

First Supplement to Memorandum 90-101

Subject: Study J-102 - Motions

Attached are letters relevant to the request of Senator Presley that the Commission study motions relating to demurrers and summary judgments.

The California Judges Association has approved a draft statute which is included in the attached materials. Ordinarily, the Commission would not duplicate the efforts of another organization studying a particular matter. However, it is apparent that Senator Presley still wants the Commission to study this matter.

Perhaps the California Judges Association has been able to develop a draft statute that is generally acceptable to all interested persons and that no study by the Commission will be required. When the opportunity provides itself, the Executive Secretary will discuss this matter with Senator Presley to determine how strongly he feels that the Commission should make this study.

The priority that can be given to the study will depend on the action the Legislature takes on the Commission's budget for 1990-91.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

SENATOR ROBERT PRESLEY
California Legislature

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File Study J-102

- For Your Information
- As You Requested
- Respectfully Referred
- Not Acknowledged

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California State Senate



STATE SENATOR
ROBERT PRESLEY
THIRTY-SIXTH SENATORIAL DISTRICT
CHAIRMAN
SENATE COMMITTEE ON APPROPRIATIONS

COMMITTEES

APPROPRIATIONS (CHAIRMAN)
NATURAL RESOURCES AND
WILDLIFE
JUDICIARY
AGRICULTURE AND WATER
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SOLID & HAZARDOUS WASTE
THE GREENHOUSE EFFECT,
OZONE DEPLETION &
ATMOSPHERIC POLLUTION

CA LAW REV. COMM'N

JUN 20 1990

R E C E I V E D

June 18, 1990

David Wysocki
Aklufi and Wysocki
3403 Tenth Street, Suite 610
Riverside, California 92501

Dear Mr. Wysocki:

Thank you for your letter of June 5 and the further information from Rylaarsdam on demurrers and summary judgments.

When I transmitted the initial proposal to the Law Revision Commission I asked the Commission to contact both you and Justice Rylaarsdam in pursuing their review and analysis of these procedural revisions. I am sending this additional information along to the Commission in the hope it will assist them in their review.

Thank you, again, for pursuing this very important matter.

Sincerely,

/s/Robert Presley

ROBERT PRESLEY
State Senator

RP/scw/gd

cc: Law Revision Commission

LAW OFFICES
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June 5, 1990

Honorable Robert Presley
State Senator
State Capitol
Sacramento, California 95814

RECEIVED
JUN 07 1990
Ans'd.....

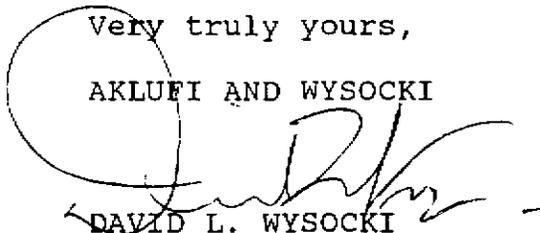
Dear Senator Presley:

Thank you for your letter of May 21, 1990 in reply to mine of April 4, 1990. I have received additional information from the Honorable William F. Rylaarsdam, Judge of the Orange County Superior Court. For your convenience, I have enclosed a copy of the letter along with the proposed Section 444 of the Code of Civil Procedure approved by the California Judges Association, Civil Procedure Committee on April 28, 1990.

This office strongly supports any meaningful effort, including the proposed Section 444 of the Code of Civil Procedure, to streamline the pretrial motion and pleading practice, while at the same time eliminating antiquated procedures resulting in increased legal expenses and delay without resulting in any meaningful progress in litigation.

Very truly yours,

AKLUF AND WYSOCKI



DAVID L. WYSOCKI

DLW:dvh
Enclosures



Superior Court of the State of California
County of Orange

RECEIVED

MAY 16 1990

AKLIFI & WYSOCKI

CHAMBERS OF
W. F. RYLAARSDAM
JUDGE

*Carla -
JLW
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11, 1990

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David L. Wysocki, Esq.
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Riverside, CA 92501

Re: Demurrers and summary judgments

JSA ✓
DLW ✓

Dear Mr. Wysocki:

Thank you for your interest in my proposal to streamline the demurrer process. Since I wrote the article and drafted the original bill, the Civil Procedure Committee of the California Judges Association has made many changes. A separate bill dealing with a substitute procedure for demurrers has been reported out of the Committee and has been forwarded to the Board of the California Judges Association with the request that the bill be submitted to the Legislature for adoption. A copy of that draft statute is enclosed herewith for your information and further comments.

Some who wrote me expressed various concerns. I believe this bill addresses most if not all of those concerns.

The summary judgment portion of the bill is still being worked on by the Committee. We hope to have our work completed on a major revision of the summary judgment statute (CCP section 437c) later this year.

Thank you for your interest. If you have any comments concerning the enclosed or any suggestions concerning summary judgments, I would appreciate hearing from you further.

Sincerely yours,

William F. Rylaarsdam
Judge of the Superior Court

WFR:dr
90-099
Encl.

CCP 444. Motions to Dismiss Pleadings.

(As approved by CJA Civil Proc. Comm. 4-28-90)

(A) A motion under this section may be made in response to a complaint, cross-complaint, or answer. The filing of such a motion does not relieve a party from any otherwise existing obligation to file responsive pleadings. A Motion to Dismiss the Complaint or the Cross Complaint shall be filed concurrent with the Answer to such Complaint or Cross Complaint or within 30 days of the filing of such Answer; a Motion to Dismiss the Answer shall be filed within 20 days of the service of such Answer.

(B) The motion under this section shall be made on one or more of the following grounds:

(1) The pleading, or any cause of action or defense therein, does not state facts sufficient to constitute a cause of action or legal defense, and there are no facts which could be alleged to constitute such cause of action or defense.

(2) Portions of the pleading which are irrelevant or contain improper matter should be struck.

(3) The court has no jurisdiction of the subject of the cause of action alleged in the complaint or cross-complaint.

(4) The person who filed the pleading does not have the legal capacity to sue or be sued.

(5) There is another action pending between the same parties on the same cause of action.

(6) There is a defect or misjoinder of parties.

(C). A motion hereunder shall distinctly specify the grounds upon which it is made. Unless it does so, it may be disregarded. The motion shall be made on no less than twenty (20) calendar days written notice. Opposition papers shall be served and filed no later than ten (10) calendar days before the hearing. Reply papers shall be served and filed no later than five (5) calendar days before the hearing.

(D). Papers filed in opposition to the motion shall, in addition to controverting the motion, set forth verbatim proposed curative language to the subject pleading addressed to the objections contained in the moving papers. The failure of the opposing party to propose such curative language shall be deemed an admission by

that party that, in the event the court determines that the motion is well taken, no future amendment to the subject pleading would cure the defect.

(E). In ruling on the motion, the court shall first determine if the motion is well taken. If not, the motion shall be denied. If the motion is well taken, but (1) the proposed curative language supplied by the opposing party or (2) proposed specific curative language developed, in the Court's discretion, at the hearing on the motion, is determined by the court to cure the defect, the motion shall be denied and the opposing party shall be ordered to file and serve within ten (10) calendar days, unless another time limit is specified by the court, a complete amended pleading which incorporates the court-approved curative language. The moving party may not, thereafter, attack the pleading, as amended, with a further motion under this section. If the motion is well-taken, and the court determines that no future amendment to the subject pleading would cure the defect, the motion shall be granted, in which event the opposing party shall not be permitted leave to amend that portion of the pleading which was the subject of the successful motion.

(F). Should the court order the opposing party to file and serve a complete amended pleading pursuant to the provisions of subsection (E) hereof, a failure on the part of the opposing party timely to file and serve the amended pleading shall result in dismissal.

al, without leave to amend, of that portion of the action which was the subject of the court's order, without further notice or application.

(G) General demurrers, special demurrers, motions for judgment on the pleadings, and motions to strike pursuant to former CCP 435-437, are disallowed.

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WFR:dr

90-001