying judicial assignment to electoral sub-district would impair the very flexibility in judicial

assignment which is a primary benefit of trial court unification.⁷²

The Commission believes that judges who serve county-wide ought to be subject to a countywide constituency. Ideally, unification should wait until the Supreme Court gives definitive direction as to whether countywide judicial elections that correspond with the countywide jurisdiction of the court are permissible, but the timing of this is uncertain.

The objective of the Voting Rights Act — to ensure full participation in the political life of the community by historically precluded minorities — is an important goal. But the Act itself is of little value in this respect for judicial elections, since the vast majority of judgeships are filled initially by appointment rather than election. Once appointed, it is rare for the incumbent to be unseated in a judicial election.

Conclusion

The Commission concludes that court unification should provide for countywide elections, subject to individual county challenges and federal court solutions imposed on a county by county basis. This plan makes the most logical sense for a unified court, and there is a good chance that it eventually will be upheld under the Voting Rights Act. The plan should be submitted for preclearance in those counties subject to preclearance, but any preclearance failures should be worked out with the federal authorities on a county by county basis, as should any ultimate Voting Rights Act failure in individual counties. Any variance from countywide elections should be subject to control of the Legislature. Retention elections may provide a viable alternative.

72. Warren, *Electoral Districting Under the Judicial Council's SCA 3 Proposals* (1993).

PRACTICE AND PROCEDURE

Court Rules

The Judicial Council has authority to “adopt rules for court administration, practice and procedure, not inconsistent with statute.”⁷³ By statute, every court has authority to “make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council.”⁷⁴ Thus local court rules are subordinate to Judicial Council rules, and Judicial Council rules are subordinate to statutes.⁷⁵

The Judicial Council has adopted comprehensive rules for trial courts, found in the California Rules of Court. The Rules of Court contain superior court rules, civil law and motion rules, superior court sentencing rules, municipal court rules, justice court rules, and miscellaneous rules. Court unification will require the Judicial Council to consolidate the rules for superior, municipal, and justice courts. Under the Constitution the Judicial Council unquestionably has authority to consolidate rules, to make new rules superseding inconsistent local court rules, and to do so before the operative date of the unification measure.⁷⁶

The Judicial Council has occupied most of the field of procedural rule-making, so rule-making by individual courts has lost much of its former importance.⁷⁷ To the extent new Judicial Council rules do not occupy the field of procedural rule-making for unified courts, local courts will continue to have authority to adopt procedural rules.

73. Cal. Const. Art. VI, § 6.

74. Gov't Code § 68070.

75. 2 B. Witkin, California Procedure *Courts* § 142, at 166 (3d ed. 1985).

76. Cal. Const. Art. VI, § 6.

77. 2 B. Witkin, California Procedure *Courts* § 142, at 166 (3d ed. 1985).

Transitional provisions will be helpful to clarify how the Judicial Council and local courts adopt transitional rules before the operative date of the unification measure, while superior, municipal, and justice courts are still separate.

Small Claims and Economic Litigation Procedures

Both the small claims procedures⁷⁸ and the expedited process followed in municipal and justice courts under the Economic Litigation Act⁷⁹ will need to be preserved in the unified court or the caseload will become unmanageable. This is a matter for statutory implementation, rather than constitutional structure. A transitional provision for this purpose should be in place before court unification becomes operative.

Criminal Procedure

The dual system of municipal or justice court preliminary decision and superior court review for some criminal procedures⁸⁰ should be preserved in the unification of the courts. Although it has been suggested that criminal procedures could be streamlined in a unified court, the Commission does not believe trial court unification should serve as a vehicle for changing substantive or procedural rights of parties.⁸¹

A judge of the unified court can review the preliminary decision of another judge. This is ultimately a statutory, rather than a constitutional, matter but the existing scheme should be preserved in the transition.

78. Code Civ. Proc. §§ 116.110-116.950.

79. Code Civ. Proc. §§ 90-100.

80. E.g., Penal Code §§ 995, 1538.5.

81. See discussion above of "General Principles in Formulating Recommendations Concerning SCA 3."

Judicial Arbitration

Existing statutes governing judicial arbitration vary with the size and jurisdiction of the court.⁸² These statutes should be reviewed as part of the general statutory revision necessitated by unification.

Filing Fees

The elaborate statutory filing fee scheme must be revised before unification becomes operative. This is a matter for the general statutory revision.

Venue

Venue provisions for municipal and justice courts distinguish among districts within the county. The venue distinctions should be reviewed in the statutory revision implementing trial court unification. To the extent venue provisions are retained, it may help maintain the “local justice” character currently associated with the municipal and justice courts. It may be useful to provide that venue within the unified court district is determined by local court rule.

Sessions

The days and hours of business are statutory and differ for the different courts and for different types of jurisdiction, particularly criminal jurisdiction. These provisions must be reviewed and revised before unification becomes operative.

Forms

Forms will require consolidation in the unified court. The Judicial Council has adequate authority in this regard, and no transitional provisions appear necessary in order to enable promulgation of new forms for publication in advance of unification.

82. Code Civ. Proc. §§ 1141.10-1141.32.

Records

Record storage and retention in the unified court will be a logistical problem. Statutes need to be conformed. SCA 3 provides appropriately that “the records of the preexisting court shall become records of the district court.”⁸³

JURY TRIAL

Jury Size

The California Constitution permits the Legislature to provide for an eight-person jury in civil cases in “municipal or justice court.”⁸⁴ The Legislature has been cautious in exercising this authority. In 1981, the Legislature authorized an experimental project using eight-person civil juries in municipal and justice courts in Los Angeles County, but that project has expired.⁸⁵ There are no other statutes authorizing eight-person juries, except by agreement of the parties.⁸⁶

The legislative authority to provide an eight-person jury in municipal and justice court civil causes should be preserved in the unified court. This can be done by giving the Legislature authority to provide for an eight-person jury in civil causes other than causes within the appellate jurisdiction of the court of appeal, which should generally correspond with the existing jurisdiction of the municipal and justice courts.⁸⁷

83. Proposed Cal. Const. Art. VI, § 16.5.

84. Cal. Const. Art. I, § 16. There is no federal constitutional right to jury trial in civil cases in state courts. *County of El Dorado v. Schneider*, 191 Cal. App. 3d 1263, 1271, 237 Cal. Rptr. 51 (1987); *California Civil Procedure During Trial* § 7.2, at 134 (Cal. Cont. Ed. Bar Supp., June 1993).

85. Code Civ. Proc. § 221.

86. Code Civ. Proc. § 220.

87. See discussion above of “Appellate Jurisdiction.”

Vicinage

Trial court unification under SCA 3 would merge the municipal and justice courts in a superior court of countywide jurisdiction. The question arises whether this would impair the federal constitutional right of a criminal defendant to be tried by jurors selected from the district where the offense occurred — the “vicinage” right.⁸⁸ If the selection area is not larger than countywide, there appears to be no violation of federal vicinage rights.⁸⁹

It is said that the vicinage right belongs to the community as well as to the accused. Trial of local criminal matters in the community, especially shocking crimes, provides a substitute for natural human reactions of outrage, protest, and vengeful self-help.⁹⁰ This policy is not undermined by a countywide jury selection area, particularly given the wide area served by newspaper, radio, and television.⁹¹

88. See, e.g., 5 B. Witkin, *California Criminal Law Trial* § 2643, at 3171 (2d ed. 1989). See also Code Civ. Proc. §§ 191-192, 197; Penal Code § 1046 (jurors in civil and criminal cases must be selected from the population of the area served by the court).

89. In the controlling case, the California Supreme Court held that under the U. S. Constitution “vicinage is defined as the *county* in which the crime was committed.” *Hernandez v. Municipal Court*, 49 Cal. 3d 713, 717, 781 P.2d 547, 263 Cal. Rptr. 513 (1989). The court rejected the defendant’s contention that vicinage should be construed narrowly to require jurors to be selected from the judicial district where the crime occurred. Thus the federal vicinage right will not prevent selecting jurors on a county-wide basis.

In *Hernandez*, the offense occurred in Watts, eight miles south of the downtown courthouse of the Municipal Court for the Los Angeles Judicial District. The case was sent for trial to the San Fernando branch court in the same municipal court district. The jury was selected from within 20 miles of the San Fernando courthouse, effectively excluding jurors from the area of the crime. The court said “there is no violation of the vicinage requirement when a criminal defendant is tried in Los Angeles County by a jury drawn from Los Angeles County.” The court concluded that “in California the boundaries of the vicinage are coterminous with the boundaries of the county.”

90. *People v. Guzman*, 45 Cal. 3d 915, 936-37, 755 P.2d 917, 248 Cal. Rptr. 467 (1988).

91. Moreover, local outrage may compel a change of venue to guarantee a fair trial. The community right to have criminal cases tried locally is outweighed by the right of the accused to a fair trial.

Some statutes localize jury selection to avoid having jurors travel long distances.⁹² If branch courts or multi-county circuits of trial courts are organized as suggested by SCA 3, adjustment of the juror pool may be necessary to avoid federal vicinage issues.⁹³ This is a matter for statutory, rather than constitutional, revision.⁹⁴

Jury Commissioners

There is one jury commissioner in each county, appointed by a majority of the superior court judges in that county, and if the county has a superior court administrator or executive officer, that person serves as ex officio jury commissioner.⁹⁵ The jury commissioner serves for all superior, municipal, and justice courts in the county.⁹⁶

A majority of the judges of the municipal and justice courts in the county may appoint the clerk or administrator of those courts to select their jurors.⁹⁷ The statewide trend is to have one jury commissioner for all courts in the county, and the provision for municipal and justice court judges to appoint their own jury commissioner is falling into disuse.

Trial court unification will not require significant revision of this scheme. The trend toward consolidating the jury

92. See, e.g., Code Civ. Proc. § 199.2; see also Code Civ. Proc. §§ 198.5, 199, 199.3, 199.5.

93. If multi-county circuits are created, Code of Civil Procedure Sections 191 and 197 should be revised to require selection of jurors from an area not larger than the county where the offense occurred. A court might uphold a selection area larger than the county, but limiting the selection area to the county would avoid the constitutional issue.

94. Statutes now authorize local court rules for selecting jurors. See, e.g., Code Civ. Proc. §§ 198, 199, 199.2, 199.3, 199.5, 200. There is no compelling reason to divest local courts of authority to make rules for jury selection not inconsistent with statute or Judicial Council rules.

95. Code Civ. Proc. § 195(a).

96. Code Civ. Proc. §§ 194(b), 195 (a).

97. Code Civ. Proc. § 195(a).

commissioner function could be codified as part of the trial court unification statutory revision.

AUTHORITY OF ATTORNEY GENERAL

Article V, Section 13 of the California Constitution provides in part:

Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney.

Trial court unification would expand the jurisdiction of the superior court and thereby also expand the authority of the Attorney General under this provision. The 1993 Judicial Council Report states that such an expansion would be appropriate, arguing that there is no reason in principle why the Attorney General should not be responsible to see that all of the criminal laws are properly enforced.⁹⁸

Expansion of the Attorney General's local enforcement authority is not necessitated by trial court unification. Consistent with the policy of limiting constitutional changes to those necessitated by trial court unification, the Commission recommends that Article V, Section 13 be amended to maintain the status quo by limiting the Attorney General's local enforcement authority to matters currently within the superior court jurisdiction.

COURT OFFICERS

Presiding Judge

The presiding judge will play a critical role in the unified trial court since the presiding judge is expected to cure one of

98. 1993 Judicial Council Report at 9.

the most serious problems of unification — dealing with the varied levels of competence of judicial personnel from three different trial courts and assigning them to cases appropriate to their abilities.

The presiding judge is chosen by the other judges of the court. At unification, the various judges may not be sufficiently familiar with each other's qualifications to have an adequate basis for selection. The Commission recommends as a transitional matter that the Judicial Council should adopt rules to govern interim selection of a presiding judge of the unified court so that the presiding judge will be in a position to manage the court on the operative date of unification.

Subordinate Judicial Officers

Combining existing trial court operations will necessitate combining functions of superior court and municipal court subordinate judicial officers such as commissioners and referees.⁹⁹ This involves primarily statutory changes to create one set of qualifications, one manner of selection, one set of responsibilities, and one salary schedule in each unified court. This will be the subject of a follow-up Commission recommendation if trial court unification is approved by the voters. As an interim matter, subordinate judicial officers of the existing trial courts should become subordinate judicial officers of the unified court.

Court Administrator

Most trial court unification proposals require that the unified court appoint a court administrator to help manage operations. Judges are not ordinarily trained administrators, and the presiding judge should have this type of assistance in

99. See Cal. Const. Art. VI, § 22 (Legislature may provide for appointment by trial courts of officers such as commissioners to perform subordinate judicial duties).

a larger unified court with more extensive operations, more employees, and new challenges.

SCA 3 does not address selection of court administrators. Existing statutes require appointment of a court administrator in Los Angeles County, and there is adequate authority for a court to employ a court administrator in other counties. Since the need for a court administrator will vary with the size of the court, the Commission recommends against mandating this office.

Where there are existing court administrators in the superior and municipal courts within a county, the unified court will need to select among them. The transitional provisions should clearly state the authority to make this decision in advance of the operative date of SCA 3, so that the unified court administrator can coordinate necessary transitional activities.

Court Clerk

The Constitution provides that the “county clerk is ex officio clerk of the superior court in the county.”¹⁰⁰ But the municipal and justice courts by statute may appoint their own clerks.¹⁰¹ These provisions must be reconciled in the unified court.

Despite the constitutional provision that the county clerk is the clerk of the superior court, legislation provides that where a superior court has an executive or administrative officer, the officer has the authority of a clerk of the superior court.¹⁰² The superior court also may delegate powers and duties of the county clerk to an executive or administrative officer under

100. Cal. Const. Art. VI, § 4.

101. Gov’t Code § 71181 (municipal and justice court appointment of clerk).

102. Gov’t Code § 69898.

this provision. A number of courts have done so, and legal challenges by county clerks have been unsuccessful.¹⁰³

The constitutional provision that the county clerk is clerk of the superior court is an anachronism and should be deleted. This matter should be handled by statute as are the other non-judicial positions in the court system. In some counties, particularly the smaller ones, it may be desirable or necessary to authorize the county clerk to act as superior court clerk or to combine the positions, but the situation varies from county to county.¹⁰⁴

Sheriff, Marshal, or Constable

The sheriffs, marshals, and constables have court-related as well as non-court functions. Sheriffs serve the superior court, marshals serve the municipal courts, and constables serve the justice courts. They provide court assistance such as service of process and notices, execution and return of enforcement writs, acting as crier and calling witnesses, and attending court and executing lawful court orders and directions.

These functions need to be consolidated in the unified court. Issues include whether the officers should be county or court employees, particularly in light of their peace officer status. These are statutory rather than constitutional matters, and will be the subject of a subsequent Commission recommendation if SCA 3 is approved by the voters.

103. See, e.g., *Zumwalt v. Superior Court*, 49 Cal. 3d 167, 776 P.2d 247, 260 Cal. Rptr. 545 (1989).

104. Government Code Section 69898 authorizes the superior court to appoint an administrative officer to act as court clerk, and also authorizes the court to appoint the county clerk to this position. This provision should be made applicable to the unified court. A conforming change should make clear that, absent appointment of another person by the court, the county clerk is the clerk of the unified court.

Court Reporters

All trial courts are currently courts of record,¹⁰⁵ so unification should not result in any increased costs for official court reports. As a transitional matter, the existing trial court reporters should be made court reporters in the unified court.

Interpreters and Translators

Interpreters and translators are court officers that appear to present no particular issues relating to trial court unification. The existing trial court interpreters and translators should be assigned to the unified court.

COURT EMPLOYEES

In addition to the judges, the subordinate judicial officers, and the nonjudicial officers of the courts, there are numerous court employees of each existing trial court that will be affected by unification. One of the major benefits of unification is thought to be a reduction in the need for court personnel as a result of consolidating functions. It is likely that the appropriate reductions may be achieved through attrition rather than layoffs. The decision-making structure for court personnel management issues, including job assignments, compensation, and benefits must be addressed at an appropriate stage and in an appropriate forum in the court unification process.

Control of Court Personnel

The Legislature currently is required to *provide for* the officers and employees of each superior court.¹⁰⁶ The Legislature also must *prescribe* for each municipal court and *provide*

105. Cal. Const. Art. VI, § 1.

106. Cal. Const. Art. VI, § 4.

for each justice court the number, qualifications, and compensation of judges, officers, and employees.¹⁰⁷

These provisions have been construed to require the Legislature to prescribe for the municipal courts by statute, and to provide for the superior and justice courts either directly by statute or indirectly by delegation. Pursuant to this authority, existing statutes, at great length and in excruciating detail, prescribe the number of positions, classifications, salary ranges, and benefits of court personnel of all kinds in some courts, and delegate authority to the county board of supervisors or to the court in others.

The employees appointed pursuant to this personnel system are in the peculiar position of being considered court employees for some purposes and county employees for other purposes, while half the funding for their positions is provided by the state and half by the counties (in part out of revenues generated by the courts).

Unification proposals in the past have differed on the proper personnel system for the unified court. Many would make trial court employees state employees on the state pay scale. This would achieve uniformity in pay, benefits, and other terms of employment. It also would recognize the movement toward state funding of trial court operations.

Other proposals would keep the court employees part of the county personnel system. This would preserve the existing awkward arrangement where the employee serves the court employer but is ultimately answerable to the county.

The current constitutional authority of the Legislature to “provide for” superior court officers and employees is sufficiently flexible to enable the Legislature to prescribe by statute or to delegate the matter to the extent appropriate in the unified court. The Commission recommends no change in the existing constitutional structure for the unified court. The

107. Cal. Const. Art. VI, § 5.

Commission will make subsequent statutory recommendations if SCA 3 is approved by the voters.

Transitional Process

The transitional issues concerning personnel will be among the most time consuming and difficult in the unification process. There are innumerable practical problems.

For example, should existing county employees give up seniority rights, retirement plans, accrued benefits, etc., in order to become judicial branch employees? How will layoff decisions be made if the unified court system requires fewer combined employees than the individual trial courts? Collectively bargained seniority provisions may be difficult to apply from one court to the next. The best solution may be a phased-in reduction, with attrition resolving the problem.

Will unification require relocation of some employees to other courts within the unified court district? How will it be determined who gets relocated? What about relocation expense reimbursement?

How are differences in pay, benefits, and retirement plans to be resolved? Should an effort be made to get all persons who are in the same class on the same pay scale and with the same benefits? Would this mean a pay cut for some employees? If so, can it be phased in? Would it mean a pay raise for other employees? Can that be phased in?

Are there any collective bargaining agreements or memoranda of understanding applicable in a particular court that limit the ability to resolve any of these problems most efficiently? Under the Constitution, court employees are exempt from civil service,¹⁰⁸ but there may be limitations resulting from union contracts in individual courts that are protected by the Contract Clause.

108. Cal. Const. Art. VII, § 4(b).

Resolution of personnel issues will take intensive work by affected presiding judges, court administrators, and others who may be involved in personnel administration in the unified court.

A mechanism should be established for resolving these issues. SCA 3 provides that the previously selected employees in each former superior, municipal, and justice court become the employees of the unified court. This is appropriate as far as it goes.

The Commission recommends that a process be established to settle personnel questions in advance of the operative date of unification. The Commission does not propose a specific structure or specific language at this time. The Commission understands that the Judicial Council has commissioned a study on effective implementation of coordination activities, to be delivered February 1, 1994. The study should provide useful ideas for development of a specific implementation process.

The Commission will make a supplementary proposal on this matter after receipt of the Judicial Council study. A spot bill should be available to receive any necessary implementing legislation, for enactment as an urgency measure to take effect on passage of SCA 3.¹⁰⁹ Meanwhile, the Commission solicits suggestions on the transition process from interested persons.

FACILITIES

The existing facilities of the superior, municipal, and justice courts should become the initial facilities of the unified court.

109. Language should be added to SCA 3 making California Constitution Article IV, Section 8(d) inapplicable to transitional legislation implementing trial court unification. That provision states in relevant part that: "An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest."

SCA 3 provides for this in an appropriate transitional provision.

It is possible that in unified trial court operations the current courthouse locations will not yield the most efficient allocation of judicial resources. The Commission recommends no change in the current shared responsibility for location and funding of court facilities.¹¹⁰

TRANSITIONAL MATTERS

Role of Judicial Council

The Judicial Council must play a key role in implementation of trial court unification. It should be clear by statute that the Judicial Council must adopt rules to coordinate and guide trial court unification activities in the courts of each county. The Judicial Council should be responsible for conducting workshops and training programs involving members of the bench, bar, court staff, and community to establish policies, rules, and procedures for the transition to a unified court. The Judicial Council should also provide for the needed staff and judicial training to support operations in the unified court.

In this connection, the 1993 Judicial Council Report proposes a number of revisions of the California Constitution relating to the Judicial Council's structure and operations.¹¹¹ These proposals go beyond the strict requirements of trial court unification, and the Commission has therefore not circulated them for comment. Nonetheless, the Commission notes that several of the proposals appear merely to codify existing practice and may assist the functioning of the Judicial Council, which will have a central role in implementing trial

110. See discussion above of "Branch Operations."

111. 1993 Judicial Council Report at 29-31.

court unification. The proposed revisions that appear unobjectionable are set out in the footnote.¹¹²

Operative Date

SCA 3 contemplates that trial court unification will be on the June 1994 ballot and, if approved, will become operative July 1, 1995. The one-year deferral of the operative date is intended to allow proper preparation for unification.

There are two primary considerations in determining the adequacy of the operative date: (1) the time needed to take care of the practical details of forms, rules, personnel, assignments, facilities, and the like; and (2) the time required for necessary statutory revisions, for example to address economic litigation issues, criminal review procedures, and venue questions. To some extent these considerations overlap,

112. SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, 2 *non-voting court administrators, and such other non-voting members as determined by Council*, each appointed by the Chief Justice for a 2 3 -year term *pursuant to procedures established by the Council* ; 4 members of the State Bar appointed by its governing body for 2 3 -year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

The Judicial Council is the policy-making body for the courts. To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall be the chief executive officer for the courts and shall implement the rules promulgated by the Judicial Council. The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

since under the existing scheme of legislative control of the details of judicial operations and personnel, many of the practical issues are governed by statutes that may require amendment.

With respect to the practical details of implementation, the 1993 Judicial Council Report concludes that a one-year deferral is sufficient.

A variety of effective date and transition periods were considered, ranging from a six-month transition period to a two-year period in which individual districts could certify readiness to unify at any time within the two-year period. The general purpose of a transition period is to give local judicial officials time to make preparations for unification. Some counties, especially those counties which have vigorous trial court coordination plans, will be ready to unify almost immediately. Other counties may require more time. Ultimately, it was determined that a single effective date was the only practical solution. Having some counties unify before other counties would create state-wide confusion among the bench, the bar and the public. July 1, 1995, was chosen because it coincides with the courts' budget cycle. Assuming the constitutional amendments are approved in the June 1994 election, trial courts will have over one year to prepare for unification. It was agreed that one year should be adequate time for court administrators to make all necessary preparations. July 1994 was ruled out both because not all trial courts would be ready so quickly and because the necessary implementing legislation will likely not be enacted until later in the 1994-95 legislative session.¹¹³

The Commission believes the Judicial Council's conclusion on this matter may be relied upon. Its report was developed by a joint committee of presiding judges and court administrators, and the Council has recent experience with trial court coordination activities.

113. 1993 Judicial Council Report at 7.

The necessary statutory revisions will be quite substantial. All the detail of court organization, procedures, operations, personnel, compensation, and the like, is in the statutes. In addition, essentially all of the fundamental unification issues — jurisdiction, venue, branches, sessions, fees, civil and criminal procedures, appeals, etc. — require statutory resolution. Each of these issues is intensely political, and there is likely to be some difficulty achieving an acceptable resolution with all the competing interests. It will also be necessary to make conforming revisions to several thousand statutes.

The Commission believes that some additional time is necessary to allow proper functioning of the legislative process. While the task is large, all the interest groups will be under time pressure to come to a reasonable accommodation on the issues. In addition, a substantial amount of background work on trial court unification has been done, and many of the major problem areas have been identified and drafts of various approaches prepared and analyzed in earlier studies. The conforming revisions can be done in later cleanup legislation, if necessary, with a general conversion provision enacted as a temporary fix.

Given these factors, the Commission suggests a six-month extension of SCA 3's operative date to January 1, 1996. This will avoid the need for implementing legislation on an urgency basis, but not cause an undue delay before unification occurs.

The statutory review will need to begin immediately in anticipation of approval of SCA 3 at the June 1994 election in order to obtain enactment of implementing legislation in a timely fashion. The Law Revision Commission has been directed to make a report to the Legislature pertaining to statutory changes that may be necessitated by court unification.¹¹⁴ While Commission resources are limited, the

114. 1993 Cal. Stat. res. ch. 96.

Commission believes statutory implementation by January 1, 1996, is feasible assuming allocation to the Commission of the necessary resources.

Pending Proceedings

SCA 3 includes a clause that pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the unified court. The Commission believes this deals with the issue satisfactorily.

Severability

It is possible that an amendment of the state Constitution to implement trial court unification could be held to violate the federal Constitution, in particular violation of the Supremacy Clause through the Voting Rights Act.¹¹⁵ Trial court unification should proceed even though, due to constitutional limitations, it may not be possible to achieve countywide election of all unified court judges. The Commission therefore recommends addition of a severability clause to the measure.

115. See discussion above of "Voting Rights Act."

RECOMMENDED REVISIONS OF CALIFORNIA CONSTITUTION, ARTICLE VI (JUDICIAL)

Cal. Const. Art. VI, §1 (amended). Judicial power

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, *and* superior courts, ~~municipal courts, and justice courts. All courts *all of which*~~ are courts of record.

Comment. Section 1 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

Cal. Const. Art. VI, § 4 (amended). Superior court

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in the county.~~

Comment. Section 4 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See former Section 5 (municipal court and justice court).

The last sentence, relating to the county clerk as ex officio clerk of the superior court, is deleted. The court may appoint a clerk which may, but need not, be the county clerk. This continues existing statute and case law. See, e.g., Gov't Code §§ 69898 (superior court appointment of executive officer as clerk), 71181 (municipal and justice court appointment of clerk); *Zumwalt v. Superior Court*, 49 Cal. 3d 167, 776 P.2d 247, 260 Cal. Rptr. 545 (1989).

Section 4 is silent concerning location of superior court facilities in the county. This continues existing law as it applies to superior courts and

supersedes provisions of former Section 5 that applied to municipal and justice courts. As an initial matter, the existing superior court, municipal court, and justice court locations are retained. Section 23 (transitional provision). It is intended that location of superior court facilities in the future, and operation of branch or district facilities or sessions, be determined as it is under current practice — by a combination of judicial branch decision-making, statutes, and limitations imposed by funding sources.

Nothing in this section limits the ability of the superior court, or of the judicial branch by court rule, to establish or provide for divisions or departments within the superior court dealing with specific causes such as probate, juvenile, or traffic matters, or the authority of the Legislature to prescribe special procedures or divisions for specific causes. See Section 6. Nothing in this section affects the ability of superior courts of different counties to share resources or consolidate administrative activities.

Cal. Const. Art. VI, § 5 (repealed). Municipal and justice court

~~SEC. 5. (a) Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.~~

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.~~

~~The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.~~

~~(b) Notwithstanding the provisions of subdivision (a), any city in San Diego County may be divided into more than one municipal court or justice court district if the Legislature determines that unusual geographic conditions warrant such division.~~

Comment. Section 5 is repealed to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court).

Initially, the previously selected judges, officers, and employees of the municipal and justice courts become superior court personnel, and preexisting municipal and justice court locations are retained as superior court locations. Section 23.

The superior court after unification may operate in branches or districts, as the superior court does now. *Cf.* Section 4 & Comment. The original jurisdiction of the superior court extends to all causes. Section 10. The Legislature prescribes the number of judges. Section 4. The qualifications of judges are governed by Section 15. The Legislature prescribes the compensation of judges. Section 19. The Legislature provides for the officers and employees of the superior court. Section 4.

Cal. Const. Art. VI, § 6 (amended). Judicial Council

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, ~~5 and 10~~ judges of superior courts, ~~3 judges of municipal courts,~~ and ~~2 judges of justice courts,~~ each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and

procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Comment. Section 6 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal and justice court).

The authority of the Judicial Council to adopt rules under this section for court administration, practice, and procedure, not inconsistent with statute, is not limited to rules for existing courts but extends to adoption of rules for the unified trial courts before the operative date of unification. See also Section 23 (transitional provision).

The authority of the Judicial Council to adopt rules of practice and procedure not inconsistent with statute includes authority to establish or provide for divisions or departments within the superior courts dealing with specific causes. The Legislature may also prescribe special procedures or divisions for specific causes under this section, and may authorize adoption of local court rules.

Unification of the trial courts enables the presiding judge to assign a trial court judge to hear any cause in the unified court. Assignment by the Chief Justice under the fifth paragraph of Section 6 is unnecessary and consent of the judge is not required, since the superior court is a single court with original jurisdiction of all causes. See Section 10 (original jurisdiction). Nothing in this section precludes adoption of a statute or court rule that immunizes an incumbent superior court judge, for the duration of the judge's term, from hearing cases that were within the municipal and justice court jurisdiction at the time of unification.

Cal. Const. Art. VI, § 8 (amended). Commission on Judicial Performance

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, ~~2~~ and 3 judges of superior courts, and ~~one judge of a municipal court~~, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. ~~Except as provided in subdivision (b),~~ all *All* terms are 4 years. No member shall serve more than 2 4-year terms.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.

~~(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:~~

~~(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.~~

~~(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.~~

Comment. Subdivision (a) of Section 8 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

Former subdivision (b) is deleted. It was a transitional provision added in 1988 by Proposition 92 to initiate staggered terms, and is no longer necessary.

Cal. Const. Art. VI, § 10 (amended). Original jurisdiction

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition , *but a superior court may not exercise that jurisdiction in such proceedings directed to the superior court except by its appellate division.*

Superior courts have original jurisdiction in all causes ~~except those given by statute to other trial courts .~~

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Comment. Section 10 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The first paragraph is amended to limit the former jurisdiction of superior courts to issue extraordinary writs to compel or prohibit action by the municipal and justice courts and their judges. Only the appellate divisions of superior courts (together with the Supreme Court and courts of appeal) may issue extraordinary writs for review of proceedings in the superior courts.

Although the superior court has original jurisdiction of all causes, nothing in this section limits the ability of the superior court, or of the judicial branch by court rule, to establish or provide for divisions or departments within the superior court dealing with specific causes such as probate, juvenile, or traffic matters, or the authority of the Legislature to prescribe special procedures or divisions for specific causes. *Cf.* Section 4 & Comment.

Cal. Const. Art. VI, § 11 (amended). Appellate jurisdiction

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. ~~With that exception~~

In each superior court there is an appellate division. The appellate division has appellate jurisdiction in criminal

causes other than felonies, and in civil causes provided for by statute or by rule adopted by the Judicial Council not inconsistent with statute. Judges shall be assigned to the appellate division by the Chief Justice for a specified term pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

The courts of appeal have appellate jurisdiction when superior courts have original jurisdiction of all other appeals and in other causes prescribed by statute.

~~Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.~~

The Legislature may permit appellate courts *exercising their appellate jurisdiction* to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Comment. Section 11 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The second paragraph preserves in the superior court the former appellate jurisdiction of the superior courts and vests appellate jurisdiction in an appellate division. The provision requires adoption of court rules intended to foster independence of judges serving in the appellate division. Rules may set forth relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge's regular assignments (e.g., a superior court judge who routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate division). Review by a panel of judges might include judges assigned from another county in appropriate circumstances, or even by a panel of appellate division judges from different superior courts who sit in turn in each of the superior courts in the "circuit."

The third paragraph preserves the appellate jurisdiction of the courts of appeal in appeals other than those appealable to the Supreme Court or the appellate division of the superior court. Nothing in this section limits the original writ jurisdiction of the courts of appeal. See Section 10 (original jurisdiction).

The reference in the fourth paragraph to courts exercising their appellate jurisdiction includes the appellate divisions of the superior courts.

Appellate jurisdiction under this section is defined by Section 23 (transitional provision) pending statutory revision.

Cal. Const. Art. VI, § 15 (amended). Qualifications of judges

SEC. 15. A person is ineligible to be a judge of a court of record unless for ~~5 years immediately preceding selection to a municipal or justice court or~~ 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. ~~A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.~~

Comment. Section 15 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single level trial system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The first sentence is amended to increase the required experience for selection as a trial court judge from 5 years to 10 years. Formerly 10 years experience was required of superior court judges but not of municipal and justice court judges. All judges, including court of appeal and supreme court judges, are now subject to the 10 years experience requirement. The 10 years experience requirement may be satisfied by a combination of State Bar membership and service as a judge, so long as the combined experience immediately precedes selection to the court. As used in this section, the term “selection” is intended to refer to the date of appointment or election, whichever occurs first.

A sitting municipal or justice court judge who lacks the requisite 10 years experience on January 1, 1996, the operative date of this amendment, is eligible to continue service under Section 23 for the duration of the judge’s term.

The former second sentence of this section, empowering the Chief Justice to assign municipal court judges to any court, is deleted as obsolete. Section 6 gives the Chief Justice authority to assign any judge to another court.

Cal. Const. Art. VI, § 16 (amended). Election of judges

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their

districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of ~~other~~ *superior* courts shall be elected in their counties ~~or districts~~ at general elections *except as otherwise necessary to comply with federal law, in which case the Legislature may provide for their election by the system prescribed in subdivision (d) or by other arrangement* . The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the *third* January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday

after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Comment. Section 16 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court). Unification does not affect the terms of sitting judges. Section 23.

Subdivision (b) is revised to authorize the Legislature to provide for alternate voting arrangements, if necessitated by federal law. See, e.g., Voting Rights Act, 42 U.S.C. § 1973 *et seq.* Other arrangements may include retention elections—a system of selection prescribed in subdivision (d). The Legislature may provide the remedy directly or by delegation, for example, to the board of supervisors of an affected county in an appropriate case.

Subdivision (c) is revised to provide for an election to fill a superior court vacancy at the general election following the third, rather than the first, January 1 after the vacancy occurs. This represents a middle ground between the system formerly applicable to superior court judges under this section (election at the first general election following the first January 1 after the vacancy occurs) and the system formerly applicable to municipal and justice court judges by statute. Gov't Code §§ 71145, 71180, and 71180.3 (as a general rule, selection of an interim judge to serve the remainder of the predecessor's term). This change is not intended otherwise to affect existing interpretations of the meaning of the section, including the rule that a new "vacancy" does not occur for purposes of the section on resignation or death of a temporary appointee, or the rule that a scheduled election is not postponed by a temporary appointment to fill a vacancy if a person has qualified as a candidate for election to the office. See, e.g., *Pollack v. Hamm*, 3 Cal. 3d 264, 272-73, 475 P.2d 213, 90 Cal. Rptr. 181 (1970); *Stanton v. Panish*, 28 Cal. 3d 107, 115-16, 615 P.2d 1372, 167 Cal. Rptr. 584 (1980).

Cal. Const. Art. VI, § 23 (added). Transitional provision

SEC. 23. (a) The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this Article, Section 16 of Article I, and Section 13 of Article V, approved at the June 7, 1994, primary election is to abolish the municipal and justice courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) On January 1, 1996, the judgeships in each municipal and justice court in a county are abolished and the previously selected municipal and justice court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal or justice court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal or justice court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Subject to contrary action pursuant to statute, on January 1, 1996, in each preexisting superior, municipal, and justice court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal or justice court judge or a magistrate shall be performed by a superior court judge other than the judge or magistrate who originally made the ruling or order.

(d) This section shall be operative until January 1, 2002, and as of that date is repealed.

Comment. Section 23 is added to implement unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court). The operative date of this section is the day after the June 1994 primary election. This section is transitional only and is repealed by its own terms on January 1, 2002.

Subdivision (a) makes clear that implementing legislation may be by urgency statute, and may affect matters otherwise precluded under Article IV, Section 8(d) (limitation on subject of urgency statute). Implementing legislation must be consistent with the Constitution, but it should be noted that the transitional matters outlined in the subdivision (c) govern only absent contrary action pursuant to statute.

Subdivision (b) makes clear that existing municipal and justice court judgeships are not continued after unification. New superior court judgeships are created, and this section ensures the continuation in office of existing municipal and justice court judges in the unified trial court for the duration of their former terms, regardless whether their selection was by appointment or election. The provision for education and training addresses the issue of qualifications of municipal and justice court judges

elevated to the unified superior court by operation of this section. The provision is not limited to former municipal and justice court judges in its application, however, and education for superior court judges may be appropriate. The provision is not intended to create any implication concerning any general authority the Judicial Council may have to prescribe education and training for judges apart from trial court unification pursuant to Section 6 (Judicial Council).

Among the previously selected officers, employees, and other personnel who serve the court and who become officers and employees of the superior court pursuant to subdivision (c)(1) are persons such as commissioners and referees appointed to perform subordinate judicial duties as provided for pursuant to Section 22 (subordinate judicial officers), court reporters, interpreters and translators, court clerks, and sheriffs, marshals, and constables.

Subdivision (c)(2) converts existing trial court facilities into unified superior court facilities. The ultimate location and use of facilities in the unified court is determined in the same manner that location and use of superior court facilities was previously determined. See Section 4 (superior court) & Comment.

Subdivision (c)(5)-(6) preserves the existing appeal and review structure of the superior, municipal, and justice courts, including small claims rehearings. Subdivision (c)(7) also preserves single judge review of preliminary criminal matters under Penal Code Sections 995 (setting aside indictment or information) and 1538.5 (motion to suppress).

Note. The Commission plans to make a supplementary recommendation after February 1, 1994, relating to statutory transitional matters involving court officers, employees, and other personnel who serve the court.

Operative Date

This measure shall become operative on January 1, 1996, except that the addition of Section 23 of Article VI shall become operative immediately.

Severability Clause

If any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

RECOMMENDED CONFORMING REVISIONS OF CALIFORNIA CONSTITUTION

Cal. Const. Art. I, § 16 (amended). Trial by jury

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ *other than causes within the appellate jurisdiction of the court of appeal* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Comment. Section 16 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Article VI, Section 4 (superior court) and former Section 5 (municipal court and justice court).

The civil appellate jurisdiction of the court of appeal consists of all civil appeals other than those to the appellate division of the superior court. The civil appellate jurisdiction of the superior court is defined by statute or by Judicial Council rule not inconsistent with statute. Article VI, Section 11 (appellate jurisdiction). This section thus preserves the former arrangement under which the Legislature defined the jurisdiction of municipal and justice courts, thereby determining the civil causes in which an eight-person jury might be used. See Article VI, Section 10.

Cal. Const. Art. V, § 13 (amended). Powers of Attorney General

SEC. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law , *other than causes* of which the superior court shall have *appellate* jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

Comment. Section 13 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Article VI, Section 4 (superior court) and former Section 5 (municipal court and justice court).

The amendment preserves the authority of the Attorney General with respect to prosecution of matters of a type formerly within the superior court, as opposed to municipal and justice court, jurisdiction. The appellate jurisdiction of the superior court includes criminal causes other than felonies and civil causes prescribed by statute. Article VI, Section 11 (appellate jurisdiction).

RECOMMENDED STATUTORY CONFORMING REVISIONS FOR IMMEDIATE IMPLEMENTATION

Note. Numerous statutory revisions would be required by trial court unification. These will be the subject of a separate report by the Law Revision Commission. This report collects those statutory revisions recommended by the Commission for immediate enactment so that they will be operative for transitional purposes during the interim before the operative date of trial court unification.

Gov't Code § 68070.3 (added). Transitional rules of court

SECTION 1. Section 68070.3 is added to the Government Code to read:

68070.3. The Judicial Council shall, before January 1, 1996, adopt rules not inconsistent with statute for:

(a) The orderly conversion on January 1, 1996, of proceedings pending in municipal and justice courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after January 1, 1996.

(b) Selection of persons to coordinate implementation activities for the unification of municipal and justice courts with superior courts in each county, and selection of persons to serve as presiding judges of the superior courts on and after January 1, 1996.

(c) Preparation of any necessary local court rules that shall, on January 1, 1996, be the rules of the superior court.

Comment. Section 68070.3 requires the Judicial Council by rule to coordinate and guide trial court unification activities in the courts of each county. See also Cal. Const. Art. VI, § 23, for transitional provisions for trial court unification. The Judicial Council is responsible for conducting workshops and training programs involving members of the bench, bar, court staff, and community to establish policies, rules, and procedures for the transition to a unified court. The Judicial Council would also provide for the needed staff and judicial training to support operations in the unified court.

Note. The Commission plans to make a supplementary recommendation after February 1, 1994, relating to statutory transitional matters involving court officers, employees, and other personnel who serve the court.

Gov't Code § 68122 (added). Preclearance of trial court unification

SEC. 2. Section 68122 is added to the Government Code, to read:

68122. The Attorney General shall, pursuant to the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, seek to obtain preclearance of Senate Constitutional Amendment No. 3, approved by the voters at the June 7, 1994, primary election, before it becomes operative, with respect to any county subject to preclearance requirements.

Comment. Section 68122 requires the Attorney General to seek preclearance of trial court unification under the federal Voting Rights Act before it goes into effect in those counties in which preclearance is required. See 42 U.S.C. § 1973c (preclearance submission by state's chief legal officer); Cal. Const. Art. V, § 13 (Attorney General state's chief law officer).

Operative date

SEC. 3. This act shall become operative only if Senate Constitutional Amendment No. 3 is approved by the voters at the June 7, 1994, primary election, in which case this act shall become operative on the day after the election.

Urgency clause

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment No. 3, if approved by the voters at the June 7, 1994, primary election, would unify the

trial courts operative January 1, 1996. It is necessary that implementing steps be taken immediately so that an orderly transition of the trial court system will occur on that date.

Appendix 1

SENATE CONSTITUTIONAL AMENDMENT NO. 3 (LOCKYER) (AS AMENDED JULY 16, 1993)

Note. This appendix sets out the text of the July 16, 1993, version of SCA 3, showing all changes it would make to the California Constitution.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1993-94 Regular Session commencing on the seventh day of December 1992, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 1 of Article VI is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, ~~superior courts, municipal courts, and justice and district~~ courts. All courts are courts of record.

Second—That Section 4 of Article VI is amended to read:

SEC. 4. In each county there is a ~~superior~~ *district* court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each ~~superior~~ *district* court. ~~If the governing body of each affected county concurs, the~~ *The* Legislature may provide that one or more judges serve more than one ~~superior court district~~ *district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes .*

The Legislature may divide the district court into one or more branches.

The county clerk is ex officio clerk of the superior court in the county.

Third—That Section 5 of Article VI is repealed.

Fourth—That Section 6 of Article VI is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, ~~5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice~~ *and 10 judges of district courts*, each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower

jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Fifth—That Section 8 of Article VI is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, ~~2 judges of superior courts, and one judge of a municipal court~~ *and 3 judges of district courts*, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. Except as provided in subdivision (b), all terms are 4 years. No member shall serve more than 2 4-year terms.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.

(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.

Sixth—That Section 10 of Article VI is amended to read:

SEC. 10. The Supreme Court, courts of appeal, ~~superior~~ *district* courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.

~~Superior District~~ courts have original jurisdiction in all causes ~~except those given by statute to other trial courts~~ .

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Seventh—That Section 11 of Article VI is amended to read:

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when ~~superior~~ *district* courts have original jurisdiction and in other causes prescribed by statute.

~~Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.~~

An appellate division shall be created within each district court. The appellate division has appellate jurisdiction in causes prescribed by statute that arise within that district court.

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Eighth—That Section 15 of Article VI is amended to read:

SEC. 15. A person is ineligible to be a judge of a court of record unless for ~~5~~ 10 years immediately preceding selection to a ~~municipal or justice~~ *district* court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a

court of record in this State. A judge eligible for ~~municipal~~ *district* court service may be assigned by the Chief Justice to serve on any court.

Ninth—That Section 16 of Article VI is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of other courts shall be elected in their ~~counties~~ ~~or~~ districts *or branches* at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of ~~superior~~ *district* courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not

elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior *district* courts.

Tenth—That Section 16.5 is added to Article VI to read:

SEC. 16.5. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a district court.

In each former superior, municipal, and justice court district, the previously selected judges, officers, and employees shall become the judges, officers, and employees of the district court; each preexisting superior, municipal, and justice court location shall be retained as a district court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the district court; and the records of the preexisting court shall become records of the district court.

The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as district court judges.

This section shall be operative only until January 1, 2000, and as of that date is repealed.

Eleventh—That this measure shall become operative on July 1, 1995.

Appendix 2

RECOMMENDED REVISIONS OF SENATE
CONSTITUTIONAL AMENDMENT NO. 3
(LOCKYER) (AS AMENDED JULY 16, 1993)

Note. This appendix sets out the changes that would be made to the July 16, 1993, version of SCA 3 to implement the Law Revision Commission's recommendations concerning SCA 3.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1993-94 Regular Session commencing on the seventh day of December 1992, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 16 of Article I is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ *other than causes within the appellate jurisdiction of the court of appeal* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a

misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second—That Section 13 of Article V is amended to read:

Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law, *other than causes* of which the superior court shall have *appellate* jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

First Third —That Section 1 of Article VI is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, and ~~district~~ *superior* courts. ~~All courts~~, *all of which* are courts of record.

Second Fourth—That Section 4 of Article VI is amended to read:

SEC. 4. In each county there is a ~~district~~ *superior* court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each *district superior* court. ~~The~~ *If the governing body of each affected county concurs, the* Legislature may provide that one or more judges serve more than one ~~district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes~~ *superior court* .

~~The Legislature may divide the district court into one or more branches.~~

~~The county clerk is ex officio clerk of the district court in the county.~~

~~Third~~ *Fifth*—That Section 5 of Article VI is repealed.

~~Fourth~~ *Sixth*—That Section 6 of Article VI is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, and 10 judges of *district superior* courts, each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

~~Fifth~~ *Seventh*—That Section 8 of Article VI is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal ; and 3 judges of ~~district~~ *superior* courts, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. ~~Except as provided in subdivision (b), all~~ *All* terms are 4 years. No member shall serve more than 2 4-year terms.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term

has expired may continue to serve until the vacancy has been filled by the appointing power.

~~(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:~~

~~(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.~~

~~(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.~~

Sixth Eighth—That Section 10 of Article VI is amended to read:

SEC. 10. The Supreme Court, courts of appeal, district *superior* courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition , *but a superior court may not exercise that jurisdiction in such proceedings directed to the superior court except by its appellate division .*

District *Superior* courts have original jurisdiction in all causes.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Seventh Ninth—That Section 11 of Article VI is amended to read:

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. ~~With that exception courts of appeal have appellate jurisdiction when district courts have original jurisdiction and in other causes prescribed by statute.~~

~~An appellate division shall be created within each district court. In each superior court there is an appellate division. The appellate division has appellate jurisdiction in causes prescribed by statute that arise within that district court criminal causes other than felonies, and in civil causes provided for by statute or by rule adopted by the Judicial Council not inconsistent with statute. Judges shall be assigned to the appellate division by the Chief Justice for a specified term pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division .~~

The courts of appeal have appellate jurisdiction of all other appeals and in other causes prescribed by statute.

The Legislature may permit appellate courts *exercising their appellate jurisdiction* to take evidence and make findings of fact when jury trial is waived or not a matter of right.

~~Eighth Tenth~~—That Section 15 of Article VI is amended to read:

SEC. 15. A person is ineligible to be a judge of a court of record unless for ~~10 years immediately preceding selection to a district court or~~ 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. ~~A judge eligible for district court service may be assigned by the Chief Justice to serve on any court.~~

~~Ninth Eleventh~~—That Section 16 of Article VI is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term.

In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of ~~other~~ *superior* courts shall be elected in their ~~districts or branches~~ *counties* at general elections *except as otherwise necessary to comply with federal law, in which case the Legislature may provide for their election by the system prescribed in subdivision (d) or by other arrangement* . The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of ~~district~~ *superior* courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the *third* January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the

Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of district *superior* courts.

~~Tenth—That Section 16.5 is added to Article VI to read:~~

~~SEC. 16.5. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a district court.~~

~~In each former superior, municipal, and justice court district, the previously selected judges, officers, and employees shall become the judges, officers, and employees of the district court; each preexisting superior, municipal, and justice court location shall be retained as a district court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the district court; and the records of the preexisting court shall become records of the district court.~~

~~The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as district court judges.~~

~~This section shall be operative only until January 1, 2000, and as of that date is repealed.~~

~~Twelfth—That Section 23 is added to Article VI, to read:~~

~~SEC. 23. (a) The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this Article, Section 16 of Article I, and Section 13 of Article V, approved at the June 7, 1994, primary election is to abolish the municipal and justice courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition~~

under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) On January 1, 1996, the judgeships in each municipal and justice court in a county are abolished and the previously selected municipal and justice court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal or justice court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal or justice court judge. The Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Subject to contrary action pursuant to statute, on January 1, 1996, in each preexisting superior, municipal, and justice court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal or justice court judge or a magistrate shall be performed by a superior court judge other than the judge or magistrate who originally made the ruling or order.

(d) This section shall be operative until January 1, 2002, and as of that date is repealed.

~~Eleventh~~ *Thirteenth*—That this measure shall become operative on ~~July 1, 1995~~ *January 1, 1996*, *except that the addition of Section 23 of Article VI shall become operative immediately.*

Fourteenth—*That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.*

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

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February 10, 1994

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

The California Law Revision Commission's report to the Legislature on SCA 3 notes that trial court unification would expand the jurisdiction of the superior court, which could result in an expansion of the Attorney General's authority under California Constitution Article V, Section 13, to prosecute violations of law "of which the superior court shall have jurisdiction." *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 57 (1994). The report recommends revision of Article V, Section 13, to preserve the status quo with respect to the Attorney General's authority. *Id.* at 86.

The Commission has made further study of this matter. The meaning of the language relating to the Attorney General's prosecutorial authority is unclear, whether from an historical, case law, constructional, or policy perspective. Under this language, the affected parties — the Attorney General and the district attorneys — have coordinated their efforts and arrived at a working balance of authority. The affected parties agree that any change in the existing language of Article V, Section 13, would upset the current balance. See joint letter from Daniel E. Lungren, Attorney General, and Greg Totten, Executive Director, California District Attorneys Association, to Sanford Skaggs, Chairperson, California Law Revision Commission (Feb. 2, 1994) (on file in the Commission's office).

In light of this consensus, the Commission believes that the status quo would best be preserved by leaving unchanged the existing language of Article V, Section 13 relating to the authority of the Attorney General. The Commission's Comment to California Constitution Article VI, Section 10 (original jurisdiction), should be revised to make clear that the expansion of the jurisdiction of the superior court as a result of trial court unification is not intended to change the existing authority of the Attorney General under Article V, Section 13:

Cal. Const. Art. VI, § 10 (amended). Original jurisdiction

Comment. Section 10 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The first paragraph is amended to limit the former jurisdiction of superior courts to issue extraordinary writs to compel or prohibit action by the municipal and justice courts and their judges. Only the appellate divisions of superior courts (together with the Supreme Court and courts of appeal) may issue extraordinary writs for review of proceedings in the superior courts.

Although the superior court has original jurisdiction of all causes, nothing in this section limits the ability of the superior court, or of the judicial branch by court rule, to establish or provide for divisions or departments within the superior court dealing with specific causes such as probate, juvenile, or traffic matters, or the authority of the Legislature to prescribe special procedures or divisions for specific causes. *Cf.* Section 4 & Comment.

Expansion of the jurisdiction of the superior court to all causes is not intended to alter the meaning of language in Article V, Section 13, relating to the authority of the Attorney General to prosecute violations of law. Trial court unification should not result in any change in the Attorney General's authority and that authority remains the same as it was before unification.

Respectfully submitted,

Sanford M. Skaggs
Chairperson