

11/27/68

## Memorandum 69-2

Subject: Study 55 - Additur and Remittitur

The Judicial Council (Exhibit II) has approved the Commission's proposed legislation on additur and remittitur. The State Bar Committee on the Administration of Justice has approved the proposed legislation in principle and requested that the Commission consider the changes recommended in the report (attached to the State Bar letter) in Exhibit I.

The suggested revision of Section 662.5 (showing changes from the section as recommended by the Commission) is as follows:

In any civil action where after trial by jury an order granting a new trial limited to the issue of damages would be proper, the trial court may in its discretion :

(a) ~~Grant a motion for a new trial on the ground of~~ If the ground for granting a new trial is inadequate damages , and make its order subject to the condition that the motion for a new trial is denied if the party against whom the verdict has been rendered consents to an addition of so much thereof as the court in its independent judgment determines from the evidence to be fair and reasonable.

(b) ~~Grant a motion for a new trial on the ground of~~ If the ground for granting a new trial is excessive damages , and make its order subject to the condition that the motion for a new trial is denied if the party in whose favor the verdict has been rendered consents to a reduction of so much thereof as the court in its independent judgment determines from the evidence to be fair and reasonable.

The addition of "after trial by jury" is to make clear that "the subject matter has no application to causes tried without a jury." The remaining revisions are intended to "clarify that the trial court in its discretion may decline additur or remittitur, as the case may be." See Exhibit I attached.

What revisions, if any, does the Commission wish to make in the recommended section?

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## THE STATE BAR OF CALIFORNIA



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November 8, 1968

John H. DeMouilly, Esq.  
 Executive Secretary  
 Law Revision Commission  
 School of Law  
 Stanford, California

Re: Additur and Remittitur

Dear Mr. DeMouilly:

Pursuant to the Board authorization that views of the Committee on Administration of Justice or its sections are to be forwarded directly to the Commission, we enclose copy of a Report dated October 21, 1968 on this proposed measure.

The Southern Section on November 4, 1968 and the Northern Section on November 7, 1968 both adopted this Report with a resolution as follows: That the measure be approved in principle and the Commission be requested to consider the changes recommended in the report of Mr. Hall which is adopted by the Section.

Yours very truly,

*Garrett H. Elmore*

Garrett H. Elmore

GHE:jc  
 Enc.

cc: Mr. Zinke, Mr. Allen  
 Mr. Hall, Mr. Abramson (no enc.)  
 Mr. Hayes, Mr. Ellingwood (enc.)



AGENDA NO.: 66-24  
SUBJECT MATTER: ADDITUR AND REMITTITUR  
SUBMITTED BY: Donald Keith Hall  
DATE: October 21, 1968

This revisitation of a subject debated at length in 1965-66 and 1966-67 arises because in June, 1967 the California Supreme Court, in Jehl v. Southern Pacific Co., 66 Cal. 2d 821, expressly overruled Dorsey v. Barba, 38 Cal. 2d 350 (1952), on which CCP 662.5 enacted in 1967 was based.

The present tentative recommendation (July 25, 1968) of the CLRC is to amend CCP 662.5 to codify the pronouncements in Jehl and to eliminate the restriction in CCP 662.5 limiting additur to cases where the jury's verdict is supported by substantial evidence. The proposal also provides statutory recognition for remittitur practice.

The proposal makes no substantive change in the law existing since Jehl. CCP 662.5 as it now stands should be either repealed (because it restricts additur contrary to existing law) or amended. I assume it is preferable to codify procedures such as additur and remittitur.

I have these suggestions concerning CLRC's proposed amendment of CCP § 662.5 (Tentative Recommendation, p. 4):

1. I would add "after trial by jury" following "where" in the first line of CCP § 662.5 as amended in the proposal. The subject matter has no application to causes tried without a jury.

2. To clarify that the trial court in its discretion may decline additur or remittitur, as the case may be, I would change the first clauses of subdivisions (a) and (b) to read:

"(a) If the ground for granting a new trial is inadequate damages, make its order . . . (etc.)"

"(b) If the ground for granting a new trial is excessive damages, make its order . . . (etc.)"

and would change the clause introducing (a) and (b) to read:

". . . the trial court may in its discretion:"

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November 18, 1968

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Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
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Dear John:

At its November 15-16 meeting, the Judicial Council considered the Law Revision Commission's tentative recommendation relating to additur and remittitur. The Judicial Council approved the Commission's proposed legislation and agreed to support the proposal when presented to the 1969 Legislature.

Best regards,

Ralph N. Kleps, Director

By

  
Jon D. Smock  
Attorney

JDS/sr