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1/27/86

First Supplement to Memorandum 85-94

Subject: Topics and Priorities for 1988 and Thereafter

Attached are two letters bringing to the Commission's attention defects in the existing laws.

Exhibit 1 is a letter from Professor Benjamin D. Frantz noting a technical defect in Section 631.8 of the Code of Civil Procedure. Since it is unlikely that the Commission will ever be proposing legislation in this area of the law, we suggest that this letter be sent to the office of the Legislative Counsel. Perhaps this matter can be dealt with in the legislation to maintain the codes. If not, perhaps the Legislative Counsel can make the correction in some bill that amends Section 631.8. The Commission is not authorized to study this matter.

Exhibit 2 is a letter from Judge Harlan K. Veal. Since Judge Veal believes that the problem he sees in existing law needs immediate correction, I have sent a copy of his letter to Assembly Member Harris (Chairman of the Assembly Judiciary Committee) for his consideration. The Commission is not authorized to study this matter.

Respectfully submitted,

John H. DeMoully
Executive Secretary

2nd Supp memo 85-94

Exhibit 1

McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

January 6, 1986

Law Revision Commission
4000 Middlefield Road, Suite D2
Palo Alto, CA 94303-4739

Attention: John H. DeMoully
Executive Secretary

Dear Mr. DeMoully:

Someone has probably long since called your attention to the reference in Code of Civil Procedure section 631.8 to "make findings as provided in sections 632 and 634," the latter sections now providing for a statement of decision rather than "findings."

Assuming that this note will not add anything of any particular value to your efforts, please allow me to wish you a very happy and enjoyable 1986.

Very truly yours,

Benjamin D. Frantz

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

Harlan K. Veal
Judge

In Chambers
Hall of Justice
Redwood City, California 94063

January 15, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Re: Requested Urgency Legislation to Revise C.C.P. Section 1005

Gentlemen:

The captioned code section sets out time limitations within which various motions are to be filed, opposition in response thereto filed and reply memoranda in support thereof filed. The provisions are generally 15 days, 5 days and 2 days before the hearing date. This has been interpreted by the Court of Appeal for the Fourth District in the case of Iverson v. Superior Court of Orange County, 167 C.A.3d 534 (April 29, 1985), to mean calendar days not court days.

Such interpretation poses no great problem with regard to the time limitation for the moving papers, i.e. 15 calendar days. It does, however, impose an almost impossible burden upon counsel and particularly on the judge hearing law and motion matters with regard to both the response and the reply brief filing times.

For example, if a hearing is set for 9:00 on a Monday morning, it is possible -- and frequently happens -- that the reply papers are not filed until 4:55 p.m. the preceding Friday. This makes it impossible for the court to consider same prior to the hearing. If the statute were revised to require filing of the reply brief 2 court days before the hearing (and for clarity, I would prefer it to read by 5:00 p.m. the third court day before the hearing), the court would have at least 24 hours prior to the hearing as part of its regular scheduled work week within which to review the reply brief.

Similarly, with regard to the responsive brief being required to be filed five days before the hearing. If the Iverson interpretation stands, it is frequently possible to have an intervening three day court holiday such that the response could be filed by 5:00 p.m. the preceding Thursday, thereby not only giving the court a very limited time within which to review the brief, but putting the moving party in an absolutely unconscionable bind as to having insufficient time within which to receive, review and prepare a reply thereto and to get the same timely filed with the court. If the statute were to clearly state five court days for filing the response prior to the hearing

(and, again, I would prefer by 5:00 p.m. on the sixth court day preceding the hearing date), then in the example just given the moving counsel would have a reasonable opportunity to receive, review and reply to the opposition and the court would have ample opportunity to review both the opposition and the reply memoranda prior to the hearing.

This situation will shortly be exacerbated when and if pending legislation/rules requiring law and motion departments to issue tentative decisions 18 hours in advance of the hearing date is adopted. This goal obviously cannot be accomplished if the Iverson interpretation of C.C.P. Section 1005 is allowed to stand.

As the present Law and Motion Judge of the Superior Court of San Mateo County, I do regard this matter as one of statewide urgency and request your very earliest consideration hereof. Thank you.

Yours very truly,

Harlan K. Veal

HKV:df

cc: Judicial Council of California
Attention: Ralph J. Gampell, Director
Judicial Council of California
Legislative Office
The Honorable Louis Papan
The Honorable Robert Naylor
The Honorable Rebecca Morgan
The Honorable Allan J. Bollhoffer
Presiding Judge