#76 11/25/69

Memorandum 69-142A

Subject: Study 76 - Trial Preference

You will recall that the Commission directed the staff to write to each presiding superior court judge to determine whether serious problems are created by the approximately 60 statutory provisions that give particular types of matters priority in setting for trial or hearing. We wrote to each of the 58 presiding judges and requested his opinion. We received 16 responses (attached) from the presiding judge of the following counties: Tehama, Monterey, Ventura, Shasta, Tuolumne, Stanislaus, Siskiyou, Riverside, Butte, San Luis Obispo, Yolo, Contra Costa, Santa Cruz, Alameda, Solano, and Marin. Note that we did not receive a response from Los Angeles County, the City and County of San Francisco, and from other populous counties.

Without exception, the judges who responded report that the existing statutory provisions do not create significant problems in the administration of the court's business in their counties. The only qualification to this general reaction is Yolo (Judge McDermott -- Exhibit XI)(States that "in the past, but not recently," the court has had difficulty with setting eminent domain cases. Does not state that serious problems have been created.).

Some judges believe that the great volume of special preference statutes operates to make the preferences more manageable and results in less preference. One judge, Judge Ross A. Carkeet (Tuolumne), believes for this reason, that nothing should be done in the field. He comments:

> The fact that there are such a large number of preferences of necessity leaves the Court remaining with some degree of discretion as how he is going to arrange or re-arrange such preferences. As a result, at least in the small counties, I know that the Judges take a look at the nature

> of the case and the exigencies involved and give preference to the case which really seems to need the most priority. I have done this on many occasions and while there has been some grumbling, in the main the Bar has accepted the same graciously and understandingly.
>
> If this subject matter were to receive an in depth examination and study and the Commission were to revise and eliminate perhaps a number of such preferences, but still come up with a large number of definite priorities or preferences with any degree of mandatory requirement, then, I am sure, this would create significant problems in the administration of the Court's business.

Nine of the 16 judges believe that no study of this topic is necessary. See Exhibit I (Tehama); II (Monterey); III (Ventura); IV (Shasta)("I have no objection to a systematic review, possibly leading to a codification in one place, of statutory preferences. However, the status quo is not troublesome."); V (Tuolumne)(Revision of law could "create significant problems in the administration of the Court's business"); VIII (Riverside); X (San Luis Obispo); XIV (Alameda); XV (Solano). A few judges believe that there would be some value in collecting all the preferences in one section or series of sections so that they could be readily found. Exhibit IV (Shasta); IX (Butte); XVI (Marin). A number of judges suggest that the number of statutory priorities be reduced. Exhibit VI (Stanislaus); VII (Siskiyou); IX (Butte); XI (Yolo); XII (Contra Costa)(delete statutory preference given to declaratory relief actions); XIII (Santa Cruz); XVI (Marin)(delete statutory preference for declaratory relief actions).

As Judge Zeff (Exhibit VI - Stanislaus) notes:

> it is felt that there may be a need to revise but that before doing so, it would be necessary to reassess and re-evaluate the priorities or preferences that presently exist; having regard to the changes which have occurred in the economic relationships as between litigants in particular kinds of cases.

The staff concludes--based on the letters received--that it would not be a desirable use of Commission resources to undertake a comprehensive

study of trial preferences. However, the Commission should consider whether it might wish to study whether the statutory preference given to declaratory relief actions should be eliminated or limited. Judge Wilson, Marin County, states (Exhibit XVI):

> One particular matter which we feel might well receive the Commission's attention with respect to proposed legislation concerns the priority assigned to declaratory relief actions. We have found, and I suspect other counties have found this to be true as well, that many actions which are actually simply actions for money judgment will contain a declaratory relief count of some description, and it is often a fair inference that this count was added simply for the purpose of obtaining some kind of priority. It might well be worthwhile to consider legislation which would vest a Court with discretion, so that a Court would not have to assign a priority to an action simply because it was labeled as an action for declaratory relief, but would only assign such a priority when the action was in fact an attempt to determine rights so as to govern future conduct.

Judge Cooney, Contra Costa County (Exhibit XII) states: "However, we do feel that the statutory preference given to declaratory relief actions should be deleted by proper amendments. Our experience has been that normal calendar settings causes no prejudice to any of the litigants in such an action."

It should be noted that the analysis presented in this memorandum is based on the views of 16 presiding judges; only 16 of the 58 presiding judges--less than one-third--responded to our request for a statement of their views.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 69-142 EXHIBIT I

STATE OF CALIFORNIA RONALD REAGAN, Governor

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305

October 10, 1969

Hon. Curtiss E. Wetter, Judge
Superior Court of Tehama County
P.O. Box 950
Red Bluff, California 96080

Dear Judge Wetter:

The 1969 Legislature adopted a concurrent resolution directing the Law Revision Commission to make a study to determine "whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised."

The Commission solicits your views as to whether any legislation is needed in this area. A search by the Commission's staff discloses at least 60 statutory provisions that give particular types of matters priority in setting for trial or hearing. Do you believe that the existing law relative to trial preferences is seriously in need of study? No Do the existing statutory provisions create significant problems in the administration of the court's business in your county? No

We would greatly appreciate your cooperating in this study by making your views known to us.

Yours truly,

John H. DeMoully
Executive Secretary

JHD:ss

A judge should be able to control his calendar in spite of legislative attempts to do it for him

Curtiss Wetter Judge

ES	
AES	

Memo # 69-142 EXHIBIT II

Superior Court

State of California

County of Monterey
Stanley Lawson, Judge

October 15, 1969

Courthouse
Salinas, California

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. Demoully
Executive Secretary

Gentlemen:

With respect to your second letter which concerns preferential settings, no statutory amendments seem required. Any calendar Judge can arrange for these priorities.

Very truly yours,

STANLEY LAWSON
Judge of the Superior Court

SL:jkl

Memo 69-142

EXHIBIT III

CHAMBERS OF

The Superior Court

VENTURA, CALIFORNIA 93001

JEROME H. BERENSON, PRESIDING JUDGE

October 14, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

In response to your letter of October 10, 1969 please be advised that it is my view that the existing law relative to trial preferences does not create any significant problem in the administration of our courts' business in Ventura County.

I am not of the opinion that there is a serious need for study of the existing law in this area.

Very truly yours,

JEROME H. BERENSON
Presiding Judge of the
Superior Court

JHB:mr

Memo 69-142

EXHIBIT IV

Chambers of the Superior Court
Shasta County
RICHARD B. EATON, JUDGE
Redding, California

October 14, 1969

John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

My dear Sir:

Your letter of October 10, 1969 respecting legal preferences in setting, is at hand.

The only types of preference commonly employed in this county are those for hearings on preliminary injunctions and those for criminal trials of imprisoned persons. In each such case the need for the preference is obvious. In criminal trials of persons not imprisoned, right to preference is commonly waived; and in condemnation cases it is not normally claimed. Other types of preference trouble us seldom.

I have no objection to a systematic review, possibly leading to a codification in one place, of statutory preferences. However, the status quo is not troublesome.

Yours very truly,

RICHARD B. EATON
Judge of the Superior Court

RBE:g

THE SUPERIOR COURT
TUOLUMNE COUNTY
SONORA, CALIF. 95370
532-7733

CHAMBERS OF
ROBB A. GARKEEY, JUDGE

MAILING ADDRESS
P. O. BOX 846

October 14th, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

In response to your letter of October 10th, 1969 concerning a study to determine "whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised", I would advise you that I am sure that the 1969 Legislature's concurrent resolution directing your Commission to make inquiry into this subject was undoubtedly based upon some rather heated discussions that take place from time to time among members of the Bench and certainly among members of the Bar.

I understood that there were a large number of such cases which are entitled to statutory priority but I was not aware that it was as large a number as the 60 which were developed by your staff's inquiry. I suppose that one would naturally say in looking at such a large number of statutory priorities that the trial preference question is probably in need of study. On the other hand in answer to your second question, "Do the existing statutory provisions create significant problems in the administration of the court's business in your county?", I would say that they do not create significant problems in the administration of my court's business.

This is a small county with a one-man Superior Court and of course the bulk of the business is nothing in comparison with that of metropolitan areas. On the other hand, we are growing rapidly and our caseload increasing rapidly and at the present writing I am, for example, setting cases for trial as far ahead as March and April, 1970. I frequently have this question of priority raised especially by people from the State of California in condemnation cases, I have it raised frequently in injunction cases, I have it raised frequently in declaratory relief actions, and of course constantly in criminal and juvenile cases.

Since this is a small county I am able to keep my own

hand in control of the calendar and by reason of this experience can speak first hand when I tell you that I do not think it creates a serious or significant problem. The fact that there are such a large number of preferences of necessity leaves the Court remaining with some degree of discretion as to how he is going to arrange or re-arrange such preferences. As a result, at least in the small counties, I know that the Judges take a look at the nature of the case and the exigencies involved and give preference to the case which really seems to need the most priority. I have done this on many occasions and while there has been some grumbling, in the main the Bar has accepted the same graciously and understandingly.

If this subject matter were to receive an indepth examination and study and the Commission were to revise and eliminate perhaps a number of such preferences, but still come up with a large number of definite priorities or preferences with any degree of mandatory requirement, then, I am sure, this would create significant problems in the administration of the Court's business.

Trusting that these views are of some assistance and assuring you that we appreciate the good work being done by the Commission, I remain

Very truly yours,

Ross A. Carkeet

RAC/ED

Memo 69-142

EXHIBIT VI

Superior Court of California

Stanislaus County

Modesto, California

WILLIAM ZEFF, JUDGE

October 14, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. DeMoully, Executive Secretary

Gentlemen:

Replying to your communication of October 10, 1969, in which you request my view as to whether any legislation is needed in the area of preferences accorded to certain types of actions or proceedings and whether a revision thereof is indicated, it is felt that there may be a need to revise but that before doing so, it would be necessary to reassess and re-evaluate the priorities or preferences as they presently exist; having regard to the changes which have occurred in the economic relationships as between litigants in particular kinds of cases.

Relative to whether the existing statutory provisions create significant problems in the administration of the court business in this county, it is my opinion that they do not and no significant problems are presented.

Hoping that this may be of some assistance to you,

Very truly yours,

William Zeff, Judge

WZ:r

Memo 69-142

EXHIBIT VII

Chambers Superior Court
Siskiyou County
J. E. BARR, JUDGE
Yreka, California
96097

October 15, 1969

John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This in regard to your letter of October 10th regarding preferential settings.

I think preferential settings should be abolished except in criminal cases or where an ex parte order or an order pendente lite has been made that seriously affects the position of one of the parties. I am thinking about restraining orders, orders for immediate possession ~~and~~ unlawful detainer actions, and so forth.

Many of the preferential settings now are the result of legislation by pressure groups beginning way back several hundred years ago when the English landlords made unlawful detainer actions preferred actions.

Very truly yours,

J. E. BARR
JUDGE

JEB:ph

EXHIBIT VIII

Memo 69-142

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE
COUNTY OF RIVERSIDE

CHAMBERS OF
LEO A. DEEGAN
JUDGE OF THE SUPERIOR COURT

COURT HOUSE
RIVERSIDE, CALIFORNIA

October 15, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Sir:

This is in reply to your letter of October 10 relative to our views concerning the need for revision in the matter of preference given in the setting of trials of various types of cases.

Before answering your letter I have spoken with Mrs. Dorotha McCarver, a long-time employee and judge's secretary in this county who, for a good many years, has been the principal assistant to the court in the matter of setting cases for trial. Her present memory indicates that only three of the 60 types of cases mentioned in your letter of October 10 have come to her attention in the years of her experience with any degree of frequency, and that a fourth type has come before the court on rare instances. The three which most frequently occur, in the order of their relative frequency, of memory are eminent domain, declaratory relief and injunction matters, the fourth type which has been mentioned are rare cases of unlawful detainer which reach the superior, as distinguished from the municipal or other trial courts.

Your second question is, "Do the existing statutory provisions create significant problems in the administration of the court's business in your county?" In answer to this we should say no that these provisions do not create significant problems. This, of course, is not intended to mean that we do not extend the benefits of the preference laws to the classes of cases mentioned because in the point of fact that law is given its proper application.

Your first question was, "Do you believe that the existing laws relative to trial preferences is seriously in need of study?" We can visualize that in larger counties with larger

courts with greater number of cases the total number of 60 preferences provided by law (that total, as stated in your letter, came as a surprise to us) would present serious problems in the scheduling of cases for trial. However, it is difficult for us to appraise the situation without taking the time necessary to determine what each of the 60 preferences is and form an estimate as to how frequently such cases might be filed. It is our expectation that the replies you receive from the larger counties in the state will probably be sufficient for your purpose in the present study.

Yours very truly,

LAD:jh

Leo A. Deegan

Memo 69-142

EXHIBIT IX

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF BUTTE
JEAN MORONY, JUDGE
OROVILLE

October 21, 1969

Mr. John H. DeMoully,
Executive Secretary,
California Law Revision Commission,
Stanford University,
Stanford, California 94305

Dear Mr. DeMoully:

In reply to your letter of October 10, 1969, please be advised that it does appear that legislation is needed in the area of legal preference for trial purposes. My comments are as follows:

1. From a very practical daily operational viewpoint it is difficult for clerks and judges having the obligation of running the calendar to seek in so many places to verify the matter of legal preference. A revision would be worthwhile if for no other reason than to put into one code and into one section or series of sections all matters pertaining to legal preference.

2. Does not the significance of being entitled to legal preference diminish in proportion to the increased number of cases entitled to such consideration? It seems to me that it does. Would it not be more meaningful to re-evaluate cases and limit those to legal preference which really under all circumstances should be given priority on the court's calendar? It seems to me that this re-evaluation is indicated.

3. With every privilege there should be some responsibility and, in this respect, I would urge that some consideration be given to imposing some responsibility upon litigants claiming legal preference to move their cases along rather than waiting until the last minute and then congesting an already overcrowded trial calendar. I wish there was some way to build in to the legal preference structure a condition that would cause legal preference to be lost if the litigants did not move promptly with their litigation in order to legitimately claim it. By way of illustration, I would point out a condemnation case where the condemnor wants to get to trial within one year of filing his complaint. The answer to the complaint may be filed within 30 days of the time of service and yet it can happen that the At Issue Memorandum may not be

filed for ten months and then the court is faced with immediate trial date. Whereas, if the At Issue Memorandum had been filed as soon as the case was at issue, then the court would have ample time to melt it into its trial calendar and get the case to trial within a one year period or earlier without bumping other cases long since set.

4. In all honesty, I cannot say that the existing statutory provisions have created any significant problems in the administration of the court's business in this county. This is not to say that there have not been problems but they have been understandable problems because for the last eight years in connection with various Public Works projects in this county we have had an unusual number of condemnation cases and our share of criminal case. Obviously, both of these types of matters require legal preference. Any problems that we have had have not been attributable to the existing statutory provisions, so far as I am personally concerned, but rather merely inherent in the very nature of our work. Nevertheless, for the reasons set forth in the preceding paragraphs, I do feel that this subject of trial preferences is one which is seriously in need of constructive study.

Thanking you for the opportunity of expressing some comments on this very interesting subject, I am

Very truly yours,

JM/mw

Memo 69-142

EXHIBIT X

ROOM 309
COURTHOUSE ANNEX

CHAMBERS OF
SUPERIOR COURT
STATE OF CALIFORNIA
SAN LUIS OBISPO COUNTY
TIMOTHY I. O'REILLY, JUDGE
SAN LUIS OBISPO, CALIFORNIA

October 21, 1969

Mr. John H. DeMoully, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Sir:

After discussion with the other judges in our Superior Court, we feel we do not have any problem in the area of preferential settings of certain types of actions nor do we contemplate the need for revision of the present laws.

We therefore do not feel qualified to make any suggestions.

Very truly yours,

TIMOTHY I. O'REILLY

TIO'R:mid

Memo 69-142

EXHIBIT XI

Superior Court of California

County of Yolo

DEPARTMENT NO. TWO
JAMES C. McDERMOTT, JUDGE

COURT HOUSE
WOODLAND, CALIFORNIA
95695

October 21, 1969

Mr. John H. DeMoully, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This is in reply to your letter of October 10, 1969 inviting my views on the necessity of legislation in the field of preferential trial setting.

I believe the entire matter needs thorough study and revision. At the present time too many matters are given preferential treatment which should not be entitled thereto. For instance, there is little reason, if any, to give preference to a state highway condemnation case where the State is allowed to pay an acceptable amount into Court at the very outset of the case and thereby obtains immediate possession of the land. In the past, but not recently, we have had difficulty with settings of this type of case.

Many injunctive matters really are not as imperative as the law permits them to be. It would seem to me that in injunctive proceedings some provision whether or not preferential setting be granted should be in the discretion of the Court, it being provided that preferential setting could be had only when specific detailed facts relating to the specific case were set forth by affidavit and showed the necessity of preferential treatment.

From the nature of the above comments it should be obvious I believe the existing law relative to trial preferences is in need of serious study. Attempted correction by piecemeal legislation can only result in an aggravation of the present situation.

Sincerely,

James C. McDermott

JCMcD:e

Memo 69-142

EXHIBIT XII

Superior Court
State of California
COUNTY OF CONTRA COSTA
COUNTY HOUSE, MARTINEZ

ROBERT J. COONEY
JUDGE, DEPARTMENT 8

October 22, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen:

I am in receipt of your letter of October 10, 1969. I have discussed the question of statutory preference in setting matters for trial with the Judges of this Court and also with our Secretary to the Courts who sets matters on the master calendar. At the present time we find that the existing statutory provisions create no problems in the administration of the courts' business in this county. However, we do feel that the statutory preference given to declaratory relief actions should be deleted by proper amendments. Our experience has been that normal calendar settings causes no prejudice to any of the litigants in such an action.

Very truly yours,

ROBERT J. COONEY
PRESIDING JUDGE

RJC:jeb

Memo 69-142

EXHIBIT XIII

CHAMBERS OF
The Superior Court
SANTA CRUZ, CALIFORNIA

DEPARTMENT TWO
CHARLES S. FRANICH
JUDGE

October 27, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

In reference to your letter of October 10th concerning the various laws covering preferences for certain types of actions, it seems to me that some action is needed in this field.

I should state, however, that we have not had any significant problem in this regard in our court. Fortunately we have been able to set cases even before the attorneys are generally prepared to try them. However, I believe it would be helpful to reduce the number of preferences.

Very truly yours,

CHARLES S. FRANICH
Presiding Judge

CSF:jh

Memo 69-142

EXHIBIT XIV

LYLE E. COOK
PRESIDING JUDGE

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA
COURT HOUSE-OAKLAND 94612

October 29, 1969

John H. DeMoully, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

In response to your letter of October 10th, I referred your question as to whether the laws giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised, to the Law Review Committee of this court for a study and report to me. This reply is therefore based on the report made by the members of this committee.

It was the opinion of the Law Review Committee, which coincides with my own personal experience, that no legislation is needed in this particular field. None of the judges who studied the matter could recall any significant problem having arisen in the administration of the court's business because of these preferential setting provisions.

We were rather surprised to learn that there are at least sixty statutory provisions in this field. Perhaps it is because neither the courts nor the attorneys have heard of all of them that we have so little occasion to be concerned with them.

Very truly yours,

Lyle E. Cook

Lyle E. Cook
Presiding Judge

LEC:mr

Memo 69-142

EXHIBIT XV

Superior Court of the State of California
County of Solano
Fairfield, California 94533

Chambers of
RAYMOND J. SHERWIN
Judge of Superior Court
(707) 425-3194

October 23, 1969

California Law Revision Commission
School of Law - Stanford University
Stanford, California 94503

Attention: John H. DeMoully, Executive Secretary

Dear Professor DeMoully:

This refers to your letter of October 10, 1969, concerning preference in trial setting.

We are not aware of any problems arising out of the existing scheme, but it may be that our situation is not representative. We have been shorthanded for a long time and it appears that we shall be for some time yet by reason of the Governor's vetoe of our Fourth Department. The result is that we so seldom have the opportunity to try anything but a criminal case that the conflict between civil cases that enjoy preference and civil cases that do not is imperceptible.

We must confess that none of us realized there were so many kinds of matters entitled to preference. You spoke of 60 excavated by your staff.

Would it be convenient to give us a list?

Cordially,

RAYMOND J. SHERWIN

RJS/mmg

cc: Honorable Thomas N. Healy
Honorable Ellis R. Randall

EXHIBIT XVI

Memo 69-142

CHAMBERS OF
Judge of the Superior Court
MARIN COUNTY
CALIFORNIA

JOSEPH G. WILSON
JUDGE
DEPARTMENT NO. 2
TELEPHONE 453-2100

SAN RAFAEL, CALIFORNIA

November 12, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
Stanford University,
Stanford, California 94305

Dear Mr. DeMoully:

This is in reply to your letter of October 10, 1969, requesting comments on the proposed study of the provisions of law relative to trial preferences.

We do feel it would be desirable if some effort were made to bring the statutory provisions relative to trial priorities under one heading so they could be readily found in the code. Although existing statutory provisions have not created particularly significant problems in this County, we do feel that a study in this area is probably warranted.

One particular matter which we feel might well receive the Commission's attention with respect to proposed legislation concerns the priority assigned to declaratory relief actions. We have found, and I suspect other counties have found this to be true as well, that many actions which are actually simply actions for money judgment will contain a declaratory relief count of some description, and it is often a fair inference that this count was added simply for the purpose of obtaining some kind of priority. It might well be worthwhile to consider legislation which would vest a Court with discretion, so that a Court would not have to assign a priority to an action simply because it was labeled as an action for declaratory relief, but would only assign such a priority when the action was in fact an attempt to determine rights so as to govern future conduct.

We hope these comments will be of assistance to you.

Very truly yours,

JOSEPH G. WILSON

JGW/jby