

9/4/84

Memorandum 84-67

Subject: Possible New Topic--Court Congestion

Commissioner Marzec has written to the staff:

As you know, I am very involved, as Chairman of the Los Angeles County Judicial Procedures Commission, with the tremendous problem caused by court congestion. Although Los Angeles County is the most obvious problem area, there are many other counties which also face court congestion problems relative to their size. Therefore, I would greatly appreciate the opportunity to discuss the possibility of including some of the topics related to court reform and court congestion, as set forth in Assemblyman McAlister's Resolution No. 102, dated January 4, 1984, on the Commission's agenda for 1984/85.

Chairperson Rosenberg also has indicated an interest in the past in legislation that would contribute to the solution of the problem of court congestion at the trial court level. You will recall that the Commission devoted part of its November 1983 meeting to considering whether legislation is needed to encourage the use of mediation as an alternative to judicial determination of a matter in controversy. At that time, the Commission determined to draft a statute providing some type of privilege for communications made in the course of a mediation proceeding. A staff draft of such a statute is presented in Memorandum 84-64, prepared for consideration at the September 1984 meeting.

The Commission also recommended legislation relating to dismissal of a civil action for lack of prosecution, partly because it believed that clarification of this area of the law might contribute in a small part to avoiding litigation on this issue. The bill was enacted at the 1984 session.

Attached as Exhibit 3 is a copy of Assembly Concurrent Resolution No. 102. This contains a list of the topics the Commission is authorized to study. Some of the topics listed are somewhat related to the problem of court congestion. We can review these topics at the meeting. But, for various reasons, the staff does not believe that it would be desirable to study these topics at this time. Instead, the staff believes that it would be desirable to identify a few specific new topics where Commission study would be useful and to request the Legislature to authorize the Commission to study those topics.

The staff does not believe that it would be appropriate for the Commission to seek to undertake an overall study of the problem of court congestion. That is the primary responsibility of the Judicial Council. See Cal. Const. Art. 6, § 6 ("To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute. The Chief Justice shall seek to expedite judicial business and to equalize the work of judges."). At the same time, we believe that it might be possible to identify specific areas where a Commission study would be useful and where legislation could be developed that would contribute to the solution of the court congestion problem. The staff suspects, however, that the extent of the court congestion problem primarily is determined by how many judges we authorize and how effectively those judges are used.

The staff has no suggestions as to particular topics that might be studied. Early in July, the Executive Secretary wrote to Ralph J. Gampell, Director of the Administrative Office of the Courts, and requested him to attend our September meeting so that he could describe work in progress in this field (we would not want to duplicate work already completed or underway) and provide his suggestions as to topics that he believes might usefully be studied by the Commission. A copy of the staff letter is attached as Exhibit 1. A copy of Mr. Gampell's reply is attached as Exhibit 2.

The availability of funds to the Commission during the current fiscal year is uncertain. When funds are available, it might be useful to retain a consultant who is expert in this field to prepare an analysis of specific areas of law that might usefully be studied by the Commission. Or the Commission might want to retain a number of consultants (perhaps pursuant to contracts that provide for reimbursement of travel expenses only) and assemble them together at a Commission meeting for a session devoted to determining what topics related to court congestion might be appropriate for Commission study.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

July 3, 1984

Ralph J. Campbell, Director
Administrative Office of the Courts
601 McAllister Street
San Francisco, CA 94102

Dear Ralph:

At its September meeting, the Law Revision Commission will be considering the studies it will actively consider during 1985 and the priorities it will give those studies. Several members of the Commission believe that a Commission study concerning particular aspects of the court congestion problem might result in Commission recommendations that would contribute to a partial solution of those problems.

I know that other studies and projects are now in progress that deal with various aspects of the court congestion problem. Nevertheless, you may be aware of areas where a Commission study would be useful. For this reason, I write to request that you or a representative attend our September meeting to advise us as to what other studies and programs are now in progress and to give us your suggestions as to specific aspects of the court congestion problems where a Commission study and recommendation might be useful.

The Commission will meet in Los Angeles (at a location near the airport that is yet to be determined) on September 27 (7:00 p.m. - 10:00 p.m.), 28 (9:00 a.m. - 5:00 p.m.), and 29 (9:00 a.m. - 12:00 noon). It would be best to schedule the presentation and discussion on September 27 or 28 in case we finish our work early. But we can schedule the presentation and discussion for September 29 if necessary. You could call me and we can discuss the date and time that would be most convenient.

If you have background material relevant to this matter available, it would be useful for us to distribute the material to the members of the Commission for study prior to the meeting.

Sincerely,

John H. DeMouilly
Executive Secretary

JHD:jcr

CHIEF JUSTICE
ROSE ELIZABETH BIRD
CHAIRPERSON



JUDICIAL COUNCIL OF CALIFORNIA

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RALPH J. GAMPELL
DIRECTOR

BURTON W. OLIVER
DEPUTY DIRECTOR

August 30, 1984

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear Mr. DeMouilly:

Thank you for your letter of July 3rd asking for our suggestions on aspects of "the court congestion problem" that might usefully be studied by the Law Revision Commission, and inviting our attendance at the September meeting of the commission.

Court congestion is, of course, an issue of great public concern. When congestion problems arise, they properly attract general interest.

The Judicial Council and the Chief Justice, its chairperson, are given the responsibility of addressing court congestion problems by the Constitution, article VI, section 6. To facilitate this work, the council employs technically trained administrative staff and attorneys, and is assisted by advisory committees appointed by the Chief Justice to work in specific areas. Among the recent and current activities of the Judicial Council that deal with these issues are:

Advisory Committee on Caseflow and Calendar Management (Judge Homer Thompson, Santa Clara Superior Court, Chair), which is currently meeting, has already recommended restructured civil trial court management rules that have been adopted by the Judicial Council effective January 1, 1985. It is now preparing recommendations for revised criminal court management rules.

Workshops for superior court presiding judges, municipal court presiding judges, and administrative officers of those courts, are conducted annually by the Judicial Council. These focus on management techniques for avoiding or reducing congestion and delay, and afford an opportunity for shared discussions of common problems.

Workshops for all judges, and judicial college sessions for new and experienced judges, are conducted by the Center for Judicial Education and Research, a joint project of the Judicial Council and the California Judges' Association. These sessions address techniques of efficient case management as well as substantive law and procedure.

The Judicial Council is currently studying means of expediting pretrial motions in civil matters. It has been active in encouraging adoption of settlement conference techniques for the early resolution of cases, and the use of arbitration as an alternative to trial.

A staff section of the Administrative Office of the Courts, the Court Consultative Services unit, consists of trained specialists who, on request, survey the situation in the requesting court and make appropriate recommendations addressing local conditions. This unit is the direct successor to a highly successful federal funded temporary project, the "calendar management team," that was made part of the council's permanent budget.

This partial list of Judicial Council activities suggests the concern it has for preventing congestion and delay, and correcting those problems when they arise. The council has been addressing these problems since its inception.

We express no opinion on whether problems of court congestion and delay, which many informed observers believe can be addressed, in considerable part, by improved managerial techniques, also fall within the mandate of the Law Revision Commission. If the commission concludes that it has an appropriate role in the consideration of these questions, and has suggestions as to work in this area, we would be most pleased to discuss them with you.

Mr. John H. DeMouilly

3

August 30, 1984

I look forward to attending your meeting in Los Angeles on September 28th, when we can discuss the matter more extensively.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ralph J. Gampell".

Ralph J. Gampell
Director

RJG/vm

AMENDED IN ASSEMBLY MARCH 5, 1984

CALIFORNIA LEGISLATURE—1983-84 REGULAR SESSION

Assembly Concurrent Resolution

No. 102

Introduced by Assemblyman McAlister

January 4, 1984

Assembly Concurrent Resolution No. 102—Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

ACR 102, as amended, McAlister. California Law Revision Commission.

Existing law requires the California Law Revision Commission to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, including a list of studies in progress and a list of topics intended for future consideration, and, after the filing of the commission's first report, its studies are confined to topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study, or referred to it for study, by concurrent resolution of the Legislature.

This measure would give legislative approval to the commission to continue its study of numerous, specified topics which the Legislature has previously authorized or directed the commission to study.

This measure would also require the commission to study the topic of whether the law on injunctions and related matters should be revised.

Fiscal committee: no.

1 WHEREAS, The California Law Revision Commission
2 is authorized to study only topics set forth in the calendar
3 contained in its report to the Legislature which are
4 thereafter approved for study by concurrent resolution of
5 the Legislature, and topics which have been referred to
6 the commission for study by concurrent resolution of the
7 Legislature; and

8 WHEREAS, The commission, in its annual report
9 covering its activities for 1983, lists 22 topics, all of which
10 the Legislature has previously authorized or directed the
11 commission to study, as studies in progress; now,
12 therefore, be it

13 *Resolved by the Assembly of the State of California, the*
14 *Senate thereof concurring,* That the Legislature approves
15 for continued study by the California Law Revision
16 Commission the topics listed below, all of which the
17 Legislature has previously authorized or directed the
18 commission to study:

19

20 TOPICS UNDER ACTIVE CONSIDERATION

21

22 (1) Whether the law relating to creditors' remedies
23 (including, but not limited to, attachment, garnishment,
24 execution, repossession of property (including the claim
25 and delivery statute, self-help repossession of property,
26 and the Commercial Code repossession of property
27 provisions), civil arrest, confession of judgment
28 procedures, default judgment procedures, enforcement
29 of judgments, the right of redemption, procedures under
30 private power of sale in a trust deed or mortgage,
31 possessory and nonpossessory liens, and related matters)
32 should be revised;

33 (2) Whether the California Probate Code should be
34 revised, including but not limited to whether California
35 should adopt, in whole or in part, the Uniform Probate
36 Code;

37 (3) Whether the law relating to real and personal
38 property (including, but not limited to, a Marketable
39 Title Act, covenants, servitudes, conditions, and
40 restrictions on land use or relating to land, possibilities of

1 reverter, powers of termination, Section 1464 of the Civil
2 Code, escheat of property and the disposition of
3 unclaimed or abandoned property, eminent domain,
4 quiet title actions, abandonment or vacation of public
5 streets and highways, partition, rights and duties
6 attendant upon termination or abandonment of a lease,
7 powers of appointment, and related matters) should be
8 revised;

9 (4) Whether the law relating to family law (including,
10 but not limited to, community property) should be
11 revised;

12 (5) Whether the law relating to involuntary dismissal
13 for lack of prosecution should be revised;

14 (6) Whether the law relating to statutes of limitations
15 applicable to felonies should be revised;

16 (7) Whether the law relating to the rights and
17 disabilities of minors and incompetent persons should be
18 revised;

19

20

OTHER TOPICS AUTHORIZED FOR STUDY

21

22 (1) Whether the law relating to the award of
23 prejudgment interest in civil actions and related matters
24 should be revised;

25 (2) Whether the law relating to class actions should be
26 revised;

27 (3) Whether the law relating to offers of compromise
28 should be revised;

29 (4) Whether the law relating to discovery in civil cases
30 should be revised;

31 (5) Whether a summary procedure should be
32 provided by which property owners can remove doubtful
33 or invalid liens from their property, including a provision
34 for payment of attorneys fees to the prevailing party;

35 (6) Whether acts governing special assessments for
36 public improvements should be simplified and unified;

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38

TOPICS CONTINUED ON CALENDAR FOR FURTHER STUDY

39

40

1 (1) Whether the law relating to custody of children,
2 adoption, guardianship, freedom from parental custody
3 and control, and related matters should be revised;

4 (2) Whether the Evidence Code should be revised;

5 (3) Whether the law relating to arbitration should be
6 revised;

7 (4) Whether the law relating to modification of
8 contracts should be revised;

9 (5) Whether the law relating to sovereign or
10 governmental immunity in California should be revised;

11 (6) Whether the decisional, statutory, and
12 constitutional rules governing the liability of public
13 entities for inverse condemnation should be revised
14 (including, but not limited to, liability for damages
15 resulting from flood control projects) and whether the
16 law relating to the liability of private persons under
17 similar circumstances should be revised;

18 (7) Whether the law relating to liquidated damages in
19 contracts generally, and particularly in leases, should be
20 revised;

21 (8) Whether the parol evidence rule should be
22 revised;

23 (9) Whether the law relating to pleadings in civil
24 actions and proceedings should be revised; and be it
25 further

26 *RESOLVED, That the California Law Revision*
27 *Commission shall study the topic of whether the law on*
28 *injunctions and related matters should be revised; and be*
29 *it further*

30 *Resolved, That the Chief Clerk of the Assembly*
31 *transmit a copy of this resolution to the California Law*
32 *Revision Commission.*