

#36.85

6/10/69

Second Supplement to Memorandum 69-66

Subject: Study 36.85 - Condemnation (Litigation Expenses)

Attached to this supplement is a copy of a letter from Mr. Herbert Hafif (green) and a copy of Assembly Bill 1756 (pink) relating to offers to settle civil cases.

Also attached is a copy of a letter from Maxwell M. Freeman (yellow).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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May 28, 1969

California Law Revision Commission
School of Law
Stanford University
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Gentlemen:

I'm awfully sorry not to have returned your February 17, 1969 proposal on Condemnation Law and Procedure relative to cross offers and costs.

This is potentially, the most dynamic piece of legislation you've come up with. I think without any question we should go ahead and apply to all trials.

Neg Good and Judge Loring went up on a modification of 997 to make it a reciprocal thing between a defendant and a plaintiff as to costs, but to make it even better, it should apply as to attorneys fees as well. When you guess wrong, you should pay and that motivates settlement. I'm not suggesting I agree with the exact formulation, but I certainly agree with the concept, and I think that you would have tremendous support for the concept.

Right now, I am the chairman of a fourteen city campaign for additional judges to cure court congestion. One of the very next things that should be done, is to streamline the judicial process so as to motivate settlements. At rather great expense and with a considerably analytical forethought, the presiding judge in Los Angeles and a group of defense and plaintiffs lawyers sat down and drew up a "short-cause" personal injury procedure. My guess was that it wouldn't work despite the fact that they were well-meaning and the program was excellent in conception. The reason I didn't think it would work is that the attorneys wouldn't take the time to either understand it, or would be uncertain as to its results and wouldn't apply it. In short, the motivation was lacking.

When we were up in Sacramento testifying in support of additional judges, for Los Angeles County, Judge Loring confirmed by suspicions by saying


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that in the several months that it has been in operation, it has only been used three times.

On the otherhand, when you make it pay to seriously appraise your cases, you're going to get settlements. That's motivation. I don't see any reason to restrict this approach to pure condemnation.

I enclose the form.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Herbert Hafif', written in a cursive style.

HERBERT HAFIF

HH:mm
encl.

AMENDED IN ASSEMBLY MAY 21, 1969

AMENDED IN ASSEMBLY MAY 15, 1969

CALIFORNIA LEGISLATURE—1969 REGULAR SESSION

ASSEMBLY BILL

No. 1756

Introduced by Assemblyman Hayes

April 7, 1969

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Chapter 3 (commencing with Section 998) to Title 14 of Part 2 of the Code of Civil Procedure, relating to offers to settle civil cases.

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

1 SECTION 1. Chapter 3 (commencing with Section 998) is
2 added to Title 14 of Part 2 of the Code of Civil Procedure, to
3 read:

4 CHAPTER 3. OFFERS BY A PARTY TO COMPROMISE

5 998. After assignment of a case to trial, and prior Prior to
6 commencement of the trial as defined in subdivision 1 of Sec-
7 tion 581, or at any settlement conference presided over by a
8
9

LEGISLATIVE COUNSEL'S DIGEST

AB 1756, as amended, Hayes (Jud.). Offers to compromise: costs.
Adds Ch. 3 (commencing with Sec. 998), Title 14, Pt. 2, C.C.P.

Authorizes any party, after assignment of a case to trial and prior to commencement of the trial; or at any settlement conference presided over by a judge of the court in which the action is pending, to offer to the other party to have judgment taken based on terms and conditions offered, and if the party to whom the offer is made refuses to accept it prior to trial or within 30 days after it is made, whichever occurs first, and there is a judgment less favorable to him than the refused offer, bars him from recovering costs and authorizes the court to order him to pay various costs of the other party, including expert witness' fees of expert witnesses who are not regular employees of any party.

Declares that such procedure shall not apply to eminent domain actions.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 judge of the court in which the action is pending, any party
2 may offer to allow judgment to be taken in accordance with
3 the terms and conditions stated at that time. If such offer is
4 accepted, the judge shall enter judgment accordingly. If such
5 offer is not accepted *prior to trial or within 30 days after it is*
6 *made, whichever occurs first*, it shall be deemed withdrawn,
7 and cannot be given in evidence upon the trial. If the party to
8 whom the offer of judgment is made fails to obtain a more
9 favorable judgment, he cannot recover costs, and the court may
10 order him to pay to the party who made the offer, not only that
11 party's taxable costs incurred from the date of filing the com-
12 plaint, but also a reasonable sum to cover costs of the serv-
13 ices of expert witnesses *who are not regular employees of any*
14 *party* actually incurred and reasonably necessary in the prep-
15 aration of the case for trial by such prevailing party. Police
16 officers shall be deemed to be expert witnesses for the purpose
17 of this section. Any judgment entered pursuant to this section
18 shall be deemed to be a compromise settlement.
19 *The provisions of this chapter shall not apply to eminent*
20 *domain actions.*

FREEMAN & RISHWAIN
Attorneys at Law
45 Hunter Square Plaza
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June 2, 1969

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Trial Expenses in Eminent Domain Actions

Gentlemen:

I have serviced a rather substantial condemnation practice for the last few years. To obtain and submit cogent evidence in a case of any size (\$30,000.00 or more) normally entails appraisal and engineering costs in excess of \$2,500.00 in cases involving between \$60,000.00 to \$100,000.00, these costs increase to approximately \$5,000.00. These are necessary expenditures in order to obtain a fair trial for a property owner wherein counsel is competing against the vast and unlimited expenditures of governmental agencies in obtaining their appraisals. In addition, of course, substantial attorneys fees are involved. A cursory examination of this deal therefore plainly indicates that many owners are forced to accept unreasonably low offers because of the exceptional costs of litigation. In the lower echelon of values, litigation is absolutely impossible because of the costs. Typically, the client having a \$15,000.00 home at fair market value must be advised by his counsel to accept the \$12,500.00 offer of the right-of-way agent because litigation costs are prohibitive.

Perhaps a study by interviewing condemnation counsel would permit you to determine the proper costs of preparation and counsel fees geared to the value of the award and authorizing the court to award these items where the jury awards an amount in excess of the condemnors offer (CCP 995). As an alternative to providing a statutory standard of compensation for these items, the trial court could be invested with the power to take evidence and determine the actual expenditures of the property owner for obtaining evidence and attorneys.

If you have any questions concerning this area of practice, please do not hesitate to call upon me.

Very truly yours,

FREEMAN & RISHWAIN

By 
MAXWELL M. FREEMAN

MMF:tf