

CALIFORNIA PREFERENCE STATUTES

Overcrowded court calendars continue to be one of the most serious problems in the administration of justice in California. On January 1, 1952, the courts of Los Angeles faced a backlog of 6,286 cases, with jury cases being set for trial 9½ months and non-jury cases 6 months after application for a place on the calendar.¹ San Francisco and Oakland courts face a similar difficulty in cases requiring juries.² Lacking a cure, the legislature has devised the palliative of giving important types of actions seriously affecting the public interest priority on court calendars.³

In recent times statutes of this character have swelled in number,⁴ and their conflicting admonitions have created serious problems of application.⁵ This discussion will attempt to correlate the most important of these statutes, look at the application of them by various California courts,⁶ and propose certain improvements.

For purposes of analysis the statutes may be classified into those providing for civil actions, criminal actions, and actions on appeal. Many of the statutes apply in both trial and appellate practice. The priority provisions relating to civil actions may be further divided into those requiring (1) trial within a definite period, (2) an "immediate" or "speedy" trial, and (3) precedence over other actions. Some of the statutory priorities have application only to specified localized actions.

Civil Actions Within a Definite Time Limit

The principal statutes found requiring action to be commenced within a definite time interval relate to certain election actions. In a primary election contest where only a simple recount is necessary, Election Code Section 8645 requires the judge "forthwith" to designate the time and place of the hearing, after the clerk has presented the affidavits, but the time of hearing shall be not less than 10 nor more than 20 days from the date of the judge's order.⁷ Election Code Section 8625 provides for the same requirements in contested primary elections involving issues other than a

¹ Report of the Committee of the Superior Court of Los Angeles, March 12, 1952, p. 1.

² Interviews with calendar clerks of both courts show that jury cases are running many months behind. In San Francisco non-jury cases are current. Part of the reason jury cases lag is that a large number of cases are handled by a relatively small number of law firms.

³ For example, the legislature gave preference to eminent domain actions because "so long as such actions are pending and undisposed of, the owner of the property sought thus to be condemned or taken from its owner is himself practically deprived of the right to use or utilize it." See *Bottoms v. Superior Court*, 82 Cal. App. 764, 256 Pac. 422, 425 (1927).

⁴ A tabulation of statutes shows that over 60% have been enacted during the past twenty years.

⁵ Witkin, *New Rules on Appeal*, 17 So. CALIF. L. REV. 232, 240 (1944).

⁶ The writer wishes to acknowledge the valuable aid and suggestions made by clerks and judges of various California courts, too numerous to mention individually.

⁷ It is to be noted that Section 8645 requires the county clerk to turn over to the court "on" the fifth day after the last day for contesting, while Section 8625 states "within" five days.

simple recount, as does Election Code Section 8550 for general election contests.⁸

Civil Actions Requiring Speedy or Immediate Trial

A number of statutes, most of which deal with bond issues, elections, or minors, specify that actions based on them are to be tried "speedily" or "immediately," without setting any definite time for trial. The courts seem to interpret "speedily" and "immediately" in these statutes to mean the same thing.

Determinations of the validity of bond issues are often required to be made rapidly. Section 22679 of the Water Code provides that actions challenging the validity of bonds and assessments are to be "speedily tried." Similar promptness is exhorted for court action involving bonds issued under the Drainage District Act of 1903,⁹ requiring judgment be given "as speedily as possible"; the Protective District Act of 1907;¹⁰ the Sanitation, Sewer and Water Revenue Bond Law of 1941;¹¹ and the Municipal Utility District Act.¹²

Actions to determine the validity of reassessments under the Road Improvement District Act,¹³ as well as those under the Road Improvement Act of 1910,¹⁴ "shall be speedily tried." Like treatment may be had under the Assessment Bond Refunding Act of 1933¹⁵ and the Special Assessment and Bond Refunding Act of 1939.¹⁶

In actions brought under Water Code Section 20935 dealing with irrigation districts the court "shall speedily try the election contest." Soil Conservation District elections receive the same advantage by Public Resources Code Section 9144, as do Municipal Port District elections by Harbors and Navigation Code Section 5131, and contests for dissolution of irrigation districts by Water Code Section 27493.

Election contests to be "immediately" tried are those brought under the Water Conservation Act of 1927¹⁷ and the Water Conservation Act of 1931.¹⁸

Two actions dealing with minors are given calendar preference. When the court is determining whether to declare a child a ward of the court under Welfare and Institutions Code Section 732, the court shall proceed

⁸ *Dennis v. Superior Court*, 87 Cal. App. 2d 279, 196 P. 2d 893 (1948). Before the 1951 amendment the judge was required to "thereupon" make the order. It was determined in *Busick v. Superior Court*, 16 Cal. App. 499, 504, 118 Pac. 481 (1911), that "thereupon" did not mean immediately but at most "within a reasonable time." With the 1951 change the judge is required to "forthwith" make the order.

⁹ 1 CAL. GEN. LAWS Act 2202, § 58 (Deering 1951).

¹⁰ 2 CAL. GEN. LAWS Act 6175, § 56 (Deering 1951).

¹¹ CAL. GOV. CODE § 54585.

¹² CAL. PUB. UTIL. CODE § 13347.

¹³ 1 CAL. GEN. LAWS Act 3276, § 28 (Deering 1951).

¹⁴ CAL. ST. AND HIGH. CODE § 5270.

¹⁵ 1 CAL. GEN. LAWS Act 877, § 30 (Deering 1951).

¹⁶ 1 CAL. GEN. LAWS Act 2123, § 54 (Deering 1951).

¹⁷ 3 CAL. GEN. LAWS Act 9127a, § 9 (Deering 1951).

¹⁸ 3 CAL. GEN. LAWS Act 9127c, § 9 (Deering 1951).

to hear and dispose of the case in a summary manner," as soon as possible after the return of the citation or other process." A similar requirement is made by Welfare and Institutions Code Section 784 as to proceedings to declare a person free from the custody and control of his parents.

For members of the National Guard returning to private employment after active military service who are eligible to return to their former employment but are denied that opportunity by their employer, the court "shall order a speedy hearing . . . and shall advance it on the calendar."¹⁹

Civil Actions Given Precedence

The bulk of priority statutes and those most frequently used are ones requiring precedence over all other actions. These statutes will be discussed in order of descending priority. Some of them provide for precedence above everything else; others for precedence except as to those actions that are specifically enumerated in the statutes.

Eminent domain actions are to be given preference "over all other civil actions . . . in . . . setting for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined."²⁰ Such cases are to be determined with a "greater degree of alacrity than is the case in the common run of civil actions for the obvious reason that so long as such actions are pending . . . the owner of the property sought is himself practically deprived of the right to use . . . it."²¹

Water Code Section 8833 provides that court tests of reclamation board assessments shall have preference over all civil actions in fixing the time of trial.

Two actions involving the Public Utilities Commission are accorded favored treatment. Suits involving orders and decisions of the Public Utilities Commission "shall be preferred over and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar."²² Proceedings brought under Public Utilities Code Section 4652, part of the For-Hire Vessel Act, as well as cases in which the Commission's attorney intervenes, are given the same preference.

Code of Civil Procedure Section 527 provides that preliminary injunctions shall be given priority over all other actions on the day the order is made returnable except older matters of the same character and matter to which special precedence may be given by law; and, when the cause is at issue, the case shall be set for trial at the "earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law." A reorganization by the court under Financial Code Section 9657 is given the same preference as injunctions.

Two actions involving narcotic violations are given favored treatment. If an action is brought for the forfeiture of vehicles involved in narcotic

¹⁹ CAL. MIL. AND VET. CODE § 395.06.

²⁰ CAL. CODE CIV. PROC. § 1264.

²¹ *Bottoms v. Superior Court*, *supra* note 3.

²² CAL. PUB. UTIL. CODE § 1767.

violations, it shall be set for hearing on a day not less than thirty days after the verified answer is filed and the proceeding has priority over all other civil cases.²³ Narcotic abatement actions are given precedence over all other actions "except criminal proceedings, election contests, hearings on injunctions, and actions to forfeit vehicles under this division."²⁴

Two kinds of abatement proceedings are given priority. Cases to abate "red light districts" receive priority over all actions "excepting criminal proceedings, election contests and hearings on injunctions."²⁵ Similar preference is given abatement actions coming under the Unlawful Liquor Sales Abatement Law.²⁶

Three sections frequently invoked to obtain advancement on the calendar are Code of Civil Procedure Sections 1179a, 1062a and 660. The first provides that unlawful detainer actions are given preference over all other civil actions "except actions to which special precedence is given by law."²⁷ By the second, declaratory relief cases "shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character and matters to which special precedence may be given by law."²⁸ A motion for a new trial under Code of Civil Procedure Section 660 "shall have precedence over all other matters except criminal cases, probate matters and cases actually on trial and it shall be the duty of the court to determine the same at the earliest possible moment."²⁹ If the motion is not determined within sixty days, it is deemed denied.

A number of other miscellaneous statutes provide for various lesser degrees of priority. Transfer of juvenile cases from one county to another is given preference in the latter county "over all actions and civil proceedings not specifically given precedence by other provisions of law and shall be heard by the court at the earliest possible moment following the filing of the order."³⁰ Any civil action brought by or against the Unemployment Insurance Commission is given preference over "all civil litigation except equity cases, cases involving extraordinary writs, or summary proceedings."³¹ Proceedings for plant and pest control have priority over all other matters "except injunctions, older matters of the same character, and mat-

²³ CAL. HEALTH AND SAFETY CODE § 11617.

²⁴ CAL. HEALTH AND SAFETY CODE § 11785.

²⁵ 2 CAL. GEN. LAWS Act 6161, § 5 (Deering 1951).

²⁶ 2 CAL. GEN. LAWS Act 3778, § 4 (Deering 1951).

²⁷ In *Lori Ltd. v. Superior Court*, 74 Cal. App. 2d 442, 168 P. 2d 982 (1946), plaintiff sought a writ of mandate to compel the trial court judge to hear his action in unlawful detainer that was being held in abeyance until a reformation action was completed on appeal. The district court of appeal issued the writ, ordered the case to be put on the next calendar, as the action was entitled to preference.

²⁸ Writ of prohibition denied in *Klement v. Superior Court*, 21 Cal. App. 2d 456, 69 P. 2d 869 (1937), when petitioner sought to stay proceedings in order to appeal dismissal of a cross complaint, since declaratory relief is set at the earliest time.

²⁹ *Churchill v. Flournoy*, 127 Cal. 355, 59 Pac. 791 (1899); *Lee Doon v. Tesh*, 131 Cal. 406, 63 Pac. 764 (1901).

³⁰ CAL. WEL. AND INST. CODE § 883.

³¹ 3 CAL. GEN. LAWS Act 8780d, § 45.1 (Deering 1951).

ters given preference by law."³² Review of the reasonableness of real estate subdivision design "shall take preference over all matters upon the calendar of the court, criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings excepted."³³

Preference in Localized Civil Actions

Certain localized actions receive favored treatment. Proceedings brought to determine the validity of bonds issued under the American River Flood Control Act are given preference in hearing and trial over all other civil actions or proceedings brought in Sacramento County.³⁴

Cases brought under the Orange County Water District Validation Law in the Superior Courts of Orange County to determine the validity of bonds shall be "speedily tried."³⁵ Assessment payers may bring an action within thirty days after the levy of any assessment and that also "shall be speedily tried."³⁶ Any motion for a new trial of any action or proceeding under this statute "must be heard and determined within ten days from the filing of the notice of intention to move for a new trial."³⁷

Similar suits brought to determine the validity of bonds issued by the Yolo County Flood Control and Water Conservation District "shall be given precedence in hearing and trial over all other civil actions or proceedings" in the Superior Court of Yolo County.³⁸

Preference Given Criminal Cases

To protect the accused from having criminal charges pending against him an undue length of time, California Constitution Article I, Section 13 guarantees that "in criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial."³⁹ This section has been declared to be self executing.⁴⁰

The constitutional provision has been supplemented by legislation. According to Penal Code Section 686, defendant in a criminal action is entitled to a speedy and public trial.⁴¹ A similar requirement is made in Penal Code Section 681a which declares, "the welfare of the people of the state of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time."⁴²

More explicit implementation is given the constitutional guaranty by Penal Code Section 1050 whereby criminal cases are given precedence over

³² CAL. AGRIC. CODE § 144.

³³ CAL. BUS. AND PROF. CODE § 11525.

³⁴ 1 CAL. GEN. LAWS Act 320, § 11a (Deering 1951).

³⁵ 2 CAL. GEN. LAWS Act 5683 § 44 (Deering 1951).

³⁶ 2 CAL. GEN. LAWS Act 5683 § 45 (Deering 1951).

³⁷ 2 CAL. GEN. LAWS Act 5683 § 47 (Deering 1951).

³⁸ 3 CAL. GEN. LAWS Act 9307 § 21.

³⁹ *People v. Godlewski*, 22 Cal. 2d 677, 140 P. 2d 381 (1943).

⁴⁰ *Harris v. Municipal Court*, 209 Cal. 55, 285 Pac. 699 (1930).

⁴¹ A speedy trial is defined in *People v. Molinari*, 23 Cal. App. Supp. 2d 761, 67 P. 2d 767 (1937), as a trial as soon after indictment as the prosecution can with reasonable diligence prepare. In this case a delay of 48 days was not a speedy trial.

⁴² *Infra* note 44.

all civil matters and proceedings and are required to be set for trial not later than 30 days after entry of defendant's plea. If any court is unable to hear all pending criminal cases within this time, it must immediately notify the Chairman of the Judicial Council.⁴³ Penal Code Section 1382 provides that the court, unless good cause to the contrary is shown, must order public offense cases dismissed if "a defendant, whose trial has not been postponed upon his application, is not brought to trial in a superior court within 60 days after the finding of the indictment or filing of the information, or in case a new trial is to be had following an appeal from the superior court within 60 days after the filing of the remittur in the trial court." The section also provides for dismissal of misdemeanor cases not brought to trial within 30 days.⁴⁴

Writs for habeas corpus are to be granted "without delay" according to Penal Code Section 1476, which provides for interim bail; and Section 1486 says the court "must" hear and examine the return and other matters properly submitted for its hearing and consideration "immediately."

A definite order for setting criminal cases on the court calendars is provided by Penal Code Section 1048. Unless there is good cause to try an action out of order, prosecutions for felonies when the defendant is in custody receive priority. Prosecutions for misdemeanors when the defendant is in custody rank next. These are followed by prosecutions for felonies, then misdemeanors, when the defendant is on bail. Cases in which a minor is detained as a material witness or wherein the minor is the victim of the alleged offense, shall be given precedence over all other criminal actions in the order of trial. Section 1048 further provides: "the trial shall be commenced within thirty days after arraignment unless for good cause the court shall direct the action to be continued, after a hearing and determination of the necessity of such continuance."

Actions appealed from justice courts must be heard within one year according to Code of Civil Procedure Section 981a.

Welfare and Institutions Code Section 580 provides that appeals from a judgment or decree of a juvenile court declaring a person to be a ward

⁴³ In *Zamloch v. Municipal Court*, 106 Cal. App. 2d 260, 235 P. 2d 25 (1951), the court declared that provisions of Section 1050 were directory only and contain no provision for dismissal where compliance is not had within its terms. However, the policy announced by the section "should not lightly be disregarded."

⁴⁴ In *Harris v. Municipal Court*, *supra* note 40, a delay of 18 months was held to be in violation of the constitutional right to a speedy trial as the defendant was at all times available for prosecution. The supreme court declared that the time within which criminal cases should be disposed of has been and is a matter of great concern and the duty imposed upon the courts, judicial officers and public prosecutors is to expedite the disposition thereof. Section 1382 is a mandatory provision so a trial delayed more than 60 days within good cause is not a speedy trial. See *Matter of Ford*, 160 Cal. 334, 116 Pac. 757 (1911). In *Rice v. Superior Court*, 40 Cal. App. 2d 391, 104 P. 2d 874 (1940), the meager evidence of a material witness not being located was held not to be "good cause to the contrary."

In *People v. Perea*, 96 Cal. App. 183, 273 Pac. 836 (1929), Sections 681a, 1050, and 1382 were considered together. The district court of appeal found that Section 681a is general in its terms and merely directory, as is Section 1050. Section 1382 was said to be mandatory, but in the particular case the defendant had asked for a postponement, so that he was not entitled to a dismissal on a conviction of selling intoxicating liquor.

of the court shall have precedence over all other cases in the court to which the appeal is taken.

Preference on Appeal

Besides those statutes already discussed, which apply as well in appellate courts,⁴⁵ a number of others deal specifically with priorities on appeal.

Many of these appeal statutes set a definite time limit for hearing. Appeals from judgments in primary election contests shall have precedence over all other appeals and be acted upon by the district court of appeal within 10 days after the appeal is filed.⁴⁶ Cases contesting elections required by the Water Conservation Acts of 1927⁴⁷ and 1931⁴⁸ must be heard and determined by the supreme court within 60 days.

Hearing and determination within "three months" or "90 days" is demanded by a number of laws. Appeals from judgments involving the Assessment Bond Refunding Act of 1933,⁴⁹ Special Assessment and Bond Refunding Act of 1939,⁵⁰ Sanitation, Sewer and Water Revenue Bond Law of 1941,⁵¹ Yolo County Flood Control and Water Conservation District Act,⁵² Orange County Water District Validation Law,⁵³ American River Flood Control District Act,⁵⁴ Municipal Utility District Act,⁵⁵ irrigation district bonds and assessments,⁵⁶ irrigation district dissolution contests,⁵⁷ Improvement Act of 1910,⁵⁸ and Road Improvement District Law,⁵⁹ are all within this class.

Other actions on appeal must be determined "speedily" or at the "earliest time." Appeals from judgments involving bonds issued under the Drainage District Act of 1903 shall be heard and determined "as speedily as possible."⁶⁰ A hearing on application for a stay of the Public Utilities Commission shall be preferred and assigned for hearing "at the earliest practicable day after the expiration of the notice."⁶¹

Appeals in probate and election cases are given precedence in the supreme court and district courts of appeal, according to their date of issue, over all cases except those in which the people of the state are a party.⁶² Appeals from a judgment contesting a soil conservation district election have similar priority.⁶³

⁴⁵ For example, eminent domain and unlawful detainer.

⁴⁶ CAL. ELECT. CODE § 8629.

⁴⁷ 3 CAL. GEN. LAWS Act 9127a, § 9 (Deering 1951).

⁴⁸ 3 CAL. GEN. LAWS Act 9127c, § 9 (Deering 1951).

⁴⁹ 1 CAL. GEN. LAWS Act 877, § 30 (Deering 1951).

⁵⁰ 1 CAL. GEN. LAWS Act 2123, § 54 (Deering 1951).

⁵¹ CAL. GOV. CODE § 54586.

⁵² 3 CAL. GEN. LAWS Act 9307, § 21 (Deering 1951).

⁵³ 2 CAL. GEN. LAWS Act 5683, §§ 44, 45, 47 (Deering 1951).

⁵⁴ 1 CAL. GEN. LAWS Act 320, § 11a (Deering 1951).

⁵⁵ CAL. PUB. UTIL. CODE § 13347.

⁵⁶ CAL. WATER CODE § 22684.

⁵⁷ CAL. WATER CODE § 27495.

⁵⁸ CAL. ST. AND HIGH. CODE § 5270.

⁵⁹ 1 CAL. GEN. LAWS Act 3276d, § 28 (Deering 1951).

⁶⁰ 1 CAL. GEN. LAWS Act 2202, § 58 (Deering 1951).

⁶¹ CAL. PUB. UTIL. CODE § 1762.

⁶² CAL. CODE CIV. PROC. § 57.

⁶³ CAL. PUB. RES. CODE § 9145.

Appeals from orders disapproving a plan of reorganization or petition for withdrawal of assets for building and loan associations are preferred in hearing on appeal "over all other appeals except contested election cases and cases in which the people of the State are parties."⁶⁴ The requirements for such a rapid hearing are the same for the reorganization or withdrawal of assets as provided by Financial Code Section 9518 and rehabilitation of mortgage insurers as covered by Insurance Code Section 12629.44.

Court Application of Preference Statutes

Preference statutes have been drafted without consideration of either the organization and procedure of the courts or the provisions of the other statutes, causing inconsistencies and conflicts among the various priority sections.⁶⁵ In consequence, courts have had to develop their own schemes for applying these statutes.

At the trial level, preference statutes create few problems in areas where court calendars are not crowded. Lawyers seldom ask for preference; when they do, the case can be given priority without any difficulty.⁶⁶ In the smaller communities the number of actions in which preference is requested is not so great as to create a serious problem. This summary will therefore deal principally with the larger population centers of California.⁶⁷ Even in the latter areas much of the problem of conflicting statutes is alleviated by having special departments handle juvenile, criminal, and probate matters, each with its own separate calendar.

In areas where inconsistent statutory preference provisions cannot be avoided, the courts have worked out fairly satisfactory solutions. At the trial level the general rule is that the actions are not given preference automatically but must be requested. Usually this is done by a special written application to the court. Los Angeles courts include this provision in the memorandum for setting for trial.⁶⁸

When a preference is requested, the attorneys will often agree on an open date themselves. If that is not possible, the judge must determine the date. Those cases required to be heard within a definite time period are set for trial within that period. Other actions receive preference when the cases are set on the calendar. Ordinarily the setting of cases on the calendar in areas like San Francisco and Oakland takes place about once a month. Since the preferred actions go to the top of the list at this time, the advantage to be gained by a preferred action is only over ordinary actions being set on the same occasion. Preferred actions do not take priority over all

⁶⁴ 1 CAL. GEN. LAWS Act 986, § 16.11 (Deering 1951).

⁶⁵ See Witkin, *supra* note 5, at 240.

⁶⁶ For example, at present in San Francisco there is no backlog of non-jury cases. Since the cases can be set currently for trial, very few lawyers ask for advancement, according to clerks of that court.

⁶⁷ The material for this section was obtained through personal interviews with many judges and clerks of the various courts in Los Angeles, San Francisco, and Oakland.

⁶⁸ On the memorandum for setting for trial, two questions are provided so that preference may be determined: "Is this case entitled to legal preference in setting?" "If answer is 'yes' state reason, giving code section."

pending ordinary actions that were previously set but not yet heard, but only over cases which have been filed during the same period as the preferred action.

Los Angeles courts, presently faced with a serious problem of overcrowded calendars, have developed a more complex system for reasonably expeditious handling of preferred cases by giving a fixed time advance to each type of action. The amount of the advantage for each preferred action constantly changes, depending on the courts' experience in keeping the calendars filled.⁶⁹ Then on the master calendar for each day, the preferred actions for that particular day move to the head of the list.

Since the preference statutes do lack any type of integration among themselves, courts are occasionally faced simultaneously with two or more actions carrying preferences of identical or equivalent weight. If this problem cannot be solved by assigning the cases to separate departments at the same time, the cases are simply handled on the basis of the order of filing.⁷⁰

If the attorney is not satisfied with the amount of advancement after preference has been given his action, he still has the opportunity to object to the setting by a special motion. The court in deciding the motion has discretion as if it were a motion to advance based on hardship such as sickness, old age, military service, or financial reasons.⁷¹

How satisfactorily are the statutes working out at the appellate level? Mr. B. E. Witkin in considering these sections stated: "This peculiar practice of incorporating sweeping declarations in obscure statutory provisions purporting to regulate appellate court calendars has little to recommend it . . . Legislative provisions giving 'priority' . . . are objectionable because inconsistent and not comprehensively planned; but provisions purporting to require that a case shall be 'heard and decided within a specified time' are frequently unworkable, and are necessarily disregarded as an improper interference with judicial functions."⁷²

In handling the statutes as they are presently drafted, the district courts of appeal give preference automatically to the actions required to be advanced.⁷³ If the briefs have not been filed in the case when the periodic calendars are made, the case is not set for trial. When cases are advanced, priority is figured from the date of filing the transcript. Preference is recog-

⁶⁹ During March, 1952, the following time arrangement for preference actions was in effect: Election contests, 5 to 20 days; third party claims, 10 to 20 days; default divorces and annulments, 3 weeks; forfeiture of fish nets, about one month; restoration to capacity, 1 month; narcotic forfeiture, 8 weeks; unlawful detainer, 2 months; injunction, 2½ months; eminent domain, 2½ months; declaratory relief, 3-3½ months; probate, jury, 3-4 months; treble damages, 4-5 months; writ of mandate, 4-5 months. It should be remembered that the ordinary actions have to wait 6 months for non-jury and 9½ months for jury cases.

⁷⁰ Interview with Judge Albert C. Wollenberg, Presiding Judge of San Francisco Superior Courts.

⁷¹ See *Moffitt v. Ford Motor Co.*, 115 Cal. App. 499, 1 P. 2d 994 (1931), where the motion to advance was granted since the plaintiff was 97 years old and in poor health. This advancement may be granted on a motion for a special setting.

⁷² Witkin, *supra* note 5, at 240.

⁷³ Material based on interview with Mr. Walter Chisholm, Clerk of the District Court of Appeal, First Appellate District.

nized in the following order: criminal cases, probate cases, cases in which the state is a party, guardianship cases, and unlawful entry and detainer cases. The other types of actions requiring preference occur infrequently.

Preference statutes do not create a serious problem in the California Supreme Court, although recognition is given these statutes.⁷⁴ Most of the actions, outside of criminal cases involving the death penalty, arise from petitions for a hearing. The few cases which are taken are tentatively placed on the next calendar in the supreme court district in which the action arose. When it is determined that the appeal is ready for argument, the case is placed on the regular calendar of the district. Where there is need for an immediate hearing, it is possible to transfer the action to another supreme court district calendar.⁷⁵

Conclusion

One of the tentative conclusions reached by the committee which drafted the new California appellate court rules was that in most cases option priorities should be substituted for fixed preferences, giving the parties an opportunity to claim them when the circumstances justify.⁷⁶

However, even if the present statutory method of granting preference was eliminated, the problems would not vanish. New York has gone largely from the statutory method to one of allowing preference at the discretion of the court. A recent writer in describing the system pointed out that it was difficult to estimate how many preferences have been granted because of personal friendships or political contacts of the attorney or party who sought them. "Such a danger is inherent in any system in which discretion plays so large a role."⁷⁷

It is recognized that the statutes and their application in California have created some difficulties. However, it does not seem that they have proved so unworkable that the statutory method of preference need be abolished.

The legislature is in a better position than are individual judges to determine competing factors governing what actions are in the public interest. By continuing to allow the legislature to mark out the guide posts for the courts the advantage of uniformity is preserved.

It would be advisable for the legislature to review the present list of actions to determine whether each is so vital as to receive special treatment. Those found to be entitled to preference should be included in one statute with a definite order of priority listed. This single statute would have the advantages of facility of reference and elimination of present conflicting provisions.

⁷⁴ Information gathered from interview with clerks of California Supreme Court.

⁷⁵ Rules on Appeal, as amended March 1, 1952, p. 58 (appendix).

⁷⁶ Witkin, *supra* note 5, at 243.

⁷⁷ Note, 49 COL. L. REV. 1137, 1143 (1949). A fear expressed against switching to the method of court discretion is that every case will be asked to be advanced, resulting in even more crowded calendars. However, the writer dealing with the New York system, which has been in existence for more than a decade, made no mention of this problem.

If it is found that a definite order cannot be established, at least the actions entitled to priority should be enumerated in one section. The amount of preference given to each could be left to the individual courts depending on their load of cases.

It is recognized that the ultimate solution lies not in devising means and standards for advancing one cause over another, but rather in finding reliable, yet flexible, techniques of alleviating permanently the crowded conditions of the trial dockets themselves.⁷⁸ Until that condition is reached in California, the conflicting, disorganized statutes presently existing should be changed, allowing the courts to handle cases needing rapid determination in the quickest and best manner.

Robert A. Mackey

APPENDIX

The following are the principal preference sections:

ABATEMENT

Red light districts, 2 CAL. GEN. LAWS Act 6161 § 5 (Deering 1951);
Unlawful liquor sales, 2 CAL. GEN. LAWS Act 3778 § 4 (Deering 1951);
Narcotics, CAL. HEALTH AND SAFETY CODE § 11785.

ASSESSMENTS AND BONDS

Special Assessment and Bond Refunding Act of 1939, 1 CAL. GEN. LAWS Act 2123 § 54 (Deering 1951);
Reclamation Board Assessment, CAL. WATER CODE § 8833;
Irrigation Districts, CAL. WATER CODE § 22679;
Irrigation Districts (appeal), CAL. WATER CODE § 22684;
American River Flood Control District Act, 1 CAL. GEN. LAWS Act 320 § 1 (Deering 1951);
Drainage District Act of 1903, 2 CAL. GEN. LAWS Act 2202 § 58 (Deering 1951);
Municipal Utility District Act, CAL. PUBLIC UTILITIES CODE § 13347;
Orange County Water District Validation Law, 2 CAL. GEN. LAWS Act 5683 §§ 44, 45, 47 (Deering 1951);
Protective District of 1907, 2 CAL. GEN. LAWS Act 6175 § 56 (Deering 1951);
Road Improvement District, 1 CAL. GEN. LAWS Act 3276d § 28 (Deering 1951);
Sanitation, Sewer and Water Revenue Bond Law of 1941, CAL. GOV. CODE §§ 54585, 54586;
Yolo County Flood Control and Water Conservation District Act, 2 CAL. GEN. LAWS Act 9307 § 21 (Deering 1951).
Building and Loan Association Appeal, 1 CAL. GEN. LAWS Act 986 § 16.11 (Deering 1951).
Declaratory Relief, CAL. CODE CIV. PROC. § 1062a.

DISSOLUTION

Irrigation District, CAL. WATER CODE § 27493;
Irrigation District Appeal, CAL. WATER CODE § 27495.

ELECTIONS

General Election Contest, CAL. ELECTION CODE § 8550;
Primary Election Contest, CAL. ELECTION CODE §§ 8625, 8645;
Primary Election Appeal, CAL. ELECTION CODE § 8629;
Irrigation Districts, CAL. ELECTION CODE § 20935;
Municipal Port Districts, CAL. HARBORS AND NAVIGATION CODE § 5131;
Soil Conservation District, CAL. PUBLIC RESOURCES CODE § 9144;
Soil Conservation District (Appeal), CAL. PUBLIC RESOURCES CODE § 9145;
Water Conservation Act of 1927, 3 CAL. GEN. LAWS Act 9127a § 9 (Deering 1951);
Water Conservation Act of 1931, 3 CAL. GEN. LAWS Act 9127c § 9 (Deering 1951).

⁷⁸ Note, 49 COL. L. REV. 1137, 1143 (1949).

Eminent Domain, CAL. CODE CIV. PROC. § 1264.
For Hire Vessel Act, CAL. PUBLIC UTILITIES CODE § 4652.
Habeas Corpus, CAL. PEN. CODE §§ 1476, 1483.
Improvement Act of 1910, CAL. STREETS AND HIGHWAY CODE § 5270.
Injunction, CAL. CODE CIV. PROC. § 527.
Insurance plan appeal, CAL. INS. CODE § 12629.44.

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Declaring ward, CAL. WEL. AND INST. CODE §§ 580, 732;
Hearing, CAL. WEL. AND INST. CODE § 784;
Transfer, CAL. WEL. AND INST. CODE § 883.
Justice Court appeal, CAL. CODE CIV. PROC. § 981a.
Narcotic forfeiture, CAL. HEALTH AND SAFETY CODE § 11617.
New trial, CAL. CODE CIV. PROC. § 660.

PENAL ACTIONS

Rank and priority, CAL. PEN. CODE § 1048;
Speedy trial, CAL. PEN. CODE §§ 681a, 686, 1050, 1382.
Plant quarantine, CAL. AGRI. CODE § 144.
Probate and election appeals, CAL. CODE CIV. PROC. § 57.
Public Utilities Commission, CAL. PUBLIC UTILITIES CODE §§ 1762, 1767.
Reassessment, Bond Refunding Act of 1933, 1 CAL. GEN. LAWS Act 877 § 30 (Deering 1951).
Reemployment, National Guard, CAL. MIL. AND VET. CODE § 395.06.
Reorganization, CAL. FINANCIAL CODE § 9657.
Reorganization appeal, CAL. FINANCIAL CODE § 9518.
Subdivision design, CAL. BUS. AND PROF. CODE § 11525.
Unemployment Insurance Commission, 3 CAL. GEN. LAWS Act 8780d § 45.1 (Deering 1951).
Unlawful detainer, CAL. CODE CIV. PROC. § 1179a.