

5/18/71

Memorandum 71-26

Subject: Research Contracts

EXISTING CONTRACTS

The following is a report on outstanding research contracts.

Arbitration. Eddy Feldman, Los Angeles attorney, is the consultant on this \$1,000 study. The study was due on December 1, 1969. Mr. Feldman, from time to time, has promised delivery of the study. He now advises that the completed study will be delivered before June 1, 1971.

Liquidated damages. Professor Sweet is the consultant on this \$1,500 study. The study was due on October 1, 1970. He has, from time to time, promised delivery of the study. Some time ago he was involved in a motor vehicle accident. He is now out of the hospital and working a short day. He now advises that the study will be completed and delivered before June 1, 1971.

Nonresident aliens. Professor Barton is the consultant on this \$1,500 study. The study was due on October 1, 1970. She tells me she completed a draft of the study some time ago. Other experts in the field are now reviewing her draft. She advises that the completed study will be delivered before June 1, 1971.

Condemnation procedure. Mr. Matteoni is the consultant on this study. Almost a month ago, he delivered the first installment of the study. This installment constitutes, he believes, approximately one-half of the study. He plans to wait until after the June 1971 meeting before starting work on the remainder of the study. He has made good progress on the study.

Attachment, Garnishment, Exemptions From Execution. Professors Warren and Riesenfeld are the consultants on this study. The contracts with the consultants called for:

1. Not later than October 1, 1970, a study on the impact of Sniadach (relating to prejudgment wage garnishment) and subsequent related cases on the California law and the changes needed or desirable in light of the Sniadach case. Also, not later than October 1, 1970, a study on the impact of the federal Consumer Credit Protection Act on California law and the changes in California statutes needed or desirable as a result of the enactment of the federal act. These two studies were delivered and have been reviewed by the Commission. The wage garnishment revision is going forward and the Commission directed Professor Riesenfeld to make a study of court and sheriff's records concerning attachment.

2. Not later than June 1, 1972, a comprehensive, detailed outline covering the field of attachment, garnishment, exemptions from execution, and related aspects of debtor's rights and creditor's remedies. This outline should indicate the various matters that would need to be covered in a comprehensive study of this topic and should indicate the problems most in need of attention and the promising lines of approach to solving those problems. The outline was intended to serve as a basis on which the Commission could schedule future work on this topic and to provide the Commission with an understanding of the amount of work that will be required to prepare a comprehensive study and recommended legislation on this topic. This outline has not yet been prepared by the consultants.

Condemnation. Fadem and Kanner are the consultants on this contract to provide expert advice at Commission meetings. The contract provides for payment of travel expenses and \$20 per diem compensation for attending Commission meetings. The funds available for payment of expenses under this contract (\$500) have been substantially expended.

### SUGGESTED NEW CONTRACTS

The staff suggests that the following new contracts be made to the extent that funds are available during the current fiscal year, the contracts to be given priority in the order listed below.

Attachment, Garnishment, Execution. Significant developments have occurred since we made the original contracts with Professors Riesenfeld and Warren. The California Supreme Court should indicate within a few months or sooner the extent to which Sniadach affects property other than earnings. It is likely that a crash program will be needed since the staff believes that the California Supreme Court will hold that much of present attachment procedure violates due process. The staff believes that we should devote a significant portion of our resources to this topic to the extent that those resources can be efficiently used. Accordingly, we recommend that an additional \$5,000 (plus \$1,000 travel) be allotted out of the current research funds for this study. Professor Riesenfeld and perhaps Professor Warren will be present at the May 28-29 meeting. At that time, the Commission can discuss how the additional moneys can be most profitably used. We should have a definite schedule if we are going to make another contract on this topic.

Inverse condemnation. We suggest that a contract be made with Professor Van Alstyne for a study covering various aspects of inverse condemnation liability that offer promise as a reasonable means of limiting inverse liability. Specifically, the following matters should be covered by the study:

- (1) Rules on when interest accrues on inverse condemnation liability.
- (2) Statute of limitations.
- (3) Claims statute.
- (4) Rules for offsetting benefits.
- (5) Nonmonetary remedies as an alternative to payment of damages.
- (6) Other means of reducing amount of damages in inverse cases.

Professor Van Alstyne is willing to prepare this study. The amount of the contract is recommended as \$3,000, plus \$200 travel. The study is to be completed by January 1, 1973, at the latest.

Condemnation. We suggest that a contract be made with Fadem and Kanner for \$750 (for travel and \$20 per diem to provide expert advice at Commission meetings). The amount available under the existing contract is about exhausted.

Rights when lease terminated. The Commission approved making a contract with Professor Friedenthal for \$2,500 to prepare a background study on rights upon abandonment or termination of a lease. Professor Friedenthal plans to use a research assistant if he undertakes to prepare this study. If he does this, he needs \$3,500 rather than \$2,500 to cover the cost of the study.

An additional complication is that one of Professor Friedenthal's students has prepared a bill relating to this problem and the bill be heard early in June. If the bill is enacted, it would not appear desirable to study this problem. We will not know until after the June hearing what chance the bill has for enactment.

If Professor Friedenthal is unable to undertake the study, we suggest that Joe Harvey, former Assistant Executive Secretary of the Commission, be selected as the consultant at a compensation of \$3,500. Harvey wrote the basic lease study which resulted in the enactment of the lease legislation recommended by the Commission.

Apportionment of the award in condemnation action. Joe Harvey, former Assistant Executive Secretary, has indicated that he would be interested in preparing a background study on the problems involved in apportionment of the award in a condemnation action. He would prepare an outstanding study if he

undertook to do so. He is quite busy, but he believes that he could work it into his schedule within the next year or so. The staff believes that a fair compensation for such study would be \$2,500, plus \$500 travel expenses.

Conforming various codes to Evidence Code. A worthwhile project, which has been deferred because no competent consultant was available, is conforming the various codes to the Evidence Code. The most important function to be served by such a study is the classification of the various presumptions. If funds are available and the study on apportionment of the award is not to be made, we suggest that Joe Harvey be retained as a consultant to prepare background studies on conforming the Code of Civil Procedure and the Civil Code to the Evidence Code. We would recommend a compensation of \$2,000 for each such study. The study would involve examination of each code section and determination of what, if any, changes are needed to conform it to the Evidence Code.

#### OTHER STUDIES

Water damage study. Professor Sato is going to be the consultant on a water rights study to be made by a state agency if the agency gets a grant to do the study. He will not know until after July 1, 1971, whether the financing needed for this other study will be available. If the grant is not made for the other study, he is interested in doing the water damage study for the Commission. If he is available after July 1, 1971, the Commission can consider whether it wishes to use the research funds that will become available on July 1, 1971, to finance the water damage study.

Other studies. We do not plan to finance background research on the other topics on our agenda with funds available for the current fiscal year. This means that we will not finance studies on nonprofit corporations, oral modification of a written contract, partition procedures, or on the three

studies that are supposed to be delivered before June 1, 1971, under contracts we have made (arbitration, liquidated damages, nonresident aliens). Moreover, we will have to finance studies on prejudgment interest and the parol evidence rule out of funds available for future years if those topics are approved for Commission study.

#### FISCAL SITUATION

Current fiscal year. The totals for the recommended studies to be financed for the current fiscal year are as follows:

Attachment	\$6,000
Inverse condemnation	3,200
Condemnation (Kanner)	750
Rights when lease terminated	3,500
Condemnation--apportionment of award	3,000
	<u>\$16,450</u>

We have available in the budget for research approximately \$9,750. This leaves us quite a bit short if each of the contracts we recommend works out. We would attempt to find funds (from printing, salary savings, savings on employment of law students, and the like) to finance all the contracts. If sufficient funds were not found, we would not be able to finance all the contracts we recommend.

Next fiscal year. Funds available during the next fiscal year, which begins on July 1, 1971, for research are \$9,900. Comparable information on past years is indicated below:

<u>1969-70</u> <u>Actual</u>	<u>1970-71</u> <u>Budgeted</u>	<u>1971-72</u> <u>Proposed</u>
\$22,600	\$15,108	\$9,900

NOTE: Amount for 1970-71 may be increased by transfers from other budget categories.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary