

First Supplement to Memorandum 90-87

Subject: Study J-501 - Discovery After Judicial Arbitration (Comment
of Administrative Office of the Courts)

Attached to this Supplement as Exhibit 1 is a letter from Arline Tyler for the Administrative Office of the Courts. She supports the conclusions of Judge Donald Smallwood in his letter attached to the basic memo. He recommended the obsolete section reference in Code of Civil Procedure Section 1141.24 be corrected to refer to the new section as the *Tentative Recommendation* attached to the basic memo would do. He opposed any increase in the time within which the arbitration hearing must be held. Ms. Tyler said "Judge Smallwood's letter is quite persuasive."

Accordingly, the staff recommends the Commission approve the TR attached to the basic memo for distribution for comment.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

SEP 12 1990

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JUDICIAL COUNCIL OF CALIFORNIA

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September 10, 1990

Mr. Robert J. Murphy III
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Mr. Murphy:

This is in response to your letters of July 23 and August 13. You ask if the "obsolete reference" in Code of Civil Procedure section 1141.24 (Discovery Not Permitted After Award) to repealed section 2037 should be replaced by a reference to section 2034. Repealed sections 2037 to 2037.9, and section 2034 both discuss discovery regarding expert witnesses.

If this matter had been brought to the attention of the legal staff of the Administrative Office of the Courts for appropriate action, staff would have determined if sections 2037 and 2034 were similar in content. If it appeared that they were, staff would draft a technical amendment citing section 2034 in lieu of section 2037 in Code of Civil Procedure section 1141.24. The proposed amendment would be submitted to the Superior Court Committee of the Judicial Council for review. If the committee adopted staff's proposal it would recommend to the Judicial Council that council seek legislation amending Code of Civil Procedure section 1141.24 to implement the recommendation.

To answer your question, in this case a technical amendment would appear to be the appropriate course of action. However, to be precise, sections 2034(b), 2034(c), 2034(f) and 2034(g) are most similar to repealed sections 2037, 2037.1 and 2037.3. Repealed section 2037 cites repealed section 2037.1 (Date of Exchange), which is most comparable to section 2034(c) (Contents of Demand). Former section 2037 also cites former section 2037.3 which is consistent with sections 2034(f) (Time and Manner of Exchange; List of Expert Witnesses; Expert Witness Declaration) and 2034(g) (Exchange of Expert's Reports and

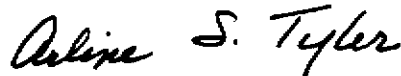
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Writings). Section 2034(b) (Demand for Exchange of Information Concerning Expert Witnesses; Time for Demand), is consistent with the remaining portions of repealed section 2037.

You also ask if another way of handling the discovery issue would be to extend the period within which the arbitration hearing must take place from 60 days after the case is assigned to the arbitrator to a longer period of time. The Judicial Council favors the expeditious resolution of cases referred to arbitration. Extending the time for arbitration would tend to increase delay. Judge Smallwood's letter is quite persuasive.

We hope this response is of assistance to you. If you have any questions, please don't hesitate to call the undersigned at (415) 396-9128.

Very truly yours,



Arline S. Tyler
Attorney

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