

Third Supplement to Memorandum 92-37

Subject: Study N-100 - Administrative Adjudication (Combined Draft of Statute--continuances)

Attached to this supplementary memorandum is a letter from Richard K. Turner, one of the Commission's practitioner consultants on administrative law. Mr. Turner would preserve in the draft the special provision on judicial review of denial of a continuance. See discussion in the First Supplement to Memorandum 92-37.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

JUL 06 1992

Richard K. Turner

ATTORNEY AT LAW

File: _____
Key: _____

July 1, 1992

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Deletion of Government Code §11524
Administrative Adjudication Study N-107

Dear Nat:

I have Steve Kahn's letter to Dean Marzec, concerning deletion of Government Code §11524, which provides that if a continuance is denied, judicial review may be sought in the Superior Court within ten days of the denial.

I would propose that the section not be deleted but for different reasons than Mr. Kahn's. Ordinarily procedural and other rulings by administrative law judges cannot be taken directly to the Superior Court for review without exhaustion of administrative remedies, that is, completion of the entire hearing process. While this section poses a short time period within which a writ must be taken to the Superior Court, in effect, it amounts to an exception to the exhaustion rule and permits respondents to proceed to the Superior Court to challenge a denial of a continuance prior to hearing. Frankly, this is a good rule for respondents, for denials of continuances are not uncommon in practice. The Office of Administrative Hearings, at least in the recent past, has been very tough on requests for continuances, even in cases where, in my view, a continuance was clearly warranted. I have challenged these denials in the Superior Court on more than one occasion and on every occasion the continuance has been ordered by the Superior Court.

Thus, it seems that the current law protects both sides and I would recommend that it be included in the new administrative procedure act.

Very truly yours,



Richard K. Turner

pmcr:rk\misc\bus.rkt