Study J-1405 April 9, 2018

# Memorandum 2018-19

## Statutes Made Obsolete by Trial Court Restructuring (Part 6): Projects to Consider Deleting From the "To Do" List

In the memorandum introducing this phase of the Commission's work on *Statutes Made Obsolete by Trial Court Restructuring*, the staff provided an overview of the remaining projects relating to this topic.[1] The staff noted that, among other things, the Commission's "to do" list includes "a deactivated project, an essentially deactivated project, a project that would entail purely stylistic revisions, and a project that would almost certainly be dead-on-arrival because the Judicial Council and stakeholders are currently pursuing exactly the opposite type of reform."[2] The staff promised to prepare a short memorandum "describing those projects in more detail and explaining why the Commission may want to remove them from its 'to do' list."[3] This memorandum follows through on that promise.

The four projects in question are:

(1) Appellate and writ review under trial court unification.
(2) Statutory references to "jurisdiction."
(3) "Unlimited civil case" terminology
(4) Reexamination of the concept of a limited civil case.

The memorandum discusses each project in order below.

1. Memorandum 2018-5.

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. *Id.* at 9 (footnotes omitted).

3. *Id.* (boldface omitted).

## APPELLATE AND WRIT REVIEW UNDER TRIAL COURT UNIFICATION

As a result of unification of the municipal and superior courts, the appellate division of each unified superior court reviews appeals and writs taken from its own court. This type of peer review creates at least an appearance of impropriety. More than a decade ago, the Commission conducted a study of the situation (Study J-1310).[4]

The Commission circulated a tentative recommendation proposing to:

(1) Eliminate the appellate division of each superior court; and
(2) Create a limited jurisdiction division in each court of appeal, which would handle the matters formerly assigned to the appellate divisions of the superior courts in that court of appeal district.[5]

The Commission began analyzing the comments on the tentative recommendation in May 2002, but discontinued work on this project in late 2003 due to state budgetary constraints on court operations. The proposed restructuring would necessarily have entailed significant transition costs, as well as other potential fiscal impacts. The Commission considered it ill-advised to move forward with the proposal while the court system was struggling to maintain routine operations.[6] It directed the staff to monitor developments in the area and alert the Commission if it appeared appropriate to reactivate the study.[7]

The judiciary's current budget situation is better than it has been in some time, but it is still far from rosy.[8] There does not seem to be strong discontent with the existing system for appellate and writ review. Absent such discontent, it may be best to delete that topic from the Commission's "to do" list and devote its resources to other projects. **Does the Commission agree?**

## STATUTORY REFERENCES TO "JURISDICTION"

Many code sections use the term "jurisdiction" or some variant of it. In 2002, the staff prepared a memorandum discussing whether to systematically search

4. For further information on Study J-1310, see http://www.clrc.ca.gov/J1310.html.

5. The tentative recommendation is available at http://www.clrc.ca.gov/pub/Misc-Report/TR-CtAppJuris.pdf.

6. See Minutes (Nov. 2003), p.8; see also Memorandum 2003-38.

7. Minutes (Nov. 2003), p. 8.

8. See https://newsroom.courts.ca.gov/news/2017-state-of-the-judiciary (2018 State of the Judiciary address of Chief Justice Tani Cantil-Sakauye).

for such code sections and assess whether they required revisions to reflect trial court restructuring.[9]

On considering the costs and benefits of systematically addressing this matter, the Commission adopted a "no review and very limited treatment" approach.[10] In other words, "staff should skip a systematic review of jurisdiction provisions and revise or delete specific jurisdiction references only if the staff is made aware of problems relating to them."[11]

That approach appears to have worked well. In the years since the Commission chose it, the staff does not recall receiving any complaint that a statutory reference to "jurisdiction," "proper court," or "same court" was obsolete due to trial court restructuring.

In light of that experience, would the Commission like to **drop this topic from its "to do" list, subject to possible reactivation if a problem relating to a "jurisdiction" reference comes to its attention?**

## "UNLIMITED CIVIL CASE" TERMINOLOGY

Before the term "unlimited civil case" was coined, some statutes were revised to refer to a "civil case other than a limited civil case" or use similar phraseology. For purposes of consistency and graceful drafting, those provisions could now be revised to use the term "unlimited civil case." The possibility of making such stylistic revisions has been on the Commission's trial court restructuring "to do" list for a long time.

Because such a project would entail purely stylistic revisions, however, it might not be worth doing. There are probably better uses of the Commission's time.

**Does the Commission want to delete this project from its "to do" list?**

## REEXAMINATION OF THE CONCEPT OF A LIMITED CIVIL CASE

In 2005, the Commission decided to reexamine the concept of a limited civil case. The objective was to determine whether the complexity of differentiating between limited and unlimited civil cases was warranted.[12]

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9. See Memorandum 2002-34.
10. Minutes (July 2002), p. 23.
11. *Id.*
12. Minutes (Nov. 2005), p. 7.

The staff tried to find a consultant to prepare a background report for the study, but no one was ever hired. No work has been done on the study.

To the best of the staff's knowledge, there currently is no impetus within the Judicial Council or the courts to reexamine the concept of a limited civil case. In fact, the Judicial Council's Small Civil Cases Working Group considered issues like this in 2011-12 and the effort did not lead anywhere.

More importantly, the Judicial Council, acting on advice from its Futures Commission, is currently pursuing just the opposite type of reform. As Chief Justice Tani Cantil-Sakauye recently explained in a *Daily Journal* interview:

> We have chosen, as the council, to go forward with creating an intermediate tier, a tier with commensurate discovery limitations that would be more acceptable to folks who have the kind of lawsuit that falls between $50,000 and $250,000, and then would be able to obtain, potentially, representation with more limited discovery in the intermediate tier.[13]

In other words, the Judicial Council would like to add a new classification of civil cases to the existing three-tier system (unlimited civil cases, limited civil cases, and small claims cases). The Futures Commission considered stakeholder input in recommending such an approach to the Judicial Council. That does not seem to bode well for the prospect of eliminating one of the existing classifications (limited civil cases) in the interest of simplification.

Given this situation, **should reexamining the concept of a limited civil case remain on the Commission's trial court restructuring "to do" list?**

Respectfully submitted,

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13. David Houston, *Chief Justice Outlines Plans for Increased Funds* (April 4, 2018), *quoting* Chief Justice Cantil-Sakauye.