

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

REPORT

## Trial Court Unification: Issues Identified for Future Study

February 2001

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

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**CALIFORNIA LAW REVISION COMMISSION**

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February 2, 2001

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

This report gives a status update on a number of studies assigned to the Law Revision Commission pursuant to Government Code Section 70219.

Respectfully submitted,

David Huebner  
*Chairperson*



## TRIAL COURT UNIFICATION: ISSUES IDENTIFIED FOR FUTURE STUDY

In its recommendation on revision of the codes to implement trial court unification, the Commission identified a number of issues for future study.<sup>1</sup> The Legislature directed the Commission to undertake primary responsibility for some of these studies, in consultation with the Judicial Council.<sup>2</sup> The Legislature assigned other studies to the Judicial Council, to conduct in consultation with the Commission.<sup>3</sup> The Legislature also directed the Commission and the Judicial Council to jointly reexamine civil procedure in light of unification.<sup>4</sup>

The following is an update, as of February 2001, on the status of the studies for which the Commission has primary responsibility.<sup>5</sup> This update does not cover the studies assigned to the Judicial Council or the joint study of civil procedure.

### **Obsolete Statutes Relating to Expired Programs**

The Commission is responsible for studying obsolete statutes relating to expired pilot projects or other expired programs. The Commission has approved a final recommenda-

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

2. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 83, 85-86.

3. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 83-85.

4. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 82-83.

5. The Commission consulted with the Judicial Council on these studies by providing tentative recommendations and staff memorandums to the Judicial Council and considering any input that the Judicial Council provided.

tion on this topic.<sup>6</sup> Legislation to implement this recommendation is pending (Senate Bill 153 (Knight)).

### **Appointment of Receiver**

The Commission is responsible for studying whether to conform the statutory procedures on circumstances for appointment of a receiver.<sup>7</sup> The Commission approved a final recommendation on this topic in February 2000.<sup>8</sup> The proposed legislation was included in the Assembly Judiciary Committee omnibus civil practice bill last session (AB 1669), but later deleted as too substantive for that type of bill. The Commission revised its recommendation in February 2001.<sup>9</sup> Legislation to implement its revised recommendation is pending (Senate Bill 562 (Morrow)).

### **Good Faith Improver Claims**

The Commission is responsible for studying the procedure for good faith improver claims, particularly the jurisdictional classification of a good faith improver cross-complaint.<sup>10</sup> The Commission approved a final recommendation on this topic.<sup>11</sup> The proposed legislation was enacted.<sup>12</sup>

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6. *Expired Pilot Projects*, 30 Cal. L. Revision Comm'n Reports 327 (2000).

7. Compare Code Civ. Proc. § 86(a)(8) (appointment of receiver in limited civil case) with Code Civ. Proc. § 564 (appointment of receiver in unlimited civil case).

8. Preprint Recommendation on *Authority to Appoint Receivers* (February 2000) (on file with California Law Revision Commission).

9. Revised Recommendation on *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm'n Reports 291 (2000).

10. Code Civ. Proc. § 871.3.

11. *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm'n Reports 281 (2000).

12. 2000 Cal. Stat. ch. 688, § 7.

### **Stay of Mechanic's Lien Foreclosure Action Pending Arbitration**

The Commission is responsible for studying the procedure for stay of a mechanic's lien foreclosure action pending arbitration.<sup>13</sup> The Commission approved a final recommendation on this topic.<sup>14</sup> Legislation to implement this recommendation is pending (Senate Bill 562 (Morrow)).

### **Counsel for Defendant in Criminal Case**

The Commission is responsible for studying the provisions on obtaining counsel for a defendant in a criminal case. A number of these provisions appear to conflict with a defendant's constitutional right of self-representation,<sup>15</sup> which applies in both capital and noncapital cases.<sup>16</sup> The Commission decided not to propose legislation in this area, because such a proposal would go beyond the scope of the technical clean-up originally envisioned when the Commission proposed this study.

### **Court Reporter in Unified Superior Court**

The Commission is responsible for studying the role of a court reporter in a unified superior court. The Commission circulated a tentative recommendation on this topic.<sup>17</sup> On considering the comments on the tentative recommendation, the Commission decided to prepare and circulate a revised tentative recommendation.

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13. Code Civ. Proc. § 1281.5.

14. *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm'n Reports 307 (2000).

15. Penal Code §§ 686, 686.1, 859, 859a, 987.

16. See *Faretta v. California*, 422 U.S. 806 (1975) (noncapital case); *People v. Kirkpatrick*, 7 Cal. 4th 988, 874 P.2d 248, 30 Cal. Rptr. 2d 818 (1994) (capital case); *People v. Superior Court (George)*, 24 Cal. App. 4th 350, 29 Cal. Rptr. 2d 305 (1994) (capital case).

17. Tentative Recommendation on *Cases in Which Court Reporter Is Required* (August 2000).

**Appealability of Order of Recusal in Criminal Case**

The Commission studied and proposed legislation on the appealability of an order of recusal in a criminal case. The proposed legislation has been enacted.<sup>18</sup>

**Publication of Legal Notice in County with Unified Superior Court**

The Commission is responsible for studying issues relating to publication of legal notice in a county with a unified superior court.<sup>19</sup> The Commission is deferring work on this study until interested parties gain experience with legal publication in a unified superior court.

**Numbering Conflict in Government Code**

The Commission is responsible for studying a numbering conflict in the Government Code.<sup>20</sup> Legislation on this topic is unnecessary, because the conflict was eliminated in Legislative Counsel's 1998 bill to maintain the codes.<sup>21</sup>

**Default in Unlawful Detainer Case**

The Commission studied and proposed legislation on default in an unlawful detainer case. The proposed legislation has been enacted.<sup>22</sup>

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18. 1999 Cal. Stat. ch. 344, § 25 (conforming Penal Code § 1238 to Penal Code § 1424(a)(2)); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657, 664 (1999).

19. See Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).

20. In 1997, the Legislature enacted two Chapters 2.1 (commencing with Section 68650) of Title 8 of the Government Code, one entitled "Trial Court Personnel" (1997 Cal. Stat. ch. 857, § 1) and the other entitled "California Habeas Resource Center" (1997 Cal. Stat. ch. 869, § 3).

21. 1998 Cal. Stat. ch. 485, §§ 94-100.5.

22. 1999 Cal. Stat. ch. 344, § 19 (correcting cross-references in Code Civ. Proc. § 1167.3); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999*, *supra* note 18, at 663.

**Affidavit Pursuant to Fish and Game Code Section 2357**

The Commission studied Fish and Game Code Section 2357, which concerned carrying of trout into an area where the season is closed. The Commission approved a final recommendation to repeal the statute.<sup>23</sup> The proposal was enacted.<sup>24</sup>

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23. *Trout Affidavit*, 30 Cal. L. Revision Comm'n Reports 319 (2000).

24. 2000 Cal. Stat. ch. 167, § 1.

