

Memorandum 71-93

Subject: Study 36.85 - Condemnation (Litigation Expenses--Report of Select Committee on Trial Court Delay)

A Select Committee on Trial Court Delay was appointed by Chief Justice Donald R. Wright in March 1971 to investigate the causes of trial court delay in California and to recommend solutions.

Attached is a copy of the second report of the Select Committee. This report includes recommendations relating to procedures to induce more settlements of civil litigation. These have great significance in connection with the Commission's eminent domain and prejudgment interest studies.

The most significant recommendation would require good faith pretrial settlement negotiations accompanied by written demands and offers filed with the clerk of court. After trial, these demands and offers would be considered by the court, which could, in its discretion after a hearing, award to any party, or apportion between the parties, all costs, attorney's fees, expert witnesses' fees, or any of these, which were incurred after the demands and offers were filed, as well as interest on the amount of the judgment.

The recommendations are set up on page 5 of the report and commented on on pages 10-19. Proposed legislation is set out on pages 12-13.

As far as prejudgment interest is concerned, the staff believes that the recommendations are of interest but require no consideration by the Commission. The Commission has no investment in this topic, and we have not yet retained a consultant on the topic.

The application of the recommendations to condemnation actions is a matter that should be of great interest to the Commission. To what extent--if any--does the Commission wish to give further consideration to the recommendations insofar as they apply to condemnation actions?

Respectfully submitted,

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Executive Secretary