

Mem

Date of Meeting: August 28-29, 1959

Date of Memo: August 19, 1959

Memorandum No. 9

Subject: Study No 32 - Arbitration

Chairman Stanton, John McDonough and John DeMouilly met with Mr. Sam Kagel concerning the future course of action to be followed in connection with the Arbitration Study. Chairman Stanton will report the results of that meeting to you at the August meeting of the Commission.

Attached is an exchange of correspondence between your executive secretary and Mr. Kagel.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Min

Law Offices of
SAM KAGEL
503 Market Street
San Francisco 5, California

August 12, 1959

John H. DeMouilly, Esq.
Executive Director
State of California
California Law Revision Commission
School of Law
Stanford, California

Dear John:

Thanks for your letter of August 5, 1959.

I studied the outline that you submitted relative to the questions raised by the Commission on the subject of arbitration. Taking into account the outline and other subjects which, in my opinion, should be treated in the type of study discussed, I could undertake to have such study ready by the end of this year. Please let me know the desires of the Commission.

It was a real pleasure meeting you and I trust I will have the pleasure of working with you.

Cordially yours,

S/ Sam

Min.

August 5, 1959

Mr. Sam Kagel
503 Market Street
San Francisco, California

Dear Sam:

Attached is the outline we mentioned in our discussion yesterday. This outline was prepared some time ago and was not intended to impose any specific requirement in terms of format but rather to preserve in outline form some of the questions the Commission raised when it considered the materials you have already prepared.

The material we gave you yesterday was prepared by a staff member as an attempt to answer some of the questions indicated by Parts I and II of the outline. I am also enclosing the footnotes that go with the material we gave you yesterday.

It was a real pleasure to meet you yesterday, Sam, and I look forward to seeing you soon.

Sincerely yours,

John H. DeMouly
Executive Secretary

JHD

OUTLINE - ARBITRATION STUDY

I. Introduction (To provide background and to set stage and context for study.).

A. What arbitration is. What the policy of State toward arbitration should be (herein arguments for, arguments against, conclusion).

B. What State should do if decides to encourage and support arbitration: make agreements valid; make specifically enforceable by expeditious procedure; give arbitrator adequate powers (subpoena, power enter default judgment etc.); provide for expeditious enforcement of award; provide for very narrow judicial review of proceeding and award.

C. History of arbitration

Herein of principal differences between Common law and Statu- tory arbitra- tion	}	In England and U.S. generally.	
		In California:	
		Pre-1927	{ General statement of (history of decisions (interpreting Act)
		1927 Act	
		1927 - date	

D. What is now needed - i.e., study of whether changes in present law are necessary or desirable, in light of 1927 Act and decisions thereunder, legislation and decisions of other states, promulgation of Uniform Act and proposal for its enactment in California.

II. What Agreements for Settlement of Dispute by Reference to Third Person Should Be Covered by California Legislation on Arbitration.

- A. Overall conclusion: all such agreements should be valid and specifically enforceable.
- B. Discussion of possibility of excluding:
 - 1) Oral agreements
 - 2) Agreements between employers and employees and their representatives
 - 3) Valuations, appraisals and other similar proceedings
- C. Should agreements not within statute be made invalid - neither agreement nor third person's decision enforceable?

III. By What Procedures and Devices Should Valid Agreements To Arbitrate Be Made Binding on Parties - i.e., Specifically Enforceable.

- A. Summary procedure to compel arbitration (herein of whether petitioner has to show breach, of waiver, of what defenses court should be able to consider (including defense of no agreement to arbitrate this question), of whether should have right to jury trial.
- B. Stay of civil actions pending arbitration.
- C. Procedure for naming arbitrator if parties fail to do so.

IV. Conduct of Arbitration Proceedings.

- A. Rights of parties (herein of notice, right to be heard and cross-examine witnesses, etc.).
- B. Powers of arbitrators (herein of distinction between "neutral" and "party" arbitrators, of whether less than all can act, of power to proceed in

absence of party, of power to administer oaths and issue subpoenas [and enforcement of same], of power to obtain information except in hearing).

C. Payment of expenses of proceeding.

V. Making and Enforcement of Arbitration Award.

A. Making of award (herein of time limitation on arbitrator, form of award, delivery to parties)

B. Modification of award by arbitrator.

C. Procedure for enforcement of award (herein of grounds for modification or denial of enforcement).

D. Procedure for setting aside award (herein of limited extent to which court should be empowered to review award and of disposition of matter if award is set aside).

E. Modification of award by court.

VI. Miscellaneous

A. Jurisdiction and venue of proceedings authorized.

B. Procedure (notice, papers, etc.) in proceedings authorized.

C. Enforcement of judgment on award.

D. Appeals.