

Date of Meeting: July 18-19, 1958

Date of Memo: July 9, 1958

Memorandum No. 4

Subject: Study No. 22 - Cut-off Date Motion New Trial.

At its June meeting the Commission considered the research study on this subject prepared by Professor Pickering and decided upon certain recommendations.

We have prepared a recommendation of the Commission and proposed legislative bill for your consideration at the July meeting. If these are approved, we will send this study to the State Bar for its views.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Time Within Which Motions for New Trial  
and to Vacate Judgment May be Made

Section 659 of the Code of Civil Procedure authorizes a notice of intention to move for a new trial to be filed, inter alia, "within ten (10) days after receiving written notice of the entry of the judgment." Section 663a of the code authorizes a notice of intention to move to set aside and vacate a judgment or decree based upon findings of fact made by the court or the special verdict of a jury to be filed "within ten days after notice of the entry of judgment." Under both of these sections a motion is timely even though made many months or years after judgment has been entered and the time within which an appeal may be taken has passed, if the moving party can show that he was not given written notice of entry of the judgment by the prevailing party.

The Commission believes that this situation is undesirable. The orderly administration of justice requires that motions for new trial and to set aside and vacate judgments be made and disposed of within a reasonably short time after a case is decided. While the party against whom the motion is made can be said to have brought the difficulty on himself by failing to give notice of entry of judgment, the State has a larger interest in the matter than that of assessing the blame for long-delayed motions between the parties or their counsel.

The Commission recommends, therefore, that Sections 659 and 663a of the Code of Civil Procedure be revised to require the motions to which they relate to be made within 30 days after entry of judgment or within 10 days after receipt of written notice of entry of judgment, whichever is earlier. Under this rule the prevailing party will be able, as at the present time, to shorten the time to move for a new trial or to vacate a judgment by giving prompt notice of the entry of judgment. Should he fail to give such notice the time to move will expire 30 days after the entry of judgment.

The Commission does not believe that these proposed amendments will impose undue hardship on the moving party. As the report of its research consultant shows, at least 12 jurisdictions have a similar rule in respect of motions for new trial and most of them give the moving party only 10 days or less after entry of judgment (or other event of record) to make the motion. Moreover, the losing party must keep track of the date of entry of judgment in any event inasmuch as his time to appeal runs from that date.

---

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

An act to amend Sections 659 and 663a of the Code of Civil Procedure relating, respectively, to the time within which notice of intention to move for a new trial and notice of intention to move to set aside and vacate certain judgments and decrees may be filed.

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

SECTION 1. Section 659 of the Code of Civil Procedure is amended to read:

659. The party intending to move for a new trial must, ~~either-(1)-before-the-entry-of-judgment-and,-where-a-motion-for-judgment-notwithstanding-the-verdict-is-pending,-then-within five-(5)-days-after-the-making-of-said-motion,-or-(2)-within ten-(10)-days-after-receiving-written-notice-of-the-entry-of-the~~ judgment, file with the clerk and serve upon the adverse party a notice of his intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court or both, either

1. Before the entry of judgment and, where a motion for judgment notwithstanding the verdict is pending, then within five days after the making of said motion; or

2. Within thirty days after the entry of the judgment or ten days after receiving written notice of the entry of judgment, whichever is earlier.

Said notice shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The time above specified shall not be extended by order or stipulation.

SECTION 2. Section 663a of the Code of Civil Procedure is amended to read:

663a. The party intending to make the motion mentioned in the last section must, within thirty days after the entry of judgment or within ten days after receiving written notice of the entry of judgment, serve upon the adverse party and file with the clerk of the court a notice of his intention, designating the grounds upon which, and the time at which the motion will be made, and specifying the particulars in which the conclusions of law are not consistent with the findings of facts, or in which the judgment or decree is not consistent with the special verdict. The time designated for the making of the motion must not be more than sixty days from the time of the service of the notice. An order of the court granting such motion may be reviewed on appeal in the same manner as a special order made after the final judgment and a bill of exceptions to be used on such appeal may be made prepared as provided in ~~section-six-hundred-and-forty-nine.~~ Section 649.