

Memorandum 2015-2

**Trial Court Unification: Publication of Legal Notice
(Possible Reform Approach)**

Memorandum 2014-56 discussed public comment on the Commission's tentative recommendation¹ on *Trial Court Unification: Publication of Legal Notice*. The tentative recommendation proposed continuing the status quo with regard to the requirements for notice publication in judicial districts, while improving the clarity of those requirements and the determinability of the notice boundaries.

In response to public comment questioning the feasibility of describing the current district boundaries used for notice publication, the staff suggested an alternative — nonministerial reform.² Specifically, in Memorandum 2014-56, the staff suggested a “city plus” model as a possible reform approach.³ This memorandum explains the premises underlying the city plus reform.

This memorandum presents the staff's further thinking on how the city plus model could be implemented. Essentially, this model would describe the districts by reference to the cities that they contain; the law would also provide rules addressing the area that falls outside of the districts (the “plus”).

The memorandum is not intended as a staff recommendation that the Commission adopt the “city plus” approach. Rather, the purpose is to provide more detail on one promising nonministerial reform approach to inform the Commission's broader decision on how this study should proceed.

Unless otherwise noted, all statutory citations in this memorandum are to the Government Code.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2014-56, pp. 19-22.

3. *Id.* at 20.

UNDERLYING PREMISES

The discussion that follows explains the premises that underlie the “city plus” reform approach. Those premises are grounded on the Commission’s general decision to preserve the status quo – continuing publication within the historical judicial districts. These premises also account for ease of implementation and ease of use.

Premise #1: Describe Districts by Their Contents

The most accurate way to describe the relevant districts would be to precisely describe their boundaries. The boundaries could be described either with lines on a map or a written description. The authoritative county materials establishing or modifying judicial districts (e.g., an ordinance containing a written boundary description) and preserving their boundaries for notice publication (e.g., a map prepared pursuant to Section 71042.6) were prepared in these formats.⁴

The staff’s experience indicates that accessing authoritative historical records of judicial district boundaries from the counties is difficult.⁵ And, in some cases, it may be impossible to access such records.⁶

Perhaps more importantly, even where records can be found, they are often in a form that makes them difficult to use.⁷ Thus, reproduction of boundary descriptions would be difficult to achieve, even if the relevant historical records are available. While a fully functional, electronic map would provide excellent ease of use, such maps do not currently exist and would require significant effort to prepare. Written boundary descriptions can be difficult to understand and use. In particular, determining whether one is within a particular district requires parsing a written district description, which may rely on waypoints (e.g., township and range designations) that are not generally known by the public.

A simpler alternative would be to describe each district by reference to clearly delineated areas contained within the district. This would simplify the initial description of the districts and facilitate the determination of the appropriate district in which to publish a notice.

4. See Memorandum 2014-56, pp. 9-13.

5. See *id.*, First Supplement to Memorandum 2014-56.

6. See First Supplement to Memorandum 2014-56, p. 2.

7. See *id.* at pp. 1-4, Memorandum 2014-56, pp. 9-13, 17-20.

Premise #2: Describe Districts by Reference to Their Cities

Cities are a good candidate for use in describing the content of districts, for three reasons:

- (1) There are reliable secondary sources available that list the cities contained within certain historical judicial districts.⁸ This would make it fairly easy to describe those districts by reference to the cities that they contained.
- (2) Former law generally required each city to be fully contained within a single judicial district.⁹ Thus, a city would not fall into more than one district.
- (3) People generally know whether they are located within a particular city. This should make a city-based description easy for the public to use.

The main disadvantage of describing districts by reference to cities¹⁰ is some of the area within the historical districts would not be included within the new description. Specifically, relying solely on cities to describe districts means that all unincorporated area would fall outside of the districts. Thus, the district descriptions would need to be accompanied by a statutory rule that explains how notice should be published in such areas.¹¹

CITY-BASED DISTRICT DESCRIPTIONS

The staff made an initial effort to match up today's cities with the corresponding historic judicial districts using secondary source materials.¹² In doing so, the staff focused on the districts that were in existence on the effective date of Section 71042.5. For the purpose of this initial effort, the staff focused on

8. See Memorandum 2014-56, pp. 13-16.

9. See 1953 Cal. Stat. ch. 1130, § 1 (former Gov't Code § 71040).

10. The staff considered alternatives that would provide a more comprehensive description of the area contained within an historical district, e.g., zip codes, electoral precincts, and census areas. Those possibilities would have been much harder to match up with the historical districts than cities. Because there is no reliable secondary source to use in matching them to districts, maps or ordinances would need to be used. Also, those areas may not be as easy to maintain over time or as easy for the public to use.

11. See discussion *infra* pp. 7-8.

12. See Memorandum 2014-56, pp. 13-16. In particular, the Judicial Council Reports and the Handbooks prepared by the Association of Municipal Court Clerks were the main resources used by the staff in undertaking this effort. See *id.* at pp. 14-15.

the districts in existence on December 7, 1967.¹³ At that time, there appears to have been 328 judicial districts statewide.¹⁴

At the time Section 71042.5 took effect, seven counties had only a single, county-wide judicial district.¹⁵ For such districts, the simplest approach would be to continue the existing county-wide district. In these cases, the district boundaries can be fully and accurately described by reference to the county boundaries. Resorting to city plus to simplify the boundary description is simply unnecessary. Further, continuing the county-wide district perfectly preserves the status quo and facilitates usability.

The remaining 321 districts are all contained in counties with multiple judicial districts. Each of these districts either contains a city or does not. The following discussions address those two possibilities, explaining how city plus would work in each case.

District Contains One or More Cities

Roughly 233 districts contain at least one city. Use of the city plus approach would be straightforward in these districts. Each district could be described by reference to the city or cities that it contains.

District Contains No Cities

Roughly 88 districts contain no cities. In these cases, cities cannot be used to describe the district. Without some modification to this approach (e.g., allowing for a non-city district descriptor), these 88 districts would be “lost.”

In some cases, this loss of districts may not be a significant problem. An area that does not have a city will often be very sparsely populated. The staff

13. Section 71042.5 was enacted in 1967. 1967 Cal. Stat. ch. 1066, § 1. Unfortunately, the staff has seen conflicting information on the effective date for legislation enacted in the 1967 session. At the time, Section 9600 provided that “[e]very statute, unless a different time is prescribed therein, takes effect on the ninety-first day after the final adjournment of the session of the Legislature which passed such statute.” 1943 Cal. Stat. ch. 134, § 9600. The 1967 legislative session ended on September 8, 1967. Legislative Counsel, Statutes and Amendments to the Codes, v.1, p. 1 (1967). Thus, according to Section 9600, Section 71042.5 should have gone into effect 91 days later, on December 8, 1967. However, the statute book cited previously also includes a page indicating that “[t]he effective date for the statutes enacted in the 1967 Regular Session (other than those statutes which take effect immediately) is November 8, 1967.” *Id.* at A-3. In the absence of a conclusive resolution of this discrepancy, the staff intends to use the December 8, 1967 effective date, pursuant to former Section 9600, which appears to be the governing law in effect at that time.

14. Number was computed from Judicial Council of California, Annual Report of the Administrative Office of the California Courts 195-198, 246-255 (Jan. 6, 1969).

15. Memorandum 2014-56, p. 14. (Specifically, the counties are: Alpine, Amador, Mono, San Francisco, Santa Cruz, Sierra, and Ventura).

anticipates that such sparsely populated areas are less likely to have a newspaper of general circulation. Simply put, preserving such a district is unlikely to achieve more local notice in practice. Further, the loss of a district without a city or newspaper would not disrupt the notice publication scheme, as such areas would be addressed by the general rules for areas outside of districts.¹⁶

District Loss Scenarios by County

The loss of districts that do not contain cities would have different consequences in different counties. Specifically, each county would fall into one of the following categories:

- ***No districts with cities:*** There are two counties that contain no cities.¹⁷ In these cases, the city plus approach does not offer a good method to describe the existing notice districts. Some other approach would need to be used (e.g., the county could be deemed to contain one county-wide district).
- ***Only one district that contains a city.*** There are eight counties¹⁸ in which only one of the existing districts contains a city. In these counties, the use of city plus could produce odd results. In these cases, it may be appropriate to deem the county to contain a single county-wide district. However, before doing so, it would be worthwhile to consider whether establishing a single, county-wide district would be too disruptive of the status quo.
- ***Multiple districts with cities, but one or more without.*** There are 22 counties¹⁹ in this situation. In these cases, the city plus approach should be workable. Persons within the lost districts would be governed by the general rules for area outside of districts.²⁰

Minimizing District Loss Through Use of CDPs

The loss of districts could be minimized, or perhaps avoided altogether, by using something other than a city to describe the district. One possible alternative would be to use a “Census Designated Place” (“CDP”).

16. See discussion *infra* pp. 7-8.

17. See <http://www.counties.org/cities-within-each-county>; Memorandum 2014-56, Exhibit pp. 6-7. (Mariposa and Trinity)

18. Those counties are: Calaveras, Del Norte, Inyo, Lassen, Marin, Modoc, Plumas, and Tuloumne.

19. Those counties are: Butte, Contra Costa, El Dorado, Fresno, Humboldt, Imperial, Kern, Lake, Madera, Mendocino, Merced, Monterey, Placer, Riverside, San Benito, San Bernardino, San Diego, Shasta, Siskiyou, Tulare, Yolo, and Yuba.

20. See discussion *infra* pp. 7-8.

A CDP is a designation used by the United States Census Bureau to refer to population centers that are not incorporated as cities.²¹ There are over 1,000 CDPs statewide.²² Some CDPs are highly populated,²³ but most are very sparsely populated.²⁴ A CDP differs from a city in that a CDP lacks formal self government and jurisdictional boundaries.²⁵

The staff made an initial effort to match at least one CDP to each of the 88 districts that lack a city. This initial effort matched CDPs to 76 of the city-less districts. These districts could be preserved by allowing CDPs as a district descriptor. With additional effort, it may be possible to find a CDP that corresponds with each city-less district.

However, it is not clear whether preserving these city-less districts would better achieve local notice in practice. These districts are often sparsely populated. Most of those CDPs matched to city-less districts are quite small; all but four have a population of less than 10,000 people. As discussed above,²⁶ the loss of a sparsely populated district may not pose serious practical problems. Thus, it may not be worthwhile to attempt to prevent district loss where the district is unlikely to offer a possibility for local publication.

Another problem with the use of CDPs is the lack of publicly-known boundaries. The Census Bureau maintains maps with CDP boundaries on its website.²⁷ The staff anticipates that the persons residing in a CDP may not be

21. A CDP is “the statistical counterpart[] of [an] incorporated place[], and [is] delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located.” See https://www.census.gov/geo/reference/gtc/gtc_place.html.

22. Computed by the staff from 2010 Census Data, *available at* http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/#CQR.

23. See, e.g., <http://quickfacts.census.gov/qfd/states/06/0620802.html> (East Los Angeles CDP had 126,496 people at the time of the 2010 Census).

24. See [http://factfinder.census.gov/bkmk/cf/1.0/en/place/Squirrel Mountain Valley CDP, California/POPULATION/DECENNIAL_CNT](http://factfinder.census.gov/bkmk/cf/1.0/en/place/Squirrel%20Mountain%20Valley%20CDP,California/POPULATION/DECENNIAL_CNT) (Squirrel Mountain Valley CDP had 547 people at the time of the 2010 Census).

25. CDP boundaries are set by the Census Bureau. “The boundaries usually are defined in cooperation with local or tribal officials and generally updated prior to each decennial census. These boundaries, which usually coincide with visible features or the boundary of an adjacent incorporated place or another legal entity boundary, have no legal status, nor do these places have officials elected to serve traditional municipal functions. CDP boundaries may change from one decennial census to the next with changes in the settlement pattern; a CDP with the same name as in an earlier census does not necessarily have the same boundary.” See https://www.census.gov/geo/reference/gtc/gtc_place.html.

26. See discussion *supra* pp. 4-5.

27. See, e.g., <http://tigerweb.geo.census.gov/tigerweb/>.

aware that they live in a CDP. This could create usability problems for those who must publish notices in a district described by reference to CDPs.

In short, it might be workable to use CDPs to describe a district in some situations, but this would pose usability problems and may provide little practical benefit.

AREA OUTSIDE OF DISTRICTS

A critical component of the city plus approach is crafting an appropriate rule prescribing where to publish notices that arise outside the described districts. Such a rule should be designed to achieve local, less-than-countywide notice, to the extent practicable.²⁸ To that end, the rule should allow for publication of notices in *nearby* newspapers of general circulation. If no nearby newspaper of general circulation is available, then the existing statutory alternatives would apply (e.g., local posting or publication in a newspaper of general circulation in the county as a whole).²⁹

This discussion assumes that all notices will remain in the county in which they arose, in accordance with current law (i.e., unincorporated area on the edge of a county will not be assigned to publish notice in a nearby newspaper in a neighboring county).³⁰

The staff considered a number of possible rules for publication of a notice that arises outside of the described districts:

- ***Publish in any district in the county that is within a specified distance (e.g., 10 miles).*** If there is no district within that distance or all such districts lack a newspaper of general circulation, then the statutory alternative rules would apply.
- ***Publish in the nearest district in the county.*** If that district lacks a newspaper of general circulation, then the statutory alternative rules would apply.
- ***Publish in any district in the county.*** If all districts in the county lack a newspaper of general circulation, then the statutory alternative rules would apply.

28. See Memorandum 2014-15, p. 4. (“[I]t seems clear that the ‘judicial district’ references in the notice publication statutes are used as a means to achieve less-than-countywide local publication.”)

29. See *id.* at p. 5.

30. See former § 71040 (1953 Cal. Stat. ch. 1130, § 1).

Of those possibilities, the first seems the most promising. Unlike the others, it would ensure that only a *nearby* district would be used for notice publication (subject to the statutory alternatives, if that district lacks a newspaper). This would generally have the effect of keeping communities of interest intact.

However, a distance-based rule based is not without its challenges. It would require some reliable and easily used method for calculating distances. It might be possible for the public to rely on online navigational tools to calculate distances. Further, the distance-based rule could be accompanied by a safe harbor provision for those who use a reasonable method of distance calculation. In this manner, the rule could be crafted to preclude disputes about the sufficiency of notice in close cases (e.g., the actual distance is 10.2 miles, as opposed to the required 10 miles).

TREATMENT OF NEWSPAPERS OF GENERAL CIRCULATION

One aspect of preserving the status quo is avoiding disruption of the existing rights of newspapers.

As proposed in the Commission's tentative recommendation,³¹ a newspaper's existing rights could be preserved by expressly "grandfathering" them into the new framework. Under the city plus approach, districts that contain cities would continue to exist and should continue to have their existing district names. This approach could include a rule expressly stating that a newspaper that is currently certified within a particular district continues to be certified within that district. Such a rule would largely preserve the existing rights of newspapers that are certified within a district that contains a city.

However, a grandfathering clause would not be a solution for a newspaper in a district that does not contain a city, because such a district would be "lost" under the city plus approach. It may be that this scenario (i.e., a certified newspaper in a city-less district) is only a theoretical problem because districts without cities appear less likely to have newspapers. It is also worth noting that this issue could be rendered moot if the loss of districts is avoided through the use of a non-city district descriptor (e.g., CDPs). If the Commission were to adopt the city plus approach going forward, the issue of newspapers in city-less districts would need to be considered in more detail.

31. See Tentative Recommendation on *Trial Court Unification: Publication of Legal Notice* 31-32 (September 2014) (proposed Gov't Code § 6086 and Comment).

CONCLUSION

As stated above, this memorandum is intended only as background for the Commission's general decision on how to proceed in this study. The staff hopes that it will help the Commission make a rough assessment the feasibility of a reform approach.

The Commission should also note that this memorandum and Memorandum 2014-56 both presume that the Commission will desire to continue with the general approach proposed in the tentative recommendation (i.e., preserving the historic judicial districts).³² However, the staff notes that there are other possible approaches, discussed earlier in this study, to resolve the issue of judicial district notice publication (e.g., use supervisorial districts in place of judicial districts, or use cities in place of judicial districts).

How does the Commission wish to proceed?

Respectfully submitted,

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32. See *id.* at p. 8.