

Memorandum 2018-5

**Statutes Made Obsolete by Trial Court Restructuring: Part 6
(Discussion of Issues)**

Under Government Code Section 71674, the Law Revision Commission¹ is responsible for determining whether any provisions of law are obsolete as a result of:

- (1) The implementation of trial court unification.
- (2) The enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997,² or
- (3) The enactment of the Trial Court Employment Protection and Governance Act (“TCEPGA”).³

The Commission “shall recommend to the Legislature any amendments to remove those obsolete provisions.”⁴ The Commission is also responsible for conducting several specific studies that were identified in its 1998 report on trial court unification.⁵

Much of this massive legislative assignment has already been done, but some projects still need to be completed. When the Commission discussed new topics and priorities in December, it decided to devote substantial resources towards the remaining work in 2018.⁶

This memorandum introduces the topic to the current Commission. It is organized as follows:

- (1) Background information on trial court restructuring.

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. 1997 Cal. Stat. ch. 850.

3. See 2000 Cal. Stat. ch. 1010; Gov’t Code §§ 71600-71675.

4. *Id.*

5. See Gov’t Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-86 (1998) (hereafter, “*TCU: Revision of Codes*”).

6. See *Draft Minutes* (Dec. 2017), p. 3; see also Memorandum 2017-55, pp. 39-40.

- (2) Overview of the remaining projects.
- (3) Plan of attack.
- (4) Examples of statutory revisions within the scope of the Commission's assignment.
- (5) Stakeholder outreach.

BACKGROUND INFORMATION ON TRIAL COURT RESTRUCTURING

California's trial court system was dramatically restructured around the turn of the century, and the Commission played an important role in that process.

At the direction of the Legislature, the Commission began working on trial court unification almost twenty-five years ago, by preparing a report on the constitutional changes that would be necessary to unify the superior, municipal, and justice courts on a statewide basis.⁷ The Legislature did not ask the Commission to evaluate the wisdom or desirability of unifying the trial courts, but only to provide guidance on how to revise the state Constitution to implement such a reform.⁸

The Commission completed the requested report in early 1994. Soon afterward, the voters approved a proposition eliminating justice courts from California's judicial structure.⁹

At about the same time, the concept of statewide unification stalled in the Legislature. Instead, the Legislature passed a measure that authorized unification on a county-by-county basis: The municipal and superior courts in a county could unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.¹⁰

The Legislature directed the Commission to determine how to revise the codes to implement this measure.¹¹ In response, the Commission prepared a massive report (560 pp.) on the statutory changes necessary to accommodate county-by-county unification.¹²

In addition to proposed legislation, the Commission's report included a list of "Issues in Judicial Administration Appropriate for Future Study."¹³ The report

7. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994); see also *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

8. See 1993 Cal. Stat. res. ch. 96.

9. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

10. See 1996 Cal. Stat. res. ch. 36 (SCA 4 (Lockyer)).

11. See 1997 Cal. Stat. res. ch. 102; 1998 Cal. Stat. res. ch. 91.

12. See *TCU: Revision of Codes*, *supra* note 6.

13. See *TCU: Revision of Codes*, *supra* note 6, at 82-86.

recommended that the Legislature assign certain of those issues to the Commission,¹⁴ and other issues to the Judicial Council.¹⁵ The report also recommended that the two entities jointly conduct a study reexamining the procedural distinctions between traditional superior court cases, traditional municipal court cases, and small claims cases (the “three-track” study).¹⁶

The county-by-county unification measure appeared on the ballot at a statewide election in June 1998.¹⁷ The voters approved it, and the measure became operative the next day.

Soon afterwards, the Legislature enacted a bill revising the codes as the Commission recommended, to be workable regardless of whether the trial courts in a county voted to unify.¹⁸ The Legislature also directed the Commission and the Judicial Council to conduct the studies identified in the Commission’s report, in the manner recommended.¹⁹

Courts began unifying during the summer of 1998. By early 2001, the trial courts in all of California’s 58 counties had unified. At that point, it became appropriate to further revise the codes to reflect the statewide elimination of the municipal courts (through unification in every county).

In addition to trial court unification, two other major reforms of the trial court system occurred during the same time period:

- The enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997, which made the state responsible for funding trial court operations, instead of the counties.²⁰
- The enactment of the Trial Court Employment Protection and Governance Act, effective January 1, 2001, under which trial court personnel became employees of their local court, instead of the state or county.²¹

Like trial court unification, these reforms necessitated extensive code revisions to reflect the new trial court structure.

14. See *TCU: Revision of Codes*, *supra* note 6, at 85-86.

15. See *TCU: Revision of Codes*, *supra* note 6, at 84-85.

16. See *TCU: Revision of Codes*, *supra* note 6, at 82-83.

17. See Proposition 220.

18. See 1998 Cal. Stat. ch. 931 (SB 2139 (Lockyer)); see also 1999 Cal. Stat. ch. 344 (follow-up legislation); *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 (1999).

19. See 1998 Cal. Stat. ch. 931, § 257; see also Gov’t Code § 70219 & Comment; 2002 Cal. Stat. ch. 784, § 340.

20. 1997 Cal. Stat. ch. 850.

21. 2000 Cal. Stat. ch. 1010; Gov’t Code §§ 71600-71675.

In 2001, the Legislature directed the Commission to study and recommend legislation revising the codes to remove material made obsolete by these three major reforms of the trial court system.²² The recommendation was due the following year.

The Commission submitted a lengthy report (567 pp.) in response, recommending hundreds of statutory revisions, as well as a few constitutional changes.²³ The report pointed out that in addition to the numerous revisions proposed, “many other statutes require amendment or repeal, but are not included in this recommendation because (1) stakeholders have not yet reached agreement on key issues, (2) further research is required due to the complexity of the law, or (3) additional time is required to prepare appropriate revisions due to the volume of statutory material involved.”²⁴ The Commission therefore recommended removal of the deadline for its study, so that it could “continue its work in this area and recommend further cleanup of the statutes from time to time.”²⁵

The Legislature enacted the legislation recommended by the Commission,²⁶ as well as a constitutional measure that the voters eventually approved.²⁷ As requested, the Legislature also eliminated the deadline for completion of the Commission’s study.²⁸

Since then, the Commission has issued many additional reports on trial court restructuring,²⁹ and the Legislature has enacted virtually all of the legislation

22. See 2000 Cal. Stat. ch. 1010, § 14.

23. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Reports 1 (2002) (hereafter, “TCR: Part 1”).

24. *Id.* at 5.

25. *Id.*

26. See 2002 Cal. Stat. ch. 784 (SB 1316 (Committee on Judiciary)).

27. See 2002 Cal. Stat. res. ch. 88 (ACA 15 (Wayne)) (Prop. 48, approved Nov. 5, 2002).

28. See Gov’t Code § 71674 (2002 Cal. Stat. ch. 784, § 360) & Comment.

29. See *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter, “TCR: Part 2”); *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 341 (2006) (hereafter, “TCR: Part 3”); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 37 Cal. L. Revision Comm’n Reports 149 (2007) (hereafter, “TCR: Bail Forfeiture (2007)”); *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007) (hereafter, “TCR: Part 4”); *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm’n Reports 195 (2007); *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm’n Reports 109 (2009) (hereafter, “TCR: Part 5”); *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm’n Reports 157 (2009) (hereafter, TCR: Court & County #1); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm’n Reports 265 (2011) (hereafter, “TCR: Bail Forfeiture (2011)”); *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm’n Reports 315 (2011) (hereafter, “TCR: Writ Jurisdiction”); see also *Civil Procedure: Technical*

recommended in those reports.³⁰ The Commission has also completed work on all of the “Issues in Judicial Administration Appropriate for Future Study” that the Legislature assigned to it.³¹ Almost all of those studies resulted in the enactment of legislation,³² but legislation proved unnecessary in a few instances.³³ In addition, the Commission and the Judicial Council jointly conducted the “three-track” study described in the Commission’s 1998 report on trial court unification.³⁴

The Commission’s work in this area has ranged widely in character, and it has affected over 1,700 sections throughout the codes. The Commission has prepared a multitude of straightforward technical revisions,³⁵ addressed complex and challenging sets of issues,³⁶ and helped to resolve innumerable

Corrections, 30 Cal. L. Revision Comm’n Reports 479 (2000); *Authority of Court Commissioner*, 33 Cal. L. Revision Comm’n Reports 673 (2003).

30. See 2003 Cal. Stat. ch. 149 (implementing recommendation on *TCR: Part 2*); 2007 Cal. Stat. ch. 43 (implementing recommendation on *TCR: Part 3*); 2008 Cal. Stat. ch. 56 (implementing recommendations on *TCR: Part 4* and *Transfer of Case Based on Lack of Jurisdiction*); 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12 (partially implementing recommendation on *TCR: Part 5*); 2012 Cal. Stat. ch. 470 (implementing recommendations on *TCR: Court & County #1*, *TCR: Writ Jurisdiction*, and *TCR: Bail Forfeiture (2011)*), and partially implementing recommendation on *TCR: Part 5*); see also 2001 Cal. Stat. ch. 44 (implementing recommendation on *Civil Procedure: Technical Corrections*); 2004 Cal. Stat. ch. 49 (implementing recommendation on *Authority of Court Commissioner*).

31. See *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm’n Reports 291 (2000); *Expired Pilot Projects*, 30 Cal. L. Revision Comm’n Reports 327 (2000); *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm’n Reports 281 (2000); *Law Library Board of Trustees*, 30 Cal. L. Revision Comm’n Reports 429 (2000); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm’n Reports 307 (2000); *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm’n Reports 507 (2000) (hereafter, “*TCU: Issues Identified for Future Study*”); *Trout Affidavit*, 30 Cal. L. Revision Comm’n Reports 319 (2000); *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm’n Reports 223 (2001); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm’n Reports 333 (2002); *Trial Court Unification: Publication of Legal Notice*, 44 Cal. L. Revision Comm’n Reports 385 (2015); see also *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm’n Reports 267 (2003).

32. See 2000 Cal. Stat. ch. 113 (implementing 2000 recommendation on *Stay of Mechanic’s Lien Enforcement Pending Arbitration*); 2000 Cal. Stat. ch. 167 (implementing recommendation on *Trout Affidavit*); 2000 Cal. Stat. ch. 688, § 7 (implementing recommendation on *Jurisdictional Classification of Good Faith Improver Claims*); 2001 Cal. Stat. ch. 44 (implementing recommendation on *Authority to Appoint Receivers*); 2001 Cal. Stat. ch. 52 (implementing recommendation on *Law Library Board of Trustees*); 2001 Cal. Stat. ch. 115 (implementing recommendation on *Expired Pilot Projects*); 2002 Cal. Stat. ch. 71 (implementing recommendation on *Cases in Which Court Reporter Is Required*); 2016 Cal. Stat. ch. 703 (implementing recommendation on *Publication of Legal Notice*); see also 2004 Cal. Stat. ch. 193 (implementing recommendation on *Obsolete Reporting Requirements*).

33. See *TCU: Issues Identified for Future Study*, *supra* note 32.

34. For information on the “three-track” study, see Memorandum 2011-36 and the other Commission materials at <http://www.clrc.ca.gov/J1321.html>. See also *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm’n Reports 443 (2000); 2001 Cal. Stat. ch. 812 (implementing recommendation on *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*).

35. For example, the bulky recommendation on *TCR: Part 1*, *supra* note 24, included many straightforward revisions, as well as some complicated and difficult ones.

36. See, e.g., *TCR: Writ Jurisdiction*, *supra* note 30.

stakeholder concerns, some of which were relatively minor while others involved intense conflicts over limited resources or other sensitive matters.³⁷

Although the Commission has already done an immense amount of work on trial court restructuring and has almost always actively pursued one or more projects in the area for the past quarter-century, more work remains to be done. Unfortunately, most of the remaining work is difficult in one respect or another; almost all of the low-hanging fruit is already gone.

OVERVIEW OF THE REMAINING PROJECTS

The remaining work on statutes made obsolete by trial court restructuring includes five major projects, as briefly described below:

- (1) *Rights and Responsibilities of the County Versus the Superior Court With Respect to Trial Court Operations (Part 2)*. Numerous provisions throughout the codes refer to rights and responsibilities of a county with respect to various aspects of trial court operations. These provisions need to be revisited in light of the switch from local to state funding of trial court operations. In many instances, a reference to the county is no longer appropriate; the reference should be to the superior court instead.

A lot of this work has already been done, by the Commission and by others.³⁸ However, the Commission has not yet finished reviewing the codes alphabetically, methodically searching for provisions bearing on rights and responsibilities of a county with respect to trial court operations.

Completing these searches and analyzing the results is very time-consuming. The Commission is currently partway through the Government Code; there are still many more codes to review. Moreover, some of the provisions identified in the Commission's previous work have not yet been addressed, because they appear to be controversial or involve other complications.

This is not only a huge project, but also a politically sensitive one. Both courts and counties are fiscally strained and thus reluctant to assume any additional responsibilities or relinquish any source of income. The proper allocation of aspects of trial court operations was carefully negotiated and resolved in the process of trial court restructuring,³⁹ but any ambiguities are likely to be contentious.⁴⁰

37. See, e.g., *TCR: Bail Forfeiture (2007)*, *supra* note 30; *TCR: Bail Forfeiture (2011)*, *supra* note 30.

38. See, e.g., 2002 Cal. Stat. ch. 221; 2002 Cal. Stat. ch. 784; 2003 Cal. Stat. ch. 296; 2005 Cal. Stat. ch. 75; 2010 Cal. Stat. ch. 212; 2012 Cal. Stat. ch. 470, §§ 8-10.

39. See Gov't Code § 77003 ("court operations" defined), 77200 (state funding of "court operations"); Cal. R. Ct. 10.810 (specifying which matters constitute "court operations").

40. For a more detailed description of this project, see First Supplement to Memorandum 2014-53, pp. 7-8.

- (2) **Statutory References to “Superior Court.”** This project involves checking all statutory references to “superior court,” to determine whether it is necessary to add language regarding jurisdictional classification or appeal path. Such language would, for example, serve to make clear that a matter is to be treated as an unlimited civil case regardless of the amount in controversy and thus falls within the appellate jurisdiction of the court of appeal.

In 2002, the Commission specifically determined that this project should be undertaken.⁴¹ It is a huge project, however, and preliminary work showed that it would be complex and difficult. Because the project would be so laborious, the Commission might want to consider adopting a general policy of leaving “superior court” references alone, absent concrete evidence that a particular “superior court” reference is causing problems. The Commission has already taken that type of approach with respect to “jurisdiction” references in the codes.⁴²

- (3) **Judicial Benefits.** Pursuant to its usual practice, the Commission circulated a tentative recommendation before finalizing its 2002 report on trial court restructuring.⁴³ The lengthy tentative recommendation included a number of provisions relating to judicial benefits.

The Commission received input expressing various concerns relating to judicial benefits. Due to those concerns, in March 2002 the Commission removed the judicial benefit provisions from its proposal, for further study.

The Commission has not yet revisited those provisions, mainly because this is a touchy and volatile area that has been the subject of recent lawsuits, related legislation, and studies being conducted within the judiciary. Nonetheless, some clean-up to remove obsolete statutory material might still be in order.⁴⁴

- (4) **Court Reporter Compensation.** Numerous provisions in the codes relate to court reporter compensation.⁴⁵ Many of these provisions were included in a staff draft of proposed legislation that the Commission sent to court reporter groups and the Judicial Council for review in 2001.⁴⁶ This step was a preliminary effort to

41. Minutes (July 2002), p. 23.

42. See First Supplement to Memorandum 2014-53, p. 21.

43. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001).

44. For a more detailed description of this project, see First Supplement to Memorandum 2014-53, pp. 9-11.

45. See, e.g., Fam. Code § 9005(d) (discussed in Memorandum 2010-24, p. 3; Minutes (June 2010), p. 5.); Gov’t Code §§ 68114.8, 68525, 69893.7, 69894.6, 69903, 69947, 69948, 69948.5, 69949, 69952, 69953.5, 69955, 69956, 69990-69991, 69992-69992.2, 69993, 69994-69994.9, 69995-69999, 70000, 70313, 70010-70017, 70025, 70040-70062, 77064, 70100-70104, 70110-70113, 70125-70128, 70130-70134, 70136-70139; Penal Code § 938.3.

46. See Staff Draft, *Statutes Made Obsolete by Trial Court Restructuring: Official Reporter Statutes (Excluding County-Specific Municipal Court Statutes)* (July 16, 2001) (on file with Commission).

investigate whether the enactment of TCEPGA rendered material in those provisions obsolete.

Negotiations regarding court reporter compensation were ongoing, however, and court reporter organizations considered it important to leave the statutes intact pending resolution of the compensation issues. A legal argument could be made that the statutes still have some effect despite the enactment of TCEPGA; whether that argument would succeed in court is debatable.⁴⁷ The Commission decided to defer further work on the matter.

Since then, relationships between the Judicial Council and court reporter organizations have remained unsettled and contentious. To the best of the staff's knowledge, there has been no judicial guidance on the continued viability of the compensation provisions in the draft it circulated in 2001. Still, it would be good to bring some closure to the Commission's work on this topic, at least by formally summarizing where things stand.⁴⁸

- (5) *Court Facilities*. When the Commission finalized its 2002 report on trial court restructuring, the courts and the counties were engaged in negotiations regarding transferring court facilities from the counties to the courts. Instead of revising the statutes relating to court facilities, the Commission left such provisions intact, because issues remained unsettled and the facility transfers were not complete.⁴⁹

It took years and involved numerous complications, but all of the transfer issues were finally resolved. The court facility statutes are thus ripe for clean-up. Moreover, the Judicial Council has experts in this area who are available to provide assistance as the Commission re-examines those statutes. Of the five major remaining projects, this one may be the most tractable to address.⁵⁰

In addition to the major projects discussed above, a number of smaller trial court restructuring projects remain unfinished. In particular, there are loose ends relating to the following subjects:

- Judicial disqualification.⁵¹
- Judicial districts and local venue.⁵²
- Coordination and consolidation of cases.⁵³

47. See Memorandum 2001-96.

48. For a more detailed description of this project, see First Supplement to Memorandum 2014-53, pp. 14-16.

49. See *TCR: Part 1*, *supra* note 23, at 21; see also *TCR: Part 2*, *supra* note 29, at 176-77.

50. For a more detailed description of this project, see First Supplement to Memorandum 2014-53, pp. 8-9.

51. For a more detailed description of this project, see *id.* at 13-14.

52. For a more detailed description of this project, see *id.* at 12-13.

53. For a more detailed description of this project, see *id.* at 17-18.

- Representation and indemnification of courts and court personnel.⁵⁴
- Precedential value of appellate division decisions.⁵⁵
- Obsolete “constable” references that can only be removed by a statewide vote.⁵⁶

Two projects remain premature, because they would essentially involve putting the codes in good order after all of the other trial court restructuring clean-up is accomplished. Those projects are: (1) reorganizing the parts of the Government Code relating to courts (particularly Chapters 5 and 8 of Title 8, which are both titled “Superior Courts” now that municipal courts no longer exist)⁵⁷ and (2) doing a final check of the codes to ensure that all references to “municipal court” have been satisfactorily addressed.⁵⁸

Lastly, the Commission’s “to do” list for trial court restructuring includes a deactivated project,⁵⁹ an essentially deactivated project,⁶⁰ a project that would entail purely stylistic revisions,⁶¹ and a project that is almost certainly dead-on-arrival because the Judicial Council and stakeholders are currently pursuing exactly the opposite type of reform.⁶² **Unless the Commission otherwise directs, the staff will prepare a short memorandum for the next meeting, describing those projects in more detail and explaining why the Commission may want to remove them from its “to do” list.**⁶³

PLAN OF ATTACK

Throughout the Commission’s work on trial court restructuring, the Commission has generally given the staff discretion in determining which areas to concentrate on at any particular time. Often, work proceeded on several fronts

54. For a more detailed description of this project, see *id.* at 11-12.

55. For a more detailed description of this project, see *id.* at 18.

56. For a more detailed description of this project, see *id.* at 19.

57. For a more detailed description of this project, see *id.*

58. For a more detailed description of this project, see *id.* at 20.

59. See *id.* at 21-22 (appellate & writ review under trial court unification).

60. See *id.* at 21 (references to “jurisdiction”).

61. See *id.* (“unlimited civil case” terminology).

62. See *id.* at 20-21 (reexamination of concept of limited civil case).

63. For political reasons unrelated to trial court restructuring or the merits of the Commission’s suggested revisions, two amendments recommended by the Commission have not yet been enacted. See *id.* at 11 (discussing proposed revisions of Gov’t Code §§ 26806, 69894.5).

From a trial court restructuring standpoint, those provisions do not require further study. The Commission is not authorized to study or address the concerns that impeded enactment of the proposed amendments. The Commission has thus completed all the work it can do with respect to those provisions, aside from perhaps checking whether the political situation has changed such that it would make sense to reintroduce the proposed amendments.

simultaneously, resulting in recommendations (and corresponding bills) that addressed a mixture of trial court restructuring issues.⁶⁴

That approach has worked well, and the staff suggests continuing with it. The Chief Deputy Counsel is well-familiar with the Commission's work on trial court restructuring, having been involved in many aspects of it since the Commission began working on the topic in late 1993. She would like to try to bring as much of the remaining work to closure as soon as possible. The court facilities statutes seem particularly likely to be a productive area for reform efforts, but it may be possible to wrap up many of the other loose ends fairly soon too.

Is this approach acceptable to the Commission?

EXAMPLES OF STATUTORY REVISIONS WITHIN THE SCOPE OF THE COMMISSION'S ASSIGNMENT

Before the Commission actually delves into the substantive work on trial court restructuring, it might be helpful to provide some examples of the types of statutory revisions that fall within the scope of this assignment. As previously mentioned, the Commission is responsible for determining whether any provisions of law are obsolete as a result of:

- The implementation of trial court unification,
- The enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997, or
- The enactment of the TCEPGA.⁶⁵

For each of these reforms, we present:

- (1) A typical, straightforward example of a statutory revision that has already been enacted on the Commission's recommendation.
- (2) An example of an existing code provision involving a more complex situation, which has not yet been addressed.

Trial Court Unification

As a result of trial court unification, trial court operations were consolidated in the superior court of each county and municipal courts no longer exist.

64. See, e.g., *TCR: Part 1, supra* note 24; *TCR: Part 2, supra* note 30; *TCR: Part 3, supra* note 30; *TCR: Part 4, supra* note 30; *TCR: Part 5, supra* note 30.

65. Gov't Code § 71674.

Consequently, most statutory references to the municipal courts became obsolete.

Typical, Straightforward Example

Here is a typical, straightforward example of clean-up to remove statutory material made obsolete by trial court unification:

Code Civ. Proc. § 628 (amended). Entry upon receipt of verdict

SEC. _____. Section 628 of the Code of Civil Procedure is amended to read:

628. In superior ~~and municipal~~ courts upon receipt of a verdict, an entry must be made in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

Comment. Section 628 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

This amendment was enacted in 2002 on Commission recommendation.⁶⁶

More Complicated Example

Government Code Section 70047.1 concerns court reporter compensation and contains the following provision:

70047.1....

(j) The presiding judge of the superior court may, upon request of the presiding judge of the municipal court, assign an official superior court reporter to the municipal court during such times as the business of the municipal court requires. Official superior court reporters who are so assigned shall receive no additional compensation for that service.

The above provision is clearly obsolete, yet attempting to delete it from Section 70047.1 might prove politically difficult, due to ongoing stakeholder disputes relating to court reporter compensation.⁶⁷

Trial Court Funding Act

Under the Lockyer-Isenberg Trial Court Funding Act of 1997, the state became responsible for funding and conducting trial court operations, instead of the counties. Consequently, statutes that gave a county (or a county official)

66. See 2002 Cal. Stat. ch. 784, § 63.

67. See generally AB 1630 (Olsen) (2011-2012 Reg. Sess.).

responsibility for, or control over, an aspect of trial court operations generally became obsolete.

Typical, Straightforward Example

Here is a typical, straightforward example of clean-up to remove statutory material made obsolete by the enactment of the Trial Court Funding Act:

Fam. Code § 1834 (amended). Assistance to family conciliation court petitioner

SEC. _____. Section 1834 of the Family Code is amended to read:

1834. (a) The clerk of the court shall provide, at the expense of the ~~county~~ court, blank forms for petitions for filing pursuant to this part.

....

Comment. Subdivision (a) of Section 1834 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("court operations" include "publications and legal notices, by the court"); *cf.* Cal. R. Ct. 10.810(d), Function 6 (listing "court operations" relating to dispute resolution programs, including conciliators, but signaling that "[a]ny other related services, supplies, and equipment" are allowable under Function 10").

....

This amendment was enacted in 2012 on Commission recommendation.⁶⁸

More Complicated Example

Family Code Section 3153 concerns appointment of private counsel to represent a child in a custody or visitation proceeding. In a tentative recommendation released in 2010, the Commission proposed to amend that section as follows to reflect the enactment of the Trial Court Funding Act:

3153. (a) If the court appoints counsel under this chapter to represent the child, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Except as provided in subdivision (b), this amount shall be paid by the parties in the proportions the court deems just.

(b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed pursuant to

68. See 2012 Cal. Stat. ch. 470, § 14.

this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county court. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county court payment of counsel appointed by the court pursuant to this chapter.

Comment. Subdivision (b) of Section 3153 is amended to reflect enactment of the Lockyer- Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000- 77655). See, e.g., Gov't Code §§77003 ("court operations" defined), 77003(a)(4) ("court operations" include "counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code"), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 7 ("court operations" include "[e]xpenses for court-appointed counsel as specified in Government Code § 77003").⁶⁹

The Los Angeles County Superior Court objected to this proposed amendment. It said that the cost of court-appointed counsel under Section 3153(b) was not handled the same way historically in every county, and this cost should remain a county expense in Los Angeles and some other counties.⁷⁰

Due to this objection, the Commission removed the proposed amendment of Section 3153 from its 2010 proposal, for further study.⁷¹ The provision has not been amended since the Commission last considered it.

Trial Court Employment Protection and Governance Act

The TCEPGA established the basis for a new personnel system for trial court employees. Under the act, trial court employees became employees of the court, instead of the state or county. The new personnel system rendered obsolete many detailed statutes on employment terms for court employees.

Typical, Straightforward Example

Former Government Code Section 69903.3 is an example of such a statute. In 2002, the Commission recommended repealing it:

Gov't Code § 69903.3 (repealed). Extra compensation for administrative assistant and chief calendar deputy in Alameda County

SEC. _____. Section 69903.3 of the Government Code is repealed.

~~69903.3. Notwithstanding any other provisions of this article, in any county with a population of less than 1,000,000 but more than~~

69. Tentative Recommendation on *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)* (Aug. 2010), p. 27.

70. See Memorandum 2010-55, pp. 12-15.

71. Minutes (Dec. 2010), p. 11.

~~800,000 as determined by the 1960 federal census, and if the superior court does not have a position of assistant jury commissioner, the positions of administrative assistant and chief calendar deputy in Section 69903 shall be compensated at a rate of 10 percent more than the salary to which they would be entitled otherwise.~~

Comment. Section 69903.3 is repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71623 (salaries).

The provision was repealed as the Commission recommended.⁷²

More Complicated Example

In a tentative recommendation released in 2001, the Commission proposed to repeal Government Code Section 53200.3, which is in an article relating to group insurance:

Gov't Code § 53200.3 (repealed). County group insurance

SEC. _____. Section 53200.3 of the Government Code is repealed.

~~53200.3. For the limited purpose of the application of this article, judges of the superior and municipal courts and the officers and attaches of said courts whose salaries are paid either in whole or in part from the salary fund of the county are county employees and shall be subject to the same or similar obligations and be granted the same or similar employee benefits as are now required or granted to employees of the county in which the court of said judge, officer, or attaché is located.~~

Comment. Section 53200.3 is repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Section 71629 (trial court employment benefits not affected).

Because issues involving judicial benefits were unsettled and contentious, however, this amendment was removed from the Commission's 2002 proposal, for further study.⁷³ Section 53200.3 has not been amended since the Commission last considered it.

STAKEHOLDER OUTREACH

The Commission has previously directed that “[w]hen inviting stakeholder participation in a new study, the staff should provide Commissioners with a list of the groups and individuals that were invited to participate.”⁷⁴ The staff is still

72. See 2002 Cal. Stat. ch. 784, § 318.

73. See Minutes (March 14-15, 2002), p. 11.

74. See Minutes (Oct. 2014), p. 3.

in the process of developing a strategy for contacting stakeholders regarding this study. Unless the Commission otherwise directs, we will address that matter in a memorandum for the next meeting.

Respectfully submitted,

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