CALAVERAS COUNTY SUPERIOR COURT

TENTATIVE RULING

FOR: THURSDAY, AUGUST 28, 2014
DEPT.: 3
11:00 A.M.

CASE NO.: 13CV39804

Petition for Writ of Mandate/Prohibition; Declaratory relief

Petitioners: County of Calaveras, et al.
Attorneys: Janis J. Elliott, County Counsel, David E. Sirias, Assistant County Counsel, Julie L. Moss-Lewis, Megan K. Stedtfeld, and Michael B. Hansell, Deputy County Counsel; Jones & Mayer, Martin J. Mayer, James R. Touchstone, and Krista MacNevin Jee.

Amicus Curiae on behalf of Petitioners: California State Association of Counties
Attorneys: Thomas E. Montgomery, County Counsel (San Diego), and William L. Pettingill, Deputy County Counsel.

Respondents: Superior Court of Calaveras County, et al.
Attorneys: Hardy Erich Brown & Wilson, John P. Rhode, Cameron L. Cobden, and Jeffrey V. Lovell.

Statement of the Case

This matter arises under rule 10.174 of the California Rules of Court and involves a dispute between parties to a memorandum of understanding (MOU) which covers trial court security services within the meaning of Government Code section 69926.[1] The County of Calaveras (County) and Calaveras County Sheriff, Gary Kuntz (Sheriff) (collectively petitioners) seek writ relief by way of a petition for writ of mandate and writ of prohibition, and have additionally filed a complaint for declaratory relief pursuant to Code of Civil Procedure section 1060. Respondents are the Superior Court of Calaveras County (Superior Court) and the Administrative Office of the Courts (now named Judicial Council staff) (collectively respondents).

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[1] All further statutory references are to the Government Code unless otherwise indicated.

The Superior Court and Sheriff have a longstanding contractual relationship with one another, as memorialized by an MOU executed in 2009, relating to the provision of trial court security services at the courthouse of the Superior Court in San Andreas. The MOU came into existence as a result of the now-repealed Superior Court Law Enforcement Act of 2002, and was governed by its statutory scheme until 2012 when significant changes were made to the Government Code as a result of California's 2011 fiscal realignment legislation. The Superior Court Law Enforcement Act of 2002 was superseded and replaced by the Superior Court Security Act of 2012 (§ 69920 et seq.), which necessitated the creation of a new MOU between the parties to conform to various changes in the law. Despite several months of negotiations aimed at reaching a new agreement, the parties are at an impasse due to a dispute over their respective rights and obligations in light of the new legislation.

Petitioners take issue with the Superior Court's decision to relocate its operations in November 2013 "from a one-story courthouse facility of approximately seven thousand (7,000) square feet … to a new three-story courthouse facility of approximately forty-four thousand (44,000) square feet [… i.e.,] almost seven times larger than the old courthouse." The existing MOU calls for the Sheriff to make available the equivalent of four full-time sheriff's deputies to provide security services at the entrance to the courthouse and in its courtrooms. The Sheriff has continued to provide the same level of staffing at the new location, but believes more manpower is needed to ensure adequate judicial protection and public safety.

The realignment legislation shifted responsibility for funding the MOU from the state to the County. Although the County can still afford to pay for the staffing levels utilized before the Superior Court relocated, the Sheriff believes more security personnel are needed and asserts that someone must pay for the increased level of service. The Superior Court denies needing or requesting more deputies. The Superior Court takes the position that section 69923 prohibits it from paying for the heightened level of service the Sheriff desires.

Background

California's trial courts have long relied on county sheriffs to provide courthouse security services. (§ 69922; former § 26603, added by Stats. 1947, ch. 424, § 1, repealed by Stats. 2002, ch. 1010, § 2 (SB 1396).) Financial and logistical responsibility for this arrangement has shifted over time. Although historically managed at the county level, the state took control of all superior court funding after the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. (§§ 77200, 77201; Sen. Jud. Com., Analysis of Sen. Bill No. 1396 (2001-2002 Reg. Sess.) as amended Apr. 24, 2002, background, p. 1; Legis. Analyst Rep., Completing the Goals of Trial Court Realignment (Sept. 28, 2011) pp. 3-4 <http://www.lao.ca.gov/reports/2011/crim/trial-court-realignment/

Trial_Court_Realignment_092811.pdf> [as of Aug. 12, 2014].)[2] Rather than reassign court security functions to the state law enforcement agency (i.e., the California Highway Patrol), the Legislature added former section 77212.5 to the Government Code in 1998, which required most trial courts to enter into contracts with their local sheriff's department for the provision of security services. (Legis. Counsel's Dig., Assem. Bill No. 92 (1997-1998 Reg. Sess.) <http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0051-0100/ab_92_bill_19980831_enrolled.html> [as of Aug. 12, 2014]; Sen. Jud. Com., Analysis of Sen. Bill No. 1396, *supra*, background, p. 1.)

The enactment of former section 77212.5 apparently created problems in light of the altered funding structure. (See Sen. Jud. Com., Analysis of Sen. Bill No. 1396, *supra*, background, p. 2.) According to a report by the Legislative Analyst's Office, trial courts had "little opportunity to influence either the level of security to be provided or the salaries of those security officers, but [were] expected to pay the full amount of each. In most cases, the county sheriff determine[d] the minimum level of security required in a court facility… [and] the county board of supervisors negotiate[d] the level of salaries and benefits with the sheriff." (Legis. Analyst, Analysis of the 2003-04 Budget Bill: Trial Court Funding (0450) <http://www.lao.ca.gov/analysis_2003/crim_justice/cj_02_0450_anl03.htm> [as of Aug. 12, 2014].)

The Superior Court Law Enforcement Act of 2002 (Stats. 2002, ch. 1010, § 1 (SB 1396)) established a more collaborative procedure for the development of court security plans and made actual security allocations subject to approval by the Judicial Council. (Legis. Counsel's Dig., Sen. Bill. No. 1396 (2001-2002 Reg. Sess.).) The law required "the sheriff or marshal, in conjunction with the presiding judge, [to] develop an annual or multiyear comprehensive court security plan that includes the mutually agreed upon law enforcement security plan to be utilized by the court." (Former § 69925 as enacted by Stats. 2002, ch. 1010, § 1 (SB 1396).) Former section 77212.5 was repealed and replaced with (former) section 69926, which stated, in pertinent part: "The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment." (Former § 69926, subd. (b) as enacted by Stats. 2002, ch. 1010, § 1 (SB 1396).)

This matter involves an MOU that was executed and amended at a time when funding for trial court security was controlled at the state level. The Legislature appropriated all funding for trial courts in the annual state budget and the Judicial Council allocated portions of the appropriated funds to individual trial courts. (See

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[2] Judicial notice will be taken of all legislative history materials cited in this decision. (Evid. Code, §§ 452, subd. (c), 454, subd. (a)(1); *In re J. W.* (2002) 29 Cal.4th 200, 211 ["To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice."].)

former § 69925 as enacted by Stats. 2002, ch. 1010, § 1 (SB 1396); Legis. Analyst Rep., Completing the Goals of Trial Court Realignment, *supra*, at p. 6.) This process changed as a result of California's 2011 Realignment legislation and the passage of Assembly Bill No. 118 (Stats. 2011, ch. 40). Under the new system, funding for court security is directly allocated to each county according to fixed percentages of the state's tax revenue. (§§ 30025, 30029.05, subd. (b).) The counties are responsible for using those funds to pay for security plans utilized by their respective trial courts. (*Ibid.*)

To implement the changes mandated by Assembly Bill No. 118, the Legislature revised and reconfigured the provisions of the Superior Court Law Enforcement Act of 2002, thereby creating the Superior Court Security Act of 2012. (§§ 69920-69926; Stats. 2012, ch. 41, §§ 27-35 (SB 1021).) The new statutory scheme closely resembles the old law in several ways, including the requirement that county sheriffs and presiding judges develop a "mutually agreed upon law enforcement security plan to be utilized by the court" (§ 69925) and "enter into an annual or multiyear memorandum of understanding … specifying an agreed-upon level of court security services and any other agreed-upon governing or operating procedures" (§ 69926, subd. (b)). Final approval of the MOU now lies with the county board of supervisors instead of the Judicial Council. (§ 69926, subd. (b).) Superior courts are prohibited from paying sheriffs for security services or equipment unless the provision of such services or equipment "would not otherwise have been required absent the realignment of superior court security funding enacted in Assembly Bill 118…." (§ 69923, subds. (a), (b).)

Declaratory Relief is Appropriate

Section 69926 instructs the Judicial Council to establish a process for the expeditious and final resolution of an impasse in the negotiation of an MOU for court security services and disputes regarding the administration or level of services under an existing MOU. (§ 69926, subds. (c), (d), (e); see Legis. Counsel's Dig., Sen. Bill No. 1021 (2011-2012 Reg. Sess.) par. 9.) Rule 10.174 was added to the California Rules of Court[3] to satisfy this requirement. (Rule 10.174(a).) As a result, "[i]f a sheriff, county, or superior court is unable to resolve a dispute related to the memorandum of understanding required by Government Code section 69926(b), the sheriff, county, or superior court may file a petition for a writ of mandamus or writ of prohibition." (Rule 10.174(b)(1).)

Respondents acknowledge the mechanism for writ relief under rule 10.174, but argue there is no basis upon which to allow petitioners to simultaneously request declaratory relief. The argument is not convincing. A declaratory relief action provides a quick and efficient method of resolving disputed issues pertaining to the parties' rights,

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[3] All rule references are to the California Rules of Court.

and may be initiated once an actual controversy has arisen. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897-898.) Code of Civil Procedure section 1060[4] generally authorizes government agencies to commence any type of declaratory action without restriction of other remedies. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 428; Code Civ. Proc., § 1062.) Declaratory relief may also be obtained to address probable future controversies relating to the rights and duties of the parties. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606.) A declaratory judgment thus serves to "'"set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs[.]"'" (*Id.* at pp. 607-608, quoting *Babb v. Superior Court* (1971) 3 Cal.3d 841, 848.)

A declaratory remedy "should not be used in cases 'where an appropriate procedure has been provided by special statute, but a party is trying to circumvent the statutory procedure by filing a declaratory relief action.' [Citation.]" (*Doan v. State Farm General Ins. Co.* (2011) 195 Cal.App.4th 1082, 1096.) This case does not involve such a scenario. Judicial economy strongly weighs in favor of adjudicating petitioners' complaint for declaratory relief in conjunction with the writ petition to achieve the goal of expeditiously and finally resolving the parties' dispute. (See *id.* at p. 1095; § 69926, subd. (e).)

Judicial Drafting of Contracts is Not Appropriate

Although declaratory relief is warranted, the pleadings are overreaching insofar as petitioners are asking this tribunal to draft the new MOU, approve one proposed version of the MOU over another, and/or require the Superior Court to accept certain terms and conditions dictated by the Sheriff.

Contractual interpretation and enforcement is a judicial function, drafting new agreements is not. (See *Series AGI West Linn of Appian Group Investors DE, LLC v. Eves* (2013) 217 Cal.App.4th 156, 164 ["'The courts cannot make better agreements for parties than they themselves have been satisfied to enter into….' [Citation.]"]; *Levi*

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[4] "Any person ... who desires a declaration of his or her rights or duties with respect to another ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action ... in the superior court for a declaration of his or her rights and duties.... He or she may ask for a declaration of rights or duties, *either alone or with other relief*; and the court may make a binding declaration of these rights or duties, *whether or not further relief is or could be claimed at the time*. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment...." (Code Civ. Proc., § 1060, italics added.)

Strauss & Co. v. Aetna Casualty & Surety Co. (1986) 184 Cal.App.3d 1479, 1486 ["The court does not have the power to create for the parties a contract which they did not make …."].) For a court to require one party to commit involuntarily to terms demanded by another would destroy the essential element of mutual consent, which must be freely given. (Civ. Code, §§ 1550, 1565, 1580; *T. M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 282 ["[M]utual consent of the parties is essential for a contract to exist."].) "If there is no evidence establishing a manifestation of assent to the 'same thing' by both parties, then there is no mutual consent to contract and no contract formation." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.)

To usurp the bargaining power of the Superior Court by declaring that the Sheriff is entitled to "deference in determining court security staffing priorities" would also contravene the statutory requirement that county sheriffs and superior courts develop a "mutually agreed upon law enforcement security plan." (§ 69925.) Any MOU entered into by the parties must specify an "*agreed-upon* level of court security services" and "*agreed-upon* governing or operating procedures." (§ 69926, subd. (b), italics added.)

Requiring the Superior Court to enter into petitioners' proposed MOU or to be bound by a particular contractual term or condition without mutual consent exceeds the scope of permissible relief. The same is true of petitioners' request that the Superior Court be required to "recogniz[e] the Sheriff's superior expertise in security matters … by affording him deference in his day-to-day decision making about how to best achieve safety in the new courthouse within the limits of available resources."

Rule 10.174 only purports to provide a mechanism for resolving "a dispute related to the memorandum of understanding required by Government Code section 69926(b) …." (Rule 10.174(b)(1).) Section 69926, subdivision (e) likewise refers to "disputes that are not settled in the meeting process described in subdivision (d)." The dispute in this case is framed by the pleadings as a disagreement over the meaning and applicability of certain statutory provisions, and the parties' rights and obligations under an existing contract. A final resolution of the dispute can be achieved through statutory interpretation and traditional modes of adjudication. Whether rule 10.174 allows for the unprecedented expansion of judicial power to create binding contracts for litigants in other contexts is not only a doubtful prospect, but a question that need not be decided in order to provide the relief to which the parties are entitled.

The Question of Whether a Statute Constitutes an "[U]nfunded [M]andate" must be Addressed in the First Instance to the Commission on State Mandates

Petitioners raise questions about whether the Superior Court Security Act of 2012 might be construed as an "unfunded mandate" that would require subvention of funds to reimburse them for expenses associated with a new program or increased level of service. (See Cal. Const., art. XIII B, § 6.) This issue is entirely outside the scope of rule 10.174. No part of this decision should be construed as declaring that petitioners are required to provide "uncompensated security services to courts" or as otherwise determining whether any statute imposes state-mandated costs on a local agency within the meaning of section 6 of Article XIII B of the California Constitution. The exclusive procedure for obtaining such a determination is set forth in other parts of the Government Code (§ 17500 et seq.) and the question must be addressed in the first instance to the Commission on State Mandates. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81-82; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 819 ["[T]he Commission … has the sole and exclusive authority to adjudicate whether a state mandate exists."].)

The Existing MOU Must Remain in Effect Until a New Agreement is Reached

Petitioners contend the existing MOU is void and unenforceable because (1) the MOU was never reviewed or approved by the county board of supervisors (as now required by § 69926, subd. (b)), (2) the Superior Court's relocation to a "much larger and difficult-to-secure building operates as a change of circumstances," (3) the parties did not originally intend for the MOU to apply to the provision of security in the new courthouse, and (4) the Superior Court "has not secured funding from the State sufficient to pay for a similar level of security services adequate to the new courthouse."

These arguments are undermined by the final subdivision of section 69926. It states: "The terms of a memorandum of understanding shall remain in effect, to the extent consistent with this article, and the sheriff shall continue to provide court security as required by this article, until the parties enter into a new memorandum of understanding." (*Id.*, subd. (f).) The unsubstantiated notion that subdivision (b) of section 69926 requires retroactive approval of the existing MOU by the county board of supervisors is at odds with the express directive of subdivision (f).

The "changed circumstances" argument is also unavailing. "A mere change of circumstances which makes performance more difficult or more expensive should not be a bar to specific performance of a contract." (*Ellison v. Ventura Port District* (1978) 80 Cal.App.3d 574, 582; accord, *Lloyd v. Murphy* (1944) 25 Cal.2d 48, 55 ["[L]aws or other

governmental acts that make performance unprofitable or more difficult or expensive do not excuse the duty to perform a contractual obligation."].) Performance may be excused under the doctrine of impracticability if honoring a contractual obligation would require "excessive and unreasonable expense," but petitioners have made no such showing. (*Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1336.) Their pleadings and evidence indicate the anticipated funding for the 2013-2014 fiscal year "will pay the costs of approximately four (4) full-time equivalent Sheriff-provided court security personnel," i.e., the same level of staffing promised under the current MOU.

The third argument alludes to the frustration of purpose doctrine. "Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary." (Rest.2d Contracts, § 265.) The excuse of frustration is a conclusion of law to be drawn by the court under the particular facts of the case. (*Mitchell v. Ceazan Tires, Ltd.* (1944) 25 Cal.2d 45, 48.) The Superior Court's move to a new courthouse may not have been anticipated when the parties' agreement was made, but the principal purpose of the MOU has not been substantially frustrated as a result. Frustration of purpose arises in situations involving a supervening event that makes one party's performance virtually worthless to the other, which is not the case here. (Rest.2d Contracts, § 265, com. a, p. 335.)

Furthermore, the terms of the agreement do not indicate a clear intention by the parties to limit its applicability to a particular courthouse. In designating the location where services are to be rendered, the MOU generically refers to "[o]ne [e]ntrance [s]creening [s]tation" and "2-4 courtrooms." Petitioners also overlook the fact that the MOU was created to comply with statutory requirements for the provision of security services which the Sheriff was, and still is, required to provide by law regardless of the Superior Court's physical location. (§§ 69921.5, 69922, 69926; former §§ 69922, 69926.)

With regard to the final argument, it is true that changes to the funding structure for trial court security have effectively nullified those provisions of the MOU which refer to allocations made by the Judicial Council and direct payment for services by the Superior Court. This does not mean the entire agreement is now void. Under Civil Code section 1643, "[a] contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (See also, Civ. Code, § 3541 ["An

interpretation which gives effect is preferred to one which makes void."].) Put differently, "[o]ne of the cardinal rules of contract construction is that, if possible, the contract should be construed to render it valid and enforceable." (*Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 272.)

Returning to the text of section 69926, subdivision (f), the Legislature has decreed that an existing MOU "shall remain in effect," to the extent it is consistent with current law, until the parties enter into a new agreement. As a rule of statutory construction, the word "shall" ordinarily connotes mandatory action. (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542; *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 348.) Where, as here, the statutory language is unambiguous, it is presumed the Legislature meant what it said and the plain meaning controls. (*Kirby v. Immoos Fire Protection, Inc*. (2012) 53 Cal.4th 1244, 1250.) Therefore, the existing MOU must remain in effect until the parties reach a new agreement.

The parties will be ordered to honor all terms and conditions of the existing MOU not in conflict with current versions of sections 69920 through 69926, including the levels of staffing and service outlined in the most recent amendment.[5] This does not mean either side has carte blanche to furnish or demand staffing, services, and/or equipment in excess of what is feasible under the County's budget. Quite the opposite is true. As explained *post*, the rights and obligations of the County, the Sheriff, and the Superior Court under the existing MOU and any future MOU are circumscribed by the budgetary constraints the Legislature has seen fit to impose upon them.

Annual Budgets Establish the Limits of the Parties' Contractual Rights and Obligations

As previously discussed, funding for trial court security is governed by the realignment legislation enacted through Assembly Bill No. 118. (§§ 30025, 30029.05, subd. (b); see also, § 69920.) Petitioners argue that the fixed percentages of tax revenue prescribed by section 30029.05, subdivision (b) for the allocation of funding to different counties are based on "historical data concerning operations in existing courthouses [at the time the legislation was enacted] and [do] not take into account or address the additional security costs superior courts would incur if they relocated their operations into new, larger courthouses …." They further complain the allocation of funding for

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[5] This result is consistent with the severability clause in Paragraph 15 of the MOU, which reads: "This Agreement is subject to all applicable laws, statutes, rules and regulations. If any term or provision of this Agreement is found by any court or other legal authority to be invalid, void, or unenforceable, the remainder of the Agreement will not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law."

Calaveras County is insufficient to pay for what the Sheriff and the Judicial Council have determined to be the minimum level of court security staffing necessary for the Superior Court's new facility. Redress for these grievances must come from the Legislature.

The enactment of budget measures and budgetary appropriations in general are legislative functions. (*Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 301-302; *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 698-699 (*County of Butte*).) "[U]nder the 'separation of powers' principle which is fundamental to our form of government a court is generally without power to interfere in the budgetary process." (*County of Butte, supra,* 176 Cal.App.3d at p. 698; accord, *California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 799.) "The chaos that would result if each agency of government were allowed to dictate to the legislative body the amount of money that should be appropriated to that agency, or its staffing and salary levels, is readily apparent. The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available." (*County of Butte, supra,* 176 Cal.App.3d at p. 699.)

Petitioners' action is premised on the idea that the Sheriff has a prerogative over court security measures which simply must be effectuated regardless of budgetary constraints. This tribunal cannot order or authorize any action by petitioners or respondents that would unilaterally circumvent the legislative decisions reflected in Assembly Bill No. 118 and the Superior Court Security Act of 2012. Therefore, it will be ordered that Paragraph 1.2 of the existing MOU remains operative to the extent that "funding for [the] Agreement is conditioned upon appropriation by the California Legislature" as now structured under the realignment legislation. Payment to the Sheriff for services rendered pursuant to the existing MOU will be ordered to be made by the County in accordance with the current law, but the provision and receipt of such services will be contingent upon and limited by the amount of funding allocated to the County for trial court security.

The limited availability of resources cuts both ways in that the Superior Court cannot demand security services or equipment from the Sheriff at levels which exceed the County's financial means. The upshot is both sides will be ordered to make do with the budget they have been given. If the Legislature's allocation of funding for the 2013-2014 fiscal year does not extend beyond the cost of four full-time deputies or the functional

equivalent of that level of service, the parties will be ordered to adjust their operations accordingly. By way of example, if funding only allows for four actual deputies or security officers at a given time, and at least one of those individuals is needed to guard the entrance screening station, the Superior Court will not be able to demand the simultaneous presence of security personnel in four different courtrooms.

Section 69923, Subdivision (b) is Not Applicable in This Case

The main point of contention between the parties relates to the meaning and application of section 69923. The full text of the statute is as follows:

> "(a) A superior court shall not pay a sheriff for court security services and equipment, except as provided in this article.
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> "(b) Subject to the memorandum of understanding described in subdivision (b) of Section 69926, the court may pay for court security service delivery or other significant programmatic changes that would not otherwise have been required absent the realignment of superior court security funding enacted in Assembly Bill 118 (Chapter 40 of the Statutes of 2011), in which the Trial Court Security Account was established in Section 30025 to fund court security."

Petitioners believe these provisions authorize the Superior Court to pay for any excess costs associated with court security services provided by the Sheriff which cannot be covered by the County's budget. The argument is made in light of the Superior Court's move to its new facility and petitioners' belief that current funding allocations are insufficient to pay for even the minimum level of protection necessary to ensure adequate safety at that location. The Superior Court rejects petitioners' interpretation of the statute and denies requesting "'unfunded security measures' … which petitioners unilaterally conclude are necessary for the current fiscal year."

The fundamental goal of statutory construction is to determine and effectuate the Legislature's intent. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 803 (*Pacific Palisades*).) "The statutory language itself is the most reliable indicator, so we start with the statute's words, assigning them their usual and ordinary meanings, and construing them in context." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190.) If the words are clear and unambiguous, the statute's plain meaning governs. (*Ibid.*) "When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008, accord, *Pacific Palisades*, *supra*, 55 Cal.4th at p. 803.) A court may also consult extrinsic

sources to confirm its understanding of facially unambiguous language. (*Martin v. PacifiCare of California* (2011) 198 Cal.App.4th 1390, 1402, fn. 7.)

Section 69923, subdivision (a) plainly states that a superior court "shall not pay" for court security services "except as provided in this article." The legislative digest to Senate Bill No. 1021 (2011-2012 Reg. Sess.) confirms this language was intended to "prohibit a superior court from paying a sheriff for court security services and equipment, except as provided." (Legis. Counsel's Dig., Sen. Bill. No. 1021, *supra*, par. 9.) Petitioners note the word "article" suggests exceptions might be found elsewhere in the statutory scheme. However, a review of sections 69920 through 69926 discloses no additional guidelines.

Section 69923, subdivision (b) is not ambiguous so much as it is vague. It does not hint at the type of scenario which may qualify as an exception to the bar against direct expenditures by trial courts for security services. The available legislative history is silent on the issue. One thing that is certain, however, is the need for a causal connection between realignment and a change in circumstances. Petitioners analyze whether an increase in the level of court security services constitutes "significant programmatic change[],"[6] but the question is academic since the causal connection is missing.

According to the evidence, post-realignment allocations of funding for Calaveras County have allowed security staffing levels to remain the same, and possibly even slightly higher than they were under the old system. The question, therefore, is did realignment cause a need for increased levels of court security staffing or otherwise impose increased obligations on the Sheriff "*that would not otherwise have been required*" without the passage of Assembly Bill No. 118? (§ 69923, subd. (b), italics added.) Based on petitioners' own arguments, the answer is no. The purported need to increase court security staffing from pre-realignment levels is said to be attributable to the Superior Court's "unilateral relocation to a larger and harder-to-secure court facility."

Any "programmatic changes" concerning security are entirely connected to the Superior Court's move from one location to another. The enactment of Assembly Bill No. 118 obviously did not cause the move to occur, nor can it be characterized as the but-for cause of any changes in the parties' security plan. Aside from this missing link, petitioners apparently presume the Superior Court would have received a substantial increase in funding sufficient to pay for the equivalent of anywhere between two and five additional full-time deputies if the realignment legislation had not been passed. The basis for such a presumption is uncertain, at best, since the Legislature was not operating under

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6 This term is not defined in the statutory scheme, nor does it appear elsewhere in the Government Code except at section 69920, which offers no additional context. In common usage, the word "programmatic" means "of, relating to, resembling, or having a program." (Merriam-Webster's Collegiate Dict. (11th ed. 2011) p. 992.)

a budget surplus during the past several years. Both sides will likely recall the state-wide furlough programs, courtroom closures, and other reductions in service throughout the judicial system due to California's fiscal crisis.

There is a clear legislative intent expressed in section 69923 to preclude direct payment by superior courts to county sheriffs for court security services unless an exception can be established under subdivision (b). The exception requires a causal connection between the enactment of California's Realignment legislation and a change in the court's security program that would not have occurred if the pre-realignment funding system had remained in place. Petitioners fail to make the requisite showing.

Section 69922, Subdivision (a) Permits the Assignment of Sheriff's Deputies to Civil Courtrooms Without a Case-By-Case Analysis of Public Safety Risks

The Sheriff would prefer his deputies to patrol other areas of the courthouse rather than attend civil proceedings unless there is a specific concern for public safety arising from a particular case. Up to this point, the presiding judge of the Superior Court has insisted upon the presence of a security officer in every courtroom. The presiding judge reasons "the potential for a disruptive and/or violent outburst is very real in many case types, particularly family law matters, real property disputes and other cases in which emotions tend to run high." Petitioners believe the Sheriff has the better argument because of certain language found in section 69922.

The relevant provision states: "Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court sessions held within his or her county. *A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety.* The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions…. *The sheriff shall obey all lawful orders and directions of all courts held within his or her county.*" (§ 69922, subd. (a), italics added.)

Petitioners' argument pertains to the second sentence, which they construe as meaning the presiding judge must make "case-by-case determinations" of potential public safety risks before requesting or requiring the presence of a sheriff's deputy at a civil proceeding. The language is susceptible to more than one interpretation. The word "shall" indicates a mandatory or directory duty (*Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 433), but it is unclear whether the sentence has an accommodating or prohibitory meaning. Petitioners urge a prohibitive interpretation, which would basically mean a sheriff cannot attend a civil proceeding unless the presiding judge has determined his or her presence is necessary "at that action" for reasons of public safety. However, if the Legislature intended to convey such a directive, it could have easily said

a sheriff "shall not" attend a civil proceeding "unless" a public safety determination is first made by the presiding judge.

The linguistic ambiguity warrants a review of the legislative history. (*Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, 1046.) "Moreover, ""'[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.]"'" (*Holland v. Assessment Appeals Bd. No. 1* (2014) 58 Cal.4th 482, 490.) Pursuant to this principle, courts may also consider the consequences that will flow from a particular interpretation. (*Moreno v. Quemuel* (2013) 219 Cal.App.4th 914, 918.)

The origins of section 69922 trace back to the enactment of former section 26603 in 1947. In its earliest form, the statute provided: "The sheriff shall attend all superior courts held within his county and obey all lawful orders and directions of all courts held within his county." (Former § 26603 as added by Stats. 1947, ch. 424, § 1.) The law was amended in 1979 to read: "Whenever required, the sheriff shall attend all superior courts held within his county provided, however, that a sheriff shall attend a civil action only if the presiding judge or his designee makes a determination that the attendance of the sheriff at such action is necessary for reasons of public safety. The sheriff shall obey all lawful orders and directions of all courts held within his county." (Stats. 1979, ch. 381, § 1.)

The 1979 amendment to former section 26603 was intended to "reduce court costs by eliminating unnecessary bailiffs." (Enrolled Bill Memorandum to Governor (Assem. Bill No. 885) July 25, 1979.) Opponents to the amendment were concerned that trial courts would lose the ability to maintain control over civil proceedings and complained about the impracticability of requiring a presiding judge to make specific findings regarding the need for security in every civil action. (*Ibid.*) The legislative history of the predecessor statute thus provides support for Petitioners' argument. The dispositive inquiry, however, is the legislative intent behind the current law.

Former section 26603 was repealed in 2002. The substantive text of the statute was retained and expanded in former section 69922 as part of the Superior Court Law Enforcement Act of 2002. (Stats. 2002, ch. 1010, § 1 (SB 1396).) The legislative history concerning this change is illuminating:

> "Current law requires the sheriff to attend all superior courts held within the county, provided that a sheriff shall attend a civil action only if the presiding judge makes a determination that the attendance of the sheriff is necessary for reasons of public safety. [(Gov. Code, § 26603.)] *In*

practice, all courtrooms are attended to by a bailiff who is either a sheriff or marshal and who is a peace officer or a public safety officer.

"This bill would repeal this statute, reenact it as Section 69922, and provide that 'the court may use court attendants in courtrooms hearing all those civil actions.' 'Court attendant' is defined in the bill as 'a nonarmed, nonlaw enforcement employee of the superior court who performs those functions specified by the court, except those functions that may only be performed by armed personnel….' [¶] … [¶]

"Thus, an agreement for court security *may include, at the superior court's option*, the use of court attendants to perform security screenings and taking charge of a jury, or any other function that the court determines does not require armed personnel. *While the guidelines stated in SB 1396 provide that the court law enforcement budget of a sheriff or marshal may not be reduced as a result of this bill, a superior court may manage any future growth in costs by the increased use of court attendants in civil actions*." (Sen. Jud. Com., Analysis of Sen. Bill No. 1396 (2001-2002 Reg. Sess.) as amended Apr. 24, 2002, comment, pp. 4-5, italics added.)

The comments of the Senate Judicial Committee provide several important insights. First, the Legislature was aware, as early as 2002, that the assignment of sheriff's deputies to civil courtrooms without preliminary "case-by-case determinations" of potential safety risks was a widespread and common practice among the trial courts. Second, the Legislature did not express disapproval of the practice and made no effort to revise the statutory language in 2002 or in 2012 to clarify any type of prohibitory or restrictive intent.

The Senate Judicial Committee analysis further indicates that section 69922, subdivision (a), (which is almost identical to the original 2002 version) was designed to provide trial courts with greater flexibility in their security plans by allowing them to utilize court attendants for civil matters instead of sheriff's deputies or other armed law enforcement personnel. There is no evidence to suggest the Legislature intended to leave trial courts with the all-or-nothing choice of either staffing civil courtrooms with nonarmed attendants or forgoing security entirely unless the presiding judge is willing to undertake a daily case-by-case analysis of all noncriminal and nondelinquency dockets and guess at which cases might pose a danger to public safety.

Under the most reasonable construction of the statute, section 69922 imposes a mandatory duty upon sheriffs to attend criminal and delinquency actions. Trial courts do not have the option to utilize nonarmed court attendants for such cases. (See § 69921, subd. (a) [defining "court attendant"].) This rule reflects the Legislature's apparent

determination that security functions relating to criminal or delinquency actions should only be performed by armed law enforcement personnel.

Security functions at noncriminal and nondelinquency actions may be performed by either sheriffs or court attendants. In these cases, trial courts have the option to select one form of protection over the other. The sheriff's attendance is not mandatory unless the presiding judge has determined that a particular case presents a public safety risk such that security functions at the proceeding should only be performed by armed law enforcement personnel.

The construction of the statute advocated by petitioners would burden every trial court in the state with an unreasonable and grossly inefficient case-by-case analysis procedure. To adopt such an interpretation would lead to absurd results which the Legislature did not intend. Respondents also note the inherent ethical problems posed by such a system.

Finally, the second sentence of section 69922, subdivision (a) must be harmonized with the concluding decree that "[t]he sheriff shall obey all lawful orders and directions of all courts held within his or her county." While it is not *mandatory* for a sheriff to attend a noncriminal, nondelinquency action in the absence of a specific public safety determination by the trial judge (meaning a court attendant may fulfill the role instead), it is not *unlawful* for the superior court to otherwise request or require the sheriff's attendance at such actions. Therefore, it will be ordered that the Superior Court may lawfully order or direct the Sheriff to provide security in civil courtrooms without first conducting a case-by-case analysis of potential safety risks posed by the matters on calendar.

Future Negotiations and Performance

The parties will be ordered to resume their efforts to arrive at a new, mutually agreed-upon MOU pursuant to sections 69920 through 69926 and in accordance with their respective rights and obligations as declared herein.

Petitioners believe the new MOU should include a provision that requires both sides to commence negotiations for future contracts at least 90 days prior to the expiration of an existing agreement. No legal authority has been cited in support of this proposition. The parties are free to negotiate such a term, but one will not be ordered.

There is no basis for issuing a writ of mandate or writ of prohibition as prayed for by the Sheriff and County. Respondents' alleged failure to perform a legal duty, under the existing MOU or otherwise, has not been shown. This includes the duty of good faith as it pertains to negotiations for a new contractual agreement. There is *also* no evidence of the unlawful performance of a duty or abuse of discretion by respondents vis-à-vis

petitioners. The Superior Court justifiably declined to accept petitioners' erroneous interpretations of the law.

TENTATIVE RULING ISSUED: AUGUST 14, 2014

BY: JRSD*

* Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.