

12/29/69

First Supplement to Memorandum 69-142A

Subject: Study 76 - Trial Preference

Three additional letters from presiding judges are attached. One letter (Exhibit I--Judge Locke, Visalia) suggests that all priorities be placed in the Code of Civil Procedure in one section, in specific order of priority, and that as many items as possible be eliminated from the priority listing.

Judge Morris (Exhibit II, San Bernardino) indicates that no significant problem has been created by statutory priorities but that a review of the various priorities should be made with a view to eliminating some or providing priorities among those preferences given.

Judge Wapner, Presiding Judge, Los Angeles County, suggests (Exhibit III) that "the real problem area is the field of declaratory relief." He states: "Many attorneys take advantage of the provisions of the law allowing for priority in actions for declaratory relief when the crux of the law suit is not that at all. Many of these cases are really actions for money and should take their normal course in setting." Other judges also noted this problem. Judge Wapner also suggests that consideration be given to priority in the area of eminent domain.

The Commission may determine that it would be desirable that the staff prepare a tentative recommendation to repeal Section 1062a of the Code of Civil Procedure. This would eliminate the priority now given to declaratory relief actions, thus making the general procedure for obtaining priority provided under Rules 225 (superior courts) and 513 (municipal courts) applicable to declaratory relief actions. After reviewing the comments

on the tentative recommendation, the Commission could determine whether it wishes to submit a recommendation to repeal the preference given to declaratory relief actions. Does the Commission wish the staff to prepare a tentative recommendation for consideration (and possible approval for distribution) at the next meeting?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Art. 5, pp.
69-142A

EXHIBIT I

JOHN LOCKE

Judge - Superior Court

Visalia, California

November 24, 1969

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

Attention: Mr. John H. DeMouilly
Executive Secretary

Gentlemen:



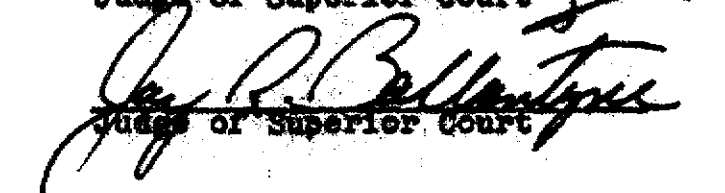
Please be advised that all three judges in our county feel that the matter of priority should be placed in the Code of Civil Procedure in one section, in specific order of priority.

The three judges also feel that as many items as possible be eliminated from the priority listing.

We have had no abuse through pleadings to gain priority. However, we understand that such is the case in the large metropolitan areas.

I trust this is the information you desire.

Very truly, yours,


President, Judges of Superior Court

Judge of Superior Court

Judge of Superior Court

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EXHIBIT II

CHAMBERS OF
The Superior Court
SAN BERNARDINO, CALIFORNIA 92401
MARGARET J. MORRIS, JUDGE
DEPARTMENT NINE

November 28, 1969

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

Dear Mr. DeMouilly:

Regarding your letter of October 10, 1969, wherein you requested our views as to the following questions:

1. Do you believe that the existing law relative to trial preferences is seriously in need of study?
2. Do the existing statutory provisions create significant problems in the administration of the court's business in your county?

Except for the general preference of general criminal cases over civil, I would have to say that the existing statutory provisions create no significant problem for our court. However, it does appear from a review of the numerous kinds of preferences given that this matter should be given some study with a view to eliminating some preferences or providing priorities among those preferences given.

Very truly yours,


MARGARET J. MORRIS
Presiding Judge

MJM:mh

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EXHIBIT III

The Superior Court

LOS ANGELES, CALIFORNIA 90012
CHAMBERS OF
JOSEPH A. WAPNER, PRESIDING JUDGE

TELEPHONE
(213) 625-3414

December 16, 1969

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

Attention: John H. DeMouilly,
Executive Secretary

Gentlemen:

Please pardon the delay in answering your communique of October 10.

I believe that there are many provisions in the law with respect to priority in setting that should be retained, such as unlawful detainer, injunction matters, third party claims, etc.

The real problem area is in the field of declaratory relief. Many attorneys take advantage of the provisions of the law allowing for priority in actions for declaratory relief when the crux of the law suit is not that at all. Many of these cases are really actions for money and should take their normal course in setting.

Another problem type of case is in the area of eminent domain. These cases are now entitled to priority both as to setting and assignment for trial. It would seem to me that priority as to early setting is sufficient and that the priority as to assignment could be determined by the Master Calendar Judge.

Thank you for giving me this opportunity to state some of my views.

Very truly yours,

Joseph A. Wapner
Joseph A. Wapner