

First Supplement to Memorandum 92-22

Subject: Study N-107 - The Process of Administrative Adjudication --
Sanctions in Proceedings (Letter from Judge Wolpman)

Attached to this supplementary memorandum is a letter from James Wolpman, Chief Administrative Law Judge of the Agricultural Labor Relations Board. He is generally pleased with the basic memorandum. However, he would also give an administrative agency the right to issue an order sanctioning misconduct, justified by appropriate findings. The order would not be self-executing and would be subject to court review. The staff is not sure exactly what procedure he envisions, or how this would work in practice. This is something we should discuss at the meeting.

Respectfully submitted,

Robert J. Murphy III
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March 12, 1992

Robert J. Murphy III
California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Dear Mr. Murphy:

Thank you for your letter of March 2nd, inviting my comments on Memorandum 92-22 dealing with the related issues of contempt and sanctions in administrative hearings.

On the whole, I thought your suggestions for dealing with the various issues raised in my earlier letter were excellent. The one place where I would suggest a modification is in the area of monetary sanctions for bad faith tactics (Pages 4 & 5 of 92-22.)

You recommend that, whenever such sanctions are sought, it be accomplished by a petition to the superior court, the model being Gov. Code 11507.7 dealing with discovery sanctions.

This works well in the area of discovery because it is a severable and discrete undertaking in which the court has before it the underlying issue--the scope of discovery--along with the alleged abuse of the discovery process. This puts the court in an excellent position to judge the propriety of sanctions.

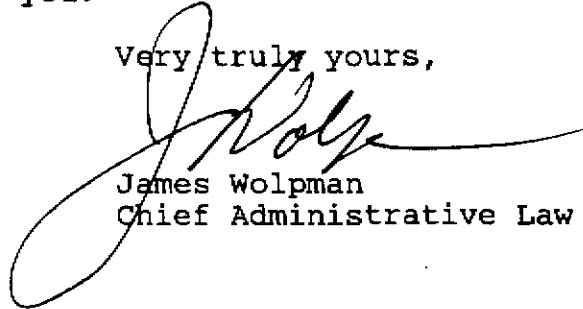
While some issues of non-discovery misconduct are equally discrete and severable, many are not. Often they involve an overall course of conduct or conduct which can only be fairly judged in the context of overall behavior. It would be difficult to present that kind of alleged misconduct to a court without unduly immersing it in the entire hearing process. Courts and litigants would find it burdensome and time consuming.

I would suggest that Administrative Agencies be given the right to issue orders sanctioning misconduct. Those orders, like other administrative decisions would have to be justified by appropriate findings and would not be self-executing. This would allow for court review, often in the context of normal review of

the merits of the underlying administrative decision. And, even where sanctions are the only matter for which review is sought, the court would at least have the benefit of administrative findings and an full record.

Thank you for inviting my comments. I apologize for my delay in getting them to you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Wolpman', with a large, sweeping loop at the end.

James Wolpman
Chief Administrative Law Judge