California –

SELECT COMMITTEE ON TRIAL COURT DELAY

REPORT 6

June 1, 1972

Select Committee on Trial Court Delay
Suite 4200 State Building
San Francisco, California 94102

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MEMBERS

Honorable Homer B. Thompson

Judge of the Superior Court
Santa Clara County

Judge Homer B. Thompson was born in 1921 and received an A.B. degree from the University of Montana in 1943, an A.M. from Stanford University in 1947, and an L.L.B. from Stanford University in 1950. Judge Thompson was engaged in the private practice of law in Palo Alto from 1952 to 1961, when he was appointed to the Superior Court for Santa Clara County. He has served as the Presiding Judge of that court, as a member of the Judicial Council from 1967 through 1971, as a faculty member of the California College of Trial Judges from 1969 through 1972, and as a member of the Planning Committee of the State Bar Conference on Judicial Reform in 1972. He has also done extensive work and writing regarding juvenile problems and juvenile court, and he is the chairman of the Juvenile Court Task Force of the Conference on Judicial Reform.

Loren A. Beckley

Chief Probation Officer
San Mateo County

Loren A. Beckley was born in 1921 and graduated from the University of Redlands in 1943. He began his career in probation work with the San Bernardino County Probation Department in 1946, and he has been with the San Mateo County Probation Department since 1948, serving as Chief Probation Officer of San Mateo County since 1958. He is a past president of the California Probation, Parole and Correctional Association, and he currently serves as a member of the Professional Advisory Committee, National Council on Crime and Delinquency; the California Youth Authority Probation Advisory Committee; the Drug Abuse Task Force, American Social Health Association; and the Improvement of Prosecution, Courts and Law Reform Task Force, California Council on Criminal Justice.

Wayne H. Bornhoft

Chief of Police
City of Fullerton

Wayne H. Bornhoft was born in 1916 and received his college education at Wayne State Teachers' College in Nebraska. He is a graduate of the 68th Session of the Federal Bureau of Investigation National

Academy. He is immediate past president of the California Peace Officers' Association and now a member of its Executive Committee; past president of the California Chapter of the FBI National Academy Associates; past president of the Police Chiefs' Section, League of California Cities and now on its Board of Directors; a member of the Executive Committee of the California Police Chiefs' Association, Inc.; and a member of the California Council on Criminal Justice and chairman of its Improvement of Detection and Apprehension of Criminals Task Force. He has served as Fullerton's police chief since 1957, after 15 years with the Pasadena Police Department.

John H. Finger

Attorney at Law
San Francisco

John H. Finger was born in 1913 and is now President of Hoberg, Finger, Brown & Abramson, a professional corporation specializing in the representation of plaintiffs in personal injury actions. He was President of the State Bar of California in 1967–8, having served on its Board of Governors from 1965 to 1968, and he recently chaired a Special State Bar Committee to draft no-fault insurance legislation. He is a past president of the Lawyers' Club of San Francisco and of the Judge Advocates Association. He received his college and law degrees from the University of California, and he has served on the Board of Visitors of Stanford University Law School and is presently on the Board of Visitors of the Judge Advocate General's School located at the University of Virginia. He is a Fellow of the American College of Trial Lawyers and of the American Bar Foundation, and a member of the American Bar Association House of Delegates.

Honorable William M. Gallagher

Judge of the Superior Court
Sacramento County

Judge William M. Gallagher was born in 1920 and received his undergraduate education at St. Mary's College, Moraga, California, from which he graduated in 1942. Following service in the Armed Forces, he received his law degree from Hastings College of the Law. After a period of private practice, he served as prosecuting attorney for the City of Sacramento, and was appointed to the Sacramento Municipal Court in 1961 by Governor Edmund G. Brown. In 1964 he was elected to the Sacramento Superior Court in a contested election, and he is presently serving his second six year term, as well as his third consecutive year as Presiding Judge of that court.

George R. McClenahan

Attorney at Law
San Diego

George R. McClenahan was born in 1924, graduated from the University of Indiana and Hastings College of Law, and was admitted to practice in 1951, starting as a Deputy District Attorney in Madera and San Diego Counties. He was part of the original faculty of the University of San Diego Law School where he instructed in criminal law. His practice for the last several years has been confined to the representation of plaintiffs in personal injury matters. He is a member of the American Trial Lawyers Association, a past president of the Western Trial Lawyers Association, and a member of the San Diego Chapter of the California Trial Lawyers Association. He is a past president of the San Diego Chapter of the American Board of Trial Advocates and is currently on the Executive Board of that organization. He is a member of the law firm of Casey, McClenahan, Fraley & Hauser of San Diego, California.

George M. Murchison

Certified Public Accountant
Long Beach

George M. Murchison is a Certified Public Accountant and President of Murchison & Hillman, Inc., a professional accounting corporation in Long Beach, California. Mr. Murchison graduated from the University of California at Los Angeles in 1958 and since that time has been actively engaged in the practice of public accounting with emphasis on financial and tax planning for individuals as well as business. He has served as a member of the Long Beach-Orange County Chapter of CPA's and the American Institute of CPA's, and he has participated on several statewide committees for the California Society of CPA's. He is also active in civic and community affairs.

Honorable Charles H. Older

Judge of the Superior Court
Los Angeles County

Judge Charles H. Older was born in 1917, received his A. B. from the University of California at Los Angeles, and graduated from the Law School at the University of Southern California. He was appointed to the Superior Court in 1967 after many years in private practice during which he was engaged principally in a wide variety of civil litigation before both state and federal trial and appellate courts and administra-

tive agencies. Since his appointment to the bench he has presided in a criminal department in the Central District of the Los Angeles County Superior Court.

Bennett W. Priest

Attorney at Law
Los Angeles

Bennett W. Priest was born in 1923 and received his preparatory education at the University of Southern California, from which he graduated in 1944, and his legal education from Stanford University, from which he graduated in 1949. He is a member of Phi Beta Kappa and the Order of the Coif. He was a member of the Board of Editors of the Stanford Law Review. He devotes his professional time almost exclusively to the handling of a very wide range of litigation, particularly in the civil business field. He is a partner in the firm of O'Melveny & Myers of Los Angeles, California.

ADVISORS

Honorable Robert J. Lagomarsino
Member of the Senate
Ventura

Honorable Jack R. Fenton
Member of the Assembly
Los Angeles

Herbert E. Ellingwood
Legal Affairs Secretary
Governor's Office
Sacramento

STAFF

Larry L. Sipes
Director and Counsel

Patrick J. Clark
Counsel

Charles G. McBurney
Counsel

Christine Shook
Secretary

THE WORK OF THE SELECT COMMITTEE ON TRIAL COURT DELAY

The Committee was appointed by Chief Justice Donald R. Wright on March 26, 1971, to investigate the causes of trial court delay in California and to recommend solutions to the people of California and the public officials concerned with our system of justice. The term of existence of the Committee was one year, from May 1, 1971 to May 1, 1972. During that year, the Committee met eleven times, and in order to utilize its limited time most effectively, the Committee formed three Subcommittees which met more frequently:

Civil	Judge William M. Gallagher (Chairman) Bennett W. Priest George R. McClenahan
Penal	Judge Charles H. Older (Chairman) Loren A. Beckley Wayne H. Bornhoft
Court Administration	Judge Homer B. Thompson (Chairman) John H. Finger George M. Murchison

The Committee was also assisted in its deliberations by the following officials designated by their respective governmental bodies to participate in the Committee's deliberations: Senator Robert Lagomarsino; Assemblyman Jack Fenton; and Mr. Herbert Ellingwood, Legal Affairs Secretary to the Governor of California.

The Committee maintained a fulltime professional staff: Larry L. Sipes, Director and Counsel to the Court Administration Subcommittee; Patrick J. Clark, Counsel to the Penal Subcommittee; and Charles G. McBurney, Counsel to the Civil Subcommittee. In addition, expert consultants were retained for assistance in selected areas.

The Committee based its deliberations and its recommendations on staff-prepared background materials, on consultants' reports regarding selected subjects, and on the experience and expertise of the Committee members and advisors. A bibliography of staff and consultants' reports is contained herein. In addition, no proposal was submitted for consideration by the full Committee until it had been evaluated by the appropriate Subcommittee and recommended for full Committee approval. Although confronted with a one-year timetable, the Committee in this manner attempted to insure that each change it recommended was preceded by thorough and informed research and deliberation.

The Committee has published five prior reports, and this final Report 6 is a compilation of all recommendations, along with the comments regarding those recommendations, which were contained in the Committee's five prior reports. These recommendations are designed to alleviate trial court congestion and delay and are the ultimate result of the Committee's consideration of numerous proposals, new and old, from which the Committee selected certain topics for study which were determined to be the most worthwhile in view of the many factors affecting the Committee's work, not the least of which were limited time and funds. The ultimate recommendations adopted by the Committee and published in its reports cover most but not all of the topics studied.

The Committee acknowledges with appreciation that its operations were funded by the Law Enforcement Assistance Administration through a grant by the California Council on Criminal Justice, supplemented to the extent of ten percent by State funds.

INTRODUCTION TO REPORT 6

In each of its five prior published reports, the Select Committee on Trial Court Delay set forth certain briefly stated recommendations designed to alleviate trial court delay and accompanied those recommendations with comments that expanded upon and described in detail the exact substance of each recommendation and gave the major considerations that prompted the Committee to make the recommendations. In this Report 6, all these previously published recommendations are set forth together in their short form on pages 11 through 20; these same recommendations along with their accompanying comments are set forth in their entirety on pages 21 through 140, as indicated in the table of contents above.

RECOMMENDATIONS

Penal Recommendations

EXPAND THE INFRACTION CATEGORY OF PUBLIC OFFENSES

Moving traffic violations of a non-serious nature, presently classified as misdemeanors, should be reclassified as infractions.

REVISE THE VOIR DIRE PROCEDURE FOR SELECTION OF A CRIMINAL JURY

Legislation should be enacted authorizing the voir dire questioning of prospective jurors exclusively by the trial judge in his discretion in criminal jury trials.

REDUCE JURY SIZE IN SELECTED CRIMINAL CASES

A criminal jury should be composed of twelve people in both the guilt and penalty phases of those felony prosecutions where an alleged offense is punishable with death, and in those felony prosecutions where an alleged offense is punishable with a maximum sentence of life imprisonment; a criminal jury should be composed of six people in those felony prosecutions where an alleged offense is neither punishable with death nor with a maximum sentence of life imprisonment; and a criminal jury should be composed of six people where the alleged offense is prosecuted as a misdemeanor.

A reduction in jury size from twelve members should be permitted during the course of a criminal trial, where a jury member has died or is discharged for illness or other good cause, in felony prosecutions where the maximum punishment for the alleged felony offense is life imprisonment, provided the number of jurors is not ultimately reduced below nine.

REVISE THE NUMBER OF AVAILABLE PEREMPTORY CHALLENGES IN CRIMINAL CASES

In criminal cases with a single defendant, the prosecution and the defense should each be entitled to a maximum number of twelve peremptory challenges in those prosecutions where

an alleged offense is punishable with death or with a maximum sentence of life imprisonment; the prosecution and the defense should each be entitled to a maximum number of six peremptory challenges in such prosecutions where an alleged offense is neither punishable with death nor with a maximum sentence of life imprisonment.

In criminal cases with multiple defendants, the defense should be entitled to twenty-four peremptory challenges in those prosecutions where an alleged offense is punishable with death or with a maximum sentence of life imprisonment, with the twenty-four challenges to be divided equally among the defendants, provided that each defendant should be entitled to a minimum of five such challenges, and the prosecution should be entitled to the number of challenges equal to the total number to which the defendants are entitled; in criminal cases with multiple defendants, the defense should be entitled to twelve peremptory challenges in those prosecutions where an alleged offense is punishable neither with death nor with a maximum sentence of life imprisonment, with the twelve challenges to be divided equally among the defendants, provided that each defendant should be entitled to a minimum of five such challenges, and the prosecution should be entitled to the number of challenges equal to the total number to which the defendants are entitled.

INSTITUTE STATEWIDE UNIFORMITY IN CERTAIN ASPECTS OF JURY SERVICE IN CRIMINAL CASES

Jurors should be called for service at random from the list of registered voters in each county.

A person called for jury service should be obligated to serve in one trial until completion or make four appearances, following which his name would be removed from the jury list for three years if he so requested.

Exemption from jury service should be reduced to an absolute minimum by excusing a juror only in a case of extreme, serious hardship and then only if recommended by an official designated by the Presiding Judge and approved by the Presiding Judge, or another judge designated by him.

Jurors should be compensated at the rate of $20.00 per day for each day they report; they should be reimbursed for the cost of transportation at the rate of 15 cents per mile each way to and from their homes; and they should be furnished with free parking or be reimbursed for the expense of parking.

Adequate jury assembly rooms should be furnished in which juror orientation is conducted and which, at a minimum, are provided with comfortable furniture, reading materials, access to food and beverages, rest rooms, public telephones, cards and other games, and television or radio.

A system should be instituted whereby a juror may volunteer to be available on one-hour notice by telephone, in which case he would not be obligated to actually appear in court until so notified.

AUTHORIZE MAJORITY VERDICTS IN SELECTED CRIMINAL CASES

A unanimous verdict should be required in both the guilt and penalty phases of those felony prosecutions where the alleged offense is punishable with death; however, a five-sixths majority of the jurors should be sufficient to return a verdict in those felony prosecutions where the alleged offense is not punishable with death, and in those prosecutions where the alleged offense is a misdemeanor.

REQUIRE CERTIFICATION OF COUNSEL FOR PARTICIPATION IN FELONY TRIAL PROCEEDINGS

A commission should be created to establish and administer a compulsory certification program for counsel who participate in felony trial proceedings, and to implement a decertification procedure for those certified counsel who subsequently demonstrate a lack of professional qualifications.

ENACT AN ALIBI STATUTE

A statutory procedure should be enacted to regulate mutual pretrial disclosure of the identity of witnesses who are expected to contradict or support an alibi defense at trial.

TRANSFER SELECTED CRIMINAL PROSECUTIONS FROM THE SUPERIOR COURT TO THE MUNICIPAL OR JUSTICE COURT

Superior Court judges should be given the discretion, upon the making of a motion pursuant to California Penal Code Section 995, to transfer an alternate felony-misdemeanor offense to the appropriate Municipal or Justice Court for prosecution as a misdemeanor if in the opinion of the Superior Court Judge the offense should be determined to be a misdemeanor by way of sentence in the event of a conviction or change of plea.

Civil Recommendations

PROCEDURES TO INDUCE MORE SETTLEMENTS OF CIVIL LITIGATION

I

A new section should be added to the Code of Civil Procedure providing that in all civil actions in the Superior Court in which money damages are sought, the parties shall enter into good faith pretrial settlement negotiations accompanied by written demands and offers filed with the clerk of the court, and that after trial, these demands and offers shall be presented to the court, which may in its discretion after a hearing award to any party, or apportion between the parties, all costs, attorneys' fees, expert witnesses' fees, or any of these, which were incurred after the demands and offers were filed, as well as interest on the amount of the judgment.

II

A new rule of court should be adopted requiring settlement conferences in all civil actions, except short causes, in Superior Courts consisting of more than two judges, to be held not more than four weeks and not less than three days prior to trial, with all attorneys, all parties, and a representative with authority to settle from all insurance companies required to attend, and with each party required to file all experts' reports, list all special damages, and make settlement offers or demands.

LIMITATION OF ORAL ARGUMENT IN SELECTED CIVIL MATTERS

A new rule of court should be adopted requiring that the following matters be submitted on written material filed, without appearances by counsel or parties, unless the court requests oral argument or unless a written request for oral argument is made by a party and granted in the discretion of the court for good cause shown: all law and motion matters and all orders to show cause, including demurrers, discovery motions, orders to show cause regarding preliminary injunctions and receivers, and preliminary motions and orders to show cause in domestic relations proceedings.

LIMITATION OF DISQUALIFICATION OF JUDGES FOR PREJUDICE PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 170.6

Code of Civil Procedure Section 170.6 should be amended to permit, in civil and criminal cases involving multiple parties, only one motion to disqualify to be made by each group of parties, such as all coplaintiffs, and then only if all of the parties in that group join in the motion.

SANCTIONS FOR FAILURE TO APPEAR AT TRIAL OR AT PRETRIAL, TRIAL SETTING, AND SETTLEMENT CONFERENCES

Code of Civil Procedure Section 581 and Rule of Court 217 should be amended to give the court discretion, on its own motion or on the motion of a party, (1) to dismiss the case of a plaintiff, or strike the answer of a defendant, who without good cause fails to appear for trial, or who appears and refuses to proceed or is unable to proceed, and (2) to impose other specified sanctions on a party who without good cause fails to prepare for, appear at, or participate in the pretrial conference, trial setting conference, settlement conference, or trial.

NO-FAULT AUTOMOBILE INSURANCE

Legislation should be enacted providing for compulsory no-fault automobile insurance in California, and the legislation should include the features set forth below:

1. *Every vehicle in California which is operated or designed to operate on a public highway and which is propelled by power other than muscle power should be required to be insured by a no-fault insurance policy.*

2. *The parties insured under each no-fault policy should be the driver and the occupants of the insured vehicle as well as all pedestrians injured by the operation and use of the insured vehicle.*

   a. *The driver should be insured whether he was operating the vehicle with or without the consent or authorization of the owner of the vehicle;*

   b. *Injured pedestrians should be insured so long as the vehicle caused the injury even if there was no physical contact between the pedestrian and the vehicle;*

   c. *The driver and occupants injured in an uninsured vehicle, and pedestrians injured by an uninsured vehicle, should be protected under an assigned risk program;*

   d. *Insurance companies doing business in California should be compelled to notify the State of cancellation of any no-fault policy.*

3. *The amount of coverage under each no-fault policy should be $10,000 for each injured party, and the coverage should include all economic loss (special damages) caused by the accident such as medical expenses, lost wages, property damage, funeral and burial expenses, the expense of hiring someone to perform services which the injured party would otherwise perform himself, survivors' benefits, and the like.*

4. *In addition to the reimbursement for the economic loss set forth in paragraph 3 above, an injured party should also be compensated within the $10,000 coverage limits for pain and suffering caused by the accident (general damages) in an amount equal to a percentage, to be prescribed by statute, of the total sum of his economic loss.*

5. *An injured party should be excluded from coverage and should not be entitled to compensation only if he was driving at the time of the accident with a revoked or suspended license to drive.*

6. *An injured party should have the right to file suit in court and recover damages against any person who negligently caused the injuries only if (1) the injured party's economic loss plus his general damages as computed in paragraph 4 above exceed $10,000, or (2) the injuries caused death, permanent, serious disfigurement, or permanent, serious loss of bodily function.*

   a. *The statute of limitations for personal injury and property damage claims should be extended to three years; and*

   b. *The no-fault insurance carrier should have a lien on his insured's recovery in any action against a third party, and that insurance carrier should participate proportionately in paying the insured's attorney's fees and costs in that action.*

THE CIVIL JURY SYSTEM

Constitutional amendments, legislation, and Rules of Court should be adopted to effect the following changes in the civil jury system:

1. *The right to a jury trial should be retained in all civil cases where it is presently available, except that there should be no right to a jury trial in eminent domain actions in which property is taken for a public use.*

2. *The size of the civil jury should be reduced from twelve to eight jurors, the present requirement for a verdict of a three-fourths majority (six out of eight jurors) should be retained, and the number of peremptory challenges to jurors should be reduced from eight to six per side in all cases.*

3. *There should be statewide uniformity in the following aspects of jury service:*

   a. *Jurors should be called for service at random from the list of registered voters in each county;*

b. A person called for jury service should be obligated to serve in one trial until completion or make four appearances, following which his name would be removed from the jury list for three years if he so requested;

c. Exemption from jury service should be reduced to an absolute minimum by excusing a juror only in a case of extreme, serious hardship and then only if recommended by an official designated by the Presiding Judge and approved by the Presiding Judge or another judge designated by him.

d. Jurors should be compensated at the rate of $20.00 per day for each day they report; they should be reimbursed for the cost of transportation at the rate of 15 cents per mile each way to and from their homes; and they should be furnished with free parking or be reimbursed for the expense of parking.

4. The Judicial Council should adopt Standards of Judicial Administration directing each county to:

a. Furnish adequate jury assembly rooms in which juror orientation is conducted and which, at a minimum, are provided with comfortable furniture, reading material, access to food and beverages, rest rooms, public telephones, cards and other games, and television or radio; and

b. Institute a system whereby a juror may volunteer to be available on one-hour notice by telephone, in which case he would not be obligated to actually appear in court until so notified.

Court Administration Recommendations

SUPERIOR COURT ADMINISTRATORS

Court administrators should be employed by the larger Superior Courts in California. (To implement this recommendation the Committee endorsed Senate Bill 804 which was introduced in the 1971 Session of the Legislature and passed into law that year.)

DUTIES OF PRESIDING JUDGES

The duties of presiding judges set forth in the Judicial Council's recommended standards of judicial administration should, with minor modifications, be adopted by the Judicial Council as a rule of court.

UNIFIED TRIAL COURT

A unified trial court system should be adopted in California, and it should incorporate the following major features which are discussed in detail herein:

Administration. The trial court system would be centrally administered with appointment by the Chief Justice of a Chief Judge in each county, subject to the recommendations set forth below for Los Angeles County and counties with small caseloads. The State also would be divided into five regions in which the Chief Justice would appoint an Administrative Judge to supervise and assist the courts within the region. All of these appointed terms would be for one year and would be renewable. Provision would be made for an administrator in each of the five regions as well as an administrator in each county. Los Angeles County by itself would become one of the five administrative regions, divided into nine districts paralleling the existing branch court system with an Administrative Judge and administrator for the entire County and a Chief Judge and administrator in each of the nine districts. In addition, counties with low volume caseloads would be consolidated for administrative purposes.

Court Structure. A single trial court would be created in each county encompassing the present jurisdiction of Justice, Municipal and Superior Courts. If a county presently has a Municipal Court or Justice Court Judge who is a qualified attorney there would be two classes of judges: Superior Court Judges (incumbent Superior Court Judges) and Associate Superior Court Judges (incumbent Municipal Court Judges and Justice Court Judges who have been members of the California Bar for at least 5 years). The Chief Judge could assign Associate Judges to sit on all matters on a case by case basis, subject to the recommendation that Associate Judges generally be responsible for matters currently within the jurisdiction of Municipal Courts.

The Area Administrative Judge could appoint Associate Judges to sit as Superior Court Judges for semi-permanent terms from one month to one year, during which time they would receive the salary of a Superior Court Judge. Counties with two levels of judges would gradually become completely unified with one level of judge by a prohibition against appointments to fill future vacancies in Associate Judge positions and by a prohibition against the future creation of new Associate Judge positions.

Commissioners. The position of Commissioner would be created as the sole type of subordinate judicial position (encompassing present commissioners, juvenile court referees, traffic court referees, non-attorney justice court judges, attorney justice court judges admitted to practice less than five years or those unwilling to become full-time judges) to perform subordinate judicial duties in fields such as traffic, small claims, minor misdemeanors, pr ate and family relations.

Staff. Except for judges, all judicial and non-judicial court personnel such as administrators, clerks, deputy clerks, bailiffs, court reporters, jury commissioners, marshals, and legal secretaries would become court employees under a statewide system in which the Administrative Office of the Courts would classify positions, prescribe qualifications, set salaries, and provide for selection, promotion, dismissal and retirement.

Financing. The operating costs of the court system would be assumed by the State including salaries and fringe benefits of all personnel, services, supplies, equipment, training costs, and any administrative expenses. Capital costs of the trial court system would continue to be funded by the counties.

CALENDAR MANAGEMENT

Rules of Court and Standards of Judicial Administration of statewide applicability should be adopted establishing certain uniform procedures, timetables, and systems regarding trial dates, certificates of readiness, pretrial and trial setting conferences, settlement conferences, continuances, court calendars, utilization of judges, penal proceedings, and court administration, the details of which are set forth herein.

COMMENTS

Penal Recommendations

EXPAND THE INFRACTION CATEGORY OF PUBLIC OFFENSES

California Penal Code Section 16 divides crimes into three categories, namely felonies, misdemeanors, and infractions. A public offense which has been categorized as an infraction is deemed to be a relatively minimal violation in terms of the type of harm involved and its impact on the public. Due to its petty nature, an infraction is not punishable with imprisonment. Since a defendant convicted of an infraction may not be incarcerated, public policy considerations have dictated that a person charged with an infraction is not entitled to a jury trial or to be represented by the public defender or other counsel appointed at public expense.

Judicial efficiency is a major impetus for reclassifying certain minor misdemeanor offenses as infractions. The use of jury trials in connection with minor violations currently consumes courtroom time which could more appropriately be used for the disposition of serious public offenses and the litigation of civil disputes. Eliminating jury trials in these cases would substantially alleviate court congestion in California. Although this suggestion may seem to conflict with traditional concepts of justice in which we presume that anyone charged with a criminal violation should have the right to a jury trial, it appears reasonable to conclude that the option to demand a jury trial is not necessary where the accused is not faced with imprisonment and has the right to be tried before an impartial judge with the availability of review upon appeal. This is particularly evident in light of the significant saving in court time which results when such minor offenses are tried before a judge rather than a jury.

A number of minor traffic violations are amenable to reclasssification as infractions. California Vehicle Code Section 40000 presently categorizes parking, equipment and other minor vehicle violations as infractions. However, a number of traffic violations are presently classified as misdemeanors. The Committee recommends that:

Moving traffic violations of a non-serious nature, presently classified as misdemeanors, should be reclassified as infractions.

The Committee has concluded Section 40000 should be amended so that the infractions classification would be extended to cover all but the more serious violations of the rules of the road contained in Divi-

sion 11 of the Vehicle Code. Among the traffic regulations which would thereby be reclassified are those pertaining to overtaking other vehicles, and compliance with traffic signs, speed laws, and rights-of-way. It is felt that the attachment of relatively slight penalties to such offenses is warranted when compared to the much higher cost to the State in terms of money and time when prosecuting such offenses and providing a jury trial and appointed counsel.

This recommendation recognizes that certain traffic violations pose a substantial danger to the public and should continue to be classified as misdemeanors. Such violations as driving under the influence of an intoxicant and reckless driving constitute serious threats to the public safety and warrant the available sanction of imprisonment. Additionally, the Committee recognizes that chronic violators of minor vehicle regulations thereby indicate a deliberate disregard for public safety. Such conduct indicates that less serious sanctions, such as fines and attendance at traffic school, would not serve as sufficient deterrents. Thus, if a defendant has been convicted of three or more traffic infractions within a preceding twelve month period, a subsequent violation which would normally have been treated as an infraction should instead be deemed a misdemeanor if the prior violations are alleged in the accusatory pleading.

The Committee therefore recommends that California Vehicle Code Section 40000 be amended to provide as follows:

> 40000. Except as provided in this section, it is unlawful and constitutes an infraction for any person to violate, or to fail to comply with, any provision of this code, or any local ordinance adopted pursuant to this code.
>
> (a) A violation expressly declared to be a felony, or a public offense which is punishable, in the discretion of the court, either as a felony or misdemeanor, or a wilful violation of a court order which is punishable as contempt pursuant to subdivision (a) of Section 42003 is not an infraction.
>
> (b) A violation of any of the following provisions, constitutes a misdemeanor:
>
> Section 20, relating to false statements.
> Section 27, relating to impersonating a member of the California Highway Patrol.
> Section 31, relating to giving false information.
> Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.
> Section 2801, relating to failure to obey a fireman's lawful order.

Section 2803, relating to unlawful vehicle or load.
Section 2815, relating to failure to obey a crossing guard's traffic signal or direction.
Section 5901, relating to dealers giving notice.
Section 10501, relating to false report of vehicle theft.
Sections 10750 and 10751, relating to altered or defaced vehicle identifying numbers.
Section 10851.5, relating to theft of binder chains.
Sections 10852 and 10853, relating to injuring or tampering with a vehicle.
Section 10854, relating to unlawful use of stored vehicle.
Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.
Section 12500, subdivision (a), relating to unlicensed drivers.
Section 12951, subdivision (b), relating to refusal to display license.
Section 13004, relating to unlawful use of identification card.
Section 14601, relating to driving when suspended.
Section 14601.1, relating to driving when suspended.
Section 14610, relating to unlawful use of driver's license.
Section 15501, relating to use of false or fraudulent license by minor.
Section 16560, relating to interstate highway carriers.
Section 20002, relating to duties at accidents.
Sections 23102 and 23102.5, relating to driving under the influence.
Section 23103 and 23104, relating to reckless driving.
Section 23106, relating to driving under the influence.
Section 23109, relating to speed contests or exhibitions.
Section 23110, subdivision (a), relating to throwing at vehicles.
Section 23253, relating to officers on vehicular crossings.
Section 23332, relating to trespassing.
Division 14 (commencing with Section 31600), relating to transportation of explosives.
Division 14.5 (commencing with Section 33000), relating to transportation of radioactive materials.
Division 14.7 (commencing with Section 34001), relating to flammable liquids.
Section 34506, subdivision (a), relating to transportation of hazardous materials.
Section 40005, relating to owner's responsibility.
Section 40504, relating to false signatures.

Section 40508, relating to failure to appear or to pay fine.
Section 40519, relating to failure to appear.
Section 42005, relating to failure to attend traffic school.

(c) Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are alleged in the accusatory pleading. For this purpose a bail forfeiture shall be deemed to be a conviction of the offense charged.

REVISE THE VOIR DIRE PROCEDURE FOR SELECTION OF A CRIMINAL JURY

The Committee has concluded that the Rules of Court recently adopted by the Judicial Council with respect to voir dire examination of jurors in civil cases should be made applicable to criminal cases insofar as appropriate legislation would specifically grant the trial judge discretion to regulate the selection of a criminal jury. It is felt that such discretion would eliminate certain voir dire excesses and thereby expedite the judicial process. The Committee therefore recommends that:

Legislation should be enacted authorizing the voir dire questioning of prospective jurors exclusively by the trial judge in his discretion in criminal jury trials.

Pursuant to this recommendation, California Penal Code Section 1078 should be amended to provide as follows:

1078. In criminal jury trials, the trial judge shall examine the prospective jurors to select a fair and impartial jury. He shall permit counsel for each party to submit additional written questions which he shall put to the jurors as he deems proper, or for good cause, he may permit counsel to supplement the trial judge's oral examination within limits prescribed by him.

This procedure would encourage a more efficient method of jury selection. The trial judge could confer with counsel prior to trial and select appropriate questions in light of the circumstances of each particular case. Courtroom delays resulting from objections to proffered questions would be eliminated without impairing the selection of a fair and impartial jury. The occasional conscious or unconscious tendencies of counsel in our adversary system to improperly pre-instruct on the law, to indoctrinate the jury, and to explore other improper areas and subjects also would be eliminated.

The trial judge would be allowed to foreclose oral questioning of prospective jurors by counsel. However, the judge could permit such questioning if the circumstances of the particular case indicated that oral questioning by counsel would expedite the proceedings by assisting the court in selecting an impartial jury.

The California Judicial Council has adopted rules that would apply a similar procedure to jury selection in civil cases. The Judicial Council concluded that such a method would expedite the jury selection process without impairing the right of litigants to a fair and impartial jury. The Committee has concluded that the same rationale is persuasive in criminal as well as civil jury trials.

REDUCE JURY SIZE IN SELECTED CRIMINAL CASES

Traditionally, twelve people have been selected in criminal cases to collectively serve as a jury. However, the United States Supreme Court has recently held that a jury of six people is constitutionally sufficient in a criminal trial.* The Committee has therefore concluded that the number of jurors should be adjusted to reflect the seriousness of the offense and recommends that:

A criminal jury should be composed of twelve people in both the guilt and penalty phases of those felony prosecutions where an alleged offense is punishable with death, and in those felony prosecutions where an alleged offense is punishable with a maximum sentence of life imprisonment; a criminal jury should be composed of six people in those felony prosecutions where an alleged offense is neither punishable with death nor with a maximum sentence of life imprisonment; and a criminal jury should be composed of six people where the alleged offense is prosecuted as a misdemeanor.

The use of smaller juries in selected criminal cases would allow the judicial system to maximize the use of existing resources by contributing to time and cost efficiency. The present congestion in California trial courts would be curtailed since the resultant time saving would allow more criminal cases to be decided in accordance with the constitutional provisions regarding a speedy trial. Thus, the public policy encouraging the prompt disposition of criminal cases could be more effectively accomplished with the use of smaller juries. At the same time, a six-member jury could reliably perform its fact-finding function in reaching a verdict while retaining the fundamental safeguards for both the defendant and the people.

* *Williams* v. *Florida* (1970), 399 U.S. 78, 26 L.Ed.2d 446, 90 S. Ct. 1893.

In recommending that the jury be composed of twelve people in those felony prosecutions where an alleged offense is punishable with a maximum sentence of life imprisonment, but not death, the Committee has further concluded that the trial in such cases should continue where a jury member has died or has been discharged for illness or any other valid reason, providing the number of remaining jurors is not reduced below nine. Therefore, the Committee also recommends that:

A reduction in jury size from twelve members should be permitted during the course of a criminal trial, where a jury member has died or is discharged for illness or for other good cause, in felony prosecutions where the maximum punishment for the alleged felony offense is life imprisonment, provided the number of jurors is not ultimately reduced below nine.

This provision would reduce, if not eliminate, the need for alternate jurors in such cases. The jury would normally be composed of twelve members but the trial could continue provided not more than three of the original twelve jurors were incapable of hearing the entire case.

In accordance with the aforementioned recommendations, the Committee proposes that the following statutory amendments to the California Penal Code be made:

1. Section 1046 of the Penal Code be amended to read:
1046.

(a) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

(b) The number of trial jurors shall be 12 in felony cases where a capital offense is charged.

(c) The number of trial jurors shall be 12 in felony cases where the maximum punishment is life imprisonment. However, where in the course of such felony cases any member of the jury dies or is discharged by the court due either to illness rendering such member incapable of continuing to act or for any other good cause, but the number of its members is not reduced below 9, the jury shall nevertheless be considered as remaining and properly constituted for all the purposes of that trial and the trial shall proceed and a verdict may be given accordingly.

(d) The number of trial jurors shall be 6 in felony cases which are not punishable as capital offenses or with a maximum sentence of life imprisonment.

(e) The number of trial jurors shall be 6 in misdemeanor cases.

2. Section 1123 of the Penal Code be amended to read:
1123.

If before the jury has returned its verdict into court, a juror becomes sick or upon other good cause shown to the court is found to be unable to perform his duty, the court may order him to be discharged. If any alternate jurors have been selected as provided by law, one of them shall be designated by the court to take the place of the juror so discharged. Except as provided in Section 1046 (c) of this Code, if after all alternate jurors have been made regular jurors, or if there be no alternate juror, a juror becomes sick or otherwise unable to perform his duty and has been discharged by the court as provided herein, the jury shall be discharged and a new jury then or afterwards impaneled, and the cause may be again tried.

REVISE THE NUMBER OF AVAILABLE PEREMPTORY CHALLENGES IN CRIMINAL CASES

The Committee has reviewed the use of peremptory challenges to prospective jurors and has decided that the number of these challenges available in criminal cases should be revised to meet the practical needs of each party while allowing the most efficient use of judicial resources. It is believed that the number of peremptory challenges should depend upon the seriousness of the charge and the number of defendants being prosecuted in each criminal action. Pursuant to these guidelines, the Committee recommends that:

In criminal cases with a single defendant, the prosecution and the defense should each be entitled to a maximum number of twelve peremptory challenges in those prosecutions where an alleged offense is punishable with death or with a maximum sentence of life imprisonment; the prosecution and the defense should each be entitled to a maximum number of six peremptory challenges in such prosecutions where an alleged offense is neither punishable with death nor with a maximum sentence of life imprisonment.

The peremptory challenge is an important trial mechanism for both the State and the defendant since it enables either party to remove from the jury a person who has been unsuccessfully challenged for cause or any person whom either party may desire to excuse without the necessity of declaring a reason. At the same time it is necessary to limit the number of these challenges to avoid unnecessarily extended trials. The purpose of the jury selection process is to eliminate persons disqualified by law and to obtain a fair and impartial jury. The Com-

mittee believes that this recommendation would encourage the attainment of such purposes. Under the recommended changes each party could still excuse those prospective jurors who appear unduly sympathetic to the cause of the other party.

The recommended number of peremptory challenges corresponds with the number of jurors suggested by the Committee in its previous recommendation in the report dealing with jury size. Thus, where there are twelve jurors, each party should be allowed twelve peremptory challenges, while where there are six jurors each side should be allowed six peremptory challenges. In most cases the proposed recommendation would result in a higher ratio of peremptory challenges to the size of the jury than is the case under the present system. The availability of one peremptory challenge for each juror to be seated in the particular case is reasonable in the view of the Committee, especially in light of the unlimited number of challenges for cause permitted each party in a criminal case.

Consolidating the recommendations regarding jury size and the number of peremptory challenges available to the prosecution and the defense in criminal cases with a single defendant produces the following rules:

Offense	*Jury size*	*Number of Peremptory Challenges*
Felony offenses punishable with death	12	12
Felony offenses punishable with a maximum sentence of life imprisonment	12	12
Felony offenses not punishable with death or a maximum sentence of life imprisonment	6	6
Misdemeanor offenses	6	6

In criminal cases with multiple defendants, the number of peremptory challenges should likewise correspond to the seriousness of the offense. The Committee further recommends that:

In criminal cases with multiple defendants, the defense should be entitled to twenty-four peremptory challenges in those prosecutions where an alleged offense is punishable with death or with a maximum sentence of life imprisonment, with the twenty-four challenges to be divided equally among the defendants, provided that each defendant should be entitled to a minimum of five such challenges, and the prosecution should be entitled to the number of challenges equal to the total number to which the defendants are entitled; in criminal cases with multiple defendants, the defense should be entitled to twelve peremptory challenges in those prosecutions where an alleged offense is punishable neither with death nor with a maximum sentence of life imprisonment, with the twelve challenges to be divided equally among the defendants, provided that each defendant should be entitled to a minimum of five such challenges, and the prosecution should be entitled to the number of challenges equal to the total number to which the defendants are entitled.

The implementation of this recommendation would eliminate the use of joint challenges by the defendants. Instead, it would authorize the exclusive use of individual challenges and thereby eliminate conferences and sources of friction among defendants. In most cases, each co-defendant would be entitled to more individual challenges than under the present system and in no event would the number of individual challenges be reduced.

Consolidating the recommendations regarding jury size and the number of peremptory challenges available to the prosecution and the defense in criminal cases with multiple defendants produces the following rules:

Offense	*Jury size*	*Number of Peremptory Challenges*
Felony offenses punishable with death	12	24 (but each defendant entitled to a minimum of 5)
Felony offenses punishable with a maximum sentence of life imprisonment	12	24 (but each defendant entitled to a minimum of 5)
Felony offenses not punishable with death or a maximum sentence of life imprisonment	6	12 (but each defendant entitled to a minimum of 5)

Offense	*Jury size*	*Number of Peremptory Challenges*
Misdemeanor offenses	6	12 (but each defendant entitled to a minimum of 5)

In summary, a total of twelve or twenty-four peremptory challenges would be allocated to the prosecution and the defense depending upon the seriousness of the criminal charge. However, these numbers would increase where there are multiple defendants. For example, should seven defendants be charged with a criminal offense which is punishable with a maximum sentence of life imprisonment, the defense and the prosecution would each be entitled to a total of thirty-five challenges since each defendant is entitled to a minimum number of five individual challenges. It is believed by the Committee that the recommended changes regarding peremptory challenges would adequately protect all parties while at the same time permitting the more expeditious selection of a fair and impartial jury.

In accordance with the aforementioned recommendations, the Committee proposes that the following statutory amendments be made:

1. Section 1070 of the Penal Code would be amended to read:

   1070. If the offense charged be punishable with death or with a maximum sentence of imprisonment in the state prison for life, the defendant is entitled to twelve and the state to twelve peremptory challenges. On a trial for any other offense, the defendant is entitled to six and the state to six peremptory challenges.

2. Section 1070.5 of the Penal Code would be amended to read:

   1070.5. When two or more defendants are jointly tried for a public offense punishable with death or with a maximum sentence of imprisonment in the state prison for life, the defendants shall be entitled to twenty-four peremptory challenges to be divided equally among the defendants so that the number of defendants shall be divided into the twenty-four and each defendant shall receive the number of challenges equal to that quotient without any remainder, but in no event shall each defendant be entitled to less than five such challenges. When two or more defendants are jointly tried for any other public offense, the defendants shall be entitled to twelve peremptory challenges to be divided equally among the defendants so that the number of defendants shall be divided into the twelve and each defendant shall receive the number of challenges equal to that quotient without any remainder, but in no event shall each defendant be entitled to less than five such challenges. Each

defendant shall exercise such challenges individually and not jointly. In each case where two or more defendants are jointly tried for any public offense, the state shall be entitled to the number of peremptory challenges equal to the total number of all the peremptory challenges to which the defendants shall be entitled.

INSTITUTE STATEWIDE UNIFORMITY IN CERTAIN ASPECTS OF JURY SERVICE IN CRIMINAL CASES

The Committee has concluded that jury service in criminal cases should be made more attractive and acceptable to a broader base of citizens, thereby encouraging the use of jury panels that are more representative of the various communities. It is therefore recommended that there be statewide uniformity in the following aspects of jury service in criminal cases:

Jurors should be called for service at random from the list of registered voters in each county;

A person called for jury service should be obligated to serve in one trial until completion or make four appearances, following which his name would be removed from the jury list for three years if he so requested;

Exemption from jury service should be reduced to an absolute minimum by excusing a juror only in a case of extreme, serious hardship and then only if recommended by an official designated by the Presiding Judge and approved by the Presiding Judge, or another judge designated by him;

Jurors should be compensated at the rate of $20.00 per day for each day they report; they should be reimbursed for the cost of transportation at the rate of 15 cents per mile each way to and from their homes; and they should be furnished with free parking or be reimbursed for the expense of parking.

To insure further statewide uniformity in certain aspects of jury service in criminal cases, the Committee recommends that the Judicial Council adopt Standards of Judicial Administration directing each county to provide the following services:

Adequate jury assembly rooms should be furnished in which juror orientation is conducted and which, at a minimum, are provided with comfortable furniture, reading materials, access to food and beverages, rest rooms, public telephones, cards and other games, and television or radio;

A system should be instituted whereby a juror may volunteer to be available on one-hour notice by telephone, in which case he would not be obligated to actually appear in court until so notified.

The Committee believes that whether or not there is to be a reduction in jury size, there should be an effort to improve the representative nature of the jury panel so that it more closely mirrors the cross-sectional composition of the community. Of course, if jury size is reduced, the need for this improvement is greater. At present, there is no statewide uniformity regarding the qualifications for and exemptions from jury service. Potential jurors are often excluded before they reach the courtroom because they are "working people", housewives with children, students, or the like. The result is often a jury panel composed of retired persons, persons whose employer is willing to continue their income while they serve as jurors, and others able to shoulder the financial burden of jury service. In short, the present system imposes too great an economic and personal hardship upon individuals to permit a representative cross-section of a community to serve.

The Committee believes that the above recommendations will broaden and improve the representative nature of the jury panel from which individual juries are selected. These recommendations are designed to more equitably distribute the burden of jury service, to reduce the financial burden of jury service, and therefore justifiably to restrict exemption from jury service. Only if potential jurors are called for service from a representative sample of the community, such as the list of registered voters, and only if exemption from jury service is minimized, will the jury panel be most representative of the community and therefore most capable of performing its designated function.

It is the conclusion of the Committee that the aforementioned recommendations regarding uniformity should also apply to jury service in civil cases, and similar recommendations are so stated in Report 5 of the Committee which deals with the civil jury system among other topics.

AUTHORIZE MAJORITY VERDICTS IN SELECTED CRIMINAL CASES

Currently, California law requires that jurors in a criminal case agree unanimously prior to returning a verdict. The Committee has studied the use of unanimous verdicts in criminal cases and has concluded that:

> **A unanimous verdict should be required in both the guilt and penalty phases of those felony prosecutions where the alleged offense is punishable with death; however, a five-sixths majority of the jurors should be sufficient to return a verdict in those felony prosecutions where the alleged offense is not punishable with death, and in those prosecutions where the alleged offense is a misdemeanor.**

If such a majority verdict were returned, the foreman of the jury would announce the verdict in open court and the jury could thereafter be polled at the request of any party.

The Committee has previously recommended in this report that a reduction in jury size to nine members should be permitted under specified circumstances where the maximum punishment for an alleged felony offense was life imprisonment. Without a reduction in size, five-sixths or ten of the jurors could return a verdict. Following a reduction in jury size, where eleven jurors remained and ten of them agreed upon a verdict or where ten jurors remained and nine of them agreed upon a verdict, such a verdict in each case could be accepted without the necessity of unanimity. However, if the jury were reduced to nine people, a unanimous verdict would be required.

In reaching these conclusions regarding majority verdicts, the Committee determined that the necessity of repeating particular trials due to the disagreement of one or two jurors should be eliminated and that duplication would thereby be curbed in the California trial courts.

Consolidating the recommendations regarding jury size and the extent of agreement required by criminal juries produces the following rules:

Offense	*Jury Size*	*Required Agreement Among Jury Members*
Felony offenses punishable with death (both guilt and penalty phases of capital cases)	12	Unanimous
Felony offenses punishable with a maximum sentence of life imprisonment	12 (may be reduced to 9)	Five-sixths or 10 (if reduced, verdicts of 10-1, 9-1, or the unanimous agreement of 9 would be sufficient)
Felony offenses not punishable with death or a maximum sentence of life imprisonment	6	Five-sixths or 5
Misdemeanor offenses	6	Five-sixths or 5

The Committee therefore proposes that the following statutory amendments be made:

1. Section 1147.5 be added to the Penal Code to read:

1147.5. (a) Except as otherwise provided in this section, the jury may return a verdict only when not less than five-sixths of them agree upon the verdict.

(b) In capital cases the verdict of the jury shall be unanimous in determining guilt or innocence and in further proceedings on the issue of penalty which are had by the jury under Section 190.1.

(c) In felony cases where the maximum punishment is life imprisonment, the verdict of the jury need not be unanimous if

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in such case where there are twelve or eleven jurors, ten of them agree on the verdict; or in such a case where there are ten jurors, nine of them agree on a verdict; however in such a case where there are nine jurors, the verdict of the jury must be unanimous.

(d) A court shall not accept a majority verdict as provided in this section unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.

2. Section 1163 of the Penal Code be amended to read:

1163. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of any party, in which case they shall severally be asked whether it is their verdict, and if the number of jurors required to return a verdict do not answer in the positive, the jury shall be sent out for further deliberation.

3. Section 1164 of the Penal Code be amended to read:

1164. When the verdict given is such as the court may receive, the clerk, or if there is no clerk, the judge or justice, shall record it in full upon the minutes, and if requested by any party shall read it to the jury, and inquire of them whether it is their verdict. If the number of jurors required to return the verdict does not agree, the fact shall be entered upon the minutes and the jury again sent out; but if no such disagreement is expressed, the verdict is complete, and the jury shall be discharged from the case.

In addition to statutory changes, an amendment to the California Constitution would be necessary to implement the foregoing recommendations regarding jury size and the use of majority verdicts. Therefore, the Committee recommends that Article I, Section 7 of the California Constitution be amended to read as follows:

Sec. 7. The right of trial by jury shall be secured to all, and remain inviolate.

In criminal actions in which a trial by jury is secured by this section, there shall be twelve jurors in those felony cases punishable as a capital offense or with a maximum punishment of life imprisonment, except that the number of jurors may be reduced to a minimum of nine for good cause as provided by statute in felony cases with a maximum punishment of life imprisonment. There shall be six jurors in felony cases not punishable as a capital offense or with a maximum punishment of life imprisonment. There shall be six jurors in misdemeanor cases.

The Legislature may provide for the number of jurors necessary for a jury to render a verdict in criminal cases, except that in both

the guilt and penalty phases of a capital case, a unanimous verdict shall be required.

In those civil actions in which a jury trial is secured by this section, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court, and three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, by the consent of both parties, expressed in open court by the defendant and his counsel, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law.

REQUIRE CERTIFICATION OF COUNSEL FOR PARTICIPATION IN FELONY TRIAL PROCEEDINGS

Human life and liberty are rights of fundamental importance and deserve the most stringent safeguards against unwarranted infringement. Since criminal actions directly affect these rights, the Committee believes that only experienced and competent counsel should participate in the more serious penal proceedings, and has concluded that:

A commission should be created to establish and administer a compulsory certification program for counsel who participate in felony trial proceedings, and to implement a decertification procedure for those certified counsel who subsequently demonstrate a lack of professional qualifications.

The Committee agrees in principle that such a commission should be given the authority and direction to establish and implement a certification program for counsel which would establish appropriate qualifications and require that counsel be so certified prior to participating in felony trial proceedings.

The Committee recommends that the commission be composed of attorneys and judges. Such a commission could administer the certification program and establish meaningful procedures whereby trial judges, clients and other interested parties could lodge complaints against certified counsel leading to hearings and appropriate determinations upon such complaints.

There is currently a compelling need for qualified criminal attorneys to assure that the system of criminal justice will operate in an efficient and just manner. This objective is thwarted when incompetent counsel are allowed to participate in serious criminal cases. When experienced and knowledgeable attorneys participate in trial proceedings, such time-consuming procedures as inept presentation of evidence and disruptive tactics are usually eliminated. This in turn decreases the amount of courtroom time devoted to each particular case and allows a larger

number of criminal cases to be decided in conformance with the constitutional provisions regarding a speedy trial.

A certification program would not only expedite courtroom proceedings while assuring a just disposition, but would help protect both criminal defendants and the public from ineffective representation by counsel. Currently, unnecessary time is spent both in prolonged trials and retrials following hung juries or appellate reversals. The availability of qualified defense and prosecution counsel would reduce the likelihood of repetitious trials, prolonged incarceration of criminal defendants, and appellate reversals caused by an inadequate trial defense.

The Committee has recommended that only certified attorneys should conduct felony trials and pretrial matters in the Superior Court. However, certification would not be a prerequisite to association with certified counsel in felony trials or such felony pretrial hearings. A distinction between felony and misdemeanor cases has been made because the more complex and serious cases are felony prosecutions and it is felt that both the public and the individual defendants are entitled to the ablest counsel in these cases.

The Committee has also concluded that a decertification procedure should be established in conjunction with the certification program to assure that only competent attorneys retain their certification. Under this procedure, complaints could be lodged by trial judges, clients and other interested parties against certified counsel on the basis of a demonstrated lack of professional qualifications. This would eliminate the need for periodic re-evaluation of those attorneys who were competent and above reproach.

It is the Committee's expectation that the Legislature would create and that the California State Bar would administer a compulsory certification program that would be meaningful in attacking the problem of trial court delay. However, if such a program could not effectively evolve it is felt that an independent commission should be established to implement the recommended certification program.

ENACT AN ALIBI STATUTE

The Committee has concluded that in the course of pretrial discovery proceedings, the prosecution should be entitled to obtain the names and addresses of defense alibi witnesses, other than the defendant himself, who are expected to testify at trial, and conversely that the defense should be entitled to obtain the names and addresses of prosecution witnesses expected to testify at trial to establish the defendant's presence at the scene of the alleged crime or to rebut the testimony of defense alibi witnesses. This proposal should promote orderly, expeditious and fair determination of criminal charges. It is therefore recommended that:

A statutory procedure should be enacted to regulate mutual pretrial disclosure of the identity of witnesses who are expected to contradict or support an alibi defense at trial.

Such legislation would allow both the prosecution and defense to be thoroughly prepared to litigate a disputed issue as to the defendant's location at the time of the alleged crime.

The enactment of such a statute would expedite courtroom proceedings by obviating the need for continuances or delaying maneuvers to verify the testimony of a witness regarding the defendant's presence or absence at the scene of the alleged crime. The need for unnecessarily extended cross-examination would be eliminated by allowing both the prosecution and defense to investigate this issue prior to trial. In the absence of such a statute, counsel frequently is required to extend his cross-examination due to the element of surprise such testimony may inject into the trial. In addition, this proposal might obviate the need for a trial in certain cases should pretrial investigation establish the accuracy and reliability of a prospective witness.

The Committee, for these reasons, urges adoption of a new Section 1028 in the Penal Code to provide as follows:

1028. As used in this chapter, "alibi evidence" means evidence that the defendant in a criminal action was, at the time specified in the demand for a notice of alibi, at a place other than the place specified in the demand; but "alibi evidence" does not include testimony of the defendant himself as to an alibi.

1028.1. Not less than 15 days before the day set for the omnibus hearing, the prosecuting attorney may serve on the defendant or his attorney and file a demand that the defendant serve and file a notice of alibi if the defendant is to rely in any way upon alibi evidence at the trial. The demand shall:

(a) State the time and place that the prosecuting attorney intends to establish at the trial as the time when and place where the defendant participated in or committed the crime. If the prosecuting attorney intends to establish more than one time and place where the defendant participated in or committed the crime, the demand shall state each such time and place.

(b) State the name and residence or business address of each witness upon whom the prosecuting attorney intends to rely to establish the defendant's presence at each time and place specified in the demand.

(c) State the defendant is required by Chapter 4.5 (commencing with Section 1028) of Title 6 of Part 2 of the Penal Code to serve and file a notice of alibi if he is to rely in any way upon alibi evidence at the trial.

(d) State that the defendant need not serve or file a notice of alibi if he is to rely only upon his own testimony to establish an alibi.

(e) Be signed by the prosecuting attorney.

1028.2. If a demand for a notice of alibi is served pursuant to this chapter and the defendant is to rely in any way upon alibi evidence, he shall, not less than 10 days before the day set for the omnibus hearing, serve on the prosecuting attorney and file a notice of alibi which shall:

(a) State the place or places where the defendant claims to have been at the time or times stated in the demand.

(b) State the name and residence or business address of each witness upon whom the defendant intends to rely for alibi evidence.

(c) State that the prosecuting attorney is required by Chapter 4.5 (commencing with Section 1028) of Title 6 of Part 2 of the Penal Code to serve and file a notice of alibi rebuttal if he is to rely in any way upon further alibi rebuttal evidence at the trial.

(d) Be signed by the defendant or his attorney.

1028.3. If a notice of alibi is served pursuant to this chapter and the prosecuting attorney is to rely in any way upon further evidence to rebut the defendant's alibi evidence, he shall, not less than 5 days before the day set for the omnibus hearing, serve on the defendant or his attorney and file a notice of alibi rebuttal which shall:

(a) State the time and place that the prosecuting attorney intends to establish at the trial as the time when and place where each witness stated in the defendant's notice of alibi was located at the time or times and place or places when the defendant allegedly participated in or committed the crime, provided such time or place differs from the time or place specified by the defendant in the notice of alibi, to discredit such alibi evidence upon which the defendant intends to rely at the trial.

(b) State the name and residence or business address of each witness upon whom the prosecuting attorney intends to rely for

rebuttal evidence to discredit the defendant's alibi evidence as provided in subsection (a) above.

(c) Be signed by the prosecuting attorney.

1028.4. At any time before the omnibus hearing, the court before which the criminal action is pending may, in its discretion, upon good cause shown:

(a) Order that the time of service of the notice of alibi or the notice of alibi rebuttal be shortened.

(b) Authorize or require the amendment of the demand for a notice of alibi, or the amendment of the notice of alibi, or the amendment of the notice of alibi rebuttal.

The party who obtains the order shortening the time of service of the notice of alibi or the notice of alibi rebuttal or authorizing or requiring the amendment shall promptly serve a copy of the order on the opposing party.

1028.5. If the defendant serves a notice of alibi, the court may, in its discretion, exclude testimony of a witness offered by the prosecuting attorney to establish the presence of the defendant at a time and place specified in the demand for a notice of alibi unless:

(a) The name and residence or business address of the witness was included in the demand; or

(b) Good cause is shown why the demand failed to include the name and residence or business address of the witness and why the demand was not amended to include such name and address.

1028.6. If a notice of alibi is required to be served by the defendant under this chapter, the court may, in its discretion, exclude alibi evidence offered by the defendant unless:

(a) The information relating to such evidence was included in the notice of alibi as required by Section 1028.2; or

(b) Good cause is shown why the notice of alibi was not served or, if a notice of alibi was served, good cause is shown why it failed to include the information relating to such evidence as required by Section 1028.2 and why it was not amended to include such information.

Nothing in this chapter prevents the defendant from testifying as to an alibi or as to any other matter.

1028.7. If a notice of alibi rebuttal is required to be served by the prosecuting attorney under this chapter, the court may, in its

discretion, exclude alibi rebuttal evidence offered by the prosecuting attorney unless:

(a) The information relating to such evidence was included in the notice of alibi rebuttal as required by Section 1028.3; or

(b) Good cause is shown why the notice of alibi rebuttal was not served or, if a notice of alibi rebuttal was served, good cause is shown why it failed to include the information relating to such evidence as required by Section 1028.3 and why it was not amended to include such information.

1028.8. Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names and residence or business addresses of additional witnesses which come to the attention of either party subsequent to filing their respective lists of witnesses as provided in this Section 1028.

1028.9. If the prosecuting attorney at the trial seeks to establish that the defendant participated in or committed the crime at a time or place other than the time and place specified in the demand for the notice of alibi:

(a) The testimony of a witness offered by the defendant shall not be excluded because the defendant failed to comply with the provisions of this chapter; and

(b) Upon motion of the defendant, the court may grant a continuance as provided in Section 1050.

1028.10. Neither the notice of alibi rebuttal nor the notice of alibi nor the demand for a notice of alibi is admissible as evidence in the criminal action. No reference or comment may be made before the jury concerning:

(a) The contents of a notice of alibi rebuttal or the contents of a notice of alibi or the contents of a demand for a notice of alibi.

(b) Whether or not a notice of alibi rebuttal or a notice of alibi or a demand for a notice of alibi was served and filed.

Nothing in this section is intended to prevent the court from examining a notice of alibi and a notice of alibi rebuttal and demand for a notice of alibi for the purpose of ruling on the exclusion of evidence under this chapter.

TRANSFER SELECTED CRIMINAL PROSECUTIONS FROM THE SUPERIOR COURT TO THE MUNICIPAL OR JUSTICE COURT

The Committee believes an inordinate amount of Superior Court judicial time is devoted to criminal cases which are improperly filed there, and recommends that:

Superior Court judges should be given the discretion, upon the making of a motion pursuant to California Penal Code Section 995, to transfer an alternate felony-misdemeanor offense to the appropriate Municipal or Justice Court for prosecution as a misdemeanor if in the opinion of the Superior Court Judge the offense should be determined to be a misdemeanor by way of sentence in the event of a conviction or change of plea.

California Penal Code Section 995 states the grounds upon which an indictment or information may be set aside. The Committee has concluded that the Superior Court should be allowed further latitude in the disposition of felony prosecutions pursuant to an amended Section 995 pretrial motion in accordance with the aforementioned proposal.

This proposal would allow the Superior Court to make a realistic evaluation of the seriousness of an alleged offense prior to trial, rather than in the sentencing process following conviction. It would thereby discourage the use of time-consuming felony procedures by motivating the district attorney to carefully scrutinize each case and avoid "overcharging." Such a procedure also would protect criminal defendants against unwarranted felony prosecutions, in addition to relieving the entire court system of the extensive felony process in cases where the more expeditious misdemeanor process was appropriate.

California Penal Code Section 17 allows the court discretion in the disposition and sentencing of a criminal offense that is punishable either as a felony or misdemeanor. However, under existing law the Superior Court can only exercise this discretion during the sentencing phase that follows a conviction in that court. The Committee believes it is anomalous that the Superior Court can impose a misdemeanor sentence following a conviction in Superior Court, can set aside an indictment or information, can dismiss a case on its own motion, but cannot exercise control over the court in which an alternate felony-misdemeanor offense is heard. This anomaly could be eliminated by amending Section 17 to authorize the Superior Court to direct a misdemeanor disposition of a felony allegation prior to trial. The Superior Court would thereby be given authority comparable to that given the magistrate at or before the preliminary examination by Subsection 17 (b) (5).

The Committee therefore recommends that the following legislation be enacted:

1. Penal Code Section 995 be amended to read as follows:

995. (a) The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

If it be an indictment:

1. Where it is not found, endorsed, and presented as prescribed in this code.
2. That the defendant has been indicted without reasonable or probable cause.

If it be an information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.
2. That the defendant had been committed without reasonable or probable cause:

(b) As an alternative to subsection (a) above, an indictment or information pending in a superior court may be removed from the court in which it is pending and the criminal action transferred to the appropriate municipal or justice court if in the opinion of the superior court the criminal action should be sentenced as a misdemeanor violation upon conviction or a change of plea, and provided that the criminal offense is punishable as a felony or misdemeanor pursuant to Section 17 of this Penal Code.

2. Present Penal Code Section 995(a) be renumbered to become Penal Code Section 995.1.

3. Penal Code Section 996 be amended to read as follows:

996. If the motion to set aside the indictment or information, or in the alternative to transfer a criminal action to the appropriate court, is not made, the defendant is precluded from afterwards taking the objections and actions mentioned in Section 995.

4. Penal Code Section 997 be amended to read as follows:

997. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. The court may entertain such motion prior to trial whether or not a plea has been entered and such plea need not be set aside in order to consider the motion. If the motion is denied, and the accused has not previously answered the indictment or information, either

by demurring or pleading thereto, he shall immediately do so. If the motion to set aside the indictment or information is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money, or if money has been deposited by another or others instead of bail for his appearance, that the same be refunded to him or to the person or persons found by the court to have deposited said money on behalf of said defendant, unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the district attorney; provided, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if before indictment or information filed he has not been examined and committed by a magistrate.

5. A new subsection 17(b)(6) be added to the Penal Code to read as follows:

17(b)(6). When the Superior Court determines that the offense is a misdemeanor, in which event the case shall be assigned to the appropriate Municipal or Justice Court and within 5 days from such assignment the case shall proceed by arraigning the defendant on an appropriate misdemeanor complaint.

COMMENTS

Civil Recommendations

PROCEDURES TO INDUCE MORE SETTLEMENTS OF CIVIL LITIGATION

In every civil case disposed of by trial rather than by pretrial settlement, there is an expenditure of judicial time and taxpayer money which is wasted if the case could have been fairly and justly settled short of trial. The Committee believes that this kind of waste is substantial, since a significant number of civil cases apparently go to trial when they could have been fairly settled had the appropriate conditions existed.

In view of overcrowded court calendars and in order to use our limited judicial resources efficiently, it seems imperative that the Legislature and the courts foster what the Committee believes are appropriate conditions for pretrial settlements in civil litigation: good faith negotiations between informed parties advised by experienced attorneys and, if necessary, by an experienced judge, all against a background of clearly defined and significant monetary sanctions for unreasonable failure to settle. The Committee therefore recommends (1) a statute requiring pretrial settlement negotiations, offers, and demands in Superior Court civil actions and providing appropriate and substantial monetary sanctions for unreasonable failure to settle those actions, and (2) a rule of court requiring comprehensive in-court settlement conferences in civil actions in multi-judge Superior Courts. The Committee is satisfied that these two recommendations, taken together, will achieve a much greater number of pretrial settlements with a substantial savings in court time and a material reduction in court congestion. The following sections describe in detail these recommendations and the Committee's reasons for so recommending.

I

A new section should be added to the Code of Civil Procedure providing that in all civil actions in the Superior Court in which money damages are sought, the parties shall enter into good faith pretrial settlement negotiations accompanied by written demands and offers filed with the clerk of the court, and that after trial, these demands and offers shall be presented to the court, which may in its discretion after a hearing award to any party, or apportion between the parties, all costs, attorneys' fees, expert witnesses' fees, or any of these, which were incurred after the demands and offers were filed, as well as interest on the amount of the judgment.

There are at present some statutory incentives to settlement negotiations and pretrial settlements. Code of Civil Procedure Sections 1031, 1032, and succeeding subsections presently provide that a prevailing party in a civil case shall recover certain costs of litigation as a matter of right. Code of Civil Procedure Sections 997 and 998 presently provide that any party may make a written pretrial settlement offer and that, if the offer is not accepted and the party to whom the offer is made fails to obtain a more favorable judgment, the court may order the latter party to pay the offeror's costs and expert witnesses' fees.

California case law also encourages settlement to a limited extent. The recent case of *County of Los Angeles* v. *Ortiz* * held that expert witnesses' fees may be recoverable costs in eminent domain actions, even in the absence of any statutory authority. Whether the Supreme Court agrees with this decision remains to be seen, but the decision clearly illustrates a trend toward awarding fees if a party is compelled to litigate by another party's unreasonable refusal to settle.

The Committee believes that the law should explicity require good faith pretrial settlement negotiations backed up by more substantial monetary incentives designed to encourage fair settlement of civil litigation. The Committee recommends the enactment of a new Section 1032.7 of the Code of Civil Procedure:

> Section 1032.7 (a) The parties to a civil action (including civil actions pending at the time of enactment of this section) in the superior court in which a party seeks money damages shall negotiate in good faith for a settlement prior to trial, and each party shall make at least one offer to settle to each opposing party.
>
> (b) Each party, before the commencement of trial or before the conclusion of any settlement conference, whichever occurs first, shall execute, serve, and file in an appropriately marked sealed envelope a written statement listing his lowest demand or highest offer made to each opposing party, and the lowest demand or highest offer made to him by each opposing party. These envelopes may not be opened, and the contents of these statements may not be disclosed, until the court has ruled on all motions for a new trial, or until the time for making that motion has expired.
>
> (c) Within 5 days after the court has ruled on all motions for a new trial or after the time for making that motion has expired, the trial court may on its own motion, and shall on the motion of a party, order a hearing to determine whether to grant awards authorized by subdivision (e). The hearing shall be within 10 days

* 17 Cal. App. 3d 164 (hearing granted by Supreme Court, June 21, 1971).

of that order, and the court's decision shall be within 5 days of the hearing.

(d) At this hearing the court shall receive evidence of attorneys' fees, expert witnesses' fees, costs, expenses, settlement negotiations, and other facts relevant to the propriety of an award. In making its decision the court shall consider the demands and offers contained in the written statements filed, the amount of the judgment, all proceedings in the action, and the evidence introduced at trial and at the hearing.

(e) The court may after the hearing award to a prevailing or nonprevailing party, or apportion between the parties, all or part of the costs, attorneys' fees, and expert witnesses' fees, or any portion thereof, which were incurred after the date of filing the written statement required in subdivision (b) above, and interest on the amount of the judgment from any date subsequent to the filing of the complaint.

(f) The clerk shall, within two days after a determination of these awards, insert the amount in the judgment and conform the copies.

The scope of this new Section 1032.7 includes all civil actions in Superior Court in which a party seeks money damages, such as cases involving personal injuries, debt collection, breach of contract, eminent domain, and the like. It would not include domestic relations proceedings, injunction proceedings, or other actions where money damages are not sought.

The mechanism of the proposed statute is simple. It requires good faith settlement negotiations and one or more successive demands or offers from each party in a civil case. If settlement nonetheless proves impossible, the lowest demand or highest offer of each party is recorded in writing and presented to the trial court after trial. The court examines the highest offers and lowest demands of the parties, along with other facts and evidence described in the statute, and determines if the parties have in fact conducted good faith settlement negotiations and made reasonable attempts to settle. If the court determines that one or more parties were unreasonable in these matters, the court may in its discretion award to any party, or apportion between the parties, certain costs and fees, as well as interest on the judgment, or any portion thereof.

The Committee believes that this statute will encourage bonafide attempts at settlement on the part of all parties to an action. Attorneys' fees and experts' fees, for example, often loom large in the considerations litigants give to settlement, and the possibility of an award of these fees against a party who refuses a reasonable settlement offer should be a major incentive to serious and good faith settlement negotiations. The Committee is confident that the proposed legislation will result in more settlements and in earlier settlements, all with a substantial savings in court trial time.

As an example of the statute in operation, consider a case in which settlement negotiations are fruitless, plaintiff's lowest demand is $50,000, defendant's highest offer is $5,000, and a trial produces a verdict for the plaintiff in the amount of $45,000. After the trial, the trial judge examines the demand, the offer, the judgment rendered, the evidence heard at the trial, the proceedings in general, the costs and fees incurred by the parties, and the settlement negotiations undertaken. If the court finds, based on its examination of these items, that the defendant was unreasonable or acting in bad faith in making an offer of no more than $5,000, the court may then order the defendant to pay the plaintiff's costs, attorneys' fees, and expert witnesses' fees which were incurred after a specified date, or any portion thereof, along with interest on the amount of the judgment from any date after the complaint was filed.

The concept of recovery of attorneys' fees, experts' fees, and costs is not new in our judicial system. The statutes mentioned above (C.C.P. §§ 997, 998, 1031, and 1032) call for awards of experts' fees and costs, and there are other existing provisions in the Code of Civil Procedure for recovery of attorneys' fees in various types of actions.* It is also common for contracts to provide for an award of attorneys' fees and costs in any action instituted to enforce the contract.

The Judicial Reform Committee of the Los Angeles Superior Court in February of 1971 recommended enactment of a statute of the kind here proposed, although with its application extended only to motor vehicle cases. The Committee feels that all civil cases in which money damages are sought contribute to court congestion and are as susceptible to settlement as motor vehicles cases, and the Committee includes all these cases in the proposed statute.

This statute would supersede Code of Civil Procedure Sections 997, 998, and 1032 in all cases in which it is applicable, and those sections should be amended to reflect this fact.

* Failure to provide discovery: C.C.P. § 2034(b), (c), and (d);
Default judgments on contracts providing for fees: C.C.P. § 585(1);
Interpleader: C.C.P. §§ 386 and 386.6;
Trust deed foreclosure or trustee's sale: C.C.P. §§ 580(c) and 726;
Libel or slander actions (limited to $100): C.C.P. § 836;
Partition suits: C.C.P. § 796;
Small wage claims: C.C.P. §1031; and
Injunction against water diversion: C.C.P.. § 532.

II

A new Rule of Court should be adopted requiring settlement conferences in all civil actions, except short causes, in Superior Courts consisting of more than two judges, to be held not more than four weeks and not less than three days prior to trial, with all attorneys, all parties, and a representative with authority to settle from all insurance companies required to attend, and with each party required to file all experts' reports, list all special damages, and make settlement offers or demands.

California Rule of Court 207.5 provides for a "settlement conference" in any Superior Court civil case in which a conference is requested by any party to the case. The settlement conference contemplated in the present rule consists of an informal meeting of all attorneys in the case before a judge who attempts to achieve a settlement of the case at that time. A properly conducted settlement conference very often results in a settlement, and the Committee has concluded that the settlement conference can be an even more useful and successful procedure for encouraging settlement if its scope and content are enlarged and it is required in all civil cases except short causes.

A settlement conference gives the court itself a definite opportunity to encourage settlement and to lend its expertise and persuasion to settlement negotiations. The judge often provides the exact catalyst necessary to accomplish an acceptable settlement. The attorneys and the parties, in formulating their settlement postures, usually give great weight to a judge's reaction to the case as it is presented by the pleadings and by the persons at the settlement conference. It is the rare case that does not warrent the most serious effort at settlement, and the extra judicial time required for settlement conferences should be far outweighed by the significant number of cases in which trial is avoided by settlement. The court should be afforded this opportunity to lend its expertise and encouragement to settlement in every civil case, with the exception of short causes, which can be disposed of more efficiently without a settlement conference.

The timing of settlement conferences is very important. The conference is not designed to settle cases immediately after filing, nor to settle cases before discovery has been completed. It is designed to provide a forum in which it can be determined upon complete information and final analysis whether the case can be settled or whether it must be tried. Its purpose is not to start negotiations, but to complete them. The Committee therefore recommends holding the settlement conference not more than four weeks and not less than three days prior to the trial date, since only at this time will each party have prepared his case to a point where accurate analysis and evaluation is possible, without the

additional expenditure of time and money necessary for final trial preparations.

Attendance of all attorneys, all parties, and representatives with authority to settle from all insurance companies involved is necessary to provide an opportunity for a free and frank exchange of information and opinions among all interested persons, from the judge to the parties. The parties should be required to lay most of their cards on the table—file all experts' reports, list all special damages, and make settlement offers or demands. Only in this way can informed and good faith negotiations take place, with the judge fully able to make his expertise and influence felt.

Mandatory settlement conferences should be confined to courts in which there are more than two judges. In courts with only one or two judges, serious problems of fairness and prejudice might arise if the judge who participated in and encouraged settlement negotiations were also required to conduct the trial of the case if it were not settled. This can be avoided in a multi-judge court, and the smaller courts wishing to have mandatory conferences could also provide for them by local rule and arrange for inter-county exchange of judges to handle the conferences.

The Committee has prepared a recommended series of rules compatible with the format of the present Rules and intended to replace present Rule 207.5. This series of rules, numbered 207.3 through 207.7, incorporates the recommendations and ideas set forth above and is self-explanatory in its other details:

Rule 207.3—Cases in which a settlement conference shall be held

In each county with a Superior Court consisting of more than two judges, a settlement conference shall be held in every civil case other than short causes set for trial under Rule 207.1. In all other counties, settlement conferences and settlement calendars shall be governed by Rule 207.5, except that in these counties settlement conferences may be required in all cases by local rule. The settlement procedures provided in these rules are not intended to be exclusive, and local settlement procedures are expressly authorized if they do not conflict with these rules or the procedures herein established.

Rule 207.4—Setting for settlement conference

Every settlement conference shall be set for a date not more than four weeks and not less than three days prior to the date set for trial. In all cases in which a settlement conference is to be held pursuant to

Rule 207.3, the settlement conference date shall be set in the same manner and at the same time as the trial date is set according to these rules, and notice of the settlement conference date shall be given in the same manner and at the same time as notice of the trial date is given.

Rule 207.5—Settlement calendar in Superior Courts with two or fewer judges

If the local rules do not require settlement conferences in all cases other than short causes, the Superior Court in each county where there are no more than two judges shall establish and maintain a settlement calendar pursuant to this Rule. When a civil case has been on the civil active list for 30 days, or at such other time as may be provided by local rule, the clerk shall send all parties to the case an invitation to attend a settlement conference. The case shall then be placed on the settlement calendar if one or more of the parties not later than 20 days prior to the date set for pretrial or trial setting conference, or if no pretrial or trial setting conference is required, not later than 20 days prior to the date set for trial advises the clerk in writing that he accepts the invitation. The clerk shall notify all other parties of the acceptance. The court may in any event, and upon the joint request of all parties shall, order a particular case to be placed on this settlement calendar at any time.

This rule shall not operate to delay the setting of cases for pretrial or trial setting conference, or for trial.

Rule 207.6—Duties of attorneys and parties in respect to settlement conferences

(a) Each party in a case shall attend the settlement conference, unless excused by the court prior to the conference for good cause shown. The attorney for each party shall attend the conference. If a party is represented by a firm of attorneys or by more than one attorney, an attorney responsible for the case shall attend the conference. If a party in a case is insured, a representative from the insurance company with authority to settle the case shall attend the conference.

(b) At the settlement conference, each party shall file with the court and supply each other party with a copy of the following: a list of all special damages claimed together with all supporting documents or information, a statement of all general damages claimed, and the most current reports of all experts consulted. If possible, these lists, statements, and reports shall be exchanged among the parties and filed with the court at least five days prior to the settlement conference.

(c) Each person attending the settlement conference shall have a thorough knowledge of the case and shall be prepared to discuss it,

make settlement offers and demands, and participate in good faith settlement negotiations.

(d) Each party at the settlement conference shall execute, serve, and file the written statement required by Code of Civil Procedure Section 1032.7, if this statement has not already been executed, served, and filed.

Rule 207.7—Conduct of settlement conferences

Settlement conferences shall be held informally before a judge in the courtroom or in chambers. The judge shall conduct a review of the case, along with a discussion of the items filed by the parties pursuant to Rule 207.6(b). The judge shall entertain settlement offers and demands and shall actively participate in settlement negotiations.

The settlement conference may be continued from time to time by the judge, except that the conference may not be continued past three days before the trial date. If the case is not settled at the conference, no reference shall thereafter be made to any settlement discussions made at the conference, except in subsequent settlement proceedings and in subsequent proceedings pursuant to Code of Civil Procedure Section 1032.7.

LIMITATION OF ORAL ARGUMENT IN SELECTED CIVIL MATTERS

The Committee has considered the advisability of eliminating or limiting oral argument in certain civil proceedings in order to conserve available court time. The Committee makes the following recommendation, based on the considerations set forth below the recommendation:

> **A new Rule of Court should be adopted requiring that the following matters be submitted on written material filed, without appearances by counsel or parties, unless the court requests oral argument or unless a written request for oral argument is made by a party and granted in the discretion of the court for good cause shown: All law and motion matters and all orders to show cause, including demurrers, discovery motions, orders to show cause regarding preliminary injunctions and receivers, and preliminary motions and orders to show cause in domestic relations proceedings.**

Experience indicates that most issues in law and motion, discovery, preliminary injunction, and receivership matters are decided by determining the applicable law and not by resolving factual disputes. Legal arguments are presented more efficiently and expeditiously by written briefs rather than by oral arguments, which seem only rarely to affect these proceedings. Indeed, in Los Angeles the judges handling

law and motion matters furnish written notes of their proposed decisions to the parties and then usually hear oral argument only by the party against whom a proposed ruling runs, with few proposed rulings changed by the oral argument. Experience also shows that in domestic relations matters orders made on properly completed questionnaires and affidavits rarely differ from orders made after hearings, which are generally routine but which occupy considerable time of judges and commissioners.

The Committee believes that oral argument in these matters should be limited to occasions in which the court deems it advantageous. This limitation should result in a significant decrease in court time required to process these pretrial proceedings, along with a resulting material increase in court time available for trials. In addition to the time saved in handling these matters without appearances, the proposed procedure would also encourage or compel attorneys to prepare better memoranda and briefs—a desirable improvement likely to save further judicial time. The procedure may also result in a general reduction of attorneys' fees in a case, since expensive in-court time is eliminated.

The Judicial Reform Committee of the Los Angeles Superior Court has made a similar recommendation that suggests implementation by legislation. The Committee urges that the recommendation could and should be implemented by the Judicial Council through the more flexible approach of adopting a new Rule of Court. Although the present format of the California Rules of Court would require three separate rules to effect the procedure recommended here (a rule for the Superior Court, an identical rule for the Municipal Court, and a third rule for domestic relations matters), along with minor amendments to existing rules, the Committee sets forth here a single rule defining the contemplated change:

Rule 203.7—Limitation on oral argument

Law and motion matters and orders to show cause, including but not limited to demurrers, discovery motions, and orders to show cause regarding preliminary injunctions and receivers, as well as all preliminary motions and orders to show cause in proceedings under the Family Law Act, shall be submitted and determined on written materials filed and served, without appearances by the parties or by their attorneys, unless within 10 days of filing and service the court requests oral argument or a written request for oral argument is made by a party and granted in the discretion of the court, for good cause shown.

It is explicit in the proposed rule that the court may require oral argument in a particular case. There are some complex cases in which

the written briefs or other materials raise questions in the judge's mind which can best be discussed and answered in oral argument, and the court should retain the discretion to call for oral argument when deemed necessary or desirable. In addition, the rule provides that a party desiring oral argument may request it in writing giving written reasons why oral argument should be held. If the court determines from the written reasons submitted that the party has shown good cause for oral argument, the court may order it.

LIMITATION OF DISQUALIFICATION OF JUDGES FOR PREJUDICE PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 170.6

Section 170.6 prohibits a judge or commissioner of any trial court from trying any civil or criminal matter involving contested issues of fact or law where any party or attorney files a motion supported only by a sworn statement that the judge or commissioner before whom the matter is pending is prejudiced against the (1) party, (2) the attorney, or (3) the interests of either of them. The party or the attorney must believe it is impossible to obtain a fair and impartial trial or hearing before the challenged judge or commissioner but it is not necessary to specify any grounds to support the allegation of prejudice. If such a motion is presented the judge or commissioner automatically is removed from the proceedings which are then assigned to another judge or commissioner.

It must be noted that the provisions of Section 170.6 supplement Section 170, subdivision 5, which provides for disqualification of a judge or commissioner for prejudice after a party has proven the fact of prejudice by competent evidence in an adversary proceeding before another judge. Section 170.6 therefore is gratuitous in that it permits a party or counsel to disqualify one judge or commissioner merely by asserting under oath, without further proof, that the judge or commissioner is prejudiced.

In an apparent effort to avoid abuse, Section 170.6, subdivision (3) limits the number of motions as follows:

> ". . . Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding."

The California Supreme Court has interpreted this quoted portion as permitting each coplaintiff or codefendant to make separate motions so long as their interests are adverse.* The court reasoned that one motion for "each side" is permitted, and, where the coplaintiffs or codefendants have substantially adverse interests there are more than two sides in the case.

The Committee has concluded that this is an undesirably broad view because Section 170.6 motions have been and may be used for delay and "judge shopping" in actions involving multiple parties. The Committee therefore recommends that:

> **Code of Civil Procedure Section 170.6 should be amended to permit, in civil and criminal cases involving multiple parties, only one motion to disqualify to be made by each group of parties, such as all coplaintiffs, or their attorneys, and then only if all the parties in the group, or their attorneys, join in the motion.**

To implement this recommendation the Committee proposes that the last sentence in Section 170.6 (3) be amended to provide as follows:

> . . . Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in any one action or special proceeding involving multiple parties a motion may be made only if all the coplaintiffs, codefendants, similar parties, or counsel for the parties in one of these groups, join in making the motion.

This proposal recognizes that class actions and criminal cases involving numerous defendants are recent developments which are placing great strains upon the resources of our judicial system. This strain becomes excessive if, for example, 35 codefendants arrested in a riot each makes a Section 170.6 motion, asserting that his interests are adverse to those of the other defendants. The resulting delay would be intolerable and substantial judicial time would be wasted. These parties might also use Section 170.6 to try to find a judge whom they regard as favorable to their position. These abuses would be corrected by the recommended amendment.

In reaching the decision to recommend limiting the number of Section 170.6 motions in multi-party actions the Committee recognized that the statute confers a privilege rather than a right. The recommended restriction of this privilege impressed the Committee as reasonable when balanced against the present needs of our judicial system.

* Pappa v. Superior Court, 54 C.2d 350, 353 P.2d 311 (1960); Johnson v. Superior Court, 50 C.2d 693, 329 P.2d 5 (1958).

SANCTIONS FOR FAILURE TO APPEAR AT TRIAL OR AT PRETRIAL, TRIAL SETTING, OR SETTLEMENT CONFERENCES

The Committee has perceived that courts too often cannot avail themselves of procedures useful in controlling their own business because in many cases these procedures must be initiated by litigants or their attorneys. In many areas, the court must wait for the motion of a party before it can take action which, though it may benefit a party, is intimately related to a just and speedy disposition of the court's overall business. For example, as discussed above, a formal settlement conference cannot presently be convened by a court unless requested by a party.

In order to place more management tools in the hands of the court, the Committee makes the following recommendation based on the observation set forth below:

> **Code of Civil Procedure Section 581 and Rule of Court 217 should be amended to give the court discretion, on its own motion or on the motion of a party (1) to dismiss the case of a plaintiff, or strike the answer of a defendant, who without good cause fails to appear for trial, or who appears and refuses to proceed or is unable to proceed, and (2) to impose other specified sanctions on a party who without good cause fails to prepare for, appear at, or participate in the pretrial conference, trial setting conference, settlement conference, or trial.**

When an attorney wishes to postpone a trial for reasons which are inadequate or improper to persuade the court to order a continuance of the trial, he will often send a completely unprepared associate, or even his own client, to appear at the very time set for trial to assert that the attorney is unable to proceed to trial, thereby coercing the continuance which would not have been granted had it been requested in the orderly course of the court's business. There are also other circumstances in which one or more parties fail to appear for trial without good cause. Under present law, unless the opposing attorney requests a dismissal, the court has no alternative but to continue these cases, place them off the trial calendar, or order them to trial with one party unprepared to proceed. Opposing attorney seldom request dismissal, since they often find themselves in the same situation hoping for similar treatment. They often have agreed beforehand not to request a dismissal. In fact, it is a too frequent occurrence for neither attorney to appear for trial, confident that in such circumstances the court will have no alternative but to continue the case or place it off the trial calendar. The court has scheduled a judge, court personnel, and a courtroom for the base, and if it cannot find another matter to fill the gap, these people and

facilities will sit idle and the regular disposition of the court's affairs will be interrupted.

The Committee has concluded that to afford the court better control over its own trial calendar, to make the court's policy regarding continuances more effective, and to discourage the disruptive and wasteful tactics described above, the court should be armed with the power to dismiss a case on its own motion for failure to appear at trial and be prepared to proceed, without relying on a party in the case so to move. The Committee also believes that just as the court should be able to dismiss an absent plaintiff's case, so should the court be able to strike an absent defendant's answer. If a defendant fails to appear for trial, the court must postpone the trial or order the case tried with the defendant absent, with a verdict for the plaintiff virtually a foregone conclusion. This latter procedure takes court time, however, and the same result would be achieved by striking the defendant's answer and entering his default. The Committee therefore recommends an appropriate amendment incorporating these changes be made to Code of Civil Procedure Section 581 (3), which governs dismissal for failure to appear at trial.

For the same reasons that the court should be allowed to impose sanctions on its own motion for failure to appear at trial, so should the court be able to impose sanctions on its own motion for failure to appear at certain pretrial proceedings. Furthermore, the Committee believes that the court should be able to impose sanctions other than dismissal for failure to appear at trial. The Committee therefore recommends that the Judicial Council adopt a Rule of Court giving the court discretion on its own motion or on the motion of a party, to impose specified sanctions for failure to appear at, prepare for, or participate in pretrial conferences, trial setting conferences, settlement conferences, or trial. The Committee recommends that present Rule of Court 217, which now provides limited sanctions regarding pretrial conferences only, be replaced by the following Rule 217:

Rule 217. Sanctions in respect to pretrial proceedings

Any failure of a person to prepare for, appear at, or participate in a scheduled pretrial conference, trial setting conference, settlement conference, or trial, unless good cause is shown for the failure, is an unlawful interference with the proceedings of the court. The court may, on its own motion or on the motion of any party, impose these sanctions for the interference: contempt citations; fines; and awards of costs, actual expenses, attorneys' fees, or any thereof arising from the interference.

NO-FAULT AUTOMOBILE INSURANCE

Litigation regarding motor vehicle accidents is the single most time-consuming and delay-causing class of litigation in our courts today. With that fact in mind, the Committee has examined the concept of no-fault automobile insurance not only as a means of alleviating court congestion but also in terms of its broad social consequences and in light of the present system of providing reparations to motor vehicle accident victims. The Committee has concluded that as a general concept and as a matter of public policy, no-fault automobile insurance is in the best interest of the public. The Committee also has concluded that an appropriate no-fault insurance plan in California would provide a significant solution to the problem with which the Committee is concerned: trial court congestion and delay. The Committee recognizes, however, that there are many aspects of a no-fault insurance plan which can better be determined by persons with expert knowledge of the various factors involved, and the Committee has confined its deliberations and recommendations to those areas of a no-fault plan which would most significantly affect the problem of delay and congestion in the courts. The Committee therefore recommends the following proposals as essential elements of any no-fault insurance plan if the plan is to significantly relieve court congestion in California.

Legislation should be enacted providing for compulsory no-fault automobile insurance in California, and the legislation should include the features set forth below:

1. **Every vehicle in California which is operated or designed to operate on a public highway and which is propelled by power other than muscle power should be required to be insured by a no-fault insurance policy.**

In order for any no-fault insurance plan to effectively reduce motor vehicle accident litigation, the plan should include those types of motor vehicles which significantly contribute to the total number of accident claims and court cases. Although private passenger automobiles may comprise the largest class of vehicles involved in accident claims and litigation, other classes of vehicles, such as commercial vehicles, public transportation vehicles, and the like, contribute significantly to the total number of claims and lawsuits. The Committee believes all vehicles described in the recommendation above, including trailers, should be required to be covered by no-fault insurance, and the Committee is confident that any inequities between the various classes of vehicles can be compensated for by the insurance industry through appropriate intra-industry adjustments, policy deductibles and exclusions, and the like.

The Committee contemplates that the registered owner of the vehicle, or perhaps the lessee in the case of a leased vehicle, would be the party required to purchase the insurance. Coverage should be required for every described vehicle physically within California, whether actually operating on the highways or not. Coverage should be required even if the vehicle is registered in a state other than California and even if it is owned by a non-resident.

2. The parties insured under each no-fault policy should be the driver and the occupants of the insured vehicle as well as all pedestrians injured by the operation and use of the insured vehicle.

a. The driver should be insured whether he was operating the vehicle with or without the consent or authorization of the owner of the vehicle;

b. Injured pedestrians should be insured so long as the vehicle caused the injury even if there was no physical contact between the pedestrian and the vehicle;

c. The driver and occupants injured in an uninsured vehicle, and pedestrians injured by an uninsured vehicle, should be protected under an assigned risk program;

d. Insurance companies doing business in California should be compelled to notify the State of cancellation of any no-fault policy.

This recommendation is a further manifestation of the Committee's belief that if a no-fault plan is established, it should include all vehicles and persons where meaningful distinctions and significant reasons for exclusion cannot be articulated. For example, the Committee sees no valid reason for excluding from coverage, as would be done in many proposed no-fault plans, the person who borrows a friend's automobile without obtaining permission and is injured in an ensuing accident. For similar reasons, the Committee feels that a pedestrian who breaks his leg leaping from the path of a car should be afforded coverage, although numerous proposed no-fault plans would deny coverage if there were no physical contact with the vehicle.

The Committee also sees no reason why the insurance industry cannot provide an assigned risk program or intra-industry fund to afford coverage to those persons injured in or by an uninsured vehicle, as well as those persons to whom individual companies are unwilling to sell a no-fault policy. To aid the State in preventing abuse by individual companies and in enforcing the requirement that all vehicles be covered, insurance companies should be required to report all policy cancellations to the State. The Committee envisions the suspension of the registration of a vehicle whose no-fault insurance is cancelled.

3. The amount of coverage under each no-fault policy should be $10,000 for each injured party, and the coverage should include all economic loss (special damages) caused by the accident such as medical expenses, lost wages, property damage, funeral and burial expenses, the expense of hiring someone to perform services which the injured party would otherwise perform himself, survivors' benefits, and the like.

The amount of coverage ($10,000) selected by the Committee as an appropriate limit for no-fault insurance in California is the same as the threshold value for total damages below which access to the court is denied an injured party, as described in detail below. The amount of coverage should equal the amount below which litigation is forbidden.

With respect to each kind of economic loss, and except for the $10,000 maximum limit for all payments, the coverage afforded should contain a minimum of monetary or temporal or other limits which are likely to leave injured persons uncompensated for their actual losses and with court action their only recourse. For example, the Committee contemplates that although reimbursement for lost wages would mean reimbursement for net wages or "take home pay", the reimbursement would not be subject to any maximum monetary ceiling or time limit, above which lost wages could be recovered only by recourse to the courts. Reimbursement for funeral and burial expenses might best be limited to items and amounts specified by the Legislature.

The Committee also contemplates that disputes, such as a dispute regarding wages which might arise in the case of an injured person who was unemployed at the time of the accident, should be resolved by compulsory, private arbitration. Regarding property damage coverage, the Committee acknowledges the possible necessity of compensating for rating difficulties or inordinately large premiums in some cases by the use of appropriate deductibles in the coverage afforded.

4. In addition to the reimbursement for the economic loss set forth in paragraph 3 above, an injured party should also be compensated within the $10,000 coverage limits for pain and suffering caused by the accident (general damages) in an amount equal to a percentage, to be prescribed by statute, of the total sum of his economic loss.

Under our present laws, a successful litigant in a motor vehicle personal injury case is allowed to recover money to compensate him for intangible loss or damage which is usually referred to as "pain and

suffering." Many no-fault plans deny an injured party any monetary recovery for "pain and suffering" if his actual economic or out-of-pocket loss falls below a certain threshold figure, such as the $10,000 recommended as a threshold figure in the paragraphs below. The Committee sees no convincing reason why recovery for pain and suffering should be denied a person with relatively minor injuries and allowed to a person with major injuries. The Committee perceives the problem to be, given the facts of our system of automobile transportation, insurance, court congestion, and the like, whether the Legislature or the judiciary should be the entity to determine the amount of recovery for pain and suffering allowed in the multitude of small accident cases.

The Committee believes that reasonable recovery should be allowed in the small case for pain and suffering, inconvenience, and all other intangible losses or injuries not capable of exact monetary determination or definition, and that this recovery should be determined by the Legislature on a broad basis rather than by the courts on an individual case-by-case basis. The Committee suggests that it is common practice and not unreasonable to measure this intangible loss for pain and suffering by making it a function of actual economic loss suffered. The Committee recommends that any no-fault plan provide for recovery for this intangible loss in an amount equal to a percentage of the total sum of actual economic loss, this percentage to be determined by the legislators through the legislative process and prescribed by statute.

5. An injured party should be excluded from coverage and should not be entitled to compensation only if he was driving at the time of the accident with a revoked or suspended license to drive.

The grounds for exclusion from coverage contained in the numerous proposed no-fault plans are many and varied and include such things as intoxication, commission of a crime, and the like. The Committee believes that, given the purposes of any no-fault plan, the exclusion set forth above is the only exclusion which should be provided for in the plan. Intoxication, for example, although perhaps grounds for imposing criminal penalties, does not seem to be sufficient grounds for excluding a person from the only available means of compensation for an accident which may or may not have been caused by the intoxication.

6. An injured party should have the right to file suit in court and recover damages against any person who negligently caused the injuries only if (1) the injured party's economic loss plus his general damages as computed in paragraph 4 above exceed $10,000, or (2) the injuries caused death, permanent, serious disfigurement, or permanent, serious loss of bodily function.

a. The statute of limitations for personal injury and property damage claims should be extended to three years; and

b. The no-fault insurance carrier should have a lien on his insured's recovery in any action against a third party, and that insurance carrier should participate proportionately in paying the insured's attorney's fees and costs in that action.

The Committee considered several methods to bar or discourage an injured person entitled to benefits under a no-fault insurance policy from filing suit in court against the person who caused the injury, rather than accepting compensation from his own insurer. Without such a prohibition, the present flow of motor vehicle cases into the courts could continue, thereby eliminating any relief from current court congestion and delay and defeating one of the major purposes of the no-fault plan. The Committee chose as most effective the above recommended "threshold" method of prohibition, with the threshold based on the actual damages suffered and compensated for by no-fault insurance, including an amount for pain and suffering.

Based on statistical data, opinions of judicial personnel, and the Committee's own experience, the Committee is convinced that a great majority of motor vehicle litigation involves claims whose reasonable value is less than $10,000 and that the great majority of claims over $10,000 are significantly larger than $10,000. By establishing $10,000 as the threshold value below which access to the court is denied an injured party, a no-fault insurance plan would encompass this large majority of motor vehicle litigation and effectively remove it from the court system. A lower threshold value would significantly reduce the effectiveness of the no-fault plan in this respect, and a slightly higher threshold value seems relatively unnecessary since it would include only very few more cases.

The Committee believes that special treatment should be afforded injuries which result in death, permanent and serious disfigurement, or permanent and serious loss of bodily function, since these injuries usually involve intangible losses or pain and suffering which are not reasonably related to economic losses and are most fairly evaluated on a case-by-case basis. In other words, the Committee believes that persons with these certain injuries should have access to the courts and the judicial process to perfect the right to adequate compensation.

To reduce the potential for peripheral litigation under a no-fault plan, the Committee recommends that instead of any right of subrogation, the no-fault insurance carrier should be indemnified only by receiving a lien on his insured's recovery in any action by the insured against a third party. In return for this, the insurance carrier should share proportionately in the expense of securing any such recovery, namely attorneys' fees and court costs. It should also be mentioned that the Committee contemplates that any good faith disputes regarding the permanency or seriousness of any disfigurement or loss of bodily function should be referred to compulsory, private arbitration. Furthermore, any claims of an insurance carrier against a negligent third party or against that party's insurance carrier should also be resolved by compulsory, private arbitration.

The Committee further recommends that in order to allow injured parties adequate opportunity to determine the availability of access to the courts under the restrictions of the no-fault plan, the statute of limitations for personal injury and property damage claims should be extended to three years.

THE CIVIL JURY SYSTEM

Other than the generally accepted rule of thumb that virtually every civil trial will take more time if heard by a judge and jury than if heard by a judge alone, no clear quantitative evidence exists regarding the contribution of the jury trial to court congestion and delay. Similarly, other than various historical traditions and democratic beliefs, there is no hard evidence that the civil jury trial results in "better justice" than does a trial to a judge alone. In view of this empirical uncertainty, the Committee believes that radical changes in the civil jury system should not be made absent some clear showing that significant benefits will be gained in terms of relieving court congestion and delay. The Committee feels, however, that there are certain ways to improve the civil jury system, ways whose possible effect on the dispensation of justice seems minimal and in any event far less than the probable effect on court congestion and delay, which is in most instances an injustice in itself. The Committee therefore makes the following recommendations.

Constitutional amendments, legislation, and Rules of Court should be adopted to effect the following changes in the civil jury system:

1. **The right to a jury trial should be retained in all civil cases where it is presently available, except that there should be no right to a jury trial in eminent domain actions in which property is taken for public use.**

In accordance with the basic philosophy described above, the Committee recommends retention of the civil jury with the modifications recommended below in all civil cases with the single exception of eminent domain or condemnation cases. These condemnation cases should not be tried to a jury because they are far too complex and technical to be accurately decided by laymen and because they consume inordinate quantities of court time when tried to a jury. In other words, the Committee feels that justice would best be served in this kind of case, from the viewpoint of the entire judicial system and also of the individual litigants, if the case were heard by a judge sitting alone.

2. **The size of the civil jury should be reduced from twelve to eight jurors, the present requirement for a verdict of a three-fourths majority (six out of eight jurors) should be retained, and the number of peremptory challenges to jurors should be reduced from eight to six per side in all cases.**

Superior Courts in several metropolitan cities, San Francisco for example, have for some time been utilizing eight-man juries in civil cases where all parties agree to a jury of that size. The experience in these cases has been uniformly favorable in terms of trial time consumed and verdict achieved. Trials are clearly expedited to some degree, without any discernible change in the outcome of the case. In these eight-man jury trials, a verdict is reached when a three-fourths majority, or six out of the eight jurors, are in agreement, and the Committee recommends retention of this majority verdict rule.

In connection with the recommended reduction in jury size, the Committee feels that California Code of Civil Procedure Section 601, which allows six peremptory challenges per side in two-party cases and eight per side in multi-party cases, should be amended to the extent of allowing only six peremptory challenges per side in all cases. It is the present practice in most cases for the court to suggest and the parties to agree to a limit of six challenges per side in any event.

It should be mentioned here that the Committee recommended, in its Report 3, that criminal juries be reduced in size to six jurors in all cases where the alleged offense is neither punishable with death nor with a maximum sentence of life imprisonment, whereas the Committee is here recommending a reduction in jury size only to eight jurors in the civil case. This is not an imbalance in favor of the civil litigant, since (1) the number of recommended peremptory challenges per juror is proportionately higher in a six-man jury criminal case (one challenge per juror in the criminal case, and three-fourths challenge per juror

in a civil case), and (2) the percentage majority verdict required is higher in the criminal case (five-sixths as compared to three-fourths in the civil case).

3. **There should be statewide uniformity in the following aspects of jury service:**

   a. **Jurors should be called for service at random from the list of registered voters in each county;**

   b. **A person called for jury service should be obligated to serve in one trial until completion or make four appearances, following which his name would be removed from the jury list for three years if he so requested;**

   c. **Exemption from jury service should be reduced to an absolute minimum by excusing a juror only in a case of extreme, serious hardship and then only if recommended by an official designated by the Presiding Judge and approved by the Presiding Judge or another judge designated by him;**

   d. **Jurors should be compensated at the rate of $20.00 per day for each day they report; they should be reimbursed for the cost of transportation at the rate of 15 cents per mile each way to and from their homes; and they should be furnished with free parking or be reimbursed for the expense of parking.**

The Committee believes that whether or not there is to be a reduction in jury size, there should be an effort to improve the representative nature of the jury panel so that it more closely mirrors the cross-sectional composition of the community. Of course, if jury size is reduced, the need for this improvement is greater. At present, there is no statewide uniformity regarding the qualifications for and exemptions from jury service. Potential jurors are often excluded before they reach the courtroom because they are "working people", housewives with children, students, or the like. The result is often a jury panel composed of retired persons, persons whose employer is willing to continue their income while they serve as jurors, and others able to shoulder the financial burden of jury service. In short, the present system imposes too great an economic and personal hardship upon individuals to permit a representative cross-section of a community to serve.

The Committee believes that the above recommendations will broaden and improve the representative nature of the jury panel from which individual juries are selected. These recommendations are designed to

more equitably distribute the burden of jury service, to reduce the financial burden of jury service, and therefore justifiably to restrict exemption from jury service. Only if potential jurors are called for service from a most representative sample of the community, such as the list of registered voters, and only if exemption from jury service is minimized, will the jury panel be most representative of the community and therefore most capable of performing its designated function.

These recommendations, and the recommendations set forth below, are applicable to criminal juries as well as civil juries, and they are included in the Committee's Report 3 regarding criminal juries.

4. **The Judicial Council should adopt Standards of Judicial Administration directing each county to:**

   a. **Furnish adequate jury assembly rooms in which juror orientation is conducted and which, at a minimum, are provided with comfortable furniture, reading materials, access to food and beverages, rest rooms, public telephones, cards and other games, and television or radio; and**

   b. **Institute a system whereby a juror may volunteer to be available on one-hour notice by telephone, in which case he would not be obligated to actually appear in court until so notified.**

These recommendations further implement the Committee's goal of making jury service attractive and acceptable to a broader base of citizens, thereby insuring or permitting a more representative jury panel.

ARBITRATION OF SMALL CIVIL CASES

According to statistical surveys and data available to the Committee, slightly over fifty percent of all Superior Court civil cases which went to a jury verdict for the plaintiff during the last two years in California resulted in a verdict of less than $10,000 for the plaintiff. This percentage would be significantly higher if some fair portion of cases resulting in defense verdicts were included as cases whose reasonable recovery potential was less than $10,000. The Committee believes that these "small cases" are a major cause of trial court congestion and delay.

Certain jurisdictions across the country and in California have instituted procedures to remove small cases from the judicial machinery by having them decided by non-judicial arbitrators, thereby conserving trained and specialized judicial personnel for the larger and perhaps

more important cases and at the same time reducing delay in cases large and small. The Committee has investigated and studied mandatory and voluntary arbitration as possible methods of removing the small case from the courts.

The California Legislature and Judicial Council are now embarking on a one-year study of arbitration procedures, and the Committee endorses this study effort. The Committee is not making a specific recommendation at this time regarding arbitration, first, because of this study and second, because the Committee believes that meaningful no-fault insurance legislation will alleviate the problem caused by the many small cases now in the courts, since a large percentage of those cases appear to be motor vehicle accident cases. After the effects of any no-fault plan can be measured, and after the pending studies of arbitration have been completed, the Committee feels that arbitration should then be given serious consideration as a solution to any remaining problem of court congestion caused by small cases.

COMMENTS

Court Administration Recommendations

SUPERIOR COURT ADMINISTRATORS

To effectively perform its *judicial* duties a trial court must effectively discharge its *nonjudicial* duties. These nonjudicial duties compel a court to:

- prepare, administer and obtain county approval of an annual budget;
- recruit, train, classify, supervise and discipline personnel;
- arrange court accommodations and procure necessary books, equipment and supplies;
- maintain accounting, personnel and judicial assignment records;
- prepare and report judicial statistics;
- maintain liaison with other public or private agencies concerned with the court;
- furnish information services to news media and other groups;
- evaluate and recommend improvements in the court's administrative system and procedures.

A trial court administrator can perform these duties. If there is no administrator a judge must perform them at the expense of more important judicial duties.

For these reasons the importance of administrators in our judicial system has been frequently emphasized by noted experts, including Chief Justice Warren Burger of the United States Supreme Court who recently stated:

> As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slowdown everywhere in the efficiency and functioning of courts. The judicial system and all its components have been subjected to the same stresses and strains as hospitals and other enterprises. The difference is that, thirty or forty years ago, doctors and nurses recognized the importance of system and management in order to deliver to the patients adequate medical care. This resulted, as I have pointed out on other occasions, in the development of hospital administrators and today there is no hospital of any size in this country without a trained hospital administrator who is the chief executive officer dealing with the management and efficient utilization of all of the resources of the institution. Courts and judges have, with

few exceptions, not responded in this way. To some extent, imaginative and resourceful judges and court clerks have moved partially into the vacuum, but the function of a clerk and the function of a court executive are very different, and a court clerk cannot be expected to perform both functions.*

California has partially recognized the value of court administrators by providing them for the Superior Courts in ten urban counties. In three of these counties the Legislature created the positions directly while in the remaining seven counties the positions were created by local action, usually with express authorization from the Legislature. The counties pay the administrators' salaries which range from an authorized minimum of $1050 per month to an authorized maximum of $2662.

The aid of a court administrator has improved conditions in each of the ten Superior Courts which have one. Often the impact upon delay has been particularly dramatic as reported by the Presiding Judge of a major California Superior Court:

> . . . the most significant and important change that has been effected is the reduction in number of cases on the civil active list, and the tremendous reduction of time in delay. Several years ago, it was common for the delay from filing of complaint to trial to take from 2½ to 3 years. The interval at this time is eleven months from Memo to date of trial, and contested civil jury cases are often tried within one year from filing of the complaint. The short cause civil matters (those estimated to take one day or less) are set for trial within 45 days from the filing of the At-issue Memo.
>
> Another important improvement is that through efficient Calendar Management, we are able to more effectively schedule, thereby eliminating the Dark-Court situation and have increased dispositions. However, it should be mentioned that since September, 1967, there have been fewer than twenty cases that did not proceed to trial on the date set or the following day due to non-availability of a court.
>
> It should also be mentioned that the last Superior Court department authorized by the Legislature was in 1968, and due to the changes that have been made, it is our present estimate that another department will not be requested until the 1973 or possibly the 1974 Legislative Session. This is despite the fact that we have already experienced in excess of 15% increase in filings since the last department was created.

The foregoing considerations persuade the Committee that the larger Superior Courts in California should have court administrators. In this connection the Committee has reviewed, and endorses, Senate Bill 804

* "Deferred Maintenance of Judicial Machinery," address to the National Conference on the Judiciary, March 12, 1971; 54 Judicature 410, 414 (May 1971).

by Senator Grunsky introduced on March 31, 1971 in the California Legislature.* It provides, among other things, that any Superior Court of seven or more judges may appoint an executive officer who shall hold office at the pleasure of the court and shall exercise the administrative powers and other duties required by the court.

Superior Courts in the following counties, which presently do not have court administrators, would thereby be authorized to employ them: Fresno (8 judges); Riverside (12 judges); Santa Barbara (7 judges): and Ventura (7 judges). The following counties without court administrators probably will come within the scope of the proposed legislation in the near future: Kern (6 judges); Marin (5 judges); San Joaquin (6 judges); Solano (4 judges); Sonoma (4 judges); and Stanislaus (5 judges).

In endorsing Senate Bill 804 the Committee notes that since 1968 the Judicial Council of California, in its recommended standards of judicial administration, has specified the following duties and qualifications for trial court administrators which should be of great assistance to courts employing administrators pursuant to this legislation:

> (a) [Qualifications] A trial court administrator should be a graduate of an accredited university or college with a degree in law, public administration, business administration, personnel, accounting, or related fields and have a minimum of one year's experience in a responsible management capacity in a public agency or in private business.
>
> (b) [Functions] A trial court administrator should, under the direction of the presiding judge, organize and administer the nonjudicial activities of the court. He should supervise and assign work to a staff that serves the judges in the execution of the court's business; assist in the dispatch of judicial business particularly in calendar management; provide or supervise administrative services in the selection and supervision of jurors; prepare and submit for court approval a personnel plan or merit system for the classification, recruitment, promotion, discipline and removal of persons employed by the court; assist in arranging for court accommodations and be responsible for procuring necessary books, equipment and supplies; assist in the preparation and administration of the court budget; prepare judicial statistics; maintain accounting, personnel and judicial assignment records; assist in providing information services to news media and other groups; assist in maintaining liaison with other public or private agencies concerned with the court; evaluate

* This bill was passed by the California Legislature in 1971 and signed into law by the Governor. This recommendation of the Select Committee on Trial Court delay was published prior to that time.

and recommend improvements in the court's administrative system and procedures; prepare an annual report, and such other reports as are directed by the court.

DUTIES OF PRESIDING JUDGES

Each Superior and Municipal Court must have a Presiding Judge.* He is chosen, customarily for one year, by rotation or election. Certain statutes direct the Presiding Judge to perform general duties such as distributing the business of the court among the judges, prescribing the order of business of the court, or assigning judges to their respective departments.† His remaining duties are specified in statewide rules promulgated by the Judicial Council, with supplementation by local court rules.

The Committee is studying whether trial court delay can be reduced by improving the tenure, methods of selection, qualifications, and duties of Presiding Judges. The Committee's conclusions will be reported in conjunction with its recommendations concerning the broader subjects of court organization and administration. However, the Committee, as an interim step to strengthen the powers and duties of the Presiding Judge, proposes that:

The duties of Presiding Judges set forth in the Judicial Council's recommended standards of judicial administration should, with minor modifications, be adopted by the Judicial Council as a Rule of Court.

The recommended rule is identical to Section 2 of the Recommended Standards of Judicial Administration with these exceptions:

(a) Substitution of the word "shall" for "should" in the initial line makes the provisions mandatory thereby assuring compliance with the provisions by local courts;

(b) Statewide uniformity of court hours and a full working day are promoted by the addition to subdivision (a) of the requirement that regular court sessions convene not later than 9:30 a.m. for commencement of trials and continue until at least 4:30 p.m. with a recess from 12:00 noon to 1:30 p.m., except when the judge is engaged in other judicial assignments ordered by the Presiding Judges; and

(c) Subdivision (g) is modified by the addition of the requirement that when a judge disqualifies himself from a judicial assignment his reasons must be stated in writing and concurred in by the

* Gov. Code, §§ 69508 & 72271.
† Gov. Code, §§ 69508 & 72272.

master calendar judge or Presiding Judge thus encouraging effective calendar control and discouraging unwarranted rejections of proper assignments.

The provisions of the proposed rule provide as follows and are not intended to supersede other existing rules except to the extent that the Judicial Council may find they conflict *:

Duties of Presiding Judge

In superior and municipal courts the presiding judge shall:

(a) have prepared with the assistance of appropriate committees of the court such local rules as are required to expedite and facilitate the business of the court, including the establishment of times for convening regular sessions of the court not later than 9:30 a.m. for commencement of trials which shall continue to 12:00 noon, reconvene at 1:30 p.m. and continue at least until 4:30 p.m. except for other judicial assignments ordered by the presiding judge; submit such proposed rules for consideration of the judges of the court and upon approval have the proposed rules published and submitted to the local bar for consideration and recommendations; and thereafter have the court officially adopt the rules and file a copy with the Judicial Council as required by Section 68071 of the Government Code;

(b) designate one of the judges as acting presiding judge to act in his absence or inability to act, in courts that do not have an elected assistant presiding judge or an administrative judge;

(c) designate the judge to preside and each department including a master calendar judge when that is appropriate, and designate an assistant presiding judge for each district, or branch court, in courts having more than one district or branch;

(d) assign to a master calendar judge any of the duties that may more appropriately be performed by that department;

(e) apportion the business of the court among the several departments of the court as equally as possible;

(f) reassign cases assigned to any department to any other department as convenience or necessity requires;

(g) require that the judge to whose department a case is assigned for trial shall accept such assignment unless he is disqualified therein or unless he deems that in the interest of justice the case should not be tried before him for other good cause, stated in writing to and concurred in by the master calendar judge or the presiding judge;

* See Cal. Rules of Court 227, 245(a)(3) & (5), 246(b), 247, 515, 533(a)(3)–(5).

(h) require that when a judge has finished or continued the trial of a case or any special matter assigned to him, he shall immediately notify the master calendar judge or the presiding judge of that fact;

(i) prepare an orderly plan of vacations and attendance at schools, conferences and workshops for judges and submit it to the judges for consideration. (Twenty-one court days a year is a proper vacation period and attendance at a California school, conference or workshop for judges shall not be deemed vacation time if such attendance is in accord with such plan and has the prior approval of the presiding judge.);

(j) call such meetings of the judges as may be needed;

(k) appoint such standing and special committees of judges as may be advisable to assist in the proper performance of the duties and functions of the court;

(l) supervise the administrative business of the court and have general direction and supervision of the attaches of the court;

(m) prepare and submit to the judges for consideration personnel rules and regulations for non-civil-service court employees to insure that such employees will be recruited, selected, promoted, disciplined, removed or retired on the basis of merit;

(n) provide for proper liaison between the court and other governmental and civic agencies;

(o) require any judge who intends to be absent from his court one-half day or more to notify the presiding judge of such intended absence reasonably well in advance thereof; and

(p) when appropriate, meet with or designate a judge or judges to meet with any committee of the bench, bar and news media to review problems and to promote understanding of the principles of fair trial and free press, under paragraph 9 of the "Joint Declaration Regarding News Coverage of Criminal Proceedings in California," as approved for submission on January 16, 1970, and adopted by the State Bar of California and the California Freedom of Information Committee.

UNIFIED TRIAL COURT SYSTEM

INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Early in its deliberations the Committee decided to investigate the unification of trial courts to determine if unification could relieve court congestion and delay. The "California Lower Court Study," by the

consulting firm of Booz, Allen & Hamilton, was in progress at the time of this decision. The Committee followed the development of that study and concluded that additional information would be necessary since the Judicial Council's contract with that consultant confined the study to the Municipal and Justice Courts. Therefore, in conjunction with the Judicial Council, the Committee retained Booz, Allen & Hamilton to conduct a supplemental study to determine the feasibility of unifying all trial courts in California. Members of the Committee's Court Administration Subcommittee, aided by staff, acted as advisors to the consultant during this study which was published on December 3, 1971 under the title "California Unified Trial Court Feasibility Study."

Based upon the extensive information and recommendations furnished by Booz, Allen & Hamilton the Committee has concluded that a unified trial court system is necessary in California and so recommends. The major features of the Committee's proposed system, which are discussed in detail in subsequent sections, are as follows:

Administration. The trial court system would be centrally administered with appointment by the Chief Justice of a Chief Judge in each county, subject to the recommendations set forth below for Los Angeles County and counties with small caseloads. The State also would be divided into five regions in which the Chief Justice would appoint an Administrative Judge to supervise and assist the courts within the region. All of these appointed terms would be for one year and would be renewable. Provision would be made for an administrator in each of the five regions as well as an administrator in each county. Los Angeles County by itself would become one of the five administrative regions, divided into nine districts paralleling the existing branch court system with an Administrative Judge and administrator for the entire County and a Chief Judge and administrator in each of the nine districts. In addition, counties with low volume caseloads would be consolidated for administrative purposes.

Court Structure. A single trial court would be created in each county encompassing the present jurisdiction of Justice, Municipal and Superior Courts. If a county presently has a Municipal Court or Justice Court Judge who is a qualified attorney there would be two classes of judges: Superior Court Judges (incumbent Superior Court Judges) and Associate Superior Court Judges (incumbent Municipal Court Judges and Justice Court Judges who have been members of the California Bar for at least 5 years). The Chief Judge could assign Associate Judges to sit on all matters on a case by case basis, subject to the recommendation that Associate Judges generally be responsible for matters currently within the jurisdiction of Municipal Courts.

The Area Administrative Judge could appoint Associate Judges to sit as Superior Court Judges for semi-permanent terms from one month to one year, during which time they would receive the salary of a Superior Court Judge. Counties with two levels of judges would gradually become completely unified with one level of judge by a prohibition against appointments to fill future vacancies in Associate Judge positions and by a prohibition against the future creation of new Associate Judge positions.

Commissioners. The position of Commissioner would be created as the sole type of subordinate judicial position (encompassing present commissioners, juvenile court referees, traffic court referees, non-attorney justice court judges, attorney justice court judges admitted to practice less than five years or those unwilling to become full-time judges) to perform subordinate judicial duties in fields such as traffic, small claims, minor misdemeanors, probate and family relations.

Staff. Except for judges, all judicial and non-judicial court personnel such as administrators, clerks, deputy clerks, bailiffs, court reporters, jury commissioners, marshals, and legal secretaries would become court employees under a statewide system in which the Administrative Office of the Courts would classify positions, prescribe qualifications, set salaries, and provide for selection, promotion, dismissal and retirement.

Financing. The operating costs of the court system would be assumed by the State including salaries and fringe benefits of all personnel, services, supplies, equipment, training costs, and any administrative expenses. Capital costs of the trial court system would continue to be funded by the counties.

ADMINISTRATION

Regional Level

—A regional administrative structure should be established within the California trial court system by dividing the State into five administrative areas and creating the position of Area Administrative Judge.

—In each of these five areas the Chief Justice should appoint a judge, currently in office in that area, to serve as Area Administrative Judge for a one-year renewable term during which the Area Administrative Judge would receive the salary of a Court of Appeals Justice.

—The Area Administrative Judge should be responsible to the Chief Justice and on behalf of the Chief Justice should provide direction and coordination in management of trial courts within the area.

—The position of Area Court Administrator should be created, and in each of the five areas the Director of the Administrative Office of the Courts, with approval of the Area Administrative Judge, should appoint the Area Administrator who would serve at the pleasure of the Area Administrative Judge.

—The Area Court Administrator should be responsible to the Area Administrative Judge and should provide staff and technical support in court management to the Area Administrative Judge in the performance of that Judge's responsibilities. He also should function as a resource person in court management for trial court administrators in his area.

COMMENT

The size of our judicial system combined with the widely varying geographic, social and economic characteristics of areas within our State, make statewide administration of this system very difficult. The difficulties are increased by an administrative void in our system between the trial courts at the local level and the Administrative Office of the Courts and Judicial Council at the state level.

The above recommendation is intended to improve this situation by creating regional administrative judges and regional administrators to assist the Chief Justice, as head of the judicial branch of our government, in implementing statewide judicial policies embodied in Statutes, Rules of Court and Standards of Judicial Administration. These area administrative officials also will assist local trial courts with problems of planning, organization and management. Detailed duties for these respective positions, and recommended qualifications, are set forth in Appendix A (Area Administrative Judges) and Appendix B (Area Court Administrators).

The salary of a Court of Appeals Justice is recommended for the Area Administrative Judge in order to compensate for the substantial burdens of the position and to enhance his position as the Chief Justice's representative.

The boundaries of the proposed areas are set forth in Appendix C. They reflect consideration of the following factors: a reasonable degree of geographic proximity and accessibility; a relatively even distribution of court workload; and a reasonably equal number of judges on the trial courts within the area.

County Level

—At the local level each county should constitute an *administrative unit* except: (1) Los Angeles County which should be divided into nine administrative units with the same boundaries as existing branch court

districts; and (2) counties with an insufficient judicial workload to justify a full-time judge which should be combined with comparable adjacent counties to form multi-county administrative units.

—In each administrative unit the Chief Justice should appoint a trial court judge currently serving within that unit to serve as Chief Judge for a one-year renewable term.

—The Chief Judge should be responsible to the Area Administrative Judge and should control the daily management of the trial court.

—In each administrative unit a Superior Court Administrator should be appointed by the Chief Judge from a list of qualified candidates prepared by the Administrative Office of the Courts and this Administrator should serve at the pleasure of the Chief Judge.

—The Superior Court Administrator should be responsible to the Chief Judge and should provide the Chief Judge with the staff assistance needed to perform the Judge's court management responsibilities.

COMMENT

Adequate control of all court resources at the primary administrative level is essential to an effective trial court system. Just as the Committee believes that the recommended regional structure is one of the keys to successful trial court operation, it believes that effective management exercised at the county level is another key.

Thirty-eight counties now have sufficient workloads, as measured by the Judicial Council's weighted caseload system, to justify their own administrative units on a countywide basis.* The remaining 20 counties need to be grouped together for purposes of effective judicial administration. Therefore, the Judicial Council should be authorized by the Legislature to create multi-county administrative units, subject to the exercise of legislative veto, along the boundaries set forth in Appendix D. The criteria used to determine the need for multi-county organizations are: sufficient workload to justify at least one full-time judge, geographic proximity, ease of transportation and common demographic interests.

Los Angeles County would be an administrative area by itself and would be further divided into administrative units along the lines of its present nine districts. The reasons for this unusual treatment are the complex operating problems in this County, the large and diversified judicial workload, the need for manageable administrative units, and the

* This and subsequent references to the weighted caseload system are based upon the weighted caseload system in effect in 1971 and do not reflect any changes proposed by the firm of Arthur Young & Co. in its current study of the system.

problems in managing the calendar of such a large court with its numerous judges and court locations.

Effective leadership is required to direct the operations of a trial court system under a centralized management and administrative support system. Therefore, the direct responsibility for effective operations and the quality of judicial services should be delegated by the Chief Justice to a single individual in each administrative unit. For these reasons, the position of Chief Judge for each trial court unit should be created and assigned broad authority for administering trial court operations. Detailed duties, and recommended qualifications, are set forth in Appendix E.

Because this is such a critical position the Chief Justice should appoint all Chief Judges for a one-year term, subject to renewal. A number of methods are available to aid the Chief Justice in the task of selecting the Chief Judge such as nomination by secret ballot of the judges on the trial court from which the Chief Justice could make his selection. Selection of an effective method or combination of methods is left to the judgment of the Chief Justice.

Skilled court administrators, utilizing modern court management systems, techniques and equipment can provide needed assistance to Chief Judges in a number of areas including: planning and achieving more effective use of court personnel, equipment and facilities; streamlining case scheduling, processing and control; supervising the daily flow of cases; coordinating information needed for administrative decisions; and providing a continuous program of training for nonjudicial personnel.

For these reasons, the position of Superior Court Administrator should be authorized for every administrative unit, and the person in that position should have the qualifications and perform the detailed duties set forth in Appendix F. The Superior Court Administrator would be under the general supervision of the Chief Judge and would be responsible for directing all non-judicial business of the court and assisting judges in supervising all court attachés. The Chief Judge, relieved of these time-consuming administrative and supervisorial tasks, should be better able to concentrate on judicial operating problems and practices.

COURT STRUCTURE

—A single trial court should be established in each county encompassing the jurisdiction of existing Superior, Municipal and Justice Courts. This unified court should be named the "Superior Court."

—Initially there should be two classes of judges in most of the 25 counties which now have Municipal or Justice Courts: one class (Superior Court Judges) comprised of incumbent Superior Court

Judges and the other class (Associate Superior Court Judges) comprised of incumbent Municipal Court Judges and Justice Court Judges who have been members of the California Bar for five or more years.

—In multi-county administrative units with a judicial workload adequate to justify only one judge, that judge should serve as the Superior Court Judge for each county within the unit.

—Associate Superior Court Judges should receive the salary of Municipal Court Judges in effect at the time the unified trial courts are created.

—The class of Associate Superior Court Judges should gradually be eliminated following creation of the unified trial courts by prohibiting the creation of new positions for Associate Superior Court Judges and by prohibiting appointments to fill vacancies which occur in these positions.

—The Judicial Council should adopt a Standard of Judicial Administration directing that Associate Superior Court Judges be confined to matters currently within the jurisdiction of Municipal Courts, subject to the power of the Chief Judge to assign any matter to an Associate Superior Court Judge.

—The Area Administrative Judge should be authorized, within his area, to assign one or more Associate Superior Court Judges to serve as Acting Superior Court Judges for terms of not less than one month or more than 12 months during which they would receive the salary of a Superior Court Judge.

COMMENT

Problem

Fragmentation, isolation and absence of coordination are prominent characteristics of our trial court system.

Structure.

There are three types of trial courts presently operating in California: the Superior, Municipal and Justice Courts. Each differs from the other in jurisdiction, organization, staffing, financing and operation. This structure in its present form was established through the following acts: the creation of a Superior Court in each county, as the state court of general jurisdiction, by the Constitutional Convention of 1879 with an organization that has remained fundamentally unchanged up to the present; and the judicial reorganization of 1950 which reduced the types of

lower courts of limited jurisdiction from six to two, the existing Municipal and Justice Courts.

The California Constitution provides that there shall be one Superior Court in each county. It also provides that each county shall have at least one court of limited jurisdiction. Presently, the Board of Supervisors in each county has complete discretion as to the number and boundaries of lower court judicial districts, subject only to these constitutional requirements: that a district with 40,000 or more residents be made a Municipal Court; and a prohibition against splitting a municipality into more than one judicial district. Judicial districts with less than 40,000 residents are made Justice Courts. The jurisdiction of the lower courts is prescribed by the Legislature, and the Superior Court has original jurisdiction over all matters not specifically assigned by the Constitution or by statute to other courts (i.e., the appellate or lower courts). The Superior Court also hears appeals from lower court decisions. The present major categories of cases handled by these three trial courts are summarized as follows:

Superior Court	*Municipal Court*	*Justice Court*
Felonies	Misdemeanors	Minor misdemeanors
Juvenile matters	Small claims	Small claims
Marriage dissolution and annulment proceedings	Traffic	Traffic
Probate	Felony preliminary hearing	Felony preliminary hearings
Civil suits when the amount in controversy exceeds $5,000	Extradition	Extradition
Equity actions	Civil cases when the amount in controversy is $5,000 or less	Civil cases when the amount in controversy is $1,000 or less
Habeas corpus	-------	-------

Management.

In addition to these jurisdictional differences among the three levels of courts they are administered, staffed and financed in various and differing ways. Moreover, each unit in the trial court system generally determines its own managerial and operational policies subject only to the Rules of Court adopted by the Judicial Council and statutes enacted by the Legislature.

Not only does each trial court level generally function independently of the others, but each judge is relatively autonomous in matters of court management. The administrative authority in each court which can be exercised by the presiding judge is based primarily on his persuasive powers or on an agreed consensus among fellow judges. In practice, the administrative direction of a presiding judge can be

ignored by individual judges who feel that, as elected officials, they are entitled to operate with complete independence on such matters as working hours or work assignments. This particular problem is largely redressed by the Committee's recommendations concerning Area Administrative Judges and Chief Judges but it also requires improvements in court structure.

Organization.

Each level of trial court in the various counties generally is organized in a different manner, further complicating the problems created by differing management practices. For example, some Superior Courts have branches, some have separate criminal and civil proceedings located in different buildings, and some have internal departments with judges specializing in certain types of cases. The Municipal Courts are unified in Ventura and San Francisco Counties and divided into 24 districts in Los Angeles County. Practically all Justice Courts are part-time because of their low caseloads. Sierra County has only one judicial district and San Bernardino County has 18 Justice Court judicial districts. Some of these organizational differences can be attributed to different judicial service requirements in the various counties, but many are the result of historical factors, vested interests or resistance to change and cannot be justified in terms of logic, need, efficiency or effectiveness. As can be expected, the desired coordination of workload and maximum use of judicial and non-judicial resources among different court levels and judicial districts are extremely difficult to achieve with the work outputs for each of these resources fluctuating significantly from court to court.

And, finally, although Municipal and Justice Courts handle basically similar cases, decision-making regarding these courts, particularly the appointment of judges, staffing, and compensation of judicial and non-judicial personnel is fragmented among different units and levels of government. It is difficult, therefore, to hold any single governmental unit fully accountable for the adequacy of these courts in terms of the quality and quantity of their manpower resources.

Size.

The sheer magnitude of our trial court system inflates these structural and operational problems. In fiscal year 1969–1970 there were 58 Superior Courts, 75 Municipal Courts and 244 Justice Courts in existence. Two hundred and eighty-two or 74% were one-judge courts, including 23 Superior Courts, 15 Municipal Courts and 244 Justice Courts. This large number of administratively separate judicial units creates several problems, including:

- Unnecessary expense in maintaining duplicate administrative and judicial support services among the Superior and lower courts in the same county.

- Under-utilization of existing judicial manpower, in some instances, in meeting the trial court caseload.

- Difficulties in achieving efficient distribution of judicial and non-judicial manpower among the courts since the transfer of cases among the courts is so limited that its effect on the equalization of workload is negligible.

- Difficulties in providing coordinated statewide administration of over 360 separate units. Effective communication between the Judicial Council and such a large number of districts is necessarily limited.

- Limited opportunity in the smaller courts, as compared with large metropolitan counties, for judicial specialization and for achieving economies of scale.

- Organization of the lower courts presently into more than 300 separate judicial districts which restricts the balancing of caseloads among courts and the economies and efficiencies which can be achieved in larger judicial service units.

- A large number of lower courts which are low-volume and part-time in nature, which fragments the financial resources available to courts, provides conflicting occupation situations, and limits opportunities for attracting attorneys to these judgeships.

- Insufficient uniformity in court procedures and practices among judicial districts. This lack of uniformity requires the regular users of the courts to become familiar with various procedures in the Superior Courts and each lower court district and adds to the cost of producing different forms and maintaining different records.

- Uncoordinated use of the court facilities available to the various types of trial courts. The fragmented control over court facilities also has resulted in an illogical positioning of these court facilities. In some areas, court facilities are located a short distance from each other but their use is not coordinated because they belong to different judicial districts.

- When workload and staff assignments are restricted to one judicial unit, it is difficult to shift non-judicial personnel to another court where they might be better used.

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Demands Upon the System.

The foregoing inherent problems are aggravated by increased caseloads, increased backlogs, inefficient distribution of judicial resources, and other external factors beyond the control of the trial courts.

The caseload problem is reflected in the fact that trial court filings increased approximately 50% from 1960 to 1970 while the number of judges expanded 22%. In specific terms the number of Superior Court filings per judge from 1960 to 1970 increased from 1,098 to 1,222.

In fiscal year 1969–1970, the number of weighted judicial workload units per judicial position exceeded the 50,000 guideline used by the Judicial Council in the seven largest counties of California.

The judicial management and staffing problems created by the increase in caseload are underscored by the fact that the most significant increases have occurred in the more time-consuming judicial matters, such as felony criminal cases, which have the greatest "weight" in terms of judicial time requirements rather than in the more routine ones, like traffic.

The backlog of cases is growing with the greatest increase in the demand for judicial services occurring in the urban areas. In spite of efforts to meet this demand:

- The number of Superior Court civil cases awaiting trial in California's 18 largest counties has almost doubled during the past 10 years.
- The number of criminal cases awaiting trial has nearly tripled since 1965.
- There are approximately 211 Superior Court civil cases per judge awaiting trial in California's 18 largest counties each year.
- In several large counties it takes nearly three years, from the filing of complaint to time of trial, for the disposal of a Superior Court civil jury case.
- As of July 1, 1970, Los Angeles County had 41,019 civil cases awaiting trial, or 306 per judge, and San Francisco had 7,804 cases awaiting trial, or 325 per judge.
- This backlog may well continue to increase, because each year the courts dispose of fewer cases than are filed.

Part of the increased backlog in the Superior Courts has been attributed to the priority assigned in recent years to the hearing of criminal cases. In this connection it should be noted that in the state's 16 largest counties, which hear approximately 90% of the criminal cases, the number of criminal cases awaiting trial has nearly tripled and, in spite

of the priority, only 50% of the juries are sworn within 60 days from the filing of indictment or information.

Judicial resources are not concentrated in the large urban areas where major backlog problems exist. About 39 predominantly low population counties have fewer weighted units per judge than the 50,000 guideline.

Using the Judicial Council formula of 50,000 weighted units per Superior Court judge, 21 counties did not have caseloads in fiscal year 1969–1970 sufficient to justify a full-time judge. This creates problems in judicial administration since these judges must be assigned to other courts to achieve the best use of judicial resources, but also must be available to handle matters that come before the court in their own counties. If a Superior Court judge is reluctant to accept a temporary assignment to another county, whether nearby or far removed, the problem of efficient manpower utilization is further compounded.

The ability of the trial courts to cope with service needs are affected by many additional factors outside of the courts, including the operation of other governmental agencies and social and demographic changes. For example:

- Population increases, urbanization, economic slumps, and crime rates bring a concommitant growth in legal and caseload problems.
- Demographic shifts in the size and character of the state's population, as well as changing traffic patterns, create a fluctuating workload among courts in various geographic areas.
- Decisions by higher state courts or federal courts affect the procedural operation and requirements of the trial courts.
- The district attorney and defense counsel staffs can have a dramatic impact upon trial court workload by their manner of processing cases.
- Law enforcement agencies affect court operations by the number and type of offenses for which arrests are made.
- Trial attorneys have impact on the courts by their willingness to settle cases out of court and types of trial tactics which they employ.
- Legislative bodies affect court workload and efficiency by creating or changing the laws and determining the financial resources which will be made available to the courts.
- Changing patterns of social behavior determine the degree to which specific laws are obeyed.

Conclusion

The Committee recommends the unification of our trial courts as a major step toward combating the existing problems of trial court structure, management, organization, size, caseload, backlog, and distribution of judicial resources. The primary advantages of unification are:

- Simplified court structure;
- Comprehensive jurisdiction and elimination of the multiplicity of existing judicial entities;
- Centralized administration of all judicial resources at the county level which is the most important administrative level;
- Maximum utilization of judicial resources at the county level;
- Consistent and coordinated trial court management when combined with the recommended regional and county administrative system; and
- Increased uniformity in court procedures.

COMMISSIONERS

—The position of Commissioner should be created as the sole subordinate judicial position within the trial court system.

—One or more Commissioners should be provided in each judicial administrative unit.

—Commissioners should be appointed by the Chief Judge, subject to approval by a majority of the judges on the court, from a list of qualified candidates prepared by a committee of judges serving within the judicial administrative unit.

—Commissioners should serve at the pleasure of the Chief Judge.

—To qualify for the position of Commissioner a person should be an attorney admitted to practice in California and should have been a member of the bar in California or elsewhere not less than 5 years.

—Matters to be handled by Commissioners should be provided by statute and be confined to the following minor judicial duties:

(1) Infractions;
(2) Small claims;
(3) Misdemeanors in which the maximum possible sentence is a fine or imprisonment not exceeding six months;
(4) Uncontested probate matters, except applications for extraordinary fees;
(5) Family relations, except contested trials and contempt hearings;

(6) Preliminary hearings in felony cases;
(7) Juvenile Court proceedings, upon the condition that juvenile proceedings before Commissioners are subject to all existing safeguards such as the right to appeal to a Superior Court Judge.

—The following existing positions should be encompassed within the position of Commissioner and persons serving in those positions at the time, including non-lawyers, should be appointed as Commissioners: juvenile court referees, traffic court referees, Justice Court judges who are non-lawyers or who either are lawyers admitted to practice less than five years or are unwilling to become full-time judges.

COMMENT

The new position of Commissioner is recommended to relieve experienced judges of routine matters and to prepare a foundation for ultimately achieving unified trial courts with a single class of judge.

Encompassed within this position would be the assortment of subordinate judicial positions in our present system such as juvenile court referees, traffic court referees, and Commissioners as well as Justice Court judges who at the time of unification do not qualify or do not choose to become Associate Superior Court Judges.

It is recommended that Commissioners be restricted to routine and less serious judicial matters. However, the resulting savings in the time of judges would be substantial. Felony preliminary hearings are a striking example because it is estimated that Municipal Courts now spend one-third of their time on these hearings which time could be devoted to trials if Commissioners were available to handle these hearings.

Recognizing the importance of the proposed Commissioners in the daily work of the trial courts, the Committee has recommended a selection process involving participation by the judges who will approve and by committee will screen candidates, and the Chief Judge, who in discharging his administrative duties will select and if necessary dismiss Commissioners.

STAFF

—All judicial and non-judicial personnel serving the trial courts, other than elected judges, should become court employees.

—These personnel should be employed within a statewide system, confined to court employees, in which the Administrative Office of the Courts would provide for positions, qualifications, compensation, selection, promotion, discipline, dismissal, and retirement.

COMMENT

The Committee has concluded that effective judicial management requires that personnel upon whom court operations depend be court employees.

Present staffing patterns place judicial personnel beyond the control of the courts and are the result of piecemeal evolution rather than rational manpower planning. The mere fact that the counties pay and provide non-judicial personnel assures widely varying practices, qualifications and quality of performance. This situation is aggravated by the lack of a continuous, statewide training program for court attachés and absence of a system for evaluating or improving performance of court personnel.

The proposed statewide personnel system would introduce uniform standards in the critical areas of qualifications, compensation, selection and performance. Deficiencies in any of these areas would be remedied by the courts through the Administrative Office of the Courts thus terminating the present anomaly of judicial dependence upon personnel who are employed by and answerable to non-judicial units of local government.

Although a statewide personnel system would be created it is contemplated that supervision of the employees servicing each court would be exercised at the local level.

FINANCE

—The State of California should pay the expense of operating the trial court system.

—The counties should continue to pay the capital expenses required to operate the trial court system provided that the Judicial Council should approve the location and adequacy of facilities furnished for use in the trial court system.

COMMENT

The present methods of financing our trial courts are a patchwork. The counties bear all capital costs. Salaries for Superior Court Judges are primarily state expenses, while Municipal and Justice Court Judges are paid entirely by the counties in which they sit. The Legislature prescribes the salaries of Superior and Municipal Court Judges but each county determines the salaries for its Justice Court Judges. Likewise, the counties finance any retirement benefits for Justice Court Judges but the State financially supports and administers the retirement system for Superior and Municipal Court Judges. And, as noted above, the counties bear the expense of all non-judicial court personnel.

The Committee concluded that capital costs should remain with the counties, primarily because trial courts customarily are situated in multi-purpose county buildings which house local agencies such as the offices of the district attorney and public defender whose convenience is served by being in the same building with the courts.

For the following reasons, among others, the Committee recommends that the operating costs of the trial court system be assumed by the State:

- It provides an opportunity to use the State's broader revenue base thereby affording some property tax relief and avoiding underfunding of courts in counties with marginal financial resources for supporting judicial services or in counties which are unwilling to provide adequate financing.
- It provides a vehicle for insuring that county expenditures for such items as salaries, retirement and training are uniform throughout the State. As a result, opportunities are increased for upgrading the caliber of both judicial and non-judicial personnel.
- It provides an approach for the State to unify, strengthen and assert its expanded policymaking and management role over California's trial courts. It also fixes financial responsibility with the State to fund the decisions it makes regarding judicial policies and management.
- It reinforces the fact that judicial services, although provided locally, are of statewide importance.
- It can be used as a financial subvention to county governments, depending on how court revenues are used, at least in avoiding future court cost increases.
- Without State financing, it is doubtful if a unified trial court concept will receive the impetus needed to insure its eventual implementation.

This recommendation contemplates that the following types of expenses will be State financed:

- Salaries and fringe benefits of all personnel (judicial, non-judicial, and administrative);
- Services and supplies required in the normal operation of the court system which were previously funded by the counties;
- Equipment requirements;
- Training costs involved in the professional development of judicial and non-judicial personnel;
- Other related expenses required for circuit-riding and judicial administration.

Although the Committee recommends no plan with respect to disbursement of the approximately $161 million in court revenue (fiscal year 1969–1970), it is important to note that those revenues exceed the estimated $137 million required to cover the operations of the unified court system.

PROCEDURE

—The Judicial Council, subject to veto by the Legislature, should prescribe rules for practice and procedure in the courts; and should prescribe rules to govern administrative procedures in the court such as court hours, calendar management, and personnel.

COMMENT

The power to make rules of procedure and rules of administration places responsibility in the judicial branch of government—where it should be. This recommendation, aside from its importance as part of unifying the trial courts, is well supported by precedent in other jurisdictions. As of June, 1970, 21 states had authorized their Supreme Courts to exercise complete supervisory rule-making power. And, in several additional states the rule-making power is limited only by the possibility of legislative modification or veto.

The above recommendation has two important safeguards. First, the power may be exercised only by the Judicial Council whose membership is representative of each court level within our system as well as the State Bar. Second, any exercise of the power is subject to veto by the Legislature which provides a check and balance.

TIMETABLE

1972

1. Provide for judicial regions, Area Administrative Judges appointed by the Chief Justice and Area Administrators.
2. Authorize the Legislature to unify the lower courts and to create a unified trial court with one or two classes of judges on a county-by-county basis.
3. Authorize the Chief Justice to appoint the Chief Judges.
4. Authorize the Judicial Council to prescribe rules of practice and procedure and rules of administrative practice.
5. Establish the single subordinate judicial position of Commissioner.
6. Authorize creation of a statewide system of judicial employees.

1973

1. Provide State financing for the operating costs of the unified trial court system.
2. Establish a unified trial court in each county, each multi-county organization and each district in Los Angeles County.
3. Appoint Area Administrative Judges and employ Area Administrators.
4. Appoint Chief Judges and employ Superior Court Administrators.
5. Establish in the appropriate counties the position of Associate Judge and appoint the incumbent Municipal Court Judges and qualified Justice Court Judges to those positions.
6. Establish the statewide system of judicial employees.

COMMENT

The Committee recognizes that the proposed improvement of our trial court system cannot be achieved immediately and therefore proposes the foregoing stages for implementation.

IMPLEMENTATION

Set forth in Appendix G are suggested constitutional, statutory and rule changes to implement the foregoing recommendations for a unified trial court system.

CALENDAR MANAGEMENT

INTRODUCTION

The Committee has concluded that our courts can dispose of judicial business more expeditiously. This conclusion is reflected in the following recommendations to adopt statewide Rules of Court applicable to the scheduling of trial dates, certificates of readiness, pretrial and trial setting conferences, settlement conferences, continuances, calendars, utilization of judges, and penal proceedings.

It should be noted that this conclusion was preceded by an extensive effort to gather relevant information. The Committee recognized early in its deliberations that advice and information from the trial courts would be essential to its efforts. Acknowledging limitations on its time and resources, the Committee concluded that it would not be feasible to visit more than the 14 largest, metropolitan Superior Courts: Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Mateo, San Francisco, San Diego, Santa Barbara, Santa Clara and Ventura. Appointments were made with the Presiding Judges in each of those courts for a meeting with one of the Judges on the Committee and a staff attorney. At least one week prior to the appointment a questionnaire, which had been reviewed by the Committee, containing questions pertinent to several topics, including those covered by the following recommendations, was sent to each Presiding Judge thereby furnishing him an opportunity to consider and gather the information requested by the Committee. In the cases of Los Angeles, Sacramento and Santa Clara Counties the Judges on the Committee from those Counties obtained their responses to the questionnaire.

Without the superb assistance and cooperation of these Presiding Judges the Committee's efforts in this and other areas would have been seriously hampered.

Combining the information obtained from this program with an analysis of existing statutes, Rules of Court and Standards of Judicial Administration the Committee was able to identify those areas in which a statewide system of calendar management would be feasible and desirable. This system is proposed for adoption immediately, with the intention that it be modified for use in the unified trial courts upon their creation.

TRIAL DATES

—All courts shall adhere to a system of assigning firm trial dates to cases that are ready for trial which shall be determined by certificates of readiness and trial setting conferences or pretrial conferences.

—Trial dates shall be scheduled in a manner which assures that the trial commences on the specified trial date.

—If extraordinary circumstances prevent a trial from commencing as scheduled it may not trail upon the court's calendar more than 4 court days beyond the specified trial date.

—The availability and control of trial dates shall be the responsibility of the court administrator, or his designated representative, acting under the supervision of the Presiding Judge or master calendar judge.

COMMENT

Nothing compels our courts to schedule trials in a manner which assures that the trials commence on the designated date. Most courts, of course, voluntarily attempt to do so. In those courts which do not the resulting delays and impositions upon judges, parties, attorneys, jurors and witnessess are inexcusable.

The proposal remedies this situation by implementing in rule form Standards of Judicial Administration adopted by the Judicial Council. This approach also was endorsed as follows at the last Workshop for Presiding Judges of the Metropolitan Superior Courts: "To maximize the pretrial disposition of civil cases and to conserve the judicial resources of courts for the cases that must be tried, the Superior Courts should adopt the practice of assigning firm trial dates, but to ready cases only." *

In addition to furnishing the court and all interested persons with a reliable schedule, the proposed rules will eliminate the practice in some courts of "trailing" cases from week to week following the dates they were scheduled to commence trial. Recognizing that some flexibility is warranted an exception is permitted which allows a court to trail a case up to four days beyond the scheduled trial date if required by extraordinary circumstances.

The availability and control of trial dates, particularly in a system of firm trial dates, are matters which should be controlled by the Presiding Judge or master calendar judge since they are the administrative leaders in any court. The proposed rules effect this by placing responsibility for trial dates on the court administrator, or his designated representative, subject to the controlling supervision of the Presiding Judge or the master calendar judge.

CERTIFICATES OF READINESS

—In courts with 5 or more judges a certificate of readiness shall be filed in every action.

* Statement of Participants' Recommendations, Item No. 2 (March 27, 1971).

—When a court can give a trial date within the 12 months following the filing of an at-issue memorandum that court may require that the certificate of readiness be filed with the at-issue memorandum.

—When a court cannot give a trial date within the 12 months following the filing of an at-issue memorandum that court shall invite parties whose actions are on the civil active list to file a certificate of readiness when the court can give a trial date within the next 6 months. If no certificate is filed within 30 days of the invitation the action shall be removed from the civil active list and may be returned to the list only by filing a new at-issue memorandum.

—The certificate may be filed by any party to the action but, in order to file, the party must certify that all discovery in the action will be completed and all motions disposed of by the time of the pretrial or trial setting conference.

—All parties shall complete discovery and obtain disposition of all motions prior to the pretrial or trial setting conference.

—Any other party who objects to the statements in the certificate of readiness may file a written motion to strike the certificate, supported by a declaration setting forth his objections.

—The pretrial or trial setting conference must be held within 90 days of the trial.

—Discovery may be conducted subsequent to the pretrial or trial setting conference only (1) upon stipulation of the parties, (2) if permitted by the court, for good cause shown, by granting an oral or written motion made at the time of the pretrial or trial setting conference, and (3) if permitted by the court subsequent to the conference by granting a written, noticed motion supported by written declarations demonstrating good cause.

—If the trial is not scheduled to commence within 90 days of the conference or the court acting on its own motion causes the trial to commence more than 90 days after the conference discovery shall automatically reopen and continue to within 30 days of trial.

COMMENT

This proposal is intended to assure that when a court allocates time and other judicial resources to a case that those resources will not be squandered because the case is not ready to proceed. Our court system can no longer afford the luxury of scheduling trials, and conferences prior to trial, for cases in which the parties or the attorneys have not completed their preparation. By requiring that discovery and pretrial

motions be completed prior to the first appointment with the court, at the pretrial or trial setting conference, the proposed rule will furnish the court with business which is ready for disposition.

The proposal is not inflexible. Unrealistic certificates of readiness may be stricken upon the motion of an objecting party, and discovery may be conducted subsequent to the trial setting or pretrial conference by stipulation or by court order for good cause.

The proposal also acknowledges the responsibility of the courts to expedite judicial business and compels trials to be scheduled within 90 days of the pretrial or trial setting conference. If a court fails to do so or fails to commence the trial within that period the parties may resume discovery until 30 days prior to trial.

The present rules merely furnish local courts the option of requiring readiness certificates and then the parties need only certify that discovery will be completed 30 days prior to trial. In the five metropolitan Superior Courts which presently require such certificates, three of the Presiding Judges advised the Committee that this type of certificate does not help in assuring that the court is dealing only with ready cases at the time of trial.

PRETRIAL AND TRIAL SETTING CONFERENCES

—Following the filing of a certficate of readiness courts with 5 or more judges shall schedule a pretrial conference or a trial setting conference which shall be held not more than 90 days prior to trial.

—The parties must receive notice of the conference at least 60 days prior to the date of the conference.

—Trial setting conferences shall not be required in cases which require one day or less for trial.

—Pretrial conferences shall be held only if ordered by the court prior to sending notice of the trial setting conference or if requested by one of the parties in the certificate of readiness.

—At the trial setting or pretrial conference the attorneys for the parties must appear and furnish the court, in a manner prescribed by the court, with the information necessary to complete a conference order.

—The trial setting conference order shall determine:

(a) The number of sides and the peremptory jury challenges to be allocated to each side if a jury is demanded;

(b) The fact that the case is at issue and that all parties necessary to its disposition have been served or have appeared;

(c) That fictitious named defendants are dismissed, or severed from the action and ordered off calendar;
(d) That discovery and all motion matters are completed or what additional discovery and motions have been permitted for good cause;
(e) The name of the attorney who actually will try the case, if this information is required by the court;
(f) The date for a settlement conference;
(g) A firm trial date not less than 30 or more than 90 days after the conference and the time estimated for trial; and
(h) Any other appropriate matter which does not conflict with statutes or other rules.

—As noted in the conference order, firm trial dates shall be set by the court not less than 30 days or more than 90 days after the conference.

COMMENT

The foregoing procedures are substantially similar to existing procedures with several notable exceptions. Compulsory trial setting conferences presently are required only in courts with 10 or more judges; the proposal applies to courts with 5 or more judges. Present rules do not require the court to enter a conference order but this is recommended by the Judicial Council's Standards of Judicial Administration and already is the practice in the major metropolitan courts. To implement this change the proposal contemplates statements from the parties. With these statements the parties also will comply with the new requirement that the trial attorney be specified if requested by the local court. Finally, the proposal compels a party to request a pretrial conference in his readiness certificate or waive the right to such a conference thereby eliminating the need to conduct both a pretrial and trial setting conference which can occur under existing rules.

The proposal furnishes the courts and parties with an opportunity to come together to jointly assess the case's readiness for trial and to agree upon dates for the settlement conference and trial thus providing the court and parties with a firm schedule. It also should be noted that the proposal is reinforced by the Committee's prior recommendation to impose sanctions as follows in connection with pretrial or trial setting conferences:

Rule 217. Sanctions in respect to proceedings before trial and at trial

Any failure of a person to prepare for, appear at, or participate in a scheduled pretrial conference, trial setting conference, settlement conference, or trial, unless good cause is shown for the failure,

is an unlawful interference with the proceedings of the court. The court may, on its own motion or on the motion of any party, impose these sanctions for the interference: contempt citations; fines; and awards of costs, actual expenses, attorneys' fees, or any thereof arising from the interference. Report 2, p. 26, (October, 1971).

SETTLEMENT CONFERENCES

—At the trial setting conference or pretrial conference the court shall set a mandatory settlement conference which shall be conducted not less than 3 or more than 30 days prior to trial in all cases in which money damages are sought, except cases which require one day or less for trial.

COMMENT

In every civil case disposed of by trial rather than by pretrial settlement, there is an expenditure of judicial time and taxpayer money which is wasted if the case could have been fairly and justly settled short of trial. The Committee believes that this kind of waste is substantial, since a significant number of civil cases apparently go to trial when they could have been fairly settled had the appropriate conditions existed.

In view of overcrowded court calendars and in order to use our limited judicial resources efficiently, it seems imperative that the Legislature and the courts foster what the Committee believes are appropriate conditions for pretrial settlements in civil litigation: good faith negotiations between informed parties advised by experienced attorneys and, if necessary, by an experienced judge. The Committee therefore recommends the above rule and further recommends that the settlement conference be attended by all attorneys, all parties, and a representative with authority to settle from any insurance company involved, with each party required to file all experts' reports, list all special damages and make settlement offers and demands. These recommendations should be considered in conjunction with the Committee's earlier proposals to encourage pretrial settlement and penalize parties who unreasonably refuse to settle.*

California Rule of Court 207.5 provides for a "settlement conference" in any Superior Court civil case in which a conference is requested by any party to the case. The settlement conference contemplated in the present rule consists of an informal meeting of all attorneys in the case before a judge who attempts to achieve a settlement of the case at that time. A properly conducted settlement conference very often results in a settlement, and the Committee has concluded that the conference can be an even more useful and successful procedure for en-

* Select Committee on Trial Court Delay, Report 2, pages 10–19 (October 1971).

couraging settlement if its scope and content are enlarged and it is required in all civil cases except short causes.

A settlement conference gives the court itself a definite opportunity to encourage settlement and to lend its expertise and persuasion to settlement negotiations. The judge often provides the exact catalyst necessary to accomplish an acceptable settlement. The attorneys and the parties, in formulating their settlement postures, usually give great weight to a judge's reaction to the case as it is presented by the pleadings and by the persons at the settlement conference. It is the rare case that does not warrant the most serious effort at settlement, and the extra judicial time required for settlement conferences should be far outweighed by the significant number of cases in which trial is avoided by settlement. The court should be afforded this opportunity to lend its expertise and encouragement to settlement in every civil case, with the exception of short causes, which can be disposed of more efficiently without a settlement conference.

The timing of settlement conferences is very important. The conference is not designed to settle cases immediately after filing, nor to settle cases before discovery has been completed. It is designed to provide a forum in which it can be determined upon complete information and final analysis whether the case can be settled or whether it must be tried. Its purpose is not to start negotiations, but to complete them. The Committee therefore recommends holding the settlement conference not more than four weeks and not less than three days prior to the trial date, since only at this time will each party have prepared his case to a point where accurate analysis and evaluation is possible, without the additional expenditure of time and money necessary for final trial preparations.

CONTINUANCES

—Continuances of pretrial conferences, trial setting conferences, settlement conferences and trials may not be permitted except upon noticed, written motions supported by written declarations which show to the satisfaction of the court that there is good cause for the continuance.

—Cases may not be placed off calendar except upon stipulation by the parties and a demonstration of good cause which satisfies the court or upon written, noticed motion supported by written declarations which show good cause. If a cause is removed from the calendar it may be returned to the civil active list only upon the filing of a new at-issue memorandum.

—Only the Presiding Judge or Master Calendar Judge shall hear and determine these and other matters which affect the calendar, such as motions to advance, reset, consolidate or strike an at-issue memorandum or certificate of readiness.

—If attorneys' vacations are to be accommodated counsel shall advise the court at the trial setting or pretrial conference of the dates they will be unavailable while on vacation which may be considered in setting the trial date. The vacations of attorneys or parties engaged in an action shall not be grounds for a continuance after the trial date is set.

COMMENT

In March of 1971 the Presiding Judges of the Metropolitan Superior Courts agreed as follows:

> As part of the practice of maintaining a firm trial date for each ready case, the superior courts should adopt a firm policy regarding any continuance of these cases. This policy should emphasize that the dates assigned for a trial setting or pretrial conference, a settlement conference, and for trial must be regarded by counsel as definite court appointments. Any continuance, whether contested or uncontested or stipulated to by the parties, must be applied for by noticed motion, with supporting declarations, to be heard by the presiding judge only or by a judge designated by him. No continuance otherwise requested should be granted except in emergencies.*

The Judicial Council subsequently adopted this recommendation as a Standard of Judicial Administration.

The Committee found, by contrast, that local practices with respect to continuances are lenient, vary widely, and fall far short of the objectives endorsed by the Presiding Judges' Workshop and the Judicial Council.

Trial dates, by stipulation of the parties, may be continued in 5 metropolitan Superior Courts or placed off calendar in 9 of them. By stipulation parties also are permitted, without court consent, to continue pretrial conferences, trial setting conferences or settlement conferences in at least 8 metropolitan Superior Courts. An even greater number of courts permit these conferences to be placed off calendar by stipulation. And, when trial continuances are sought by motion, only 7 metropolitan Superior Courts require written motions or supporting declarations. If the requested continuance involves a pretrial or trial setting conference a written motion with supporting declarations is required in only 2 of these courts and none of them requires a written motion to continue a settlement conference.

* Workshop for Presiding Judges of the Metropolitan Superior Courts, Statement of Participants' Recommendations, Item No. 3 (March 12, 1971).

The result is simple. In the great majority of urban Superior Courts the parties and their attorneys control the court's schedule. The proposed rules place that control where it should be—in the hands of the court.

COURT CALENDARS

—Courts with 5 or more judges shall maintain a master civil calendar and a master criminal calendar.

—All counsel whose trials are scheduled to commence must appear personally on the specified trial date, unless excused by the Presiding Judge or master calendar judge.

—Cases which are not assigned to trial on the date specified will not be required to report on following days but parties and counsel must be available for notification by telephone that a department is ready for the commencement of their trial.

COMMENT

The Committee has concluded that separate master calendars for civil and criminal cases would be a desirable management tool in our courts in view of the differing problems characteristic of penal and civil actions.

The proposal also requires attorneys to be present, unless excused by the Presiding Judge or the master calendar judge, on the date set for trial. There is no comparable statewide Rule of Court and local practices vary. The proposed rule corrects this and reflects the conclusion that courts should have all counsel present on the date of trial to adjust for settlements, to determine which trials actually are ready to commence, and to assign as much business as possible to the available judges. In addition, this furnishes the litigants the opportunity to reach settlements, sometimes with the assistance of the court, which previously have not been possible. As recognized by the proposal regarding firm trial dates, extraordinary circumstances may require that a case trail for a short time beyond the specified trial date. In those instances, daily appearances will not be required so long as the parties and counsel are available by telephone for notification that their trial may commence.

UTILIZATION OF JUDGES

—The utilization of judges for the trial of cases, particularly jury cases, should be maximized. To achieve this, all departments (with the exception of those with specialized full-time duty assignments such as domestic and juvenile courts) should be used for jury trials. Unless a court trial is of a priority nature it should follow the assignment

of all available jury cases. The provisions of Rule of Court 248, concerning distribution of criminal business in Los Angeles and San Francisco Counties, are an approved exception.

—Trials shall be conducted in all available departments, Monday through Friday, commencing not later than 9:30 a.m., continuing until 12:00 noon, reconvening at 1:30 p.m. and continuing at least until 4:30 p.m.

—The Presiding Judge shall assign for hearing at 9:00 a.m. or earlier, to continue until the hour specified by the Presiding Judge, the following civil matters to be handled as part-time assignments by one or more judges prior to commencement of the trial schedule: adoptions, probate, civil law and motion, defaults, minors' compromises, and mental health conservatorship hearings.

—The appellate department shall convene at least one day per month. Additional sessions may be convened but only if ordered by the Presiding Judge.

—Matters which must be heard by a specific judge, such as motions for a new trial or continued law and motion matters, shall be scheduled at 4:30 p.m. or at other times which do not interfere with the foregoing part-time assignments or the trial schedule.

—Cases shall be assigned to commence at any time a trial department becomes available between 9:30 a.m. and 4:30 p.m. Each department shall notify the Presiding Judge or person designated by him such as the master calendar secretary immediately upon becoming available (1) upon completion of any trial or hearing, (2) when a jury retires to deliberate, or (3) when the judge can proceed no further with his present assigned matter.

—A judge to whose department a trial or other matter is assigned shall accept that assignment unless he is disqualified or unless he deems that in the interest of justice the trial or matter should not be heard before him for other cause which must be stated in writing to and concurred in by the master calendar judge or the Presiding Judge.

COMMENT

This proposal remedies several deficiencies in existing Rules. There is no compulsion by rule at the present time designed to maximize the number of judges available to try cases—particularly jury cases. Court hours are a matter of local discretion and vary considerably around the State. Individual judges who have business which only they can perform are not required to schedule it in a manner that does not interfere with the overall schedule of the court. And, finally, some court

business can be disposed of efficiently on a daily basis as a part-time assignment rather than a full-time assignment, and the proposal so provides. The remaining recommendations reinforce existing rules and the Committee's prior recommendations concerning the duties of the Presiding Judge,* particularly his duty to:

> (a) have prepared with the assistance of appropriate committees of the court such local rules as are required to expedite and facilitate the business of the court, including the establishment of times for convening regular sessions of the court not later than 9:30 a.m. for commencement of trials which shall continue to 12:00 noon, reconvene at 1:30 p.m. and continue at least until 4:30 p.m. except for other judicial assignments ordered by the presiding judge; submit such proposed rules for consideration of the judges of the court and upon approval have the proposed rules published and submitted to the local bar for consideration and recommendations; and thereafter have the court officially adopt the rules and file a copy with the Judicial Council as required by Section 68071 of the Government Code . . .
>
> . . .
>
> (g) require that the judge to whose department a case is assigned for trial shall accept such assignment unless he is disqualified therein or unless he deems that in the interest of justice the case should not be tried before him for other good cause, stated in writing to and concurred in by the master calendar judge or the presiding judge;
>
> (h) require that when a judge has finished or continued the trial of a case or any special matter assigned to him, he shall immediately notify the master calendar judge or the presiding judge of that fact . . . .

PENAL PROCEEDINGS

—Time limits should be prescribed in penal proceedings to supplement existing statutes and rules to achieve the following maximum timetable in felony cases:

1. Arrest to arraignment in Municipal Court—2 days (as provided by statute);
2. Arraignment to plea—the defendant shall plead at the time of arraignment or the court shall enter a plea of not guilty except in those cases in which a sanity hearing is necessary or a demurrer is filed in which case the court may make an appropriate order;
3. Arraignment to preliminary hearing—10 days (as provided by statute);

* Select Committee on Trial Court Delay, Report 2, pages 8–10 (October 1971).

4. Preliminary hearing to filing in the Superior Court—15 days (as provided by statute);
5. Filing information in Superior Court to arraignment—3 days;
6. Arraignment to plea in the Superior Court—the same rule as in the Municipal Court;
7. Arraignment in Superior Court to trial—60 days (as provided by statute);
8. Mandatory pretrial negotiating conference—to be held no more than 21 days prior to trial, unless combined with an omnibus hearing;
9. Pretrial negotiating conference:
   (a) A date for the pretrial conference would be set during the Superior Court arraignment;
   (b) The pretrial conference would follow disposition of pretrial motions;
   (c) The conference would be conducted by the judge or judges designated by the Presiding Judge;
   (d) The attendance of the defendant would be mandatory;
   (e) Counsel for both sides would be required to attend, to be familiar with the contents of the transcript of the preliminary examination, and be prepared to discuss disposition of the case other than by trial;
   (f) The prosecuting attorney assigned to the case would be prepared to state what disposition, if any other than trial, he is authorized to make, and would have the necessary authority on the date of the pretrial conference;
   (g) Any arrangements arrived at during the negotiation would be entered on the case record in conformance with constitutional, statutory, and decisional guidelines;
   (h) Following a mutual arrangement at the pretrial conference, the judge shall commit himself as to the maximum penalty to be imposed, provided, however, the defendant be advised that if the judge later decides that such a sentence would be inappropriate in light of the probation report and other available information, the defendant shall be allowed to withdraw his guilty plea prior to the actual sentencing.
   (i) In the event approval of a plea is sought after the case is assigned to trial the case shall then be assigned back to the judge who conducted the plea bargaining at the pretrial conference, unless the case is otherwise assigned by the Presiding Judge.

10. Omnibus hearing—between the plea and no later than one week prior to the negotiating conference, unless combined with the conference, a hearing shall be held at which all pretrial motions shall be heard, subject to appropriate orders for good cause shown made by the judge hearing the motions.

11. At the time of arraignment and plea the court shall set the dates for the omnibus hearing, the pretrial negotiating conference, and the trial.

COMMENT

This proposal is intended to furnish a firm timetable for processing and disposing of criminal cases. There is an obvious management need for this and the resulting benefits to defendants and society are equally apparent. In addition, all but one Superior Court Presiding Judge contacted by the Committee favored such a system of time limits for completion of each stage of criminal proceedings. Implementation of the recommendations is relatively simple since several existing statutes and rules already pertain to many stages covered by the proposal.

The most notable changes embodied in the proposal are compulsory pretrial negotiating conferences and compulsory omnibus hearings. A majority of the Superior Court Presiding Judges contacted by the Committee favored this approach and it is consistent with the conclusions reached at the National Conference on the Judiciary:

> **Omnibus hearings should be used to screen cases which do not justify trial and to streamline those in which trial is necessary.**
>
> **Plea bargaining, when the accused is properly represented and when adequate safeguards such as those recommended in the Standards of Criminal Justice are provided, is practical and proper where the court is assured through its own inquiry that the ultimate plea is a just one.***

GENERAL RECOMMENDATIONS AND PROPOSED STANDARDS OF JUDICIAL ADMINISTRATION

The following proposals set forth self-explanatory rules and standards of judicial administration which the Committee has investigated and endorsed.

—Proposed rule

The Judicial Council should adopt a rule or take appropriate action to assure that each court has a civil active list as provided in Rule of

* National Conference on the Judiciary, Consensus Statement of Findings and Conclusions, Williamsburg, Virginia (March 11–14, 1971).

Court 207 or a card file index of cases in which at-issue memoranda have been filed in order to furnish to the Presiding Judge or the master calendar judge that information which is necessary to manage the court's calendar.

—Proposed rule

The Judicial Council should adopt a rule similar to existing Rule 207 requiring each court to have a criminal active list which would be prepared monthly in the form of a list or card file index and which would provide the Presiding Judge or judge in charge of the master criminal calendar with that information which is necessary to manage the criminal cases on the court's calendar.

—Proposed rule

The Judicial Council should adopt a rule to obtain from each Superior Court a monthly statistical report of jury and nonjury cases set, continued, settled, placed off calendar, decided by the court and decided by a jury which shall be compiled and published annually by the Council.

—Proposed rule

The Judicial Council should adopt rules as authorized by the Welfare and Institutions Code, governing practice, procedure and calendar management in juvenile court proceedings.

—Proposed Standard

Whenever and wherever possible, trial setting conferences and pretrial conferences should be conducted by the Presiding Judge or Master Calendar Judge.

—Proposed Standard

The number of judges in branch court locations should be kept to a minimum. For maximum efficiency both cases and judges should be freely transferred between the main and branch court locations as needed.

—Proposed Standard

Each court should have an adequate number of research assistants to assist with such matters as law and motion and appellate decisions. The appropriate number of assistants for courts of varying sizes should be specified by the Council.

—Proposed Standard

To assist each court to comply with the proposed rules regarding utilization of judges, especially on part-time assignments, each court should have a sufficient number of paralegal personnel to permit the

court to dispose of business in the following areas on a part-time basis utilizing one or more judges: i.e., probate, law and motion, adoptions, defaults, minors' compromises, and mental conservatorships.

—*Proposed Standard*

Each court should have a calendar secretary responsible for all matters relating to the trial calendar employed by the court and acting under the supervision of the Presiding Judge or Master Calendar Judge and the Court Administrator.

IMPLEMENTATION

Set forth in Appendix H are suggested changes in Rules of Court to implement the foregoing recommendations concerning calendar management.

APPENDIX A

AREA ADMINISTRATIVE JUDGE

Reports to: Chief Justice

Supervises: Chief Judges of Superior Courts within a judicial administrative area

Area Court Administrator

Basic Function:

The Area Administrative Judge, acting on behalf of the Chief Justice, is responsible for providing direction and coordination of the management of Superior Courts within his administrative area including: balancing workloads among courts and judges; insuring statewide court policy implementation; identifying problem areas in court operations; coordinating efforts to improve judicial services; and assisting in the professional development of judicial personnel.

Principal Duties and Responsibilities:

1. Interprets statewide court objectives and operating policies to Superior Courts and reviews and approves plans and programs to meet these objectives and policies. Recommends changes to the Chief Justice, when needed, in statewide court objectives and policies based upon area conditions.
2. Reviews and recommends to the Chief Justice the number and boundaries of single and multicounty organizations within his administrative area and administrative divisions within Superior Courts and assists County Boards of Supervisors, as requested, in court location decisions.
3. Reviews court operations of each Superior Court to assure adherence to statewide court operating policies as well as to identify improvement opportunities in court management. Coordinates the development and implementation of court operational improvement programs through visitation teams, on-site counsel, and other approaches.
4. Advises and consults with the Chief Justice on all significant matters relating to the management and operations of courts within his area.
5. Assists Chief Judges in the selection, assignment and training of Commissioners. Coordinates professional development activities for all Judges and subordinate judicial officers within the area. Identifies replacement needs in judicial personnel due to anticipated attrition.

6. Evaluates the administrative performance of each Chief Judge and reports to the Chief Justice. Counsels with the Chief Justice on the appointment of Chief Judges.
7. Assigns, under authority of the Chief Justice, individual Judges and Commissioners among the courts within his area to maintain an appropriate balance in court workload.
8. Supervises the activities of the Area Court Administrator in his staff support role.
9. Reviews judicial and commissioner staffing levels proposed for each Superior Court and recommends judicial staffing plans to the Judicial Council.
10. Cooperates and works closely with other Area Administrative Judges in balancing workloads among areas and exchanging information relative to the improvement of court management and operations.
11. Keeps informed and disseminates information on all matters which can contribute to the efficiency and effectiveness of court management and operations, including new court management approaches and technologies.
12. Represents the Chief Justice in community, civic, and professional affairs relating to judicial administration in Superior Courts as well as to improve communications between the courts and the public they serve.
13. Reviews and recommends budgets to the Chief Justice concerning area administrative functions.

Principal Working Relationships:

1. Works closely with the Chief Justice in identifying the problems in Superior Court management and determining the corrective action required.
2. Works closely with staff support and resource personnel in the Administrative Office of the Courts to prepare organization and staffing recommendations relative to Superior Courts.
3. Works closely with other Area Administrative Judges to solve common court management problems.
4. Works closely with the Chief Judges of the Superior Courts in his area to provide support in internal court administrative matters.

Qualifications:

The Area Administrative Judge is a judge with demonstrated administrative ability and interest designated by the Chief Justice.

APPENDIX B

AREA COURT ADMINISTRATOR

Reports to: Area Administrative Judge

Basic Function:

The Area Court Administrator is responsible for providing staff and technical support in court management to the Area Administrative Judge in the performance of his area responsibilities. He also functions as a resource person in court management for Superior Court Administrators in his area.

Principal Duties and Responsibilities:

1. Assists the Area Administrative Judge in coordinating the management of Superior Courts within the area, including:
   - Preparation and analysis of regular reports on the status of calendar control in each of the courts.
   - Preparation and analysis of short-term plans pertaining to the assignment of judicial personnel and subordinate judicial officers among Superior Courts.
   - Preparation and analysis of reports on the compatibility of Superior Court plans and programs to statewide policies.
   - Preparation and analysis of plans regarding possible changes in the number and boundaries of multi-county organizations, administrative division within courts and court locations.
   - Assisting in the development and implementation of court operational improvement programs, including use of visitation teams, as coordinated by the Area Administrative Judge.
2. Advises and consults with Superior Court Administrators on new programs, systems, and techniques for improving court management and the processing of court workloads.
3. Coordinates the preparation and review of operating budgets, including judicial staffing levels, for Superior Courts. Counsels with Superior Court Administrators, as required, on the preparation and analysis of operating and capital outlay budgets.
4. Advises Superior Court Administrators on methods and procedures of collecting, handling, recording and distributing court revenues.
5. Counsels on the utilization of court facilities and automated data processing systems within the area to identify opportunities for improvement and, as required, coordinated usage.

6. Counsels with Superior Court Administrators in the selection and training of court attachés as well as replacement planning. Assists the Area Administrative Judge in his professional development activities for Judges and Commissioners.
7. Assists Superior Courts in establishing and maintaining appropriate law libraries.
8. Coordinates the vertical and horizontal flow of information regarding changes in statewide court operating policies, new laws and statistical reporting.
9. Provides advice and counsel to Superior Courts on jury selection techniques and procedures.
10. Coordinates the public information activities among courts in the area and acts as spokesman for the Area Administrative Judge or Administrative Director of the Courts, as delegated.
11. Conducts special studies as requested by the Area Administrative Judge or Administrative Director of the Courts.
12. Counsels with Chief Judges on the appointment of Superior Court Administrators.

Principal Working Relationships:

1. Works closely with the Administrative Director of the Courts and other Area Court Administrators to analyze factors affecting court workload, develops long-range plans and evaluates new approaches to court management.
2. Works closely with Superior Court Administrators on identifying and solving court management problems.

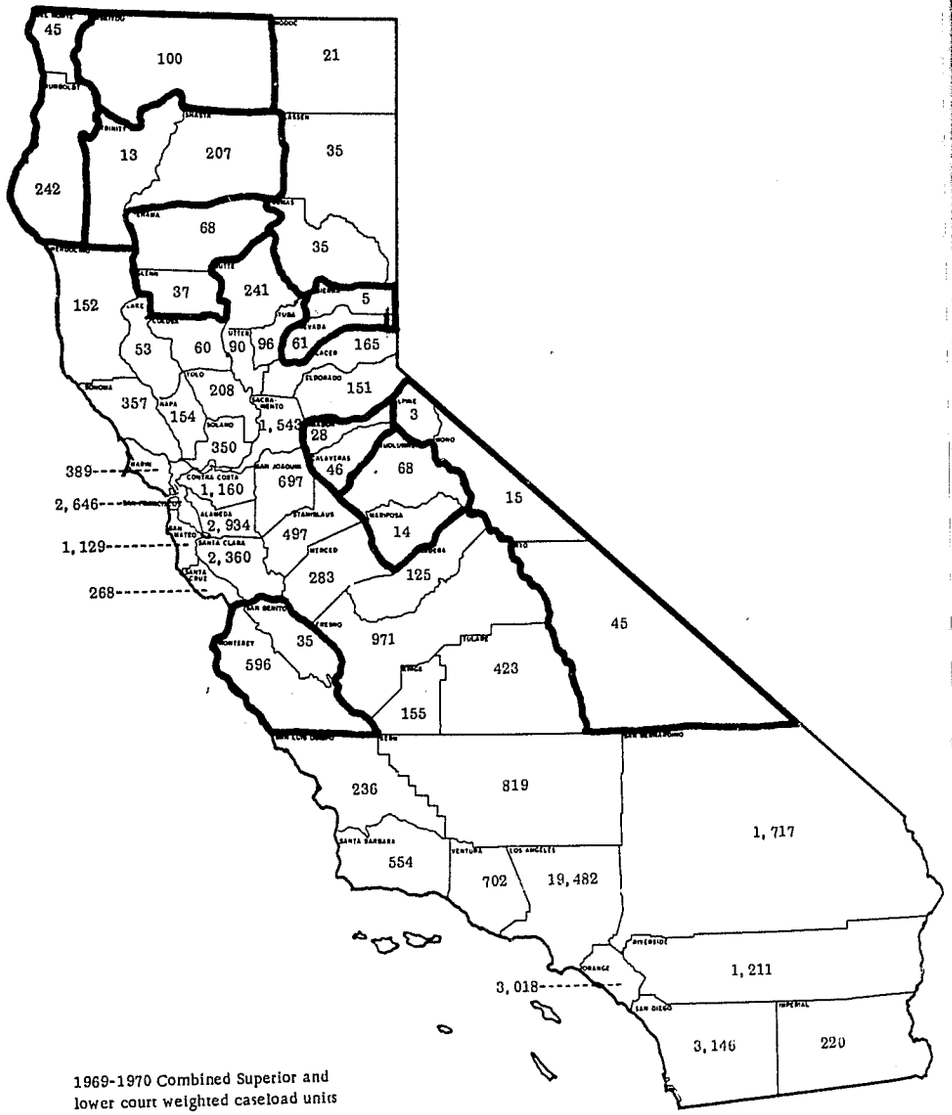
Qualifications:

The Area Court Administrator should have at least ten years of significant administrative experience and a graduate degree in law, public or business administration, management science, or a related field. He is appointed by the Director of the Administrative Office of the Courts, with approval of the Area Administrative Judge, and serves at the pleasure of that judge.

APPENDIX C

Area I Los Angeles
Area II South
Area III Central
Area IV Bay Area
Area V North

APPENDIX D



1969-1970 Combined Superior and lower court weighted caseload units in thousands*

——— Single county organization

——— Multi-county organization

* Justice Court workload is based on 1968-1969 filings

APPENDIX E

CHIEF JUDGE

Reports to: Area Administrative Judge

Supervises: Supervising Judges (As required)
Judges
Commissioners
Superior Court Administrator

Basic Function:

The Chief Judge, acting on behalf of the Chief Justice, is responsible for planning and controlling the day-to-day management of his Superior Court, including: assigning and balancing caseloads among Judges and Commissioners; developing for approval and implementing court plans and programs consistent with statewide policies; selecting and training Commissioners; identifying and correcting problems in court operations; and directing, through the Superior Court Administrator, judicial and staff support activities.

Principal Duties and Responsibilities:

1. Develops for the approval of the Area Administrative Judge the annual plans and programs of the Superior Court for meeting statewide policies.
2. Establishes the administrative framework within the Superior Court and appoints Judges to administrative assignments as well as to standing and ad hoc committees. Assists County Boards of Supervisors, as requested, in court location decisions. Ensures court facilities meet minimum facility standards as established by the Judicial Council.
3. Working with the Area Administrative Judge, develops and implements a court operational and improvement program consistent with the unique operating requirements of the county.
4. Advises and consults with the Area Administrative Judge on all significant matters relating to the overall management of the Court.
5. Appoints and removes Commissioners, upon recommendations by a committee of Superior Court Judges, and assigns and trains Commissioners. Assists the Area Administrative Judge in professional development activities for Judges, as requested.
6. Evaluates, formally, the overall performance of each Commissioner annually and reviews his appraisal with the respective individual.

7. Assigns individual Judges and Commissioners to specialized divisions and court locations and supervises the calendaring of matters requiring hearing or trial.

8. Appoints the Superior Court Administrator from a list of qualified candidates supplied by the Administrative Office of the Courts and directs his judicial and staff support activities.

9. Directs the preparation of the Superior Court operating budget, including court staffing levels.

10. Designates another Judge in the Superior Court to act as Chief Judge in the case of his absence or disability.

Principal Working Relationships:

1. Works closely with the Area Administrative Judge in evaluating court performance, identifying problems and taking corrective action.

2. Works with other Chief Judges in surrounding Superior Courts in sharing resources to handle court workload and participates in inter-court or area court improvement projects.

3. Works with the staff support and resource personnel in the Administrative Office of the Courts, as required, in the development and implementation of new judicial plans and programs.

4. Works closely with various court related personnel such as the District Attorney, Public Defender, and law enforcement officials, and correction officials, to solve common problems which relate to the effectiveness of the criminal justice system.

5. Works closely with his Supervising Judge or Judges in expediting the business of the court.

Qualifications:

The Chief Judge is a judge with demonstrated administrative ability and interest designated by the Chief Justice, for a one year renewable term. The Chief Justice should appoint a Chief Judge in each county, except in counties within multicounty Superior Court administrative districts in which case he would appoint one for the entire district, and except in Los Angeles County in which he would appoint one for each district within the County.

APPENDIX F

SUPERIOR COURT ADMINISTRATOR

Reports to: Chief Judge

Supervises: Bailiffs
Clerks
Court Reporters
Other Court Attachés

Basic Function:

The Superior Court Administrator, under the direction of the Chief Judge, is responsible for administering the staff and technical support functions of the court. He supervises the day-to-day activities of all court attachés to ensure that Judges and Commissioners receive the support required to render judicial services. He assists the Chief Judge, as required, in the overall planning and control of court management activities.

Principal Duties and Responsibilities:

1. Assists the Chief Judge in efficiently handling the judicial business within the court, including:

   - Preparation and analysis of basic information necessary in calendar management.
   - Preparation and analysis of short-term plans for the assignment of Judges and Commissioners within the court and the internal administrative organization within the Superior Court.
   - Preparation and analysis of plans regarding court locations and facilities, as required.
   - Assisting in the development and implementation of operational improvement programs within the court.

2. Selects, assigns, trains, and evaluates the performance of Bailiffs, Clerks, Court Reporters and other court attachés under the direction of the Chief Judge.

3. Assists the judges in supervising the activities of Bailiffs, Clerks, Court Reporters and all other court attachés under the direction of the Chief Judge.

4. Advises and consults with the Chief Judge on all significant matters relating to the management of the Superior Court.

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5. Prepares and recommends the annual operating and capital outlay budget for the Superior Court, including manpower levels, for approval by the Chief Judge.
6. Directs the collection, handling, recording, and distributing of all court revenues according to established procedures.
7. Monitors the utilization and adequacy of court facilities and recommends needed improvements to the Chief Judge.
8. Develops and implements plans pertaining to automated data processing activities within the court consistent with area or statewide coordinated data processing ventures.
9. Maintains an adequate and up-to-date law library to be used for legal research and makes these resources available to all judicial personnel.
10. Collects, screens and disseminates information on judicial administration improvements and coordinates meetings within the court on these subjects.
11. Directs the activities and procedures pertaining to jury selection.
12. Serves as the public information officer for the Superior Court and provides information as approved by the Chief Judge, to external groups.
13. Collects, analyzes, and disseminates judicial statistics required by the Judicial Council and needed within the Superior Court for assessing court performance.
14. Conducts special studies, as requested by the Chief Judge.

Principal Working Relationships:

1. Works closely with other Superior Court Administrators to ensure that effective working relationships are maintained.
2. Works closely with the Area Court Administrator to ensure that good communication exists and court management problems are solved.

Qualifications:

The Superior Court Administrator should have at least five years of significant administrative experience and a degree in law, public or business administration or its equivalent.

APPENDIX G

UNIFIED TRIAL COURT PROPOSED LEGISLATION

Preface

The following provisions set forth suggested changes in the California Constitution, statutes, and rules of court to implement the Committee's unified trial court proposal.

The constitutional provisions concerning associate superior court judges are transitional in that this class of judges eventually will terminate as will the need for these provisions. For this reason these provisions are placed in Article XXII (Schedule) which is designed for this purpose rather than in Article VI (Judiciary).

The statutory provisions are appended to the existing Government Code sections concerning the courts. However, it will be necessary at some future time to repeal existing statutory provisions which are inconsistent with or superseded by these new sections. Assuming adoption of the proposed constitutional and statutory provisions, it may prove desirable to create a Judicial Code containing all statutes pertaining to the courts and at that time eliminate those provisions in the Government Code which are no longer appropriate.

In addition to the statutes proposed here it will be necessary to (1) condition their enactment upon voter approval of the proposed constitutional changes, and (2) provide for funding of the area administrative system in the 1972 legislation which furnishes funds for the Judicial Council.

Article VI

JUDICIAL*

SECTION 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, *and* superior courts. ~~municipal courts, and justice courts. All except justice courts are courts of record.~~

SEC. 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all functions of the Chief Justice when he is absent or unable to act. The Chief Justice or, if he fails to do so, the court shall select an associate justice as acting Chief Justice. (No change.)

SEC. 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division con-

* Changes in existing provisions are identified by striking out deletions and italicizing additions.

sists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

An acting presiding justice shall perform all functions of the presiding justice when he is absent or unable to act. The presiding justice or, if he fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice. (No change.)

SEC. 4. In each county there is a superior court. ~~of one or more judges.~~ The Legislature shall prescribe the number of *superior court* judges, *provide for the organization of the superior courts*, and ~~provide for the officers and employees of each the superior courts. If the governing body of each affected county concurs, The Legislature~~ may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in his county.~~

SEC. 5. ~~Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.~~

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.~~

~~The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.~~

SEC. ~~6~~ 5. The Judicial Council consists of the Chief Justice as chairman and one other judge of the Supreme Court, 3 judges of courts of appeal, ~~5~~ *10* judges of superior courts, ~~3 judges of municipal courts, and 2 judges of justice courts,~~ each appointed by the chairman for a 2-year term; 4 members of the State Bar appoionted by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council ~~may~~ *shall* appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or its chairman, other than adopting rules of court administration, practice and procedure~~.~~, *or judicial reorganization plans*.

The council shall adopt rules for court administration, practice, and procedure, and may adopt judicial reorganization plans. These rules and plans shall be consistent with this Constitution. An adopted plan or rule which conflicts with a statute may not take effect if disapproved in writing by the Legislature, a majority of the membership concurring, within 6 months following the date of submission to the Legislature.

~~To improve the administration of justice~~ The council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, ~~adopt rules for court administration, practice and procedure, not inconsistent with statute,~~ and perform other functions prescribed by statute.

The chairman shall seek to expedite judicial business and to equalize the work of judges; he may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the chairman as he directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

SEC. ~~7~~ *6*. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal. (No change.)

SEC. ~~8~~ 7. The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, and ~~2~~ *3* judges of superior courts, ~~and one judge of a municipal court,~~ each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

SEC. ~~9~~ *8*. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge ~~of a court of record~~.

SEC. ~~10~~ *9*. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings.

Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.

Superior courts have original jurisdiction in all other causes. ~~except those given by statute to other trial courts.~~

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

SEC. ~~11~~ *10*. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. ~~With that exception~~ Courts of appeal have appellate jurisdiction ~~when superior courts have original jurisdiction and in~~ in all other causes ~~prescribed by statute.~~ *except that each* superior court ~~s have~~ *has* appellate jurisdiction in causes ~~prescribed by statute that arise in municipal and justice courts in their counties.~~ *determined by commissioners.*

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right.

SEC. ~~12~~ *11*. The Supreme Court may, before decision becomes final, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction. (No change.)

SEC. ~~13~~ *12*. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. (No change.)

SEC. ~~14~~ *13*. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. (No change.)

SEC. ~~15~~ *14*. A person is ineligible to become a judge of a court ~~of record~~ unless for ~~5 years immediately preceding selection to a municipal court or~~ 10 years immediately preceding selection ~~to other courts,~~ he has been a member of the State Bar. ~~or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the chairman of the Judicial Council to serve on any court.~~

SEC. ~~16~~ *15*. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following

their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judge of ~~other~~ *superior* courts shall be elected in their counties ~~or districts~~ at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of his term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed himself. If he does not, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether he shall be elected. If he receives a majority of the votes on the question he is elected. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which he had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

SEC. ~~17~~ *16*. A judge ~~of a court of record~~ may not practice law and during the term for which he was selected is ineligible for public employment or public office other than judicial employment or judicial office. A judge of the superior ~~or municipal~~ court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for his own use.

SEC. ~~18~~ *17*. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation

to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings. (No change.)

SEC. ~~19~~ *18*. The Legislature shall prescribe compensation for judges ~~of courts of record~~.

A judge ~~of a court of record~~ may not receive his salary while any cause before him remains pending and undetermined for 90 days after it has been submitted for decision.

SEC. ~~20~~ *19*. The Legislature shall provide for retirement, with reasonable allowance, of judges ~~of courts of record~~ for age or disability.

SEC. ~~21~~ *20*. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. (No change.)

SEC. ~~22~~ *21*. The Legislature ~~may~~ *shall* provide for the appointment by ~~trial~~ *superior* courts ~~of record~~ of ~~officers such as~~ commissioners to perform subordinate judicial duties. *No other subordinate judicial position may be created.*

SEC. 22. *The Legislature shall provide for a statewide system of court employees.*

Article XXII

SCHEDULE

SECTION 8. Judges serving on Municipal Courts on January 1, 1974, shall on that date become associate superior court judges in the county in which they are serving. Judges serving on Justice Courts on January 1, 1974, shall on that date become associate superior court judges in the county in which they are serving if they have been a member of the State Bar for the immediately preceding 5 years. Associate superior court judges are qualified to become superior court judges. A person may not become an associate superior court judge except as prescribed in this section, and the Legislature may not create additional positions for associate superior court judges nor may the Governor appoint a person to fill a vacant position for an associate superior court judge. The terms are 6 years beginning the Monday after January 1, 1974, and their salary shall at least equal the salary of a municipal court judge on January 1, 1974, but may not exceed the salary of a superior court judge. The provisions applicable to superior court judges in Article VI, Sections 5, 7, 15 (b), and 15 (c), except the provision for filling vacancies, apply to associate superior court judges. Justice court judges who do not become associate superior court judges shall on January 1, 1974, become superior court commissioners in the county in which they are serving.

CALIFORNIA GOVERNMENT CODE

Title 8, Chapter 11

Section 75110. Trial Court Administrative Areas

The Judicial Council shall adopt rules dividing the State into 5 or more trial court administrative areas consisting of one or more entire counties.

Section 75111. Area Administrative Judge

The Chairman of the Judicial Council shall appoint a judge serving in each trial court administrative area to serve as area administrative judge for a term of one year during which he shall receive the same salary as a court of appeal justice.

Section 75112. Area Court Administrator

An area court administrator, approved by the area administrative judge, shall be appointed by the Administrative Director of the Courts in each trial court administrative area to serve at the pleasure of the area administrative judge.

Section 75113. Compensation and Expenses of Area System

The expense of the trial court administrative area system including offices and the salaries of area administrative judges, area court administrators, and staffs shall be paid from funds appropriated for support of the Judicial Council.

Section 75114. Superior Court Administrative Districts

Each county shall constitute a superior court administrative district, except as provided in Sections 75115 and 75116.

Section 75115. Multi-County Superior Court Administrative Districts

A county which has insufficient judicial business, as measured by statewide standards which shall be adopted by the Judicial Council, to require the full-time services of a superior court judge may be combined with an adjacent county or counties into a multi-county superior court administrative district which shall have sufficient judicial business to require the full-time services of one or more superior court judges.

Section 75116. Los Angeles County

Los Angeles County shall be divided into 2 or more superior court administrative districts.

Section 75117. Creation of Districts by Rule

Superior court administrative districts within Los Angeles County or districts encompassing multiple counties may only be created by rules adopted by the Judicial Council.

Section 75118. Chief Judges

The Chairman of the Judicial Council shall appoint a judge serving in each superior court administrative district to serve as chief judge for a term of one year.

Section 75119. Superior Court Administrators

The chief judge in each superior court administrative district shall appoint a superior court administrator from a list of qualified persons prepared by the Administrative Office of the Courts to serve at the pleasure of the chief judge.

Section 75120. Qualifications and Duties

The Judicial Council shall by rule prescribe the qualifications and duties of area administrative judges, area court administrators, chief judges, and superior court administrators.

Section 75121. Acting Superior Court Judges

An area administrative judge may assign one or more associate superior court judges within his area to serve as acting superior court judges for terms of not less than one month or more than 12 months during which they shall receive the same salary as a superior court judge.

Section 75122. Commissioners

The chief judge in each superior court administrative district shall appoint one or more commissioners, approved by a majority of the judges serving within that district, from a list of qualified persons prepared by a committee of judges serving within that district. Commissioners shall serve at the pleasure of the chief judge.

Section 75123. Number of Commissioners

The Judicial Council shall prescribe the number of commissioners to be appointed in each superior court administrative district according to statewide standards which the Judicial Council shall adopt for the measurement of judicial business.

Section 75124. Commissioner Qualifications

A commissioner must be a member of the State Bar when appointed and must have been authorized to practice law in California or another state for at least 5 years immediately preceding his appointment, except that persons serving on January 1, 1974, as juvenile court referees, traffic court referees, or commissioners shall on that date become commissioners in the superior court administrative district encompassing the court by which they were employed.

Section 75126. Extraordinary Appointments

The Judicial Council may authorize the appointment of a person as a full-time or part-time commissioner, if the Council determines that no qualified person is available in a county for appointment as a commissioner or that it would be impractical for a judge or full-time commissioner to hold court sessions in a particular location. A practicing attorney may not be appointed as a part-time commissioner. To qualify for appointment under this section, a person must pass an examination administered by the Judicial Council.

Section 75127. Prohibition Against Practice of Law

Commissioners may not practice law.

Section 75128. Commissioners' Duties

The subordinate judicial duties which commissioners may perform are to hear, decide, and enter orders in causes involving infractions;

small claims; preliminary felony hearings; misdemeanors in which the maximum possible sentence is a fine or imprisonment not exceeding 6 months; uncontested probate matters, except applications for extraordinary fees; family relations, except contested trials and contempt hearings; and proceedings in juvenile court, subject to the provisions in the Juvenile Court Law, Welfare and Institutions Code, §§500–930.

Section 75129. Court Employees

The Administrative Office of the Courts shall by June 1, 1973, submit for approval by the Legislature a statewide system of all court employees and commissioners which shall provide for classified positions, qualifications, selection, compensation, promotion, discipline, dismissal, and retirement. This system shall become effective January 1, 1974 and shall be administered by the Administrative Office of the Courts.

Section 75130. Court Finances

The Judicial Council shall by June 1, 1973, submit for adoption by the Legislature a proposed statute to become effective January 1, 1974 providing for funding by the State of the non-capital expenses of the court system.

Section 75131. Court Facilities

The location and adequacy of facilities furnished by a county for use by a superior court in that county are subject to approval by the Judicial Council.

Section 75132. Administrative Office of the Courts

The Administrative Director of the Courts, under the supervision of the Chairman of the Judicial Council, shall employ, organize and direct a staff which shall be known as the Administrative Office of the Courts and which shall be operated as the staff agency to assist the Council and its chairman in carrying out their duties under the Constitution and laws of the state.

DIVISION II

RULES FOR TRIAL COURT ADMINISTRATION

CHAPTER I. TRIAL COURT ADMINISTRATIVE AREAS

Rule 1401. ***Establishment of Administrative Areas***

The state is divided into the following trial court administrative areas, each area to consist of the following entire counties:

Area I —*Los Angeles*

Area II —*South*

Imperial, Orange, Riverside, San Bernardino and San Diego Counties.

Area III—*Central*

Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, Stanislaus, Tulare, Tuolumne and Ventura Counties.

Area IV—*Bay Area*

Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara Counties.

Area V—*North*

Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Sierra, Shasta, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties.

Rule 1402. ***Headquarters of Administrative Areas***

Headquarters for each administrative area shall be established in the following cities:

Area I —Los Angeles

Area II —San Diego

Area III—Fresno

Area IV—San Francisco

Area V—Sacramento

CHAPTER II. QUALIFICATIONS AND DUTIES OF AREA ADMINISTRATIVE JUDGES

Rule 1406. ***Qualifications***

Area administrative judges shall be selected on the basis of their administrative qualifications and interest in matters of judicial administration. While serving as administrative judges they shall be relieved of their regular duties and shall devote their full time to their duties and responsibilities as area administrative judges.

Rule 1407. ***Duties of Area Administrative Judges***

The basic function of an area administrative judge is to act on behalf of the Chief Justice of California, in his capacity as Chairman of the Judicial Council. The area administrative judge shall provide policy direction and coordination in the management of superior courts within his administrative area including: balancing workloads among courts and judges; insuring that statewide court policies are implemented; identifying problem areas in court operations; coordinating efforts to improve judicial services; and assisting in the professional development of judicial personnel. The specific duties and responsibilities of an area administrative judge are as follows:

(1) Communicates to superior courts, on behalf of the Judicial Council, statewide court objectives and operating policies. Reviews and approves superior court plans and programs to meet these objectives and conform with these policies. Recommends changes to the Judicial Council, when needed, in statewide court objectives and operating policies based upon area conditions.

(2) Reviews and recommends to the Judicial Council the number and boundaries of judicial districts within his administrative area. Assists County Boards of Supervisors, as requested, in decisions concerning the location and adequacy of superior court facilities.

(3) Reviews superior court operations as to conformity with statewide court operating policies and assists in identifying improvement opportunities in trial court management. Coordinates the development and implementation of superior court operational improvement programs through visitation teams, on-site counsel, and other approaches.

(4) Advises and consults with the Chairman of the Judicial Council on all significant matters relating to the management and operations of superior courts within his area, including evaluating the performance of each Chief Judge and counseling with the Chief Justice on the appointment of Chief Judges.

(5) Assists superior courts in the selection, assignment and training of commissioners. Coordinates professional development activities for judges and commissioners. Consults with individual courts regarding need for additional judicial and nonjudicial personnel.

(6) Assigns, under a delegation of authority from the Chairman of the Judicial Council, individual judges among superior courts to maintain an appropriate balance in court workload.

(7) Supervises the activities of the area court administrator in his staff support role.

(8) Reviews judicial and commissioner staffing levels proposed for each superior court and recommends judicial staffing plans to the Chairman of the Judicial Council.

(9) Cooperates and works closely with other area administrative judges in balancing workloads among areas and exchanging information relative to the improvement of superior court management and operations.

(10) Keeps informed and disseminates information on all matters which can contribute to the efficiency and effectiveness of trial court management and operations, including new court management approaches and technologies.

(11) Represents the Judicial Council in community, civic, and professional affairs relating to judicial administration in trial courts and endeavors to improve communications between the courts and the public.

(12) Reviews and recommends budgets to the Judicial Council concerning area administrative functions.

(13) Performs such other duties as may be assigned or delegated to him by the Chairman of the Judicial Council.

CHAPTER III. APPOINTMENT AND DUTIES OF AREA COURT ADMINISTRATORS

Rule 1411. ***Appointment***

After consultation with, and subject to the approval of, the area administrative judge for each trial court administrative area, the Administrative Director of the Courts shall appoint a person in each area to serve at the pleasure of the area administrative judge as area court administrator. In the selection of area court administrators preference shall be given to persons who are graduates of an accredited university or college with a degree in law, public administration, business administration, personnel, accounting, or related fields and have a minimum of five years' experience in a responsible management capacity in a public agency or in private business, coupled with specialized training as court administrators.

Rule 1412. ***Duties***

The basic function of an area court administrator is to provide staff and technical support in court management to the area administrative judge in the performance of his area responsibilities and to function as a resource person in court management for trial court administrators in his area. The specific duties and responsibilities of an area court administrator are as follows:

(1) Assists the area administrative judge in coordinating the management of superior courts within the area, including:
   a. Preparation and analysis of regular reports on the status of calendar control in each of the superior courts.
   b. Preparation and analysis of short-term plans pertaining to the assignment of judicial personnel and subordinate judicial officers among superior courts.
   c. Preparation and analysis of reports on the compatibility of superior court plans and programs to statewide policies.
   d. Preparation and analysis of possible changes in the number and boundaries of multicounty districts, administrative divisions within courts and court locations.
   e. Assisting in the development and implementation of court operational improvement programs, including use of visitation teams, as coordinated by the area administrative judge.

(2) Advises and consults with trial court administrators on new programs, systems and techniques for improving court management and the processing of court workloads.

(3) Coordinates the preparation and review of operating budgets which are state financed for the superior courts. Counsels with superior court administrators, as required, on the preparation and analysis of capital budgets which are county finances.

(4) Advises superior court administrators on methods and procedures of collecting, handling, recording and distributing court revenues.

(5) Counsels on the utilization of court facilities and automated data processing systems within the area to identify opportunities for improvement and, as required, coordinated usage.

(6) Counsels with superior court administrators in the training of court attachés as well as replacement planning. Assists the area administrative judge in professional development activities for judges and commissioners.

(7) Coordinates the flow of information regarding changes in statewide court operating policies, new laws, new court decisions and statistical reporting.

(8) Provides advice and counsel to superior courts on jury selection techniques and procedures.

(9) Coordinates the public information activities among superior courts in the area and acts as spokesman for the area administrative judge, as delegated.

(10) Conducts special studies as requested by the area administrative judge or Director of the Administrative Office of the Courts.

(11) Counsels with chief judges on the appointment of superior court administrators.

(12) Performs such other duties as may be assigned to him by the area administrative judge.

CHAPTER IV. SUPERIOR COURT ADMINISTRATIVE DISTRICTS

Rule 1421. ***Single County Districts***

Each of the following counties is a superior court administrative district:

1. Alameda
2. Butte
3. Colusa
4. Contra Costa
5. Fresno
6. Imperial
7. Kern
8. Kings
9. Lake
10. Madera
11. Marin
12. Mendocino
13. Merced
14. Napa
15. Orange
16. Placer
17. Riverside
18. Sacramento
19. San Bernardino
20. San Diego
21. San Francisco
22. San Luis Obispo
23. San Joaquin
24. San Mateo
25. Santa Barbara
26. Santa Clara
27. Santa Cruz
28. Siskiyou
29. Solano
30. Sonoma
31. Stanislaus
32. Sutter
33. Tulare
34. Ventura
35. Yolo
36. Yuba

Each of the following combinations of counties is a multicounty superior court administrative district:

1. Alpine-El Dorado
2. Mono-Inyo
3. Amador-Calaveras
4. Humboldt-Del Norte
5. Modoc-Lassen-Plumas
6. San Benito-Monterey
7. Shasta-Trinity
8. Sierra-Nevada
9. Tehama-Glenn
10. Tuolumne-Mariposa

Rule 1423. ***Divided County Districts***

Los Angeles County is divided into nine superior court administrative districts with the same boundaries as that County's branch court districts as of January 1, 1973.

CHAPTER V. QUALIFICATIONS AND DUTIES OF CHIEF JUDGES

Rule 1431. ***Qualifications***

Chief judges shall be selected on the basis of their administrative qualifications and interest in matters of judicial administration.

Rule 1432. ***Duties***

The basic function of the chief judge is to be responsible for planning and controlling the day-to-day management of his court including: assigning and balancing caseloads among judges and commissioners; developing for approval and implementing court plans and programs consistent with statewide policies; selecting and training commissioners; identifying and correcting problems in court operations; and directing, through the superior court administrator, judicial and staff support activities. The specific duties and responsibilities of the chief judge are as follows:

(1) Develops for the approval of the area administrative judge the annual plans and programs of his court for meeting statewide policies.

(2) Establishes the administrative framework within the court and appoints judges to assignments as well as to standing and temporary committees. Assists county boards of supervisors, as requested, in court location decisions. Insures that court facilities meet minimum facility standards as established by the Judicial Council.

(3) Working with the area administrative judge, develops and implements a court operational and improvement program consistent with the unique operating requirements of the district.

(4) Advises and consults with the area administrative judge on all significant matters relating to the overall management of the court.

(5) Appoints and removes commissioners, upon recommendations by a committee of superior court judges, and assigns and trains commissioners. Assists the area administrative judge in professional development activities for judges, as requested.

(6) Evaluates, formally, the overall performance of each commissioner annually and reviews his appraisals with the respective individuals.

(7) Assigns individual judges and commissioners to specialized divisions and court locations and supervises the calendaring of matters requiring hearing or trial.

(8) Appoints the superior court administrator from a list of qualified candidates supplied by the Administrative Office of the Courts and directs the administrator's activities.

(9) Directs the preparation of the superior court operating budget.

(10) Designates another judge in the superior court to act as chief judge in the case of his absence or disability.

CHAPTER VI. SUPERIOR COURT ADMINISTRATOR

Rule 1436. ***Appointment***

The chief judge shall appoint a court administrator from a list of qualified candidates provided by the Administrative Office of the Courts. In the selection of area court administrators preference shall be given to persons who are graduates of an accredited university or college with a degree in law, public administration, business administration, personnel, accounting, or related fields and have a minimum of five years' experience in a responsible management capacity in a public agency or in private business, coupled with specialized training as court administrators.

Rule 1437. ***Duties***

The basic function of the superior court administrator acting under the direction of the chief judge, is to be responsible for administering the staff and technical support functions of the court. He assists the chief judge, as required, in the overall planning and control of court management activities. The specific duties and responsibilities of a superior court administrator are as follows:

(1) Assists the chief judge in efficiently handling the judicial business within the court, including:

a. Preparation and analysis of basic information necessary in calendar management.

b. Preparation and analysis of short-term plans for the assignment of judges and commissioners within the court and the internal administrative organization within the superior court.

c. Preparation and analysis of plans regarding court locations and facilities, as required.

d. Assisting in the development and implementation of operational improvement programs within the court.

(2) Under the direction of the chief judge selects, assigns, trains and evaluates the performance of bailiffs, clerks, court reporters and other court attachés.

(3) Assists the judges in supervising the activities of bailiffs, clerks, court reporters and all other court attachés, and communicates all matters involving court plans and procedures to court attachés.

(4) Advises and consults with the chief judge on all significant matters relating to the management of the superior court.

(5) Prepares and recommends the annual operating and capital outlay budget for the superior court for approval by the chief judge.

(6) Directs the collecting, handling, recording, and distributing of all court revenues according to established procedures.

(7) Monitors the utilization and adequacy of court facilities and recommends needed improvements to the chief judge.

(8) Develops and implements plans pertaining to automated data processing activities within the court consistent with area or statewide coordinated data processing ventures.

(9) Maintains an adequate and up-to-date law library to be used for legal research and makes these resources available to all judicial personnel.

(10) Collects, screens and disseminates information on judicial administration and coordinates meetings within the court on these subjects.

(11) Directs the activities and procedures pertaining to jury selection.

(12) Serves as the public information officer for the superior court and provides information, as approved by the chief judge, to external groups.

(13) Collects, analyzes, and disseminates judicial statistics required by the Judicial Council and needed within the superior court for assessing court performance.

(14) Conducts special studies, as requested by the Chief Judge.

STANDARDS OF JUDICIAL ADMINISTRATION

The chief judge in each superior court administrative district may assign an associate superior court judge to any department or to hear any matter but, when possible, matters within the jurisdiction of the Municipal Courts on December 31, 1974, shall be assigned to associate superior court judges.

APPENDIX H

CALENDAR MANAGEMENT PROPOSED RULES OF COURT

Preface

This appendix contains suggested rules of court which will implement the Committee's calendar management proposals if adopted by the Judicial Council.

The proposed rules affecting civil cases are recommended for inclusion in Title 2, Division I, of the Rules for the Superior Courts. The proposed rules commence with number 201 simply because that is the first number in the applicable existing rules.

It is important to note that these proposed rules, together with recommendations in the other reports by this Committee, affect and in many cases supersede existing rules of court. The Committee contemplates that the Judicial Council will take this opportunity to review and revise its rules of court to incorporate new proposals and to eliminate provisions which are superseded, inconsistent or obsolete.

In this connection the Committee recommends creation of a new division IV in the Superior Court rules devoted to penal proceedings.

TITLE TWO. DIVISION I.

Rules for the Superior Courts

CIVIL

Rule 201. ***Trial Dates***

(a) Each court shall assign firm trial dates to cases which are ready for trial and assure that trials commence on the assigned date.

(b) If extraordinary circumstances prevent a trial from commencing the court may trail the case no more than 4 court days beyond the assigned date.

(c) The court administrator, or his designated representative, acting under supervision of the presiding judge or master calendar judge, is responsible for the availability and control of trial dates.

Rule 202. ***Certificates of Readiness***

(a) A certificate of readiness shall be filed in every case in a court with 5 or more judges.

(b) A court may require that the certificate be filed with the at-issue memorandum if a trial date within 12 months of filing the at-issue memorandum can be assigned. Other courts shall invite

parties with actions on the civil active list to file a certificate of readiness when a trial date within the next 6 months can be assigned. If a certificate is not filed within 30 days following the date of that invitation the case shall be removed from the civil active list and may be returned to that list only by filing a new at-issue memorandum.

(c) Any party may file a certificate if the party certifies that all discovery and motions in the case will be concluded prior to the pretrial or trial setting conference.

(d) A party who objects to statements in the certificate may within 10 days after service of the certificate file a written motion to strike the certificate, supported by a declaration setting forth the objections.

Rule 203. ***Completion of Discovery***

(a) Parties shall conclude discovery and motions prior to the pretrial or trial setting conference.

(b) Discovery may be conducted subsequent to the conference only:

(1) By stipulation among the parties;

(2) If permitted by the court, for good cause shown, by granting a motion made at the conference;

(3) If permitted by the court subsequent to the conference by granting a written, noticed motion supported by a written declaration showing good cause; or

(4) If the trial is not scheduled to commence within 90 days of the conference or the court on its own motion causes the trial to commence more than 90 days after the conference in which instance discovery is reopened to within 30 days of the trial date.

Rule 204. ***Pretrial and Trial Setting Conferences***

(a) A court with 5 or more judges shall promptly schedule a pretrial or trial setting conference when a certificate of readiness is filed in a case requiring more than one trial day.

(b) The court shall notify the parties at least 60 days prior to the date of the conference which shall be conducted within 90 days of trial.

(c) The attorneys for the parties shall appear at the conference and, in a manner prescribed by the court, furnish the information necessary to complete a conference order.

(d) The court shall enter a trial setting conference order which shall determine:

(1) The number of sides and the peremptory jury challenges to be allocated to each side if a jury is demanded;

(2) That the case is at issue and that all parties necessary to its disposition have been served or have appeared;
(3) That fictitious named defendants are dismissed, or severed from the action and ordered off calendar;
(4) That all discovery and motions are concluded;
(5) Additional discovery and motions which have been permitted for good cause;
(6) The name of the attorney who actually will try the case, if this information is required by the court;
(7) The date for a mandatory settlement conference not less than 3 or more than 30 days prior to trial, if the case involves a prayer for monetary damages;
(8) A firm trial date not less than 30 or more than 90 days after the conference and the time estimated for trial; and
(9) Any additional matter which does not conflict with statutes or other rules.

(e) Pretrial conferences may be conducted only if ordered by the court prior to notice of the trial setting conference or if requested by a party in a certificate of readiness.

Rule 205. ***Settlement Conferences***

Each court shall conduct a settlement conference not less than 3 or more 30 days prior to trial if a case involves a prayer for money damages and requires more than one trial day.*

Rule 206. ***Continuances***

(a) Trials and pretrial, trial setting, or settlement conferences may not be continued beyond their assigned dates unless the court grants a written, noticed motion supported by a written declaration showing good cause.

(b) A case may not be placed off the court's calendar unless the parties so stipulate for a good cause which is accepted by the court or unless the court grants a written, noticed motion supported by a written declaration showing good cause.

(c) A case shall be removed from the civil active list when placed off the court's calendar and may be returned to the list only by filing a new at-issue memorandum.

(d) The presiding judge or master calendar judge shall hear and determine all motions affecting the court's calendar including motions to continue, place off calendar, advance, reset, consolidate, or strike an at-issue memorandum or certificate of readiness.

(e) Attorneys shall advise the court at the pretrial or trial setting conference of their vacation dates which may be considered in

* For more detailed proposals concerning settlement conferences see the Committee's Report 2, pages 10–19 (October 1971).

assigning the trial date. A trial may not be continued beyond the assigned trial date because an attorney or party is or will be on vacation at that time.

Rule 207. ***Court Calendars***

(a) A court with 5 or more judges shall maintain a master civil calendar and a master criminal calendar.

(b) Attorneys in a case shall appear on the assigned trial date unless excused by the presiding judge or master calendar judge.

(c) Attorneys and parties in a case which does not commence trial on the assigned date must be available by telephone on subsequent days but may not be required to appear again until the court is able to commence the trial.

Rule 208. ***Utilization of Judges***

(a) Each court shall maximize the number of judges available to try cases, particularly cases in which a jury is requested, by:
(1) Assigning jury cases to each department, except those with other specialized, full-time assignments; and
(2) Assigning jury cases to available departments before nonjury cases, except nonjury cases entitled to priority.

(b) Trials shall be conducted in each available department, Monday through Friday, commencing not later than 9:30 a.m., continuing until 12:00 noon, reconvening at 1:30 p.m. and continuing at least until 4:30 p.m.

(c) The presiding judge shall assign for hearing at 9:00 a.m. or earlier, to continue until the hour specified by the presiding judge, the following civil matters to be handled as part-time assignments by one or more judges prior to commencement of the trial schedule: adoptions, probate, civil law and motion, defaults, minors' compromises, and mental health conservatorship hearings.

(d) The appellate department shall convene one day per month. Additional sessions may be convened if ordered by the presiding judge.

(e) Matters which must be heard by a specific judge, such as motions for a new trial or continued law and motion matters, shall be scheduled at 4:30 p.m. or other times which do not interfere with part-time assignments or the trial schedule.

(f) Cases shall be assigned to commence at any time a trial department becomes available between 9:30 a.m. and 4:30 p.m.

(g) Each department shall notify the presiding judge, or person designated by him, immediately upon becoming available upon

completion of any trial or hearing, when a jury retires to deliberate, or when the judge can proceed no further with his present assigned matter.

(h) A judge shall accept the assignment of any matter unless he is disqualified or deems that in the interest of justice the matter should not be heard before him for a cause which shall be stated in writing to, and concurred in by, the master calendar judge or the presiding judge.

(i) Rule 248 is an exception to subdivision (a) of this Rule.

TITLE TWO. DIVISION IV

Penal Proceedings

Rule 901. ***Arraignment in Municipal or Justice Court***

When a defendant is charged with the commission of a public offense, over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable and the defendant is arrested in that county, the defendant shall be arraigned before a magistrate of the court in which the complaint is on file without unnecessary delay, and, in any event, within 2 days after his arrest, excluding Sundays and holidays. If the prescribed 2 days expire when the court is not in session, the time for arraignment shall be extended to include the next regular court session on the judicial day immediately following.

Rule 902. ***Entry of Plea***

If the public offense charged is a felony, not punishable with death, the magistrate at the arraignment shall have the complaint read to the defendant and ask him whether he pleads guilty or not guilty to the offense charged. The defendant then may enter a plea to the offense charged, and if the defendant declines the magistrate shall enter a plea of not guilty on behalf of the defendant; except in cases requiring a sanity hearing or involving a demurrer to the complaint in which instances, and other instances provided by statute, the court may make an appropriate order.

Rule 903. ***Preliminary Examination***

The magistrate at the arraignment shall set a time for the preliminary examination of the case which shall be conducted not less than 2 or more than 10 days from the date of arraignment, excluding Sundays and holidays, unless the right to preliminary examination within 10 court days is waived by the defendant.

Rule 904. ***Filing of Information***

The district attorney shall file an information in the superior court within the statutory 15 day period following the order of a magistrate holding the defendant to answer for a public offense.

Rule 905. ***Arraignment in Superior Court***

When an information or indictment charging a felony offense is filed, the defendant shall be arraigned not more than 3 days after filing.

Rule 906. ***Entry of Plea in Superior Court***

The judge at the time or arraignment in superior court shall have the information or indictment read to the defendant and ask him to plead to the offense charged. The defendant then may enter a plea to the offense charged, and if the defendant declines the court shall enter a plea of not guilty on behalf of the defendant; except in cases requiring a sanity hearing or involving a demurrer to the information, in which instances, and other instances provided by statute, the court may make an appropriate order.

Rule 907. ***Scheduling of Trial, Omnibus Hearing and Pretrial Negotiating Conference***

The superior court at the arraignment shall assign a firm trial date not more than 60 days following the finding of the indictment or filing of the information and in each case shall assign dates for a pretrial omnibus hearing and a pretrial negotiating conference.

Rule 908. ***Mandatory Pretrial Negotiating Conference***

(1) The court shall schedule the pretrial negotiating conference not more than 21 days prior to the assigned trial date.

(2) The conference shall follow disposition of all pretrial motions made at the omnibus hearing.

(3) The presiding judge shall designate the judge who shall conduct the conference.

(4) The defendant shall be present at the conference.

(5) Counsel for the parties shall attend the conference, be familiar with the contents of the transcript of the preliminary examination, and be prepared to discuss disposition of the case other than by trial. The prosecuting attorney shall be prepared to state what disposition, if any, other than by trial he is authorized to make, and shall obtain any authorization necessary to act on the date of the conference.

(6) Any arrangements for disposition without trial arrived at during the conference shall be entered on the case record in conformance with constitutional, statutory, and decisional guidelines.

(7) If disposition without trial is agreed upon at the conference, the judge shall commit himself to the maximum offense, and advise the defendant that if the judge later decides that the maximum sentence would be inappropriate in light of the probation report and other available information, the defendant shall be allowed to withdraw his guilty plea prior to the actual sentencing.

(8) If approval of a guilty plea is sought after the case is assigned to a department for trial, the case shall be returned to the judge who conducted the pretrial negotiating conference, unless the case is otherwise assigned by the presiding judge.

Rule 909. ***Mandatory Pretrial Omnibus Hearing***

(1) The court shall schedule the pretrial omnibus hearing to be held promptly following arraignment and not less than 5 court days prior to the pretrial negotiating conference, unless the court combines that hearing and the pretrial negotiating conference.

(2) All pretrial motions shall be made to and heard by the court at the omnibus hearing unless the court orders otherwise for good cause shown.

(3) All pretrial motions shall be in writing and shall be filed and served not more than 10 days preceding the hearing date. All notices of motion shall be accompanied by statements of the points relied upon and citations of authorities. All motions made under Penal Code §1538.5 shall contain designations of the precise matters sought to be suppressed.

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Certification of Counsel in Penal Proceedings

Plea Negotiations

Power of City Attorneys to Prosecute Misdemeanors

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SUPERIOR COURT QUESTIONNAIRE:

In addition to the above listed staff and consultants' reports, a questionnaire was sent to the 14 largest metropolitan Superior Courts in California. This questionnaire inquired into various aspects of court administration, calendar management, and litigation procedures. Shortly after sending the questionnaire, members of the Committee, accompanied by staff attorneys, visited each of these Superior Courts and met with the Presiding Judge of the court and supporting administrative personnel designated by him. Responses to the questionnaire were elicited and discussed in detail. The Committee staff then prepared a comprehensive summary of the responses from these metropolitan Superior Courts.

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