

Memorandum 93-71

Trial Court Unification: Personnel Issues

IMPLEMENTATION PROCESS

One of the most time consuming and complex problems in trial court unification will be to resolve the numerous personnel issues involved. At the October meeting the staff suggested that a process be established now, to begin in June 1994 if SCA 3 passes, that will provide a means of dealing with the personnel issues.

Specifically, the staff suggested that presiding judges and court administrators in each county, along with representatives of the Administrative Office of the Courts, county representatives, and employee representatives, would confer concerning the personnel needs of the unified court, any necessary personnel reduction or relocation plans, proposed salary, benefits, and retirement plan arrangements, and other personnel matters. These persons would have authority to act for the unified court, pending the operative date of unification, in making assignments, giving notices, and the like that will be effective on the operative date of unification.

A smaller committee type approach could involve a three person committee composed of the superior court presiding judge, a municipal court presiding judge, and a third person agreed upon by the two judges. Or the matter could simply be left to the Judicial Council to handle by whatever procedure appears most appropriate to it. The Council would be charged with preparation of a plan for the orderly transition of the existing trial court system to a unified trial court system, including adoption of rules of administration, establishment of standards for classified positions, qualifications, selection, compensation, promotion, discipline, dismissal, and retirement of all officers and employees.

An alternative approach could be to structure personnel decisions in the unified court through a statutorily prescribed phase-in. For example, all permanent court employees would be carried over into the unified court with their compensation unchanged for the first year. After the first year, employee classification and pay rate schedules developed by the Judicial Council would

become effective. After five years, each court administrator would be empowered to eliminate supernumerary positions.

At the October meeting the Commission directed the staff to confer with Steve Birdleough of the Judicial Council and to make a specific recommendation on this matter at the November meeting. The staff has conferred with Mr. Birdleough. He reports that the Judicial Council has contracted with the Judicial Management Institute for a study, due February 1, 1994, on trial court coordination activities in California over the past two years. The study should indicate what sort of processes have been most effective in achieving coordination, and should provide useful ideas for structuring the practical aspects of implementing trial court unification. Mr. Birdleough's best advice is to wait until the Commission has had a chance to review the study before making recommendations on this matter.

Unfortunately, the Commission is unlikely to have an opportunity to consider the study until after the Commission's report to the Legislature on trial court unification is due. The alternatives are to prepare the best report we can without the benefit of the Judicial Management Institute study, or to wait until the study is delivered and then supplement our report to the Legislature addressed to this issue. We could have a spot bill waiting to receive the material on the implementation process, to be enacted as an urgency measure operative on adoption of SCA 3.

The staff recommends we wait for the Judicial Management Institute study and supplement our recommendation with a proposal for urgency legislation on the matter. In order to implement this approach, we must make sure there is adequate authority in the Constitution for the Legislature to prescribe the personnel transition. If the Constitution remains silent on this matter, the likely construction will be that personnel matters are within the power of the judicial branch, and the Legislature may not prescribe transition activities.

It is true that an argument can be made for ultimate legislative authority under the language of Article VI, Section 6 of the Constitution: "To improve the administration of justice the council shall ... adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute." This is a thin reed to support legislative authority to prescribe transitional personnel matters, since the Commission's general draft on personnel matters leaves them to the judicial branch subject to local and state funding control.

The staff would add language to the proposed transitional provision that would support urgency legislation to establish an implementation process:

SEC. 23. 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 and to Section 16 of Article I, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a unified superior court. The Legislature may provide for implementation of, and orderly transition under, this measure.

Comment. Section 23 is added to implement unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court). The operative date of this section is July 1, 1995. This section is transitional only and is repealed by its own terms on July 1, 2001.

The first paragraph grants express authority to the Legislature to provide for implementation of trial court unification. The Legislature may prescribe implementing provisions directly by statute or may delegate authority, for example to a committee of presiding judges and others in each unified superior court. Implementing legislation must be consistent with the Constitution, but it should be noted that the transitional matters outlined in the third paragraph govern only absent contrary action pursuant to statute.

We have added language along these lines to the staff draft of the tentative recommendation on trial court unification. See Memorandum 93-76.

OTHER IMPEDIMENTS TO IMPLEMENTATION

The staff has done some initial work to determine whether there are any other impediments to practical resolution of personnel issues in the implementation of trial court unification that should be addressed at the constitutional level. Specifically, the concern is whether the ground should be prepared to deal with possible civil service restrictions, collective bargaining agreements, or other problems that will affect our ability adequately to resolve the many personnel related issues that will arise.

Our initial investigation indicates civil service restrictions should not be a problem. Article VII, Section 4(b) of the California Constitution provides that the following are exempt from civil service:

Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.

The staff solicits suggestions concerning the possible need for any other constitutional amendment that may be necessary to enable orderly resolution of the personnel issues involved in unification.

Respectfully submitted,

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Executive Secretary