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3/13/70

Memorandum 70-21

Subject: Study 76 - Trial Preferences

At the February 1970 meeting, the staff was directed to prepare a tentative recommendation repealing the preference given to declaratory relief actions. You may recall that earlier the Commission had solicited the views of the presiding judge of the Superior Court in each county concerning trial preferences generally. The overwhelming response was that no significant problems in this area existed, but several judges suggested that the preference for declaratory relief actions was subject to abuse and should be eliminated. The Commission's directive was in response to this suggestion and the attached tentative recommendation would implement it.

As noted in the recommendation, it seems that the apparently mandatory preference granted declaratory relief actions is in fact subject to considerable judicial discretion and control. Accordingly, the practical effect of the recommendation would seem to be merely a shifting of the onus of justifying a preference to the litigant. Under existing law, it appears that the judge may refuse to advance the matter for trial or hearing only where he considers it "not necessary or proper at the time under all the circumstances." See Code of Civil Procedure Section 1061. The staff does not believe the change is one of great moment, but perhaps the best way to determine this is to distribute the attached recommendation for comment.

Respectfully submitted,

Jack I. Horton
Associate Counsel

#76

March 12, 1970

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

TRIAL PREFERENCE FOR DECLARATORY

RELIEF ACTIONS

STAFF DRAFT

(not approved by Law Revision Commission)

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NOTE: Comments of interested persons and organizations must be in the hands of the Commission not later than August 15, 1970, in order that they may be considered before the Commission's recommendation on this subject is sent to the printer.

LETTER OF TRANSMITTAL

The California Law Revision Commission was directed by Resolution Chapter 224 of the Statutes of 1969 to make a study to determine whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised.

The Commission has solicited the view of the presiding judge of the superior court in each county whether the existing statutory provisions giving trial preference to certain actions and proceedings create significant problems in the administration of the court's business in his county. The overwhelming consensus of the presiding judges is that these provisions create no significant problems of judicial administration, but a number of judges report that the statutory priority now given declaratory relief actions has led to abuses. Accordingly, the Commission has determined not to recommend any overall revision of the statutes dealing with trial preference and herewith submits its recommendation relating to trial preference for declaratory relief actions.

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

TRIAL PREFERENCE FOR DECLARATORY RELIEF ACTIONS

Section 1062a of the Code of Civil Procedure provides that an action seeking declaratory relief "shall take preference of all other cases, except older matters of the same character and matters to which special preference may be given by law."¹ The Commission has been advised that some attorneys attempt to take advantage of this preference by including a prayer for declaratory relief when the crux of their action is not for declaratory relief at all but for the recovery of a money judgment.² The Commission is not persuaded that any general preference is needed for declaratory relief actions and that the trial court has sufficient control over its calendar to permit the advancement of those actions for declaratory relief that merit trial preference.³ Accordingly, the Commission recommends the repeal of Section 1062a of the Code of Civil Procedure.

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1. Despite the apparent mandatory nature of Section 1062a, the court held in State Farm Mut. Auto. Ins. Co. v. Superior Court, 47 Cal.2d 428, 433, 304 P.2d 13, (1956), that:

[S]ection 1062a does not purport to override the discretionary power given to the trial court to "refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." [Code Civ. Proc. § 1061.]

2. See letter of October 22, 1969, from Honorable Robert J. Cooney, Presiding Judge, Superior Court, County of Contra Costa; letter of December 16, 1969, from Honorable Joseph A. Wapner, Presiding Judge, Superior Court, County of Los Angeles; letter of November 12, 1969, from Honorable Joseph G. Wilson, Presiding Judge, Superior Court, Marin County; on file with California Law Revision Commission.
3. See Rule 225, California Rules of Court, Rules for the Superior Court.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to repeal Section 1062a of the Code of Civil Procedure,
relating to actions for declaratory relief.

The people of the State of California do enact as follows:

Section 1. Section 1062a of the Code of Civil Procedure is repealed.

~~1062a. --Actions brought under the provisions of this chapter 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.~~

Comment. The repeal of Section 1062a in no way diminishes the power of the trial court to advance the time of trial of a declaratory relief action in cases where such preference is justified. See Rule 225, California Rules of Court.