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AS OF JANUARY 1, 2015**

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**GOVERNMENT CODE  
TITLE 8, CHAPTER 7  
TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT**

**ARTICLE 1  
GENERAL PROVISIONS**

**71600. Short title**

This chapter may be cited as the Trial Court Employment Protection and Governance Act.

**71601. Definitions**

For purposes of this chapter, the following definitions shall apply:

- (a) “Appointment” means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court’s personnel policies, procedures, and plans.
- (b) “Employee organization” means either of the following:
  - (1) Any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with that trial court.
  - (2) Any organization that seeks to represent trial court employees in their relations with that trial court.
- (c) “Hiring” means appointment as defined in subdivision (a).
- (d) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.
- (e) “Meet and confer in good faith” means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the

scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) “Promotion” means promotion within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) “Recognized employee organization” means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under former Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630).

(i) “Subordinate judicial officer” means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, and juvenile referee.

(j) “Transfer” means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) “Trial court” means a superior court.

(l) “Trial court employee” means a person who is both of the following:

(1) Paid from the trial court’s budget, regardless of the funding source. For the purpose of this paragraph, “trial court’s budget” means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court’s right to control the manner and means of his or her work because of the trial court’s authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the “trial court” includes the judges

of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a “trial court employee” if and only if both paragraphs (1) and (2) of subdivision () are true irrespective of job classification or whether the functions performed by that person are identified in Rule 10.810 of the California Rules of Court. “Trial court employee” includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (). The phrase “trial court employee” does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

**71612. Modification or elimination of existing wages, hours, or terms and conditions of employment; application of act**

Except as otherwise expressly provided in this chapter, the enactment of this act shall not be a cause for the modification or elimination of any existing wages, hours, or terms and conditions of employment of trial court employees. However, except as to those procedures, rights, or practices described in this chapter as minimum standards, the enactment of this act shall not prevent the modification or elimination of existing wages, hours or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are either exempted from representation, or are not represented by a recognized employee organization, through appropriate procedures.

**71614. Unification of trial courts; transitional provisions; application of this act**

Nothing in this chapter shall be construed as affecting the interpretation or operation of Sections 70210 to 70219, inclusive, for purposes of unification of the trial courts.

**71615. Implementation date of Act; exceptions**

(a) Except as provided in subdivision (b), the effective date of this section shall be January 1, 2004.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this section later than January 1, 2004. However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

(c) As of the implementation date of this chapter, all of the following shall apply:

(1) All persons who meet the definition of trial court employee shall become trial court employees at their existing or equivalent classifications.

(2) Employment seniority of a trial court employee, as calculated and used under the system in effect prior to the implementation of this act, shall be calculated and used in the same manner by the trial court.

(3) A trial court employee shall have the same status he or she had as a probationary, permanent, or regular employee under the system in effect prior to January 1, 2004. A probationary employee shall not be required to serve a new probationary period and shall continue the existing probationary period under the terms of hire.

(4) Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding transfer between the trial court and the county that are in place as of January 1, 2004, shall be continued while an existing memorandum of understanding or agreement remains in effect or for two years, whichever is longer, and any further rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county. Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and



leave accrual rates that are in effect January 1, 2004, shall be continued if trial court or county employees transfer between the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or for a period of two years, whichever is longer. Any further right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

(5) Each trial court shall be deemed the successor employer of all trial court employees in the county in which the trial court is located.

(d) In establishing local personnel structures for trial court employees in accordance with this chapter, the trial court shall comply with contractual obligations, and consideration shall be given to minimizing disruption of the trial court workforce and protecting the rights accrued by trial court employees under their current systems. However, prior contractual obligations and rights may be reconsidered subject to the obligation to meet and confer in good faith, provided both parties give consideration to past contractual obligations and rights.

(e) Unrepresented trial court employees are governed by a trial court's personnel policies, procedures, and plans. The implementation of this section may not be a cause for changing a trial court's personnel policies, procedures, and plans applicable to unrepresented trial court employees except where required to bring those policies, procedures, and plans into conformity with this chapter. Except as otherwise expressly provided in this section, a trial court retains all existing rights with respect to revising its personnel policies, procedures, and plans as applied to unrepresented trial court employees.

(f) Upon implementation of this section in a trial court, Sections 68650 to 68655, inclusive, and Rules 10.650 to 10.659, inclusive, of the California Rules of Court, shall be inoperative as to that trial court.

(g) Notwithstanding paragraph (4) of subdivision (c), both of the following shall apply:

(1) Unless prohibited or limited by charter provisions, the policies regarding transfer between either the trial court and the county or the county and the trial court that were in effect as of January 1, 2001, shall be continued while an existing memorandum of understanding or agreement remains in effect or until January 1, 2005, whichever period is longer. Thereafter, any rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good

faith at the local level between representatives of the trial court and representatives of recognized employee organizations, and local negotiation between the trial court and the county.

(2) Unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that were in effect on January 1, 2001, shall be continued if trial court or county employees transfer between either the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or until January 1, 2005, whichever period is longer. Thereafter, any right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

**71616. Severability**

If any provision of this chapter, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provisions or application and, to this end the provisions of this chapter are severable.

**71618. Legislative findings and declarations; application of chapter**

The Legislature hereby finds and declares that the status, rights, and protections provided to court employees under this chapter constitute a matter of statewide concern. Therefore, this chapter is applicable to all counties, notwithstanding charter provisions to the contrary. In order to ensure that effective court services are provided to all people of this state and to ensure stable court employer-employee relations, it is necessary that this chapter be applicable to all trial courts and court employees, as defined in this chapter, wherever situated within the State of California.

**ARTICLE 2  
AUTHORITY TO HIRE, CLASSIFICATION AND COMPENSATION**

**71620. Job classifications and appointments of officers, deputies, assistants and employees**

(a) Each trial court may establish such job classifications and may appoint such trial court officers, deputies, assistants, and employees as are deemed necessary for the performance

of the duties and the exercise of the powers conferred by law upon the trial court and its members.

(b) Each trial court may appoint an executive or administrative officer who shall hold office at the pleasure of the trial court and shall exercise such administrative powers and perform such other duties as may be required by the trial court. The executive or administrative officer has the authority of a clerk of the trial court. The trial court shall fix the qualifications of the executive or administrative officer and may delegate to him or her any administrative powers and duties required to be exercised by the trial court.

**71622. Subordinate judicial officers**

(a) Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment or termination of a subordinate judicial officer shall be made by order of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court, and shall be entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

(g) A subordinate judicial officer who has been duly appointed and has thereafter retired from service may be assigned by a presiding judge to perform subordinate judicial duties consistent with subdivision (a). The retired subordinate judicial officer shall be subject to the limits, if any, on postretirement service prescribed by the Public Employees' Retirement System, the county defined-benefit retirement system, as defined in subdivision (f) of Section 71624, or any other defined-benefit retirement plan from which the retired officer is receiving benefits. The retired subordinate judicial officer shall be compensated by the assigning court at a rate not to exceed 85 percent of the compensation of a retired judge assigned to a superior court.

**71622.5            Legislative declaration regarding implementation of the 2011  
Realignment Legislation addressing public safety and intent to  
afford courts maximum flexibility to manage caseloads;  
appointment of hearing officers**

(a) The Legislature hereby declares that due to the need to implement the 2011 Realignment Legislation addressing public safety (Chapter 15 of the Statutes of 2011), it is the intent of the Legislature to afford the courts the maximum flexibility to manage the caseload in the manner that is most appropriate to each court.

(b) Notwithstanding Section 71622, the superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law.

(c) (1) A person is eligible to be appointed a hearing officer pursuant to this section if the person meets one of the following criteria:

(A) He or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment.

(B) He or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program.

(C) He or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

(2) The superior court may prescribe additional minimum qualifications for hearing officers appointed pursuant to this section and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.

(d) The manner of appointment of a hearing officer pursuant to this section and compensation to be paid to a hearing officer shall be determined by the court. That compensation is within the definition of “court operations” pursuant to Section 77003 and California Rules of Court, rule 10.810.

(e) The superior courts of two or more counties may appoint the same person as a hearing officer under this section.

### **71623. Salaries**

(a) Each trial court may establish a salary range for each of its employee classifications. Considerations shall include, but are not limited to, local market conditions and other local compensation-related issues such as difficulty of recruitment or retention.

(b) All persons who are trial court employees as defined in Section 71601, as of the implementation date of this chapter shall become trial court employees at their existing salary rate. For employees who are represented by a recognized employee organization, salary ranges may be subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, salary ranges may be revised by the trial court. However, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of salary ranges by a trial court.

### **71623.5. Workers’ compensation coverage**

(a) As of July 1, 2001, trial courts shall provide workers’ compensation coverage for trial court employees under a workers’ compensation program established by the Administrative Office of the Courts or a program selected or approved by the Administrative Office of the Courts. The Judicial Council shall adopt rules of court requiring the Administrative Office of the Courts to establish a workers’ compensation

program for the trial courts and to provide guidance to the trial courts to ensure that the courts' workers' compensation coverage, including workers' compensation employer liability coverage, meets all legal requirements and is cost-efficient.

(b) If, as of the implementation date of this chapter, the county provides workers' compensation coverage for trial court employees, the county shall continue to provide the coverage, under the same terms and conditions as coverage was provided immediately preceding implementation of this chapter. This coverage shall continue for a transition period of up to 24 months after the implementation date of this chapter, unless the court gives the county 60 days' notice, or a mutually agreed to period of notice, that the court no longer needs the county to provide the coverage. Subject to approval by the Administrative Office of the Courts, the parties may mutually agree to county-provided coverage beyond the 24-month transition period.

(c) County provision of workers' compensation coverage for trial court employees shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

**71624. Counties contracting with Board of Administration of Public Employees' Retirement System; corresponding county defined-benefit retirement programs**

(a) A county that contracts with the Board of Administration of the Public Employees' Retirement System as of the implementation date of this chapter and the trial court located within that county shall establish a joint contract with the county under Section 20460.1 and subdivision (b) of Section 20469.1 in accordance with the pertinent provisions of the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2) and any other applicable rules of the retirement system. Eligibility to participate in the Public Employees' Retirement System shall be determined in accordance with the pertinent provisions of the Public Employees' Retirement Law and any other applicable rules of the retirement system. For all other counties and their corresponding county defined-benefit retirement system, a trial court employee shall be eligible to participate as a member in the existing county defined-benefit retirement system in the county in which the court is located.

(b) If a trial court employee participates as a member in a county defined-benefit retirement system, his or her participation shall be subject to the applicable statutes, rules, regulations, policies, and plan and contract terms of the retirement system as is any other member of the system. In accordance with these provisions, the trial court employee who is a member of a county defined-benefit retirement system shall have the right to receive

the same defined-benefit retirement plan benefits as county employees without the opportunity to meet and confer with the county as to those benefits. For all county defined-benefit systems other than the Public Employees' Retirement System, the trial court shall pay to the county retirement system at the same rate of contribution for trial court employees as is required of the county for county employees under the county retirement system for the same benefit level. Provided that a county and a trial court are parties to a joint contract with CalPERS for the provision of retirement benefits under Sections 20460.1 and 20469.1, the county defined-benefit retirement system contribution rates for the trial court shall be the same as the contribution rates for the county for the same benefit levels.

(c) Unless otherwise required by law, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the trial court employee's contractual coverage under, or exclusion from, social security.

(d) To facilitate trial court employee participation in county defined-benefit retirement plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(e) Nothing in this section precludes a trial court from offering a different defined-benefit retirement plan for trial court employees that is separate from the county defined-benefit retirement plan, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees. The mechanism for implementation of these plans shall be created by statute.

(f) For purposes of this section, "county defined-benefit retirement system" means a defined-benefit retirement system administered by the county or applicable governing body, including systems established pursuant to the Public Employees Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2), the County Employees' Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 3 of Title 3), or an independent retirement system or plan.

(g) On the date this chapter is implemented, a trial court employee who is a member of any county defined-benefit retirement system shall continue to be eligible to receive the same level of benefits that the member was eligible to receive prior to implementation of this chapter.

**71625.           Accrued leave benefits**

(a) Trial court policies related to accrued leave benefits, including the type and accrual rate of accrued leave benefits, in effect on the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (c).

(b) The implementation of this chapter shall not cause a termination of employment and rehire for purposes of accrued leave benefits and shall not result in either the trial court or the county cashing out trial court employees' accrued leave balances. A trial court employee shall retain his or her accrued leave balances upon implementation of this chapter. A trial court employee shall not cash out his or her accrued leave balances solely as a result of implementation of this chapter.

(c) For employees who are represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits are subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement, or upon revision to personnel, policies, procedures and plans, subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits may be revised by the trial court. However, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the type and accrual rate of, and policies relating to, accrued leave benefits.

**71626.           Retirement benefits**

Notwithstanding any other provision of law, with respect to benefits which those persons who are trial court employees on and after the implementation date of this chapter would receive upon retirement, the following provisions shall apply:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee. The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b) or (c). If the same retiree group insurance benefits are not otherwise permitted by law or the vendor, the same level of retiree group insurance benefits shall be provided subject to subdivision (b).



(b) (1) For employees who are represented by a recognized employee organization, (A) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those retiree group insurance benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant only to personnel, policies, procedures, and plans, may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of retiree group insurance benefits may be revised by the trial court.

(c) A county shall have the authority to provide retiree group insurance benefits to retired trial court employees. If the county administers retiree group insurance benefits to trial court employees or retired trial court employees, or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees or retired trial court employees, a trial court employee or retired trial court employee shall be eligible to participate in county retiree group insurance benefits and plans subject to county retiree group insurance benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee or retired trial court employee shall have the right to accrual of retiree group insurance benefits, or to receive the same level of retiree group insurance benefits as county employees in similar classifications as designated by the trial court subject to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee is subject to modification by the county, if the county changes the level of retiree group insurance benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) For purposes of this section:

(1) "Retiree group insurance benefits" means group insurance benefits which trial court employees would receive upon retirement.

(2) "County," means the board of supervisors of the county where the trial court is located, or the applicable governing body for the retirement system of such county.

(e) The trial court shall reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the trial court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the trial court may agree to an alternative arrangement to fund retiree group insurance benefits.

**71626.1.           Cleaning and maintenance services**

(a) Any trial court receiving cleaning or maintenance services from persons employed directly by the court or county shall continue to receive those services from persons employed directly by a trial court or county in which the trial court is located.

(b) If the trial court replaces the county in providing cleaning or maintenance services, county employees who have been providing those services to the trial court have the right, prior to any other hiring by the trial court of persons to provide those services, to, at their own option, transfer employment directly from the county to the trial court without a break in service, either when those services are transferred from the county to the trial court, or anytime within two years from the date of that transfer of services if a vacancy exists at the time of the requested transfer. Furthermore, the trial court and an employee organization may by mutual agreement permit county employees providing cleaning or maintenance services in county facilities other than the trial court the option of transferring to the trial court upon such terms as are agreed upon by the trial court and the employee organization if there is a vacancy that no county employee who has been providing cleaning and maintenance services to the trial court opts to fill.

(c) If a county employee who provides cleaning or maintenance services to a trial court transfers employment directly from the county to the trial court without a break in service, upon the date of transfer, that employee shall be considered a trial court employee, as defined in Section 71601 subject to all applicable provisions of this chapter.

(d) The transfer of employment from the county to the trial court under this section shall not be deemed a termination of employment by the county and rehire by the trial court for the purposes of accrued leave benefits, employment seniority, and employment status as a probationary or regular employee. The transfer of employment shall not be the sole cause for a modification of wages or benefits of any kind.

**71626.5. Retiree group insurance benefits**

(a) As of the implementation date of this chapter:

(1) If a trial court employee receives county retiree group insurance benefits pursuant to Section 71626 and that county funds retiree group insurance benefits from excess funds in the county's retirement system, or prefunds retiree group insurance benefits, the county or county retirement board shall administer retiree group insurance benefits to trial court employees who retire from the county retirement system. However, the county and the trial court may agree to an alternative arrangement to administer retiree group insurance benefits.

(2) In all other counties in which the trial court exercises its authority to provide retiree group insurance benefits to its employees, (A) if the trial court administers retiree group insurance benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or a trial court employee memorandum of understanding or agreement; and (B) if the county administers retiree group insurance benefits to trial court employees or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees, the county may continue to administer retiree group insurance benefits to trial court employees pursuant to subdivision (c) of Section 71626 or the trial court may administer retiree group insurance benefits to trial court employees pursuant to the following transition process:

(i) While an existing memorandum of understanding or agreement remains in effect or for a transition period of up to 24 months, whichever is longer, the county shall administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(ii) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the 24-month transition period, if the county decides to change how it administers unrepresented trial court employees' retiree group

insurance benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in the administration of the benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to administer or provide benefits on its own.

(iii) If, during the 24-month transition period, the trial court decides to offer particular retiree group insurance benefits different from what the county is administering, the trial court shall be responsible for administering those particular retiree group insurance benefits.

(iv) If the trial court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(b) A county's agreement to administer retiree group insurance benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(c) Nothing in this section precludes a trial court from offering a different retiree group insurance benefits plan for trial court employees that is separate from the county retiree group insurance benefits plans, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees.

**71627. Federally regulated benefits provided to trial court employees; modification of levels**

Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of federally regulated benefits provided to a trial court employee. The level of federally regulated benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b). If the same federally regulated benefits are not permitted by law or by the vendor, the same level of federally regulated benefits shall be provided by the trial court subject to the provisions of subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of federally regulated benefits accruing to a trial court employee pursuant to the

terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those federally regulated benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of federally regulated benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of federally regulated benefits may be revised by the trial court.

(c) If the county administers federally regulated benefits to trial court employees, or if the trial court contracts with the county to administer federally regulated benefits to trial court employees, a trial court employee shall be eligible to participate in federally regulated benefits subject to federally regulated benefit regulations, policies, terms, and conditions, and subject to both of the following requirements:

(1) A trial court employee shall have the right to receive the same level of federally regulated benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of federally regulated benefits accruing to a trial court is subject to modification by the county if the county changes the level of federally regulated benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) For purposes of this section, “federally regulated benefits” means benefits that provide tax-favored treatment for employees pursuant to federal laws or regulations, including, but not limited to, cafeteria plans under Section 125 of the Internal Revenue Code, educational assistance benefits under Section 127 of the Internal Revenue Code, and fringe benefits under Section 132 of the Internal Revenue Code, but not including federally-regulated deferred compensation plan benefits provided to trial court employees pursuant to Section 71628.

(e) As of the implementation date of this chapter:

(1) If the trial court administers federally regulated benefits for trial court employees separately from the county, the trial court shall administer these benefits as provided

under existing personnel policies, procedures, plans, or a memorandum of understanding or agreement applicable to trial court employees.

(2) If the county administers federally regulated benefits for trial court employees, or if the trial court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the trial court:

(A) Until the effective date of the transition of responsibility, the county shall continue to administer represented trial court employees' federally regulated benefits as provided in the memorandum of understanding or agreement and unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.

(B) During the period of time between the implementation date of this chapter and the effective date of the transition of responsibility, both the trial court and the county shall cosponsor the federally regulated benefit plan. Cosponsorship shall continue as long as trial court employees are governed by a plan not offered by the trial court, but in no event longer than 18 months after the implementation date of this chapter, or the term of the memorandum of understanding or agreement applicable to trial court employees, whichever is longer, unless the trial court and the county agree to continued cosponsorship.

(C) If during the cosponsorship period the trial court decides to offer particular benefits that are different from what the county is administering, then the trial court shall be responsible for administering those particular benefits unless the trial court and county agree otherwise.

(D) The effective date of the transition of responsibility shall coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.

(f) To facilitate trial court employee participation in county federally regulated benefits plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefit plans.

(h) A county shall have authority to cosponsor federally regulated benefits with a trial court to provide those benefits to trial court employees if those benefits are requested by the trial court subject to county agreement to cosponsor those benefits. A county's agreement to cosponsor those benefits shall not be construed as creating a meet and confer obligation between the county and any recognized trial court employee organization.

(i) Nothing in this section shall prevent a trial court from offering to trial court employees a future option of participating in other federally regulated benefit plans that may be developed subject to the obligation to meet and confer in good faith.

**71628. Deferred compensation plan benefits; modification of levels**

Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of deferred compensation plan benefits provided to a trial court employee. If the same deferred compensation plan benefits are not permitted by law or the plan vendor, the trial court shall provide other deferred compensation plan benefits at the same level, subject to the provisions of subdivision (b). The level of deferred compensation plan benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of deferred compensation plan benefits accruing to a trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those deferred compensation plan benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of deferred compensation plan benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of deferred compensation plan benefits may be modified by the trial court.

(c) If the county administers deferred compensation plan benefits to trial court employees, or if the trial court contracts with the county to administer deferred

compensation plan benefits to trial court employees, a trial court employee shall be eligible to participate in deferred compensation plan benefits subject to deferred compensation plan regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of deferred compensation plan benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of deferred compensation plan benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of deferred compensation plan benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) If the implementation of this chapter causes a change in deferred compensation plans and requires the transfer of trial court employees' plan balances to the trial court's deferred compensation plan, trial court employees shall not suffer a financial loss due to transfer-related penalties, such as deferred sales charges, and any financial loss due to transfer-related penalties shall be borne by the trial court.

(e) Trial court employees shall continue to be eligible to receive deferred compensation plan benefits from the county or the trial court. For purposes of deferred compensation plans established under Section 401(k) or 457 of the Internal Revenue Code, one of the following shall apply:

(1) If permitted by federal law and deferred compensation plan vendors, trial court employees shall continue to receive federal 401 (k) or 457 deferred compensation plan benefits through county plans unless the trial court modifies its plan benefits pursuant to personnel rules, subject to meet and confer in good faith.

(2) If not permitted by federal law or deferred compensation plan vendors, the trial court shall provide deferred compensation plan benefits at the same level subject to meet and confer in good faith, in which case upon transition to the new deferred compensation plan, (A) to provide the trial court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which trial court employees shall continue to receive deferred compensation plan benefits from the county; and (B) a county may require that trial court employees leave their plan balances in the county's deferred compensation plan or may transfer trial court employees' plan balances to the trial court's deferred compensation plan.



(f) To facilitate trial court employee participation in county deferred compensation plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.

(h) A county is authorized to amend the documents of a deferred compensation plan established under Section 401(k) or 457 of the Internal Revenue Code as necessary to achieve the objectives of this section.

(i) Nothing in this section precludes the possibility that a trial court employee may have a future option of participating in other deferred compensation plans that may be developed subject to the obligation to meet and confer in good faith.

**71629. Trial court employment benefits; modification of levels**

Except as provided in Sections 71624, 71625, 71626, 71626.5, 71627, and 71628, and notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of trial court employment benefits. If the same trial court employment benefits are not permitted by law or the plan vendor, the trial court shall provide other trial court employment benefits at the same level subject to the provisions of subdivision (b). The level of trial court employment benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) For employees who are represented by a recognized employee organization, the level of trial court employment benefits provided to a trial court employee may not be modified until after the expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the trial court and recognized employee organization mutually agree to a modification. For employees who are not represented by a recognized employee organization, the level of trial court employment benefits may be revised by the trial court.

(c) The trial court shall reimburse the county for the cost of coverage of trial court employees in trial court employment benefit plans. If the county administers trial court employment benefits to trial court employees, or if the trial court contracts with the

county to administer trial court employment benefits to trial court employees, a trial court employee shall be eligible to participate in trial court employment benefits subject to trial court employment benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of trial court employment benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of trial court employment benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of the same employment benefits accruing to county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) As of the implementation date of this chapter:

(1) If the trial court administers trial court employment benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreements.

(2) If the county administers trial court employment benefits to trial court employees or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, the county may continue to administer trial court employment benefits to trial court employees pursuant to subdivision (e) or the trial court may administer trial court employment benefits to trial court employees pursuant to the following transition process:

(A) While an existing memorandum of understanding or agreement remains in effect or for a transition period of 24 months, whichever is longer, the county shall administer trial court employment benefits for represented trial court employees as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(B) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer trial court employment benefits for unrepresented trial court employees, unless notified by the trial court pursuant to subparagraph (D) that

the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the transition period, if the county intends to change unrepresented trial court employees' trial court employment benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

(C) If, during the transition period, the trial court decides to offer particular trial court employment benefits that are different from what the county is administering, the trial court shall be responsible for administering those particular benefits.

(D) If the trial court decides that it no longer needs the county to administer specified trial court employment benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(e) To facilitate trial court employee participation in county trial court employment benefit plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(f) A county shall have authority to provide trial court employment benefits to trial court employees if those benefits are requested by the trial court and subject to county concurrence to providing those benefits. A county's agreement to provide those benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(g) Nothing in this section shall prevent the trial court from arranging for trial court employees other trial court employment benefits plans subject to the obligation to meet and confer in good faith.

### **ARTICLE 3 LABOR RELATIONS**

#### **71630. Purpose of Article**

(a) It is the purpose of this article to promote full communication between trial courts and their employees by providing a reasonable method for resolving disputes regarding wages, hours, and other terms and conditions of employment between trial courts and recognized employee organizations. It is also the purpose of this article to promote the improvement of personnel management and employer-employee relations within the trial

courts in the state by providing a uniform basis for recognizing the right of trial court employees to join organizations of their own choice and be represented by those organizations in their employment relations with trial courts. It is also the purpose of this article to extend to trial court employees the right, and to require trial courts, to meet and confer in good faith over matters within the scope of representation, consistent with the procedures set forth in this article. This article is not intended to require changes in existing representation units, memoranda of agreement or understanding, or court rules, except as provided in this article.

(b) The Legislature finds and declares that the duties and responsibilities of trial court representatives under this article are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the trial court representatives in performing those duties and responsibilities under this article are not reimbursable as state-mandated costs.

**71631. Employee organizations; rights of trial court employees**

Except as otherwise provided by the Legislature, trial court employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Trial court employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial court.

**71632. Agency shop agreements**

(a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. Such an employee may be required, in lieu of periodic dues,

initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three such funds designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate such funds, then to any such fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of such memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term. However, the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(c) An agency shop agreement shall not apply to management, confidential, or supervisory employees.

(d) Every recognized employee organization which has agreed to an agency shop provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(e) If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization

representing the trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. A new agency shop election shall not be caused upon implementation of this chapter.

(f) This section shall remain in effect until such time as Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement, and as of that date this section is repealed.

**71632.5. Negotiations of agency shop agreements; effective date of agreements; rescission; financial reporting requirements**

(a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement under the following circumstances:

(1) A request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit.

(2) The vote is by secret ballot.

(3) The vote may be taken at any time during the term of the memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the trial court and a recognized employee organization or recognized employee organizations shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the trial court to negotiate on an agency shop arrangement and, beginning seven working days after the trial court received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election, that may not be held more frequently than once a year, shall be conducted by the California State Mediation and Conciliation Service in the event that the trial court and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that was in effect on January 1, 2002, the recognized employee organization shall defend, indemnify, and hold the trial court harmless against any liability arising from any claims, demands, or other action relating to the trial court's compliance with the agency fee obligation. Upon notification to the trial court by the recognized employee organization, the amount of the fee shall be deducted by the trial court from the wages or salary of the employee and paid to the employee organization. This subdivision shall be applicable on the operative date of this section, except that if a memorandum of understanding or agreement between the trial court and a recognized employee organization was in effect before January 1, 2002, as to the employees covered by the memorandum of understanding or agreement, the implementation date of this subdivision shall be either the date a successor memorandum of understanding or agreement is effective or, if no

agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement. The trial court and representatives of recognized employee organizations may mutually agree to a different date on which this subdivision is applicable.

(d) Notwithstanding subdivisions (a), (b), and (c), the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement or arrangement does not apply to management, confidential, or supervisory employees. If those employees nonetheless choose to join the recognized employee organization and pay dues or pay the organization a service fee, Section 71638 shall apply to those employees, and the trial court shall administer deductions for which the recognized employee organization shall defend, indemnify, and hold the trial court harmless.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(g) This section shall become operative only if Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement.

(h) A trial court may not offer employees inducements or benefits of any kind in return for employees opposing or rescinding an agency shop arrangement.



**71632.6. Application of chapter to existing agency shop provisions**

If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization representing the trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. The implementation of this chapter shall not be a cause for a new agency shop election.

**71633. Rights of recognized employee organizations; rights of employees to appear on their own behalf**

Recognized employee organizations shall have the right to represent their members in their employment relations with trial courts as to matters covered by this article. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this article shall prohibit any employee from appearing on his or her own behalf regarding employment relations with the trial court.

**71634. Scope of representation**

(a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding the following matters shall not be included within the scope of representation:

- (1) The merits and administration of the trial court system.
- (2) Coordination, consolidation, and merger of trial courts and support staff.
- (3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.
- (4) Design, construction, and location of court facilities.

(5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of trial court employees. The court shall be required to meet and confer in good faith with respect to that impact.

(d) The trial court shall continue to have the right to determine assignments and transfers of trial court employees; provided that the process, procedures, and criteria for assignments and transfers shall be included within the scope of representation.

**71634.1. Notice and opportunity to meet requirements; emergencies**

(a) Except in cases of emergency as provided in this section, the trial court shall give reasonable written notice to each recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the trial court and shall give each such recognized employee organization the opportunity to meet with the trial court.

(b) In cases of emergency when the trial court determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the trial court shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

**71634.2. Meet and confer requirements**

(a) The trial court, or those representatives as it may designate, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment within the scope of representation, as defined in Section 71634, with representatives of the recognized employee organizations, as defined in Section 71611, and shall consider fully the presentations as are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

(b) In fulfilling the requirements of subdivision (a), the court and the county may consult with each other, may negotiate jointly, and each may designate the other in writing as its agent on any matters within the scope of representation.

**71634.3. Memorandum of agreement or understanding; presentation for determination**

If agreement is reached by the representatives of the trial court and a recognized employee organization or organizations, they shall jointly prepare a written memorandum of the agreement or understanding, which shall not be binding, and present it to the trial court or its designee for determination.

**71634.4. Failure to reach agreement; mediation**

If after a reasonable period of time, representatives of the trial court and the recognized employee organization fail to reach agreement, the trial court and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation, if any, shall be divided one-half to the trial court and one-half to the recognized employee organization or recognized employee organizations.

**71635. Time off allowance to employee representatives**

The trial court shall allow a reasonable number of trial court employee representatives of recognized employee organizations reasonable time off, without loss of compensation or other benefits, when formally meeting and conferring with representatives of the trial court on matters within the scope of representation.

**71635.1. Discrimination prohibited**

Trial courts and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against court employees because of their exercise of their rights under Section 71631.

**71636. Administration of employer-employee relations; adoption of rules and regulations**

(a) A trial court may adopt reasonable rules and regulations, after consultation in good faith with representatives of a recognized employee organization or organizations, for the administration of employer-employee relations under this article. These rules and regulations may include provisions for:

(1) Verifying that an organization does in fact represent employees of the trial court.

- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.
- (4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the trial court or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 71631.
- (5) Additional procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.
- (6) Access of employee organization officers and representatives to work locations.
- (7) Use of official bulletin boards and other means of communication by employee organizations.
- (8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.
- (9) Any other matters as are necessary to carry out the purposes of this article.
  - (b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.
  - (c) No trial court shall unreasonably withhold recognition of employee organizations. A trial court may not offer to provide employees benefits of any kind for the purpose of inducing those employees to decertify or withdraw support from a recognized employee organization.
  - (d) Pursuant to the obligation to meet and confer in good faith, the trial court shall establish procedures to determine the appropriateness of any bargaining unit of court employees.
  - (e) Trial court employees and employee organizations shall be able to challenge a rule or regulation of a trial court as a violation of this chapter.

**71636.1. Dispute resolution procedure**

In the absence of local procedures for resolving disputes on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for the mediation or for recommendation for resolving the dispute.

**71636.3. Unit determinations and representation elections; adoption of rules by trial court; bargaining unit; exclusive or majority representation**

(a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a trial court in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a trial court pursuant to Section 71636, a bargaining unit in effect as of January 1, 2002, shall continue in effect unless changed under the rules adopted by the trial court pursuant to Section 71636.

(c) A trial court shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party, selected by the trial court and the employee organization, who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. If the trial court and the employee organization cannot agree on a neutral third party, the California State Mediation and Conciliation Service shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. If the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

**71637. Professional employees; representation**

(a) For purposes of this article, professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of those professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for mediation or for recommendation for resolving the dispute.

(b) For the purpose of this section, “professional employees” means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys.

**71637.1. Designation of management and confidential employees; restrictions on representation**

For purposes of this article, in addition to those rules and regulations that a trial court may adopt pursuant to, and in the same manner as set forth in, Section 71636, any trial court may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the trial court and restricting those employees from representing any employee organization that represents other employees of the trial court, on matters within the scope of representation. Except as specifically provided otherwise in this article, this section does not otherwise limit the right of employees to be members of, and to hold office in, an employee organization.

**71638. Dues deductions**

A trial court employee shall have the right to authorize a dues deduction from his or her salary or wages in the same manner provided to public agency employees pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

**71639. Representatives of trial court employees; memorandum of understanding or agreements covering trial court employees; local rules, personnel rules, policies and practices; continuation of existing provisions**

(a) As of the implementation date of this chapter, an employee organization that is recognized as a representative of a group of trial court employees or the exclusive

representative of an established bargaining unit of trial court employees, either by the county or the trial court, shall continue to be recognized by the trial court as a representative or the exclusive representative of the same trial court employees. A trial court and recognized employee organization shall be bound by the terms of any memorandum of understanding or agreement covering trial court employees to which the trial court or the county is a party that is in effect on the implementation date of this chapter for the duration thereof, or until it expires and, consistent with law, is replaced by a successor memorandum of understanding or agreement, subject to the obligation to meet and confer in good faith. Upon expiration of a memorandum of understanding or agreement, the trial court shall meet and confer in good faith with recognized employee organizations.

(b) A trial court's local rules governing trial court employees and a trial court's personnel rules, policies, and practices, and any county rules in effect pursuant to former Rule 2205 of the California Rules of Court as adopted on April 23, 1997, in effect at the time of the implementation date of this chapter, to the extent they are not contrary to or inconsistent with the obligations and duties provided for in this article, shall continue in effect until changed by the trial court. Prior to changing any rule, policy, or practice that affects any matter within the scope of representation as set forth in this article, the court shall meet and confer in good faith with the recognized employee organization as provided for in this chapter.

(c) Nothing contained in this article is intended to preclude trial court employees from continuing to be included in representation units which contain county employees.

**71639.1            Public Employment Relations Board; powers and duties; unfair practice charges; enforcement of rules; management employees; violation of rule or regulation**

(a) As used in this article, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

(c) A complaint alleging any violation of this article or of any rules and regulations adopted by a trial court pursuant to Section 71636 shall be processed as an unfair practice

charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this article, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this article and Section 71639.3. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a trial court require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a trial court's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a trial court concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees under Section 71637.1.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a trial court if that rule or regulation is itself in violation of this article.

**71639.15. Appeal of administrative law judge decision regarding recognition or certification of employee organization; final order of board**

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.



**71639.2. Application of Labor Code § 923**

The enactment of this article shall not be construed as making Section 923 of the Labor Code applicable to trial court employees.

**71639.3. Local public employee organizations; application to trial courts and trial court employees**

Trial courts and trial court employees are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes to these sections except as provided in this article. However, where the language of this article is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

**71639.4 Petition for writ of extraordinary relief; filing; enforcement of final decision or order after expiration of time to petition**

(a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil

Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

**71639.5. Negotiations; written agreements; binding effect; enforcement; adoption of rules of court**

(a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71634.3, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of

appeal district in which the action is filed, and shall further provide that appeals in such matters shall be heard in the court of appeal district where the matter was filed.

#### **ARTICLE 4 EMPLOYMENT SELECTION AND ADVANCEMENT**

##### **71640. Establishment of system**

(a) As of the implementation date of this chapter, each trial court shall establish a trial court employment selection and advancement system which shall become the minimum selection and advancement system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment selection and advancement system shall replace any county employment selection and advancement systems applying to trial court employees prior to the implementation date as provided in this article, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment selection and advancement system shall, at a minimum, conform to the requirements of this article.

(b) Until such time as a trial court establishes a trial court employment selection and advancement system as provided in this article, the minimum standards required pursuant to this article shall be the trial court employment selection and advancement system.

##### **71641. Personnel rules; development**

Each trial court shall develop personnel rules regarding hiring, promotion, transfer, and classification. Trial courts shall meet and confer in good faith with representatives of the recognized employee organizations on those rules that cover matters within the scope of representation. However, nothing in this article is intended to expand the definition of matters within the scope of representation, as defined in Section 71634.

##### **71642. Hiring and promotion; standards**

Hiring and promotion within a trial court shall be done in a nondiscriminatory manner based on job-related factors. Trial court personnel rules shall meet the following minimum standards:

(a) Recruiting, selecting, transferring, and advancing employees shall be on the basis of their relative ability, knowledge, and skills. Initial appointment shall be through an open, competitive process. Preference shall be given to internal candidates.

(b) Formal job-related selection processes are required when filling positions.

(c) Each trial court shall have an equal employment opportunity policy applying to all applicants and employees in accordance with applicable state and federal law.

**71643.            Positions excluded from competitive selection and promotion processes**

(a) The following positions are excluded from the competitive selection and promotion processes required by Section 71642:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, and limited-term positions in accordance with a trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith.

(b) If managerial, confidential, temporary, and limited-term positions are defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then that definition shall be maintained for those purposes until changed subject to meet and confer in good faith. If managerial, confidential, temporary, and limited-term positions are not defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then the adoption of any such definition by the trial court shall be subject to meet and confer in good faith.

(c) The exclusion of managerial, confidential, temporary, and limited term positions from required competitive selection and promotion processes shall not affect the employees' right to representation.

(d) Permanent or regular employees who assume limited term appointments or assignments to other positions or classes shall retain their permanent or regular status during and upon expiration of the limited term appointment or assignment.

**71644.            Dispute resolution**

Disputes between a trial court and its employees regarding the alleged misapplication, misinterpretation, or violation of the trial court's rules enacted pursuant to Sections

71641 and 71642 governing hiring, promotion, transfer, and classification shall be resolved by binding arbitration.

**71645. Application and effective date of Article**

(a) On and after the implementation date of this chapter, this article shall become the employment, selection, and advancement system for all trial court employees within a trial court and shall become part of the sole trial court employee system, replacing any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date of this chapter.

(b) Except as provided in subdivision (c), the implementation date of this chapter for each trial court shall be the effective date of this chapter.

(c) The representatives of the trial court and representatives of recognized employee organizations may mutually agree to a different implementation date. If the provisions in this article are governed by an existing memorandum of understanding or agreement covering trial court employees, as to such provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

**ARTICLE 5  
EMPLOYMENT PROTECTION SYSTEM**

**71650. Establishment of system**

(a) As of the implementation date of this article, as provided in Section 71658, each trial court shall establish a trial court employment protection system that shall become the minimum employment protection system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment protection system shall replace any county employment protection systems applying to trial court employees prior to the implementation date provided in Section 71658, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment protection system shall, at a minimum, conform to the requirements of this article.

(b) Nothing in this article shall preclude the establishment of enhanced employment protection systems pursuant to trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

(c) Nothing in this article shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

(d) Except as specified in subdivisions (b) and (c), this article shall not apply to either of the following categories of trial court employees:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, limited term, and probationary employees, unless included within the trial court employment protection system in accordance with trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

**71651. Progressive discipline procedures**

(a) The trial court employment protection system in each trial court shall include progressive discipline, as defined by each trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith. Except for layoffs for organizational necessity as provided for in Section 71652, discipline, up to and including termination of employment, shall be for cause.

(b) For purposes of this section, "for cause" means a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.

**71652. Layoffs**

(a) A trial court employee may be laid off based on the organizational necessity of the court. Each trial court shall develop, subject to meet and confer in good faith, personnel rules regarding procedures for layoffs for organizational necessity. Employees shall be laid off on the basis of seniority of the employees in the class of layoff, in the absence of a mutual agreement between the trial court and a recognized employee organization providing for a different order of layoff.

(b) For purposes of this section, a “layoff for organizational necessity” means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

**71653. Review of disciplinary decisions; evidentiary due process hearings**

Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for conducting an evidentiary due process hearing to review disciplinary decisions that by law require an evidentiary due process hearing, which shall include, at a minimum, all of the following elements:

- (a) A procedure for appointment of an impartial hearing officer who shall not be a trial court employee or judge of the employing court.
- (b) The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.
- (c) The employee and trial court shall have the right to call witnesses and present evidence. The trial court shall be required to release trial court employees to testify at the hearing.
- (d) The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in Section 1282.6 of the Code of Civil Procedure.
- (e) The employee shall have the right to representation, including legal counsel, if provided by the employee.
- (f) If the hearing officer disagrees with the trial court’s disciplinary decision, the trial court shall furnish a certified copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a recognized employee organization or counsel, to that representative, without cost.

**71654. Review of hearing officer’s report and recommendation**

Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for the trial court to review a hearing officer’s report and recommendation made pursuant to Section 71653 that provides, at a minimum, that the decision of the hearing officer shall be subject to review, as follows:

(a) A trial court shall have 30 calendar days from receipt of the hearing officer's report or receipt of the record of the hearing, whichever is later, to issue a written decision accepting, rejecting or modifying the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different timeframe.

(b) In making its decision under subdivision (a), the trial court shall be bound by the factual findings of the hearing officer, except factual findings that are not supported by substantial evidence, and the trial court shall give substantial deference to the recommended disposition of the hearing officer.

(c) If the trial court rejects or modifies the hearing officer's recommendation, the trial court shall specify the reason or reasons why the recommended disposition is rejected in a written statement which shall have direct reference to the facts found and shall specify whether the material factual findings are supported by substantial evidence. The trial court may reject or modify the recommendation of the hearing officer only if the material factual findings are not supported by substantial evidence, or for any of the following reasons or reasons of substantially similar gravity or significance:

(1) The recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view.

(2) The recommendation requires an act contrary to law.

(3) The recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view.

(4) The recommendation disagrees with the trial court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement.

(5) The recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider or distinguish.

(6) From an objective point of view, and applied by the trial court in a good faith manner, the recommendation exposes the trial court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

(d) If a trial court's review results in rejection or substantial modification of the hearing officer's recommendation, then the final review shall be conducted by an individual other than the disciplining officer. If the disciplining officer is a judge of the trial



court, the review shall be made by another judge of the court, a judicial committee, an individual, or panel as specified in the trial court's personnel rules. However, in a trial court with two or fewer judges, if the trial court has no other judge than the disciplining judge or judges, the judge or judges may conduct the review; and, as a minimum requirement, in a trial court with 10 or more judges, the review shall be by a panel of three judges, whose decision shall be by a majority vote, which shall be selected as follows:

- (1) One judge shall be selected by the presiding judge or his or her designee.
- (2) One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative.
- (3) The two appointed judges shall select a third judge. On panels in a trial court with 10 or more judges, no judge may be selected to serve without his or her consent; the term of office of the panel shall be defined by local personnel policies, procedures, or plans subject to the obligation to meet and confer in good faith; and no judge shall serve on the panel in a case in which he or she has imposed discipline.

**71655. Review of decision of disciplining trial courts**

(a) An employee may challenge the decision of the disciplining trial court, made pursuant to Section 71654, rejecting or modifying the hearing officer's recommendation by filing a writ of mandamus pursuant to Section 1094.5 of the Code of Civil Procedure in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the bargaining representative without charge. In reviewing the disciplining trial court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.

(b) The denial of due process or the imposition of a disciplinary decision that by law requires a due process hearing without holding the required hearing may be challenged by a petition for a writ of mandate.

**71656. County of first class as defined in § 28022; application of evidentiary due process procedures; elections to be subject to trial court employment protection system**

Notwithstanding any other provision of this article, in a county of the first class as defined in Section 28022 as of January 1, 2001:

(a) As of the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall remain in that system for the sole purposes of evidentiary due process hearings before the county civil service commission as an alternative to the due process hearings provided for in Sections 71653, 71654, and 71655, unless the employee elects, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article.

(b) One year after the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall be deemed to have elected, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article unless the employee has, during that year, submitted to the trial court a signed writing expressly electing the county civil service commission solely for the purposes of evidentiary due process hearings in lieu of the hearings provided for in Sections 71653, 71654, and 71656. However, no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. The one-year period in which to elect the county civil service commission shall be tolled during the period of time when a trial court employee is disabled from making an election because of pending disciplinary action or proceedings.

(c) A trial court employee who is subject to the county civil service system may elect at any time to be subject to the trial court employment protection system provided in this article, except that no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. An election to be subject to the trial court employment protection system may not be revoked.

(d) A trial court employee who elects to remain in the county civil service system and who later is promoted or transferred into a position that is comparable to a position that is classified as exempt from the county civil service system shall be subject to the trial court employment protection system for all purposes.

(e) Trial court employees in a county of the first class eligible for making an election pursuant to subdivisions (a) and (b) shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission.

(f) A trial court shall adopt procedures, subject to meet and confer in good faith, that establish a process for election pursuant to this section.

**71657. Disciplinary actions served prior to implementation date of Chapter**

(a) Disciplinary action served on a trial court employee prior to the implementation date of this chapter shall remain in effect in accordance with the procedures established under the trial court's predecessor personnel system.

(b) Appeals of disciplinary action served on a trial court employee prior to the implementation date of this chapter shall be made in accordance with the procedures established under the trial court's predecessor personnel system. Appeals of disciplinary action served on a trial court employee after the implementation date of this chapter shall be made in accordance with the procedures established pursuant to this article. The consequences of past discipline under the trial court's new employment protection system pursuant to this article shall be subject to meet and confer in good faith.

**71658. Implementation date of Article**

(a) Except as provided in subdivision (b), the implementation date of this article is the effective date of this chapter.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this article different from that specified in subdivision (a). However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

**ARTICLE 6  
PERSONNEL FILES**

**71660. Adoption of personnel rules**

Each trial court shall adopt personnel rules, subject to the obligation to meet and confer in good faith, to provide trial court employees with access to their official personnel files. The rules shall provide, at a minimum, that all of the following applies:

- (a) Each trial court shall, at reasonable times and intervals, permit an employee, upon that employee's request, to inspect any personnel files that are used, or have been used, to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.
- (b) Each trial court shall keep a copy of each employee's official personnel files at the place where the employee reports to work, or shall make the official personnel files available where the employee reports to work within a reasonable period of time after a request for the official personnel files by the employee.
- (c) Records of a trial court employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory, or common law provisions, shall be excluded from the personnel files for purposes of this section.

**ARTICLE 7  
RELATION TO OTHER TRIAL COURT STATUTES**

**71670. Brown-Presley Trial Court Funding Act; application of chapter**

Nothing in this chapter shall be construed to affect the provisions of the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8) or to impose upon the Judicial Council or the state any obligation to make an allocation to a trial court to fund expenses or obligations incurred by the trial court pursuant to this chapter.

**71671. Employment protection system provisions**

Notwithstanding any other provision of law, each trial court employee shall have the protections provided for in Article 5 (commencing with Section 71650) of this chapter, except as otherwise provided by this chapter.

**71672. Hiring, classification and compensation provisions**

Notwithstanding any other provision of law, each trial court employee shall be entitled to such benefits as are provided for in Article 2 (commencing with Section 71620) of this chapter.

**71673. Authority and powers of trial courts; hiring, classification and compensation**

Notwithstanding any other provision of law, the trial court may exercise the authority and power granted to it pursuant to Article 2 (commencing with Section 71620) of this chapter, including, but not limited to, the authority and power to establish job classifications, to appoint such employees as are necessary, to establish salaries for trial court employees, and to arrange for the provision of benefits for trial court employees, without securing the approval or consent of the county or the board of supervisors, and without requiring any further legislative action, except as otherwise provided by this chapter.

**71674. Obsolete provisions; duties of California Law Revision Commission**

The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, 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. The commission shall report its recommendations to the Legislature, including any proposed statutory changes.

**71675. Allegation of Court Rule 6.702 violation concerning the release of and access to budget and management information concerning the Judicial Council or the trial courts; procedure and hearing**

(a) Any trial court may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by that trial court. The Judicial Council may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by the Judicial Council.

(b) Notwithstanding Sections 1085 and 1003 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, in the event that a trial court employee, an employee organization, or a member of the public believes there has been a violation of Rule 10.802 of the California Rules of Court concerning the maintenance of, and public access to, budget and management information concerning the Judicial Council or the trial courts, that party may petition the superior court for relief.

(c) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which panel a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and, if applicable, the court of appeal, on an expedited basis. To the extent permitted by law or rule of court, these rules shall provide that the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

