

FOR
MINUTES
BOOK

#36

1/12/67

Memorandum 67-5

Subject: Study 36 - Condemnation Law and Procedure (Discovery
in Eminent Domain Proceedings)

Attached hereto are the minutes of a meeting of the Southern
Section of the State Bar Committee on Condemnation Law and Procedure
at which our recommendation concerning discovery in eminent domain
proceedings was considered.

We suggest that the amendments recommended by the Committee
be considered by the Commission at the January meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

MINUTES OF MEETING
STATE BAR COMMISSION ON CONDEMNATION
LAW AND PROCEDURE -- SOUTHERN SECTION

DATE: January 5, 1967

PLACE: Suite 535, 456 South Spring Street, Los Angeles, Calif.

PERSONS PRESENT: Richard L. Huxtable, Chairman, George C. Hadley, Homer L. McCormick, Jr., Reginald B. Pogram, and Roger M. Sullivan.

PERSONS ABSENT: Richard A. Del Cuercio, Hodge L. Dolle, Sr., Justin M. McCarthy, John M. McLaurin, Paul E. Overton, and Terry C. Smith.

The meeting was called pursuant to notice to consider the recommendation of the Law Revision Commission of the State of California relating to discovery and eminent domain proceedings as transmitted by letter dated December 5, 1966.

The majority of the members attending approved the proposed legislation as to purpose but proposed that the State Bar should urge the amendment of the bill in the following particulars:

a. Time for filing of demand. The recommended time during which a demand for exchange of valuation data may be filed as provided by proposed §1272.01(a) is "not later than 10 days after the memorandum to set has been served and filed. This provision relates the initiation of a statutory procedure to the filing of a document which is, at present, required only by rules of Court. It also would have the effect of requiring the attorney to determine the desirability of exchange of such data long before he may be fully prepared to make that decision. The members present were unanimous in the belief that the time for such filing should be "any time after appearance of the party making such demand in the action but not less than sixty days before the date set for trial."

b. Time for filing statement of valuation data. Proposed §1272.01(d) requires that the statement of valuation data be served upon the party entitled to it "not later than 10 days prior to the day set for trial". The time period thus provided is so short that it would not even be possible to make a motion for a continuance in the trial date for the purpose of compelling greater mutuality of exchange of data, taking depositions, preparation of a rebuttal case, etc. All members present were of the opinion that the time specified for the exchange of statements of valuation data should be not less than 20 days prior to the date set for trial in order that there will be sufficient time for the making of a motion for continuance if such should be required.

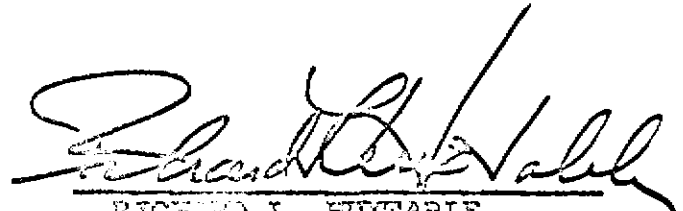
c. Provision for conflicting time periods by rule of judicial council. All members present felt that although it may become necessary in the future to change time periods, where conflict or difficulty is encountered, a provision which would permit the actual or operational time periods to be established by rules of Court which are contrary to time periods specified by statute is likely to serve as a pit-fall for the unwary. It was therefore felt that proposed §1272.01 (d) could be deleted.

d. Content of statement as to capitalization study. Proposed §1272.02(6) (5) requires of statement of "the gross income from the property, the deductions of gross income, the resulting net income, the reasonable net rental value attributable to the land and existing improvements thereon, the rate of capitalization used and the value indicated by such capitalization." It is not clear, but it does appear that the first three items enumerated relate to the actual income and expense experience of the owner on the property and, although the "reasonable net rental value" must be stated, it does not appear that the estimated gross rental value and expenses upon which such reasonable net rental value is based need be stated. All members present were of the opinion that the sub-section should be amended to read "the gross income from the property, the deductions from gross income, the resulting net income, the reasonable net rental value attributable to the land and the existing improvements thereon, and the estimated gross rental value and expenses upon which such is based, the rate of capitalization used and the value indicated by such capitalization."

e. One member of the Committee requested that the Minutes disclose his belief that statements of valuation data should be filed with the Court in camera to be exchanged only upon a determination that such would constitute mutuality of disclosure.

There being no further business before the Committee, the meeting was adjourned.

Dated: January 9, 1967.


RICHARD L. HUXTABLE
Chairman