

RESOLUTION 02-07-2017

DIGEST

Appellate Division: Deletion of Redundant Reference

Amends Code of Civil Procedure section 77 to delete a redundant reference to city and county.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 77 to delete a redundant reference to city and county. This resolution should be approved in principle because Code of Civil Procedure section 17 subdivision (b)(2) already provides that the term “‘County’ includes ‘City and County,’” making the same reference in section 77 redundant.

Code of Civil Procedure section 77 establishes appellate divisions of the superior courts. Its opening subdivision (a) currently provides, in pertinent part, “In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.”

There are 58 counties in California. Out of those counties, the one anomaly is San Francisco, which is, at the same time, a city and county. Code of Civil Procedure section 17 subdivision (b)(2)’s definition of county accounts for the fact that San Francisco is both a city and county by providing that the definition of county includes a city and county.

This resolution deletes the redundant language “city and county” in subdivision (a) of Code of Civil Procedure section 77, making the code more streamlined and less open to interpretation or misunderstanding.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 77 to read as follows:

- 1 § 77
- 2 (a) In every county ~~and city and county~~, there is an appellate division of the superior
- 3 court consisting of three judges or, when the Chief Justice finds it necessary, four judges.
- 4 The Chief Justice shall assign judges to the appellate division for specified terms
- 5 pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the
- 6 independence and quality of each appellate division. Each judge assigned to the appellate
- 7 division of a superior court shall be a judge of that court, a judge of the superior court of another
- 8 county, or a judge retired from the superior court or a court of higher jurisdiction in this state.
- 9 The Chief Justice shall designate one of the judges of each appellate division as the

10 presiding judge of the division.

11 (b) In each appellate division, no more than three judges shall participate in a hearing or
12 decision. The presiding judge of the division shall designate the three judges who shall
13 participate.

14 (c) In addition to their other duties, the judges designated as members of the appellate
15 division of the superior court shall serve for the period specified in the order of designation.
16 Whenever a judge is designated to serve in the appellate division of the superior court of a
17 county other than the county in which that judge was elected or appointed as a superior court
18 judge, or if the judge is retired, in a county other than the county in which the judge resides, the
19 judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's
20 county overnight or longer, by reason of the designation, that judge shall be paid a per diem
21 allowance in lieu of expenses for board and lodging in the same amounts as are payable for those
22 purposes to justices of the Supreme Court under the rules of the Department of General Services.
23 In addition, a retired judge shall receive for the time so served, amounts equal to that which the
24 judge would have received if the judge had been assigned to the superior court of the county.

25 (d) The concurrence of two judges of the appellate division of the superior court shall be
26 necessary to render the decision in every case in, and to transact any other business except
27 business that may be done at chambers by the presiding judge of, the division. A judgment of the
28 appellate division in an appeal shall contain a brief statement of the reasons for the judgment. A
29 judgment stating only "affirmed" or "reversed" is insufficient. The presiding judge shall convene
30 the appellate division when necessary. The presiding judge shall also supervise its business and
31 transact any business that may be done at chambers.

32 (e) The appellate division of the superior court has jurisdiction on appeal in all cases in
33 which an appeal may be taken to the superior court or the appellate division of the superior court
34 as provided by law, except where the appeal is a retrial in the superior court.

35 (f) The powers of each appellate division shall be the same as are now or may hereafter
36 be provided by law or rule of the Judicial Council relating to appeals to the appellate division of
37 the superior courts.

38 (g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the
39 independence of, and govern the practice and procedure and the disposition of the business of,
40 the appellate division.

41 (h) Notwithstanding subdivisions (b) and (d), appeals from convictions of traffic
42 infractions may be heard and decided by one judge of the appellate division of the superior court.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Currently, Code of Civil Procedure section 77 in its description of the location of Superior Court Appellate Divisions, refers to "every county and city and county." Civil Code section 17 already provides in subdivision (b)(2), "'County' includes 'city and county.'"

The Solution: This resolution would eliminate the portion of section 77 that refers to "city and county," leaving only "county."

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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