

#J-501

ns63
03/20/90

Memorandum 90-58

Subject: Study J-501 - Discovery After Judicial Arbitration (Draft of
Tentative Recommendation)

Attached to this memorandum is a brief tentative recommendation to correct a section reference in the judicial arbitration statute. The Commission at the March 1990 meeting directed the staff to prepare this tentative recommendation for approval and distribution for comment.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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Tentative Recommendation
relating to
DISCOVERY AFTER JUDICIAL ARBITRATION

The judicial arbitration statute provides that in the case of a judicial arbitration where the amount in controversy is less than \$50,000, if a trial de novo is sought, there may be no further discovery "other than that permitted by Section 2037".¹ Former Section 2037 of the Code of Civil Procedure provided for exchange of expert witness lists, but the section has been repealed.² The new statute providing for exchange of expert witness lists is Code of Civil Procedure Section 2034.³

It would be desirable to correct the reference in the judicial arbitration statute so it refers to the new discovery statute rather than the repealed discovery statute. However, new Section 2034 includes more than the revised contents of former Section 2037. It also incorporates the revised contents of former Sections 2037.1 through 2037.9, relating to production of reports and writings of expert witnesses, limitation of testimony by undisclosed expert witnesses, supplementation of expert witness lists, and deposition of expert witnesses.

The Law Revision Commission believes that the reference to former Section 2037 was intended to pick up former Sections 2037.1 to 2037.9 as well. For this reason the reference to former Section 2037 should be revised to refer to new Section 2034.

The Commission's recommendation would be effectuated by enactment of the following provision.

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1. Code Civ. Proc. § 1141.24.
 2. 1986 Cal. Stats. ch. 1336, § 3.
 3. 1986 Cal. Stats. ch. 1336, § 2.

Code Civ. Proc. § 1141.24 (amended). Discovery after judicial arbitration

SECTION 1. Section 1141.24 of the Code of Civil Procedure is amended to read:

1141.24. In cases ordered to arbitration pursuant to subdivision (a) of Section 1141.16, absent a stipulation to the contrary, no discovery other than that permitted by Section ~~2037~~ 2034 is permissible after an arbitration award except by leave of court upon a showing of good cause.

Comment. Section 1141.24 is amended to correct a section reference. While new Section 2034 includes matters covered by former Sections 2037.1 through 2037.9 as well as by former Section 2037, the reference to former Section 2037 was also intended to incorporate the related sections.