1-1-1962

Institute of Contemporary Law: The California Superior Court System

Mary Emery
Santa Clara University School of Law

Nicholas Livak
Santa Clara University School of Law

Leon Panetta
Santa Clara University School of Law

Institute of Contemporary Law

The California Superior Court System

The Institute of Contemporary Law, having recently completed an investigation and analysis of the California grand jury, now turns its efforts to the area of the superior court system in California. Hoping to correlate the work of students, lawyers and judges in this area, the following article attempts a broad review of the function and operation of the superior court in California. The history of the court, its rules and operation, its jurisdiction and its various departments are the topics covered by the discussion below. The presentation here offered is mainly expository and informational, and, it is hoped, will provide both the scholar and the practitioner with a practical introduction to this subject.

History of the California Superior Court

To appreciate the present stature of California's fifty-eight superior courts, one must first be made aware of their past, their birth in a Spanish dominated territory, and with their formative years under the constitution of the young state.

"The first California Constitution," it is said, "adopted a judicial system quite similar in its hierarchy and division of jurisdiction to that which had been established in the dependency by the laws of Mexico."[1] One scholar has thus summarized:

> The judicial system provided for the provinces of Mexico corresponds very closely with the present judicial system of California; the Tribunal and the Courts of Segunda Instantia correspond with our Supreme and Appellate Courts; the Courts of Primera Instantia, with our Superior Courts; the Alcaldes Courts, with our Municipal Courts; and their Justices' Courts with our own Justices' Courts.[2]

Hence we must search for the progenitur of our superior courts in the form of the Mexican Courts of First Instance.

These early courts were provided for by section II, article I of the Laws of the Mexican Government, promulgated in 1837 which read, "The Governor and Legislature on the recommendation of the Superior Tribunal, shall designate the number of Judges of [the Court of First Instance] in the chief town of each district."[3] Although this and following sections gave these tribunals broad and detailed jurisdiction, in fact very few Courts of First Instance were actually

---

[1] Pulmer & Selvin, The Development of the Law in California 1, 11 (1954).

[2] Mason, Constitutional History of California, Constitution of the United States and the State of California and Other Documents 69 (1951).

[3] Wilson, *The Alcalde System of California*, 1 Cal. 559, 566 (Appendix) (1851).

organized by the Mexican Governor. In actual practice, when a neighborhood needed the services of a magistrate, . . . [one] was chosen on the spot, and he either acted for a single occasion, or continued to act for a period longer or shorter, according to the pleasure of those who put him into his precarious office."[4]

It was only after the American occupation of California in 1846 and the establishment of military government that the Mexican originated judiciary system was used to its fullest advantage. The Americans, under the leadership of General Riley, their de facto governor, adopted the Mexican court organization and actively applied it. His proclamation of June 3, 1849, established a new era in the judicial administration of California. "He called upon the people in the several districts to indicate, by an election, the persons whom he should appoint as Judges of the First Instance."[5]

While these early American courts adopted a Mexican judiciary system, they seldom used the framework to apply Mexican law. In fact few, if any, of the American judges knew what the Mexican law was. "As a result, in some courts the common law was applied; in others, the civil law; and in still others, it was a combination of these two plus the law of one of the states familiar to the judge or counsel."[6] More often than not the judges did not even pretend to follow an organized body of law, and decided from day to day, "according to the very right of the case."[7]

The title of these early courts has been changed several times since the Mexican Laws of 1837. The first state constitution in 1849 chose to designate the old Courts of First Instance as county courts.[8] "The judicial power of this state shall be vested in a supreme court, in district courts, in county courts, and in justices of the peace . . . [and] such municipal and inferior courts as may be deemed necessary."[9] Only with the revision of the constitution in 1879 was the present "superior court" nomenclature adopted.[10]

The law which the courts apply has steadily progressed. At its first session in 1850 the legislature attempted to give the courts a unified body of law with which to work. "The Common Law of England, so long as it is not repugnant to or inconsistent with the Constitution of the United States or the Constitution or the laws of the State of California, shall be the rule of decision in all the Courts of this State."[11] With this common law base, the legislature gradually began to

---

[4] *Id.* at 574.
[5] *Id.* at 577.
[6] Stevenson, *The Glorious Uncertainty of the Law, 1846-1851,* 28 CAL.S.B.J. 374 (1953).
[7] Wilson, *supra* note 3, at 578.
[8] CAL. CONST. art. VI, § 1 (1849).
[9] *Ibid.*
[10] CAL. CONST. art. VI, § 1 (1879).
[11] Stats. 1850, c. 95.

enact its own statutes to bring unison and order to the legal chaos which prevailed earlier.

The whole outward appearance of our modern superior courts bears little resemblance to its early California ancestors. Its well-tailored rules and sophisticated procedures are in vivid contrast to the juristic blue jeans and buckskin of the Courts of First Instance. Yet, even though over one hundred years of service have added legal refinement to the superior courts, they have in no way sapped the strength or vigor of their youth. These courts remain today, as they were in 1849, the primary dispensers of justice of the California judiciary.

JURISDICTION

The jurisdiction of the superior court may be summed up in the word "general."[12] As successors to the common law courts and courts of equity they have the fullest jurisdiction and any constitutional limitations on their general jurisdiction must be strictly construed.[13] They possess original jurisdiction in all civil cases except those in which jurisdiction is expressly conferred by constitutional provision or statute upon inferior courts.[14] In criminal matters, the court has jurisdiction over all felonies and those misdemeanors not otherwise provided for.[15] Conviction of a lesser offense included within the felony of which the defendant is charged does not deprive the superior court of jurisdiction to impose punishment.[16] The superior courts also perform an appellate function in hearing appeals of cases tried in municipal and justice courts.[17] Certain special writs may also be issued by the court.[18]

DISTRIBUTION OF BUSINESS

In order to understand how this jurisdiction is exercised, it is essential to consider the organization of the court and the distribution of its business.

Article VI section 7 of the California Constitution provides that "The judges of each superior court in which there are more than two judges sitting, shall choose, from their own number, a presiding judge, who may be removed as such at their pleasure." In counties with more than eight judges the presiding judge shall designate one or more departments to conduct the proceedings in various fields.[19] Cases within these areas are assigned automatically to the department designated to hear that matter.[20] Only Alameda, Los Angeles, San Francisco, and Santa Clara come within the requirement for the designation of

---

[12] Campe v. Lassen, 67 Cal. 139, 7 Pac. 430 (1885).
[13] Wood v. Thompson, 4 Cal.App. 247, 90 Pac. 38 (1907).
[14] CAL. CONST. art. VI, § 5.
[15] *Ibid.*
[16] People v. Fahey, 64 Cal. 342, 30 Pac. 1930 (1883).
[17] CAL. CONST. art. VI, § 5.
[18] *Ibid.*
[19] CAL. SUPER. CT. R. 34.
[20] CAL. SUPER. CT. R. 32(a)(1).

departments on the basis of subject matter. In counties where the court is made up of from three to eight judges inclusive, all cases, with the exception of those under the Juvenile Court Law and Children's Court of Conciliation Law, go immediately to the department of the presiding judge who in turn transfers or disposes of them as he sees fit.[21] The presiding judge hears all orders to show cause, motions (except as otherwise provided by law or the Rules for the Superior Court) and demurrers.[22] The presiding judge may designate a department to conduct the proceedings in a criminal case and the judge to preside therein.[23] Should a criminal department not be designated, the presiding judge also has the responsibility of arraignments and pleas.[24] In those counties with only two judges in the superior court, the court shall provide by local rule for the distribution of business.[25]

Organization of Departments

The organization and operation of the departments designated to handle cases within a specific subject area vary from county to county. The following brief description attempts to survey these various departments.

Criminal Cases. In Alameda and Santa Clara Counties there are specific departments set aside for the hearing and disposition of criminal cases. In Los Angeles and San Francisco Counties the criminal departments are organized into a criminal division with a master calendar department for the division.[26] All informations, accusations, and other criminal proceedings are, upon filing, assigned automatically to the master calendar department which hears and determines all proceedings prior to trial.[27] If necessity and convenience require, the judge of the master calendar department may transfer any matter pending before his department to another.[28]

Naturalization and Probate Cases. These departments handle the various cases that arise regarding citizenship and probate proceedings not requiring a jury and requiring less than two hours to try. Probate proceedings requiring a jury or more than two hours to try, are transferred to regular trial departments. Once a trial has been commenced, compromises of claims are heard in the department in which the trial is proceeding. In Los Angeles County probate commissioners assist the court.

Domestic Relations Cases. This department handles actions for divorce, annulment, separate maintenance, and the related orders to show cause.[29] A

---

[21] Cal. Super. Ct. R. 32(a)(1)-(3).
[22] Cal. Super. Ct. R. 33(a).
[23] Cal. Super. Ct. R. 33(b).
[24] *Ibid.*
[25] Cal. Super. Ct. R. 32(a).
[26] Cal. Super. Ct. R. 35(a).
[27] Cal. Super. Ct. R. 35(b).
[28] *Ibid.*
[29] See generally California Continuing Education of the Bar, Family Law for California Lawyers (1956).

large part of the judge's time is devoted to the signing of documents. The expedition of these proceedings is often attempted through the use of forms and questionnaires.

Law and Motion Matters. This particular department handles all demurrers and motions made on notice. If the demurrer is unopposed the court will pass on its merits; if the moving party does not appear, it will be overruled; and if neither party appears, the case is marked off the calendar or continued, as the court sees fit. If the demurrer is filed jointly with a motion to strike, or after filing but before the hearing on the motion, the demurrer is heard at the same time as the motion.

Other cases requiring notice are usually heard by the judge of another department who hears applications for a temporary injunction, appointment of a receiver, or other matter upon an order to show cause from which a demurrer or motion to strike by the respondent has been filed but not yet heard. These matters may be transferred to the law and motion department if not heard by the trial department.

Appellate Department. In Alameda, San Francisco, and Santa Clara counties, judges from other departments are assigned to sit part-time; Los Angeles County, however, has a full-time appellate department.

Notice of appeal and the record of the lower court are submitted to the appellate clerk. The department must hold one or more regular sessions each month.[30] The decisions follow the session at which the matter was set for hearing "unless, for good cause . . . it is continued for hearing to another date, or . . . ordered to be submitted on briefs."[31] While the opinion need not be in writing, the judges may do so whenever they deem it advisable or in the public interest.[32]

It must be remembered that appeals from small claims and justice courts are by trial de novo.[33]

Pre-Trial Department. The Rules for the Superior Court require that parties and attorneys to cases requiring more than two hours to try must confer before a judge to reduce the number of issues. The exact matters to be considered at the pre-trial conference include, among others, amendments, simplification of the factual and legal issues involved, admissions of facts and documents which will avoid unnecessary proof, jurisdiction of the court, completion of discovery proceedings, preparation of trial briefs and/or memoranda of points and authorities, estimating time of trial and whether a jury is demanded, and finally the setting of the time and place of trial.[34] The pre-trial conference judge also has

---

[30] CAL. RULES ON APPEAL TO SUPER. CT. R. 101.
[31] CAL. RULES ON APPEAL TO SUPER. CT. R. 106.
[32] *Ibid.*
[33] CAL. CODE CIV. PROC. § 117j.
[34] CAL. SUPER. CT. R. 8, 4(a).

the authority to inquire of the attorneys regarding the possibility of settlement of the case.[35]

The pre-trial conference order becomes a part of the record and is said to control the subsequent course of the case where inconsistent with the pleadings, unless modified at or before trial to prevent injustice.[36]

If a pre-trial department does not exist, the judge assigned to the case will conduct his own pre-trial conference in most instances.

Juvenile Court. Welfare and Institutions Code section 571 states that a court hearing a criminal case involving a minor under the age of eighteen sits as a juvenile court. This department does not conduct a "trial" and there are no "charges" or "defendants." All matters before juvenile court are brought in the form of petitions filed "on behalf" of the youngsters involved by the juvenile probation department. Court proceedings are in the form of hearings; testimony is not recorded; and juvenile court files are not open to public inspection.

In Los Angeles County the juvenile cases assigned to the department include habeas corpus proceedings involving minors under eighteen, except guardianship and custody upon divorce, and applications under Civil Code sections 56 and 79.06, regarding marital capacity and the required age of consent.

Conciliation Court. Annually in the month of January the judge or judges of the superior court determine whether the social conditions of the county and the number of domestic relations cases require the setting up of a conciliation department.[37] Once established, domestic relations cases affecting the welfare of children may be assigned to it. The spouses themselves may petition to invoke jurisdiction of the court to effect a reconciliation, but either spouse may subsequently institute an action for divorce, annulment, or separate maintenance after thirty days.

The proceedings are held in private and the court is bound to exclude "all persons except the officers of the court, the parties, their counsel and witnesses."[38] Hearings are conducted informally and the court may invoke the aid of physicians, psychiatrists, and others to promote the purposes of the Conciliation Court Law of 1939.[39]

Summary. In considering the numerous departments in the superior court system, it should be remembered that they all have the same original jurisdiction. Although a particular department is designated to hear matters within a specific area, another department, irregularly assigned a case, does not act in excess of jurisdiction.[40] A special court, whose jurisdiction and procedures are

---

[35] CAL. SUPER. CT. R. 8.5.
[36] CAL. SUPER. CT. R. 8.8.
[37] CAL. CODE CIV. PROC. § 1733.
[38] CAL. CODE CIV. PROC. § 1747.
[39] CAL. CODE CIV. PROC. § 1768.
[40] Williams v. Superior Court, 14 Cal.2d 656, 96 P.2d 334, (1939).

statutory and which is not merely assigned cases for convenience, will, however, in such an instance act in excess of jurisdiction.[41]

The so-called departments into which superior courts are divided are unknown to the constitution, but have been adopted for convenience in apportioning the superior court's business as authorized by the constitution.[42]

Rules for the Superior Court

Article VI, section 1a of the Constitution of California establishes a judicial council for the state. The council is composed of the chief justice or acting chief justice of the state supreme court, one associate justice, three justices of the district courts of appeal, four judges of superior courts, one judge of a police or municipal court, and one judge of an inferior court. These judges are assigned to sit on the council for terms of two years. No act of the council is valid unless concurred in by at least six members. The section provides that they shall adopt or amend rules of practice and procedure for the several courts not inconsistent with existing or prospective laws; and the council shall submit at each regular session of the legislature, "its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure."[43] The Government Code provides that every court of record may make rules for its own government not inconsistent with law or the rules prescribed by the judicial council.[44] Superimposed upon this body of rules are the unwritten or common law rules of court.

The existence of this large body of rules, and the implied power of courts to alter inconvenient practice[45] or deviate from rules to promote the cause of justice,[46] may make it very difficult for an attorney unfamiliar with the courts in a particular area to insure that his client's rights are protected procedurally. Prior to the adoption of the revised judicial council Rules For The Superior Court,[47] many counties had supplementary rules for their own courts, and many of these probably remain in effect. These rules have never been collected and published together, and the clerk of each county should be contacted to determine their content and applicability.

The Santa Clara County Superior Court publishes a pamphlet embodying the supplementary rules for that court. The twenty-two rules are "especially to define with particularity our procedure in the administration of the Master Calendar."[48] They do extend however to such diverse subjects as "Election of

---

[41] People v. Superior Court, 104 Cal.App. 276, 285 Pac. 871 (1930).
[42] People v. Grace, 77 Cal.App. 752, 247 Pac. 585 (1926).
[43] Cal. Const. art. VI, § 1a(5).
[44] Cal. Gov. Code § 68070.
[45] People v. Jordan, 65 Cal. 644, 4 Pac. 682 (1864).
[46] Johnson v. Sun Realty Co., 138 Cal.App. 296, 32 P.2d 393 (1934).
[47] See 33 Cal.2d 1 (1948).
[48] *Superior Court of the State of California In and For the County of Santa Clara, Rules 1961.*

the Presiding Judge" to "Modification of Domestic Relation Orders by Stipulation."[49]

OFFICERS

There is no separate office of clerk of the superior court. The county clerk is ex officio clerk of the superior court of his county.[50] He has the power to appoint deputies,[51] conferring upon them authority equal to that of the clerk.[52] While a statute or rule may require that papers be filed with the clerk, it is not necessary that they be delivered to his main office. It is sufficient to deposit them with the courtroom clerk at his desk in the courtroom or chambers.[53]

The clerk must maintain indexes that will insure ready reference to any action or proceeding filed in the court.[54] He must also keep minutes and records and enter orders, judgments and decrees.[55] These ministerial duties must be performed in strict conformity with statute, rules and orders of the court. Since he does not act judicially, the conclusive presumption of correctness that applies to a judge's orders does not apply to a clerk's entry; however, there is a presumption that an "official duty has been regularly performed"[56] which applies to the clerk's record unless affirmatively shown to be wrong. The power of the court to correct its record to accord with the facts is not lost by mere lapse of time,[57] and the court is not precluded from correcting clerical error in entry of order by the fact that the error does not appear on the face of the record.[58]

The clerk also serves as custodian of exhibits. Rule 30(b) states: "No exhibits shall be released from the possession of the clerk except on order of the court and the giving of a receipt therefor."

The clerk must also charge and collect the statutory fees for such services as filing pleadings and other papers, preparing or certifying copies, issuing writs, etc.[59] The normal remedy of a party aggrieved by an act or omission of the clerk is to apply to the superior court for an appropriate order directed to the clerk.[60]

Article VI, section 14 of the California Constitution states:

> The legislature may also provide for the appointment, by the several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the

---

[49] *Ibid.*
[50] CAL. CONST. art. VI, § 14.
[51] CAL. GOV. CODE §§ 24100, 24101.
[52] People v. Ramirez, 112 Cal.App. 507, 297 Pac. 51 (1931).
[53] Keller v. Gerber, 49 Cal.App. 515, 193 Pac. 809 (1920).
[54] CAL. GOV. CODE § 69842.
[55] CAL. GOV. CODE § 69844.
[56] CAL. CODE CIV. PROC. § 1963(15).
[57] Wilson v. Nichols, 55 Cal.App.2d 678, 131 P.2d 596 (1942).
[58] Culligan v. Leider, 65 Cal.App.2d 51, 149 P.2d 894 (1944).
[59] CAL. GOV. CODE §§ 6103, 26820, 26823, 26856-57.
[60] Wolf v. Mulcrevy, 35 Cal.App. 80, 169 Pac. 259 (1917).

> superior courts, to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law.[61]

A court commissioner must be an American citizen and a resident of the state, and he may be required to have been admitted to practice before the supreme court of the state for a period of at least five years immediately preceding his appointment. The appointee holds office at the pleasure of the court.[62] He cannot have a partner practicing law in California,[63] and the same person may be appointed in two or more counties.[64]

The above constitutional provision is not self-executing and the commissioner's powers are enumerated in the code. Section 259 of the Code of Civil Procedure lists the general powers of every court commissioner. When the judge is absent or unable to act, he may "hear and determine ex parte motions for orders and writs." He may take proof and report conclusions as to any matter of fact other than an issue of fact raised by pleadings, subject to the right of a party to argue exceptions to the court. He may also take and approve bonds and examine securities, administer oaths, take affidavits and depositions, take acknowledgments and proof of instruments. Code of Civil Procedure section 259a lists the slightly enlarged powers of the commissioners in counties of 900,000 or more population. There are also sections providing for special types of commissioners, such as the probate commissioner to examine probate files and advise the court,[65] jury commissioner to assist in the selection of a jury,[66] and others.

CONCLUSION

As was said in the introduction, the above discussion is intended primarily to familiarize the reader with the general structure and function of the superior court in California. Because of their regional limitations and inherent complexities, the court systems of Los Angeles and San Francisco counties have not been discussed in any detail. In later issues of the *Santa Clara Lawyer*, the Institute will analyze and discuss in greater depth the superior court structure of Santa Clara County, which, it feels, is representative of the several counties of the state of California.

Mary B. Emery
Nicholas J. Livak
*Leon E. Panetta**

---

* Third year students of the University of Santa Clara School of Law. The authors wish to acknowledge the kind assistance of the office of the county clerk and the judges of the Superior Court of the State of California In and For the County of Santa Clara.

[61] CAL. CONST. art. VI, § 14.
[62] CAL. GOV. CODE § 70142.
[63] CAL. GOV. CODE § 68083.
[64] CAL. GOV. CODE § 70143.
[65] CAL. GOV. CODE § 69897.
[66] CAL. GOV. CODE §§ 69891-96.

SANTA CLARA LAWYER

VOL. 3 FALL 1962 NO. 1