

Min

Date of Meeting: January 16-17, 1959

Date of Memo: January 8, 1959

Memorandum No. 4

Subject: Study #6 - Effective Date - Order On Motion for New Trial

I enclose a copy of the section of the Commission's 1959 Report which deals with this study. Please bring it with you to the meeting.

The C.A.J. Report (see Memorandum #3) comments on the Commission's recommendation on this subject as follows:

In the view of the Northern Section, the proposed wording is adequate and will probably codify and in minor respects clarify existing case law, as expressed in more recent decisions. Within the 60 day period, the order would be required to be (1) entered in the permanent minutes, or (2) be signed by the judge and filed with the clerk.

The Southern Section, however, has prepared a revision of the last paragraph of Section 660, for the dual purpose of (1) coordinating said paragraph with the proposed amendments to C. C.P. 659 (Item 3, supra); and (2) giving effect to a written order granting new trial signed by the judge within the 60 day period, if such written order be filed in the cause not later than 5 days after the expiration of such period.

On December 5-6, 1958, the Committee as a Whole recommended that the Southern Section draft, with a slight modification, be adopted.

Text (revision of last paragraph of C.C.P. 660):

Subject to section 12a of this code, the period during which the court shall have power to rule on a motion for new trial shall expire sixty (60) days after filing of the notice of intention to move for a new trial.* If such motion is not determined within said period, the effect shall be a denial of the motion without further order of court. The motion shall be deemed to have been

determined within said period when (1) the order ruling on the motion is entered within said period in the permanent minutes, or (2) a written order ruling on the motion is signed within said period by the judge and is filed in the cause not later than five (5) days after the expiration of said period.

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* Note--This clause is inappropriate if C.C.P. 659 is not amended as provided in Item 3, supra. The clause complements Item 3 amendments, as it gives the court and parties a full 60 day period.

This text is not in terms limited to situations where the judge is absent when the "written order" is signed. No limitation is intended. The "written order" procedure thus provides a certain means of insuring that the judge's intent is carried out.

A substantial majority of the committee favored deletion of additional wording that "An order so made shall be deemed to have been timely although it may direct that a written order be prepared, signed and filed." For purpose of time to appeal, direction for a written order is material. (Rule 2 (b), Rules on Appeal). In the context of Section 660, as proposed to be amended, it appeared to complicate the provisions. When the end of the period approaches, a direct order should be required, under Section 660.

It is not clear, of course, whether the Board of Governors will adopt the views of the C.A.J. Nevertheless, I suggest that we take up the various points made in the Report at the January meeting with a view to determining the Commission's position on them. This will enable the Chairman to determine what amendments, if any, should be made to the bill if such action becomes necessary before the February meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:imh

(1959 Report)

RECOMMENDATION OF LAW REVISION COMMISSION RELATING TO
EFFECTIVE DATE OF ORDER RULING ON MOTION FOR NEW TRIAL

A study made by the Commission prior to the 1957 Session of the Legislature disclosed that the California decisions are in confusion as to precisely what must be done by a judge before whom a motion for new trial is pending to make an effective ruling within the 60 days in which he has jurisdiction to act under Section 660 of the Code of Civil Procedure.⁵² The Commission proposed that the matter be clarified by adding the following provision to Section 660:

A motion for a new trial is determined within the meaning of this section when (1) an order ruling on the motion is first entered in the minutes or (2) a written order ruling on the motion is signed by the judge. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

In making this recommendation the Commission gave controlling weight to three considerations: (1) that the critical event should be one relatively early in the process of deciding a motion for new trial, (2) that it should be an event of which there would be a written record and (3) that the provision enacted should reduce to a minimum the possibility that a motion upon which a judge had decided to act favorably within the 60-day period would be lost by the

⁵² See Recommendation and Study relating to the Effective Date of an Order Ruling on a Motion for New Trial, 1 Cal. Law Revision Comm'n Rep., Rec. & Studies at K-1 et seq. (1957).

(1959 Report)

subsequent failure of the clerical personnel of the court to see that the order was entered or filed within such period.

The Commission's proposal was embodied in Senate Bill No. 36 which was introduced by the late Honorable Jess R. Dorsey, Member of the Senate for the 34th Senate District, then the Senate member of the Commission. The State Bar objected to S. B. 36 in its original form on the ground that it would enable a party to contend that an order had been made (i.e., entered in the temporary minutes or signed by the judge) during the 60-day period, even though the order had not been entered in the permanent minutes or filed until long after the period had elapsed. This, it was feared, created too great a risk that it would be made to appear that new trial orders had been made within the 60-day period when in fact they had not. On the other hand, the State Bar was of the view, as the Commission had been all along, that a rule requiring an order to be filed or entered in the permanent minutes within the 60-day period was too strict, particularly as applied to cases where a judge had heard a motion for new trial while sitting on assignment and had decided it at or near the end of the 60-day period back in his home county. After the matter was discussed the Commission recommended that S. B. 36 be amended to provide for the addition of the following sentence to Section 660 rather than the one originally proposed:

A motion for a new trial is determined within the meaning of this section when, within the applicable 60-day period, (1) an order ruling on the motion is first entered in either the temporary or the permanent minutes; provided, that if the order is first entered in the temporary minutes it is subsequently entered in the permanent minutes not later than five days after the expiration of such 60-day period or (2) a written order ruling on the motion is signed by the judge; provided, that the order is filed not later than five days after the expiration of such 60-day period. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

As amended, the bill was passed by the Legislature but vetoed by the Governor. The Commission understands that the Governor's veto was based on the advice of his staff that the reference in the amended bill to "temporary minutes" might lead to difficulty since there is no other reference in the codes to "temporary minutes."

The Commission has studied this matter further since the 1957 Session and has decided to recommend to the 1959 Session of the Legislature that the following sentence be added to Section 660 of the Code of Civil Procedure rather than the language proposed in the 1957 bill in either its original or its amended form:

A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed, and filed. The minute entry

shall in all cases show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

It is true that under this proposal a party could lose the benefit of an order granting a new trial which had been signed or entered in the temporary minutes during the 60-day period merely because the order had not been filed or entered in the permanent minutes within such period. In the opinion of the Commission, however, the important consideration is that there be a clear rule for court and counsel to follow. The Commission believes that once Section 660 is clarified as proposed an attorney who has made a motion for a new trial can take such steps as are necessary to assure that the order made by the court is entered or filed within the 60-day period. Moreover, the rule now proposed by the Commission codifies the more recent court decisions on the subject and conforms substantially to the rule embodied in Rule 2(b) of the Rules on Appeal.⁵³

⁵³Under the proposed revision Section 660 will provide that an order ruling on a motion for a new trial is effective when entered in the permanent minutes or signed and filed even though it directs that a written order be prepared, signed, and filed. The Commission recognizes that under Rule 2(b) of the Rules on Appeal the time for appeal does not start to run in such a case until the later order is filed. However, this proposed difference in the rules is justified because of the different purposes which they serve. It is desirable to make as early an event in the process of decision as possible a "determination" within the meaning of Section 660 to avoid an unintended denial of the motion by operation of law when later events relating to the order occur after the 60-day period has elapsed. On the other hand, it is desirable to make a relatively late event relating to the order critical for the purpose of starting the time for appeal to run in order to give maximum opportunity to file an appeal.

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