

Memorandum 88-24

Subject: Recommended 1988 Legislation (ACR 42--Attorneys' Fees Study Authorization)

ACR 42 (Harris) would implement the Commission's request for authority to study the question of award of attorneys' fees and shifting of fees between parties to litigation:

WHEREAS, The California Law Revision Commission is authorized to study only topics set forth in the calendar contained in its report to the Governor and the Legislature, which are thereafter approved for its study by concurrent resolution of the Legislature, and topics which have been referred to the commission for the study by concurrent resolution of the Legislature; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That, pursuant to Section 8293 of the Government Code, the Legislature refers to the California Law Revision Commission for its study the topic of whether the law relating to the payment of attorneys' fees and the shifting of attorneys' fees between litigants should be revised; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the California Law Revision Commission.

In connection with this resolution, we have received the letter attached as Exhibit 1 from the Chair of the Attorney's Fee Task Force of the State Bar Legal Services Section. The letter states that the task force is ready to assist the Commission on this study. The letter also refers to recent studies in the area and in particular to two federal studies that concluded that existing rules and procedures would be adequate if diligently followed and properly applied.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

**THE LEGAL SERVICES SECTION
THE STATE BAR OF CALIFORNIA**

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THE LAW REV. COMMISSION

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February 10, 1988

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John DeMouly
California Law Revision Commission
4000 Middlefield, #D-2
Palo Alto, CA 94303

Re: Assembly Concurrent Resolution 42

Dear Mr. DeMouly:

The Attorney's Fee Task Force of the State Bar is ready to assist the Law Revision Commission when it begins its study on fee-shifting statutes.

As I told you in our telephone conversations, there have been many studies and articles on the subject. An excellent listing of the California fee-shifting statute is set forth as Appendix B in the Continuing Education of the Bar book entitled, "California Attorney's Fees Award Practice."

There have been two recent federal studies on procedures and methods in awarding attorney's fees. The first was by a Task Force of the Third Circuit and is a lengthy (50 pages) report dated October 8, 1985. The second is by a Committee of the Ninth Circuit chaired by Chief Judge Richard Bilby of Arizona. I think it is fair to say that the studies essentially concluded that the existing rules and procedures, if diligently followed and properly applied, would adequately deal with any problems that might be perceived.

When the Law Revision Commission commences its study, I hope you will call upon us.

Sincerely,

Armando M. Menocal, III
Chair, Attorney's Fee Task Force

mc
cc: Rudy Aros