Study J-1405.5 January 22, 2020

Memorandum 2020-6

Statutes Made Obsolete by Trial Court Restructuring: Consolidation and Coordination of Civil Cases

California's trial court system was dramatically restructured in several ways around the turn of the century. Since then, the Law Revision Commission[1] has been responsible for (1) identifying code sections that became obsolete due to those reforms, and (2) recommending revisions to remove the obsolete material.[2] The Commission has done extensive work on this huge topic, resulting in many reports, a series of bills to implement those reports, and revision of over 1,700 code sections. Nonetheless, some aspects of this legislative assignment are not yet done.[3] This memorandum introduces one of the remaining projects: Reexamination of the statutes governing consolidation and coordination of civil cases,[4] to determine whether any further revisions are necessary to reflect unification of the municipal and superior courts in each county.

The memorandum is organized as follows:

- Background information on trial court unification and the Commission's role in implementing trial court unification.

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

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

2. Gov't Code § 71674.

3. For the most recent update on the status of the Commission's work on trial court restructuring, see Memorandum 2019-44, pp. 11-12 & Exhibit p. 3. For more detailed (but less current) information about the work completed and projects requiring attention, see Memorandum 2018-5 and the First Supplement to Memorandum 2014-53.

4. Criminal procedure is beyond the scope of this memorandum. A case pending before the California Supreme Court presents the following issue:

> When a defendant is held to answer following separate preliminary hearings on charges brought in separate complaints, can the People file a unitary information covering the charges in both those cases or must they obtain the trial court's permission to consolidate the pleadings? (See Pen. Code, §§ 949, 954.).

See People v. Henson (No. S252702). This memorandum does not discuss or otherwise address that issue.

- Brief description of consolidation and coordination of civil cases.
- Summary of the Commission's previous work on this topic.
- Description of the 2004 commentary in a treatise published by Continuing Education of the Bar ("CEB") that prompted this project.
- Description of current CEB commentary on the same point.
- Research findings.
- Staff analysis of *Medina v. Cooke*.
- Possible approaches and staff recommendation.

TRIAL COURT UNIFICATION AND THE COMMISSION'S ROLE IN IMPLEMENTING IT

In the early 1990's, California had three different types of trial courts, with differing jurisdiction and procedures: Superior courts, municipal courts, and justice courts. Seeking to cut costs and achieve administrative efficiencies, the judicial branch and the Legislature began to seriously explore the concept of unifying all trial court operations in a single type of court.

Unification Process

To help it explore the unification concept, the Legislature directed the Commission to prepare a report on the constitutional changes that would be necessary to unify the superior, municipal, and justice courts on a statewide basis. The Legislature did not ask the Commission to evaluate the wisdom or desirability of unifying the trial courts; it only sought guidance on how to revise the state Constitution to implement such a reform.[5]

The Commission completed the requested report in early 1994.[6] Soon afterwards, the voters approved a proposition eliminating justice courts from California's judicial structure.[7] It is not necessary to further discuss justice courts in this memorandum.

At about the same time, the concept of statewide unification stalled in the Legislature. Instead, the Legislature passed a ballot measure that would authorize unification on a county-by-county basis. Many of the constitutional changes proposed in this measure were the same as, or similar to, the changes proposed in the Commission's report on statewide unification. If approved by

5. See 1993 Cal. Stat. res. ch. 96.
6. See *Trial Court Unification: Constitutional Revision (SCA 3),* 24 Cal. L. Revision Comm'n Reports 1 (1994); see also *Trial Court Unification: Transitional Provisions for SCA 3,* 24 Cal. L. Revision Comm'n Reports 627 (1994).
7. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

the voters, the measure would permit the municipal and superior courts in a county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.[8]

The Legislature directed the Commission to determine how to revise the codes to implement this measure.[9] In response, the Commission prepared a massive report on the statutory changes necessary to accommodate county-by-county unification.[10]

Among other things, the report addressed how to distinguish between different types of civil causes in a unified superior court. At the time, the original jurisdiction of the municipal courts was limited and prescribed by statute, while the superior courts had original jurisdiction of all other causes.[11] The report explained:

> On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court. *Differentiating among superior court causes will be necessary, however, to preserve filing fees, economic litigation procedures, local appeals, and other significant procedural distinctions for matters that traditionally have been within the municipal court's jurisdiction*.[12]

For that reason, the Commission coined the term "limited civil case" to refer to any case traditionally within the jurisdiction of the municipal court. Under the legislation proposed in its report, those cases would be listed in new Section 85 of the Code of Civil Procedure and the following rules would apply:

> In a county in which the courts have not unified, the municipal court has jurisdiction of limited civil cases. *In a county in which the courts have unified, the superior court has original jurisdiction of limited civil cases, but these cases are governed by economic litigation procedures, local appeal, filing fees, and the other procedural distinctions that characterize these cases in a municipal court*.[13]

The report thus sought to "preserve existing rights and procedures despite unification, with no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in the county."[14]

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8. See *Trial Court Unification: Revision of Codes,* 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998) (hereafter, "*TCU: Revision of Codes*").
9. See 1997 Cal. Stat. res. ch. 102; 1998 Cal. Stat. res. ch. 91.
10. See *TCU: Revision of Codes, supra* note 8.
11. See former Cal. Const. art. VI, § 10,
12. *TCU: Revision of Codes, supra* note 8, at 64 (emphasis added; footnote omitted).
13. *Id.* at 64-65 (emphasis added).
14. *Id.* at 60.

The county-by-county unification measure appeared on the ballot at a statewide election in June 1998.[15] The voters approved it, and the measure became operative the next day. Soon afterwards, the Legislature enacted a bill revising the codes as the Commission recommended, to be workable regardless of whether the trial courts in a county voted to unify.[16]

Courts began unifying during the summer of 1998. By early 2001, the trial courts in all of California's 58 counties had unified.

Follow-Up Work and Related Reforms

Once unification was complete, it became appropriate to further revise the codes to reflect the statewide elimination of the municipal courts (through unification in every county).

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

- The enactment of the Lockyer-Isenberg Trial Court Funding Act, which made the state responsible for funding trial court operations, instead of the counties.[17]
- The enactment of the Trial Court Employment Protection and Governance Act, under which trial court personnel became employees of their local superior court, instead of the county.[18]

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

The Legislature directed the Commission to prepare the necessary legislation to update the codes:

> The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of [the Trial Court Funding Act], the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions.[19]

As previously explained, the Commission has since done an immense amount of work in response to that directive, and virtually all of its many recommendations on the subject have become law.

15. See Proposition 220.
16. See 1998 Cal. Stat. ch. 931 (SB 2139 (Lockyer)).
17. 1997 Cal. Stat. ch. 850.
18. 2000 Cal. Stat. ch. 1010; Gov't Code §§ 71600-71675.
19. See 2000 Cal. Stat. ch. 1010, § 14; see also Gov't Code § 71674.

Throughout its work on trial court restructuring, *the Commission has narrowly limited its recommendations, proposing only statutory revisions necessitated by trial court restructuring, not other types of statutory improvements.* That is consistent with the scope of authority granted by the Legislature.

One of the remaining topics on the Commission's trial court restructuring "to do list" is consolidation and coordination of civil cases. On the Commission's recommendation, some of the statutes governing consolidation and coordination were revised in 2002 to reflect trial court unification. Subsequently, however, a CEB treatise raised questions about whether further guidance in this area might be forthcoming. Before discussing the 2002 revisions and the possibility of additional revisions, it may be helpful to provide some background on the consolidation and coordination processes.

CONSOLIDATION AND COORDINATION OF CIVIL CASES

Consolidation and coordination are processes for uniting two or more separately filed lawsuits (consisting of one or more causes of action) to achieve judicial efficiency and save costs. The processes are similar, but there are important differences, as explained below.

Consolidation

Under Code of Civil Procedure Section 1048(a),[20]

> [w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all of the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is thus a procedure for "uniting cases pending in the *same* court,"[21] when they involve a common question of law or fact. The purpose is to "enhance

20. Code of Civil Procedure Section 1048 (a) is the general rule governing consolidation of civil cases. A few other statutes govern consolidation of civil cases in a specific context. See, e.g., Civ. Code §§ 8552, 9506 (consolidation of separate actions brought by claimants who have given stop payment notices for same property); Code Civ. Proc. § 377.62(b) (consolidation for trial of wrongful death and personal injury actions arising out of same accident); Lab. Code § 3853 (consolidation of employer's and employee's actions against third person); see also Veh. Code § 14607.6(e)(4) (if practicable, criminal case and civil forfeiture proceeding arising from driving car without license, or with suspended or revoked license, "shall be heard at the same time in an expedited, consolidated proceeding" and "a proceeding in the civil case is a limited civil case"). This memorandum does not address those statutes.

trial court efficiency (i.e., to avoid unnecessary duplication of evidence and procedures); and to avoid the substantial danger of inconsistent adjudications (i.e., different results because tried before different juries, or a judge and jury, etc.)."[22]

Consolidation may be either complete or partial. In a complete consolidation, "the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment."[23] In a partial consolidation, two (or more) actions are consolidated for some but not all purposes. For example, the actions may be consolidated for discovery and other pretrial proceedings, but not for trial.[24] Alternatively, they may be consolidated for trial but not for pretrial purposes.[25]

"To prevail on a motion to consolidate, the movant must establish that (1) the cases are pending before the same court, (2) the cases share a common question of law or fact, and (3) the benefits of consolidation outweigh the burdens."[26] "Consolidation under Code of Civil Procedure section 1048 is *permissive*;"[27] the statute "grants *discretion* to the trial courts to consolidate actions involving common questions of law or fact."[28]

"The circumstances calling for consolidation are so variable, and the advantages and disadvantages of a joint trial are so dependent on the facts of each case, that there is no workable test."[29] Although each case presents its own facts and circumstances, a court will usually consider the timeliness of a motion

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21. R. Weil & I. Brown, Jr., Civil Procedure Before Trial *Case Management & Trial Setting* ¶12:370, p. 12(1)-71 (Rutter Group 2019) (emphasis in original).

22. *Id.* at ¶12:340, p. 12(1)-64.

23. Hamilton v. Asbestos Corp., Ltd., 22 Cal. 4th 1127, 1147, 998 P.2d 403, 95 Cal. Rptr. 2d 701 (2000); Sanchez v. Superior Court, 203 Cal. App. 3d 1391, 1396, 250 Cal. Rptr. 87 (1988).

24. See, e.g., State v. Altus Finance, S.A., 36 Cal. 4th 1284, 1293, 116 P.3d 1175, 32 Cal. Rptr. 3d 498 (2005) (cases consolidated "for discovery and pretrial purposes"); Frieman v. San Rafael Rock Quarry, Inc., 116 Cal. App. 4th 29, 33, 10 Cal. Rptr. 3d 82 (2004) (cases consolidated "for purposes of discovery and pretrial determinations"); see also Weil & Brown, *supra* note 21, at ¶12:341, pp. 12(1)-64 to 12(1)-65.

25. See, e.g., Stubblefield Construction v. City of San Bernardino, 32 Cal. App. 4th 687, 701, 38 Cal. Rptr. 2d 413 (1995) ("{W]here pending actions are consolidated only for the purpose of trial of related issues … the evidence presented in one case is to be deemed applicable in the other insofar as it is relevant thereto, but separate findings and judgments must be made in each case in disposition of the particular issues as independently submitted."); *Sanchez,* 203 Cal. App. 3d at 1396 ("In a consolidation for trial, the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy."); see also Weil & Brown, *supra* note 21, at ¶12:341, pp. 12(1)-64 to 12(1)-65.

26. O'Connor's California Practice *Civil Pretrial* Ch. 5-H, § 4.1 (2019).

27. *Hamilton,* 22 Cal. 4th at 1149 (emphasis added).

28. Todd-Stenberg v. Dalkon Shield Claimants Trust, 48 Cal. App. 4th 976, 978, 56 Cal. Rptr. 2d 16 (1996) (emphasis added).

29. B. Witkin, California Procedure *Pleading* § 345, p. 473 (5th ed. 2008).

to consolidate, the potential economy and convenience of consolidating the cases, the likelihood that consolidation would overcomplicate a trial, and any possibility of prejudice resulting from consolidation.[30] A trial court's decision regarding consolidation "will not be disturbed on appeal absent a clear showing of abuse of discretion."[31]

Coordination

Coordination is a procedure for uniting cases pending in *different* courts, when they involve a common question of law or fact.[32] The coordination procedure depends on whether a case is "complex" or "noncomplex."

A "complex case" is "an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel."[33] In deciding whether a case is complex, a court must consider whether the case is likely to involve:

- Numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve;
- Management of a large number of witnesses or a substantial amount of documentary evidence;
- Management of a large number of separately represented parties;
- Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or
- Substantial postjudgment judicial supervision.[34]

30. See Weil & Brown, *supra* note 21, at ¶¶12:359 to 12:365, pp. 12(1)-68 to 12(1)-70, & sources cited therein. For another list of relevant factors, see O'Connor's California Practice *Civil Pretrial* Ch. 5-H, § 4.3 (2019).

31. *Todd-Stenberg*, 48 Cal. App. 4th at 978-79. For a decision holding that consolidation of two cases was an abuse of discretion, see State Farm Mutual Auto Ins. v. Superior Court, 47 Cal. 2d 428, 430-31, 304 P.2d 13 (1956) (consolidation of declaratory relief and personal injury actions was abuse of discretion because it forced party "into contradictory arguments based on conflicting testimony" and "would unquestionably confuse the jury"). For a decision holding that *failure* to consolidate two cases was an abuse of discretion, see Martin-Bragg v. Moore, 219 Cal. App. 4th 367, 370-71, 161 Cal. Rptr. 3d 471 (2013) ("[W]e conclude that the trial court abused its discretion in refusing Moore's request to consolidate the unlawful detainer and quiet title actions for trial and that Moore was prejudiced by being forced to litigate the complex issue of title to the property under the summary procedures that govern actions for unlawful detainer."); see also *id.* at 391 ("[W]hen complex issues of title are involved, the parties' constitutional rights to due process in the litigation of those issues cannot be subordinated to the summary procedures of unlawful detainer.").

32. Weil & Brown, *supra* note 21, at ¶12:370, p. 12(1)-71; see also https://www.courts.ca.gov/27922.htm (Judicial Council Civil Case Coordination FAQs).

33. Cal. R. Ct. 3.400(a).

34. Cal. R. Ct. 3.400(b).

"Most litigation falls into the 'noncomplex' category."[35] When *noncomplex* cases raising a common question of law or fact are pending in different courts, a judge assigned to one of the cases may, on motion, coordinate them through a two-step process. First, the judge must transfer the other case to the judge's court; then the judge can consolidate the two cases pursuant to Code of Civil Procedure Section 1048.[36] If the judge orders such a transfer, the order must

> [s]pecify the reasons supporting a finding that the transfer will promote the ends of justice, with reference to the following standards:
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> (1) The actions are not complex;
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> (2) Whether the common question of fact or law is predominating and significant to the litigation;
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> (3) The convenience of the parties, witnesses, and counsel;
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> (4) The relative development of the actions and the work product of counsel;
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> (5) The efficient utilization of judicial facilities and staff resources;
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> (6) The calendar of the courts;
>
> (7) The disadvantages of duplicative and inconsistent rulings, orders, or judgments; and
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> (8) The likelihood of settlement of the actions without further litigation should coordination be denied.[37]

Coordination of *complex* cases is a more complicated process than coordination of noncomplex cases. There are many procedural requirements. Some of these are statutory,[38] but others are in a lengthy set of court rules, which the Judicial Council extensively revised fairly recently.[39]

Because the project at hand focuses on statutory defects stemming from unification of the municipal and superior courts, it seems unnecessary to describe the details of coordination of complex cases, at least in this introductory memorandum. Most limited civil cases (cases traditionally within the jurisdiction of the municipal courts) probably do not qualify as complex. Thus, the procedures for coordination of complex cases probably do not apply to a limited civil case very often. To the extent that such situations do occur, it seems unlikely that there are lingering statutory defects relating to trial court unification, given

35. Weil & Brown, *supra* note 21, at ¶12:405.2, p. 12(1)-77.
36. Code Civ. Proc. § 403; see also Cal. R. Ct. 3.500.
37. Cal. R. Ct. 3.500.
38. See Code Civ. Proc. §§ 404-404.9.
39. See Cal. R. Ct. 3.501-3.550.

the Judicial Council's post-unification attention to the detailed requirements for coordination of complex cases.

Comments on this preliminary assessment and the underlying assumption regarding the complexity of limited civil cases would be helpful. The Commission can always revisit this point if needed.

PREVIOUS WORK ON CONSOLIDATION AND COORDINATION

In a 2002 report on trial court restructuring,[40] the Commission recommended amendments of several provisions relating to consolidation and coordination of cases. In particular, the Commission recommended the following revisions to reflect unification of the municipal and superior courts:

> 403. A judge may, on motion, transfer an action or actions from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action and on each court in which an action is pending. Any party to that action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.
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> ~~If the cases are pending in different courts of the same county, the judge who grants the motion to transfer may also order the cases consolidated for trial in the receiving court.~~
>
> The Judicial Council may adopt rules to implement this section, including rules prescribing procedures for preventing duplicative or conflicting transfer orders issued by different courts.
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> 403.010. ~~(a) This chapter applies in a county in which there is no municipal court.~~
>
> ~~(b)~~ Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended

40. *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, "*TCR: Part 1*").

complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether, and to what extent, an amendment relates back to the date of filing the original complaint or other initial pleading.

404. When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining permission from the presiding judge, or by all of the parties plaintiff or defendant in any such action. A petition for coordination, or a motion for permission to submit a petition, shall be supported by a declaration stating facts showing that the actions are complex, as defined by the Judicial Council and that the actions meet the standards specified in Section 404.1. On receipt of a petition for coordination, the Chairperson of the Judicial Council may assign a judge to determine whether the actions are complex, and if so, whether coordination of the actions is appropriate, or the Chairperson of the Judicial Council may authorize the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases.

~~Notwithstanding any other provision of law, when civil actions sharing a common question of fact or law are pending in a superior court and in a municipal court of the same county, the superior court may, on the motion of any party supported by an affidavit stating facts showing that the actions meet the standards specified in Section 404.1, order transfer from the municipal court and consolidation of the actions in the superior court.~~

404.3. ~~(a)~~ A judge assigned pursuant to Section 404 who determines that coordination is appropriate shall order the actions coordinated, report that fact to the Chairperson of the Judicial Council, and the Chairperson of the Judicial Council shall either assign a judge to hear and determine the actions in the site or sites the assigned judge finds appropriate or authorize the presiding judge of a court to assign the matter to judicial officers of the court in the same manner as assignments are made in other civil cases.

~~(b) When an action pending in a superior court is sought to be coordinated with an action pending in a municipal court located in the same county, the presiding judge of the superior court may, as~~

> ~~an alternative to coordination, order the municipal court action transferred to the superior court and consolidated with the superior court action.~~
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> 404.9. Any duties of the presiding judge specified in this chapter may be delegated by the presiding judge to another judge of the court. ~~The term "presiding judge," as used in this chapter, includes the sole judge of a court having only one judge.~~
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> ~~Notwithstanding any other provision of law, the Judicial Council shall provide by rule the practice and procedure for the transfer or coordination of civil actions in convenient courts under this chapter, including provision for giving notice and presenting evidence.~~[41]

Those amendments were enacted the same year.[42]

CEB COMMENTARY THAT PROMPTED THIS PROJECT

A couple of years later, a CEB treatise discussed the effect of trial court unification on consolidation of civil cases. It raised the possibility of establishing special guidelines for consolidation of a limited civil case with an unlimited civil case.[43] Among other things, the treatise noted that California Rule of Court 1520(c), "which established special procedures for transfer and consolidation of municipal court cases with superior court cases," had not yet been revised to reflect trial court unification.[44] The treatise also pointed out that "[b]ecause limited civil cases (like municipal court cases under former law) are tried under special procedures intended to help keep the costs of litigation within the grasp of litigants whose damages are $25,000 or less (see CCP §§ 90-100), it is possible that the legislature, the Judicial Council, or the courts will develop consolidation rules specifically geared to these cases."[45]

The Commission's role is to assist the Legislature in drafting legislation, not to prepare the California Rules of Court, which is the province of the Judicial Council. Nonetheless, upon learning of this CEB commentary, it seemed prudent

41. See *id.* at 120-123.
42. 2002 Cal. Stat. ch. 784, §§ 55-59.
43. See California Civil Procedure Before Trial *Consolidation and Severance* § 43.28, pp. 2041-42 (CEB 4th ed. 2004) (hereafter, "*2004 CEB Commentary*").
44. *Id.* at 2042.
45. *Id.*

to add a reexamination of the consolidation and coordination statutes to the Commission's long "to do" list for trial court restructuring.

The court rule referenced in the CEB commentary focused entirely on the mechanics of transferring a case from a municipal court (or a justice court) to the superior court in the same county for consolidation with a pending superior court case. It said:

> (c) [Transfer and consolidation] A motion to transfer and consolidate actions pending in the superior court and in a municipal or justice court of the same county under Code of Civil Procedure section 404 shall be submitted to a superior court in which one of the included actions is pending. The original moving papers shall be filed in the superior court action and copies shall be filed in each included action. The prevailing party shall prepare an order setting forth the disposition of the motion and shall serve and file the order in each included action. If transfer and consolidation are granted, the moving party shall take all necessary steps to effect the transfer of the action. The moving party shall complete the transfer no later than 90 days after the date the order of transfer is filed in the included action. If an included action is not transferred within the 90-day period, the order of transfer shall expire with respect to that action without prejudice to renewal of the motion to transfer and consolidate for good cause shown.

Because a traditional municipal court case is now brought in the same court (the unified superior court) as a traditional superior court case, it is no longer necessary to provide guidance on the transfer mechanics addressed in the court rule shown above. That rule was replaced by California Rule of Court 3.520. The new rule relates solely to coordination of complex cases and does not specifically address consolidation or coordination of a limited civil case with an unlimited civil case (i.e., a traditional superior court case).

CURRENT CEB COMMENTARY

The discussion in the CEB treatise on the effect of trial court unification has since been revised as well. It now says:

> Code of Civil Procedure § 1048 and Cal Rules of Ct 3.520(a) authorize the consolidation of civil cases pending in superior court. Although there are no special rules on consolidation of limited civil cases with cases within the general jurisdiction of the superior court, it appears that, under CCP § 1048(a), the trial courts are able

> to consolidate limited civil matters with other pending matters that involve "a common question of law or fact."[46]

The discussion includes a "Note" suggesting that the current situation is a deviation from past practice:

> Before trial court unification, when superior and municipal courts were separate courts, CCP § 1048(a) by its own terms did not authorize consolidation of municipal and superior court cases. *See, e.g., Cochrane v. Superior Court* (1968) 261 Cal. App. 2d 201, 203 (municipal court could not transfer case to superior court for consolidation with case pending there); *Caballero v. Richardson* (1959) 173 CA2d 459, 462 (superior court could not transfer action pending in municipal court to itself for consolidation with superior court case).[47]

The parentheticals in this Note correctly describe the holdings of the cited cases, but the law later changed.[48] By the time the voters approved county-by-county unification in 1998, consolidation of a municipal court case (now known as a limited civil case) with a traditional superior court case (now known as an unlimited civil case) *was* permissible. That is clear from former Rule of Court 1520(c) and some of the statutory language that was revised in the 2002 amendments discussed above.

For example, former Code of Civil Procedure Section 404 said in part:

> Notwithstanding any other provision of law, when civil actions sharing a common question of fact or law are pending in a superior court and in a municipal court of the same county, the superior court may, on the motion of any party supported by an affidavit stating facts showing that the actions meet the standards specified in Section 404.1, order transfer from the municipal court and consolidation of the actions in the superior court.

Former Code of Civil Procedure Sections 400 and 404.3 included similar language, as reflected in the 2002 amendments shown above.

Thus, addition of statutory language precluding consolidation of a limited civil case with an unlimited civil case would *not* have been consistent with the

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46. See California Civil Procedure Before Trial *Consolidation and Severance* § 43.28, p. 43-16 (CEB 4th ed. 2019) (hereafter, "*2019 CEB Commentary*").

47. *Id.*

48. Among other things, Code of Civil Procedure Section 1048 was extensively revised in 1971, to track the language of the federal rule on consolidation of cases (Fed. R. Civ. Proc. 42). See 1971 Cal. Stat. ch. 244, § 58. The statute (shown on p. 5) has not been amended since 1971. Before then, it said simply: "An action may be severed and actions may be consolidated, in the discretion of the court, whenever it can be done without prejudice to a substantial right." See 1927 Cal. Stat. ch. 320, § 1.

Commission's guiding principle of "maintain[ing] the pre-unification status quo, while making the law workable in a unified court system."[49] On this point, the Commission's 2002 revisions and the interpretation of them that CEB provides (i.e., "it appears that, under CCP § 1048(a), the trial courts are able to consolidate limited civil matters with other pending matters that involve 'a common question of law or fact'") appear satisfactory.[50]

The current CEB commentary also includes the following practice tip:

> Although limited civil cases are tried under special procedures intended to help keep the costs of litigation within the grasp of litigants whose damages are $25,000 or less (see CCP §§ 90-100), the California Rules of Court do not differentiate between limited and unlimited jurisdiction for purposes of the consolidation and coordination rules. However, counsel should keep apprised of statutory developments and changes to the California Rules of Court as a result of trial court unification and should check local rules for any amendments adopted by individual trial courts to implement unification.[51]

The commentary thus continues to raise the possibility of statutorily differentiating between limited and unlimited civil cases with regard to consolidation and coordination.

With that possibility in mind, the staff did some research, trying to discover whether there have been any problems in that area. We discuss that research next.

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49. *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006).

50. For another treatise reaching the same conclusion, see O'Connor's California Practice *Civil Pretrial* Ch. 5-H, § 4.1 ("[U]nder § 1048(a), a court can consolidate … a limited civil case with an unlimited civil case."); see also Los Angeles Superior Court Local Rule 3.3(g)(3) ("Before consolidation of a limited civil case with an unlimited case, the limited case must be reclassified as an unlimited case and the reclassification fee paid.").

A small claims case may present special considerations, which might require further examination. See Acuna v. Gunderson Chevrolet, Inc., 19 Cal. App. 4th 1467, 24 Cal. Rptr. 2d 62 (1993) (holding, before trial court unification, that small claims appeal at hand could not be consolidated with related case pending in superior court); Weil & Brown, *supra* note 21, at ¶12:354, p. 12(1)-67 (relying on *Acuna* for conclusion that small claims appeal "may *not* be consolidated with a related case pending in superior court" because such consoldiation "would violate the prohibitions against pretrial discovery, jury trial and a plaintiff's appeal applicable in small claims actions."); but see Crawford v. JP Morgan Chase Bank, N.A., 242 Cal. App. 4th 1265, 1272-73, 195 Cal. Rptr. 3d 868 (2015) (distinguishing *Acuna* and rejecting argument that trial court lacked jurisdiction to transfer small claims cases out of small claims division for consolidation with superior court case in which discovery dispute leading to small claims cases arose).

51. *2019 CEB Commentary*, *supra* note 46, at § 48.28, p. 43-16.

RESEARCH FINDINGS

The staff's research did not yield much of interest, suggesting that the consolidation and coordination statutes have been functioning reasonably well since trial court unification. Only one case caught our eye: an unpublished court of appeal decision in a 2002 case called *Medina v. Cooke*.[52]

Medina v. Cooke

Medina v. Cooke involved the consolidation of (1) Mr. Medina's personal injury action against the Cookes for damages stemming from assault and battery (an unlimited civil case), and (2) an action by his workers' compensation carrier against the Cookes for reimbursement of amounts it paid for Mr. Medina's medical expenses. The latter action "was on its face filed as a limited subject matter jurisdiction civil action demanding 'under $10,000.00' and expressly prayed for compensatory damages in an amount 'not to exceed $10,000.'"[53]

"By order filed September 23, 1999, the trial court consolidated the two actions 'for all purposes.'"[54] After a six-day jury trial, the jury awarded $20,000 to Mr. Medina and $30,000 to his workers' compensation carrier.

Thereafter, "the Cookes filed a motion to set aside the $30,000 judgment … as in excess of both the $25,000 jurisdictional maximum for a limited civil action and the $10,000 amount prayed for in the complaint, and therefore void."[55] The trial court granted the motion and reduced the judgment in favor of the workers' compensation carrier to $10,000.

The workers' compensation carrier appealed from that ruling. It contend[ed] that "once its limited jurisdiction action to recover money expended for workers' compensation benefits was consolidated 'for all purposes' with Medina's unlimited jurisdiction lawsuit for personal injury damages according to proof, the two actions were merged into a single proceeding in which [the carrier's] original $10,000 limitation on recovery was superceded by the unlimited amount prayed for in Medina's complaint, as if [the carrier] had joined in Medina's lawsuit from the outset.[56] Alternatively, the carrier argued that the Cookes had waived any right they may have had to limit the award to $10,000.

52. 2002 Cal. App. Unpub. LEXIS 11057 (No. A095275, Nov. 27, 2002).
53. *Id.* at *4-*5.
54. *Id.* at *5.
55. *Id.* at *8.
56. *Id.* at *19.

The court of appeal began by addressing the first contention. It framed the issue as follows:

> Pursuant to voluntary unification of the municipal and superior courts, municipal court jurisdiction has been replaced by limited civil case jurisdiction in the superior court.…
>
> Subject to other criteria not relevant here, in general a case is deemed a limited civil action when the amount in controversy does not exceed $25,000. Under [Code of Civil Procedure Section 580], a party in a *limited* civil case "*may not be granted* … relief exceeding the maximum amount in controversy for a limited civil case …." The comments of the Law Revision Commission are if anything even clearer: "Subdivision (b)(1) [of section 580] makes explicit that although the jurisdiction of a unified superior court includes matters in which the amount in controversy exceeds the maximum for a limited civil case as provided in Section 85 [i.e., $25,000], *the court cannot grant substantive relief exceeding that maximum in a limited civil case.*"
>
> [The carrier's] original complaint was filed within the limited jurisdiction of the trial court for a stated amount in controversy 'not to exceed' $10,000, well within the jurisdictional limit of $25,000 for a limited civil case.… **The issue presented by [the carrier's] present argument on appeal is whether the consolidation of [its] case with Medina's "for all purposes" effectively merged [its] limited damage claim with Medina's unlimited claim, thereby erasing the jurisdictional limit imposed on the action originally filed as a limited civil case.**[57]

The court of appeal observed that "[o]n its face" the carrier's action was consolidated with Medina's *for all purposes* and that "does appear to distinguish the consolidation in this case from the type of consolidation in which two separate actions are consolidated for purposes of trial only."[58] The court explained:

> In the latter type of consolidation, although the two actions are tried together, all the pleadings, verdicts, findings and judgments remain completely distinct in form and disposition. In a consolidation "for all purposes," on the other hand, the two actions are thereafter treated as a single proceeding, with all further pleadings filed under one action number, one verdict or statement of decision given, and one judgment rendered.[59]

The court of appeal went on to point out that although the consolidation order referred to a consolidation "for all purposes," the record regarding the

57. *Id.* at *20-*22 (citations omitted; italics in *Medina*; boldface added).
58. *Id.* at *22.
59. *Id.* at *22-*23.

actual extent of consolidation was murky.[60] The court did not definitively resolve the issue, but said in a footnote that the trial court apparently "ultimately determined that the consolidation of [the carrier's] case with Medina's partook more of the nature of a consolidation for trial only than a consolidation for all purposes."[61]

The court of appeal further noted that the workers' compensation carrier had failed to argue to the trial court that "the consolidation of its action with Medina's eliminated the limited civil nature of [its] case — and with it, the maximum subject matter jurisdictional limits on its recovery …."[62] In addition, the court said the carrier's argument "appears to be one of first impression."[63] Although the carrier had cited case law in support of its argument, it had not cited, and the court of appeal did not find, any case addressing the specific situation at hand, "in which a limited civil case has been consolidated with an unlimited one, and the issue is whether consolidation renders moot or ineffective the jurisdictional limitation imposed on the former."[64]

Given the absence of case authority on the issue, the statutory language limiting recovery in a limited civil case, and "the confused and confusing state of the record below," the court of appeal said it would "at best be imprudent" to decide the issue.[65] It held that the carrier had waived the argument by failing to raise it in the trial court.[66]

The court of appeal then considered the carrier's alternative argument (that the Cookes had waived any right they may have had to limit the award to $10,000). It agreed with that contention, explaining that "although the trial court properly corrected the judgment insofar as it exceeded the $25,000 maximum jurisdictional limit, it was *not* justified in reducing the jury's award of damages still further to $10,000 in view of the Cookes' acquiescence in the litigation of damage claims by [the carrier] in excess of that amount."[67]

60. *Id.* at *23-*24 & n.6.
61. *Id.* at n.6.
62. *Id.* at *24.
63. *Id.*
64. *Id.* at *24-*25.
65. *Id.* at *28.
66. *Id.*
67. *Id.* at *30-*31 (emphasis added).

In the staff's view, it is unfortunate that the extent of consolidation in *Medina* was unclear. If it had been clear that the cases were completely consolidated and thus the pleadings merged, it would seem inescapable that they became a single case with an amount-in-controversy exceeding $25,000. As such, the case would have to be classified and treated as an *unlimited* civil case,[68] and it would be straightforward to conclude that Section 580's restriction on the amount of recovery in a *limited* civil case was inapplicable. The situation would have been comparable to when a municipal court case was transferred to a superior court for consolidation with a superior court case. In such circumstances, the $25,000 limit on municipal court jurisdiction became irrelevant because the consolidated case was in superior court, which had no upper jurisdictional limit.

Similarly, if it had been clear that the two cases in *Medina* were only partially consolidated and the pleadings did not merge, it would have been relatively straightforward to conclude that the carrier's case remained a limited civil case and thus remained subject to Section 580's restriction on the amount of recovery in a limited civil case, as well as the appeal path[69] and filing fees for a limited civil case.[70] The use of economic litigation procedures is not mandatory in a limited civil case,[71] so the court would have had discretion to choose whether, and to what extent, to use those procedures in resolving the carrier's case.[72]

The murky situation in *Medina,* in which there was ambiguity regarding the extent of consolidation, strikes us as unusual, undesirable, and avoidable.[73] In any event, **attempting to revise the consolidation statutes to prevent such**

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68. See Code Civ. Proc. §§ 85, 86, 88; see also *id.* §§ 403.010-403.090 (reclassification of civil actions and proceedings); Weil & Brown, *supra* note 21, at ¶3:107, pp. 3-15 to 3-16 ("[I]f any of the individual claims exceeds $25,000, the action does not qualify as a limited civil case, and all properly joined claims for lesser sums will be adjudicated under the procedures governing unlimited cases.").

69. See Code Civ. Proc. § 904.2.

70. See, e.g., Gov't Code § 70613 (filing fee for first paper in limited civil case).

71. See Code Civ. Proc. § 91(c) ("[a]ny action may, upon noticed motion, be withdrawn from [economic litigation procedures] upon a showing that it is impractical to prosecute or defend the action within the limitations of these provisions").

72. Today, an expedited jury trial (with a time limit and other special rules) is mandatory in some limited civil cases. See Code Civ. Proc. §§ 630.20-630.29. That requirement was not in place when *Medina* was decided.

73. There was somewhat similar confusion regarding the extent of consolidation in *Hamilton,* which did not involve a limited civil case. See *Hamilton,* 22 Cal. 4th at 1147-49 (actions were consolidated for all purposes and court of appeal erred in concluding otherwise). Nonetheless, the situation is likely an oddity rather than one that reoccurs often enough to require statutory guidance that does not already exist.

ambiguity in future cases would go beyond the Commission's assigned role of updating statutory material made obsolete by trial court unification.

The more clear-cut situations described above are probably more common, but courts may not need additional statutory guidance to handle those situations appropriately. **The existing statutes on the classification and reclassification of civil cases,[74] which were long ago revised or drafted on the Commission's recommendation to be workable in a unified court system, might be sufficient for that purpose.**

Partial Consolidation

In thinking about *Medina,* the staff realized that *partial* consolidation of a traditional municipal court case (a limited civil case) with a traditional superior court case (an unlimited civil case) probably could not have occurred before unification. At that time, the superior court lacked jurisdiction of cases within the jurisdiction of the municipal court, and vice versa.[75] Presumably, then, consolidation of a municipal court case and a superior court case would necessarily have involved a transfer from municipal court to superior court, followed by a *complete* consolidation. **Comments confirming or refuting this conclusion would be helpful.**

Assuming this conclusion is correct, then it is important to consider the possibility of proposing a statute that would prohibit partial consolidation of a limited civil case with an unlimited civil case. There are both pros and cons to such an approach.

On the one hand, such a statute would conform to the Commission's guiding principle of preserving pre-unification procedures in a unified court system.[76] That principle is perhaps less crucial now than it was in the past, when there was a possibility of disparity in treatment of similarly situated litigants due to unification in some but not all counties.

On the other hand, restricting the use of partial consolidation may impede realization of *precisely* the kind of administrative efficiencies and cost-savings that were the impetus for trial court unification.[77] For example, the Legislative

74. See sources cited in note 68 *supra*.
75. See former Cal. Const. art. VI, § 10.
76. See *supra* note 14 and accompanying text.
77. See, e.g., Voter Information Guide for 1998, Primary, pp. 8-11 (ballot arguments relating to Prop. 220).

Analyst’s fiscal analysis of the ballot measure proposing county-by-county unification explained:

> To the extent that most courts choose to consolidate, … this measure would likely result in net savings to the state ranging in the millions to the tens of millions of dollars annually in the long term. The state could save money from greater efficiency and flexibility in the assignment of trial court judges, reductions in the need to create new judgeships in the future to handle increasing workload, improved management of court records, and reductions in general court administrative costs.[78]

Due to these competing considerations, it is not altogether clear whether a statute prohibiting partial consolidation of a limited civil case with an unlimited civil case would help properly update the codes to reflect trial court unification. **On balance, the staff leans against proposing such a statute,** largely because it could impede efficient use of judicial resources and there do not seem to be any obvious problems that have arisen from the lack of such a statute.

POSSIBLE APPROACHES AND STAFF RECOMMENDATION

As discussed above, the existing laws governing consolidation and coordination of civil cases do not expressly say how they apply to a limited civil case (a traditional municipal court case). To help prevent confusion, one possibility would be to propose statutory revisions that provide such guidance.

For example, the Commission could explore whether to make points like the following explicit in the Code of Civil Procedure:

(1) A limited civil case may be completely or partially consolidated with an unlimited civil case pending in the same court, if the usual requirements for such consolidation are satisfied.

(2) If a limited civil case is completely consolidated with an unlimited civil case, then the resulting merged case must be treated as an unlimited civil case for all purposes.

(3) If a limited civil case is only partially consolidated with an unlimited civil case, the special rules for a limited civil case (recovery cap, local appeal, etc.) continue to apply to that case.

(4) A limited civil case may be completely or partially consolidated with another limited civil case pending in the same court, if the usual requirements for such consolidation are satisfied.

(5) If a limited civil case is completely consolidated with another limited civil case and the combined amount-in-controversy

78. *Id.* at 8.

exceeds the maximum for a limited civil case, the resulting merged case must be treated as an unlimited civil case for all purposes.

(6) If a limited civil case is completely consolidated with another limited civil case and the combined amount-in-controversy is less than or equal to the maximum for a limited civil case, the resulting merged case is a limited civil case and it is subject to the special rules for a limited civil case.

(7) If a limited civil case is partially consolidated with another limited civil case, both cases remain so classified and each is subject to the special rules for a limited civil case.

The Commission could also explore whether to provide similar guidance with respect to coordination.

Comments on whether there is any need for such guidance would be helpful. Comments on any other aspect of this memorandum would also be welcome and appreciated.

The staff's impression (based on the apparent lack of expressed concerns, our research thus far, and our long familiarity with the implementation of trial court unification) is that the courts are generally handling consolidation and coordination issues appropriately without such guidance. There do not seem to be any glaring problems that cry out for attention. **Unless the Commission receives input demonstrating the existence of a significant problem with current law on consolidation or coordination of civil cases, and that problem is attributable to trial court unification, the staff is not inclined to pursue this topic further.** The Commission's resources could be better-spent addressing other remaining issues relating to trial court restructuring. If there are any significant flaws in the consolidation and coordination statutes, the Judicial Council or others within the court system are likely best-suited to propose solutions, because court efficiency is at the heart of those statutes and court personnel could propose whatever improvements appear optimal (not just revisions to remove material made obsolete by trial court restructuring).

How would the Commission like to proceed?

Respectfully submitted,

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