

Memorandum 88-15

Subject: Consultant to Study Administrative Law

The Commission at the January meeting decided that as a priority matter a consultant should be retained to prepare an analysis of the possible scope of a background study on administrative law. The analysis would give us an overview of the field and the general problem areas that exist, culled from the cases and literature and from persons interested in the study. The analysis would be designed to help us decide what aspects of administrative law could profitably be studied, and what sorts of priorities would be involved. The compensation for the analysis would be \$1250 plus travel expenses in attending Commission meetings, not exceeding \$250.

The staff received from Paul Wyler, Chair of the Los Angeles County Bar Association Administrative Law Committee, a list of possible consultants. The list was generated by contacting the administrative law teachers at all the major California law schools and soliciting expressions of interest. The staff supplemented the list by researching published material relating to California administrative law, whether or not written by a law professor.

After reviewing all the relevant material, the staff recommends that Professor Michael Asimow of the UCLA Law School be retained to prepare the analysis. Of all the potential consultants, he appears to have the broadest overview and experience and the most extensive writings in the area. His writings include a book on advice letters and rulings from administrative agencies, as well as recent articles on various aspects of administrative law published in the Columbia Law Review, the Michigan Law Review, the Duke Law Journal, and the Oxford Journal of Legal Studies. He is also the author of Gilbert's Outline of Administrative Law and the co-author of a casebook on state and federal administrative law (with Arthur Bonfield, draftsman of the 1981 Model State Administrative Procedure Act and author of State Administrative Rule Making), to be published by West Publishing Company. A copy of Professor Asimow's resume is attached as Exhibit 1.

The staff has contacted Professor Asimow and he would be interested in preparing the analysis on the terms set out above. He would be able to commence work in late spring and deliver the completed analysis to us by the end of July. If the Commission approves these terms and this schedule with Professor Asimow, we will work out with him a more precise statement of the scope of the analysis for inclusion in the contract.

The staff believes we are fortunate to have a person of Professor Asimow's caliber interested to act as a consultant on this study, and recommends Commission approval of the proposed contract.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

RESUME OF MICHAEL ASIMOW

UCLA Law School
Los Angeles, CA 90024
213-825-1086 or 213-282-2178

A. Personal and educational data.

Born: Los Angeles, July 22, 1939

Educational: B.S., UCLA, 1961 (Business Administration). J.D.,
University of California, Berkeley (Boalt Hall), 1964.
Book Review Editor, California Law Review. Graduated
first in the class of 1964.

B. Professional data.

Member: California Bar, California Certified Tax Specialist
Of Counsel, Loeb and Loeb, Los Angeles.

Professor of Law, UCLA Law School, 1967-date.

Visiting Professor, Stanford Law School, 1972.
Michigan Law School, Summer, 1984.

Classes taught: Administrative law, contracts, income tax (both
personal and partnership-corporate), business
planning, constitutional law.

Associate, Irell & Manella, Los Angeles, 1964-1966.

C. Community and Professional Activities.

Chair, California Common Cause, 1983-85; Member, Common Cause
National Board, 1985-.

Chair, Lawyers Adoption Group, Amnesty International, 1980-1982.

Advisory Board, Matthew Bender & Co. (law school division)
(1976-1985).

Policy Board, Taxation with Representation (a public interest tax law
firm).

D. Publications.

1. Books

State and Federal Administrative Law, with Prof. Arthur Bonfield
(West Publishing Co.) (in process).

Chapter 10, Tax Aspects of Marital Dissolution, California Practice Guide-Family Law (Rutter Group 1985).

Solving Marriage Dissolution Tax Problems (Rutter Group, 1985).

Chapter 20, on marital dissolution tax problems, in Valuation and Distribution of Marital Property (Matthew Bender, 1983); New Edition 1985).

Gilbert's Outlines of Administrative Law; Income Tax I; and Income Tax II (law student summaries, new editions each year).

Collaborator in Bittker et. al., Federal Taxation of Income, Estates and Gifts (Warren, Gorman & Lamont, 1983) (This is a four volume work of which Asimow wrote about 7%).

Advice to the Public from Federal Administrative Agencies (Matthew Bender, 1973).

2. Articles

Deducting Spousal and Child Support Under the Deficit Reduction Act, 63 J. Tax. 150 (Sept. 1985).

Non-legislative Rulemaking and Regulatory Reform 1985 Duke L. Journ. 301.

Stock for Services: The Four Faces of Section 83 15 Bev. Hills B.J. 543 (1983).

Delegated Legislation: United States and United Kingdom, 3 Oxford J. of Leg. Studies 253 (1983).

Property Settlements in Marital Dissolutions, 35 U.S.C. Tax Inst. Ch. 3 (1983).

When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies, 81 Colum. L. Rev. 759 (1983).

Standing to Challenge Lenient Tax Rules: A Statutory Solution, 57 Taxes 483 (1979).

Public Participation in the Adoption of Interpretive Rules and Policy Statements, 75 Mich. L. Rev. 520 (1977).

Estoppel Against the Government: The Immigration and Naturalization Service, 2 Chicano L. Rev. 4 (1977).

Civil Penalties for Inaccurate and Delinquent Tax Returns, 23 UCLA Tax Inst. 637 (1976).

The Maximum Tax on Earned Income: The First Five Years, 27 USC Tax Inst. 19 (1975).

Section 1348: The Death of Mickey Mouse, 58 Calif. L. Rev. 801 (1970).

Principle and Prepaid Interest, 16 UCLA L. Rev. 36 (1968).

Detriment and Benefit of New Operating Loss Carryovers, 24 Tax L. Rev. 1 (1968).

EXHIBIT 2

Potential Consultants

The staff has considered the following persons as potential consultants. We have not directly contacted any of them other than Professor Asimow. It is possible that once we have our analysis in hand and have decided on scope and priorities, we may retain one or more of these persons to prepare material on specific aspects of the study or to attend meetings and provide comments.

- Prof. Norman Abrams, UCLA Law School (teaches and has written in area, including study for ABA Center for Administrative Justice concerning California hearing officers; has expressed interest in study, particularly the possibility of a joint effort with Prof. Asimow, also at UCLA)
- Prof. Michael Asimow, UCLA Law School (teaches and has written extensively in area; is interested in study and is recommended by staff to do analysis of possible scope of study)
- Wilbert E. Bennett, Supervising Deputy Attorney General, San Francisco (author of 1987 supplement to CEB California Administrative Hearing Practice)
- Prof. James Blawie, Santa Clara Law School (teaches in area and has expressed interest in study)
- Jack Clevenger, Oakland (founder of Administrative Law College)
- Prof. Marsha Cohen, Hastings Law School (teaches and has written in area and has expressed interest in study)
- Prof. Kenneth Culp Davis, University of San Diego Law School (foremost national authority in area, but unfamiliar with California law)
- Judge Warren Deering, LA County Superior Court (author of old CEB administrative law practice book)
- Robert Fellmeth, San Diego (author of book on California administrative law)
- Prof. Dorothy Glancy, Santa Clara Law School (teaches in area and has expressed interest in study)
- Prof. Robert Lutz, Southwestern Law School (teaches in area and has expressed interest in study)
- Prof. Frank Newman, Boalt Law School (longtime teacher in area)
- Prof. Robert Rabin, Stanford Law School (teaches and has written in area)
- Prof. David Slawson, USC Law School (longtime teacher in area)