

Proposed Agenda for Meeting
of
California Law Revision Commission
June 25, 1955

1. Consideration of Minutes of Meeting of March 18 and 19, 1955
2. Report of Chairman and Executive Secretary on Legislative Session:
 - A. Budget
 - B. Education Code bills (A.B. 1605, 1606)
 - C. Summary probate bill (A.B. 858)
 - D. Agenda resolutions (A.C.R. 33, 63, 82)
3. Agenda matters:
 - A. Discussion of implications of developments during the Session for future agenda decisions. (See Memorandum No. 1 enclosed herewith)
 - B. Report of Agenda Committee (Messrs. Babbage and Shaw), enclosed herewith.
 - C. Report of Executive Secretary on plans for future agenda work. (See Memorandum No. 2 enclosed herewith)
4. Topics for Immediate Study by commission:
 - A. Topics proposed by commission and approved by Legislature (Topics 1, 2, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 19, 20, 22, 23 in A.C.R. 82):
 1. Report of Executive Secretary on proposed handling of these topics (See Memorandum No. 3 enclosed herewith).
 2. Report of Executive Secretary on general problem of appointment of research consultants (See Memorandum No. 4 enclosed herewith).
 3. Appointment of committees for specific topics.

4. Report of Executive Secretary on research consultants for
Topics 2, 4, 6, 9, 19 and 20 (See Memorandum No. 5 enclosed)
- B. Revision of California Inheritance and Gift Tax Laws (A.C.R. 33)
Report of Executive Secretary (See Memorandum No. 6 enclosed herewith).
- C. Revision of Fish and Game Code (A.C.R. 63) Report of Executive
Secretary (See Memorandum No. 7 enclosed herewith).
5. Discussion of procedures for developing closer relationship with the
Legislature.
Report of Executive Secretary (See Memorandum No. 8 enclosed herewith).
6. Report of Executive Secretary re Personnel and Equipment.
7. Discussion of Commission's relationship to Judicial Council.
8. Discussion of request of Washington attorney for 100 copies of
Commission's report.
9. Discussion of disposition of Education Code files.

GOODWIN J. KNIGHT
GOVERNOR



JESS R. DORSEY, BAKERSFIELD
MEMBER OF SENATE
STANFORD C. SHAW, ONTARIO
MEMBER OF ASSEMBLY
RICHARD C. FILDEW, LOS ANGELES
BERT W. LEVIT, SAN FRANCISCO
JOHN HAROLD SWAN, SACRAMENTO
SAMUEL D. THURMAN, STANFORD
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STATE OF CALIFORNIA

California Law Revision Commission

July 6, 1955

MINUTES OF MEETING

OF

JUNE 25, 1955

Pursuant to the call of the Chairman, the Law Revision Commission met on June 25, 1955 at Los Angeles, California.

PRESENT:

Mr. Thomas E. Stanton, Jr. Chairman
Mr. John D. Babbage, Vice-Chairman
Mr. Joseph A. Ball
Mr. Stanford C. Shaw
Mr. Samuel D. Thurman

ABSENT:

Honorable Jess R. Dorsey
Honorable Clark L. Bradley
Mr. Bert W. Levit
Mr. John H. Swan
Mr. Ralph N. Kleps

Mr. John R. McDonough, Jr., Executive Secretary of the commission was present. Mr. Charles W. Johnson, Chief Deputy Legislative Counsel, was present, representing Mr. Ralph N. Kleps. Honorable Richard C. Fildew, a former member of the Commission, was present.

The minutes of the meeting of the Commission on March 18 and 19, 1955, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

The Chairman and Executive Secretary reported on the legislative program of the Commission in the 1955 Session of the Legislature.

I. AGENDA

A. Commission Policy on Agenda. The Commission discussed whether the opposition which developed on the part of some Members of the Legislature to the Commission's undertaking to recommend "substantive" changes in the law should cause the Commission to proceed differently than it has in the past, particularly with respect to the items to be included in the calendar which will be reported to the Legislature for approval at the 1956 Session. In the course of this discussion, the Commission discussed whether closer liaison with the Legislature should be developed and, if so, how this might be achieved. The Chairman suggested that the Commission might try to establish liaison with interim committees of the Legislature working in the general areas which its studies cover. He suggested that such liaison might be particularly desirable with the Interim Judiciary Committees since many of the Commission's studies would fall in their area of interest. Mr. Shaw suggested that a number of lawyer members of the Legislature would doubtless attend the State Bar Convention and that the Commission might attempt to arrange a meeting with them at that time. It was decided that because

several members of the Commission, including both of the Legislative members, were not present, no final action should be taken on these matters at this meeting. The consensus of the opinions expressed was, however, that the Commission should present in 1956 a calendar of topics selected for study of essentially the same kind as that presented in 1955.

B. Topics Not Approved by the Legislature. The Commission considered what action should be taken with respect to the Topics included in the 1955 calendar reported to the Legislature which were deleted by action of the Assembly Judiciary Committee, i.e., whether these Topics should be considered as permanently withdrawn from the Commission's program or whether the Commission might present them for approval again at the next session or some future session of the Legislature. The view was expressed that in the case of at least some of the Topics, the Commission should probably present them again at some future date for approval; Topic No. 18, the proposed study of the exceptions to the Hearsay Rule, was prominently mentioned among these. [Note: In these minutes the Topic numbers used are those used in the Commission's report to the Legislature and in A.C.R. 92 as originally drafted]. It was decided that for the present the Commission should simply report to the persons who suggested these Topics that the Legislature declined to approve them.

II. TOPICS APPROVED FOR STUDY

A. Staff and Consultant Research. The Commission considered the recommendation of the Executive Secretary with

respect to how the research work on the sixteen Topics proposed by the Commission and approved by the Legislature should be done. The following action was taken:

1. Mr. Shaw made a motion which was seconded by Mr. Ball and unanimously adopted that Topics Nos. 7, 8, 12, 15, 22 and 23 be studied and reported upon by the Commission's staff.

2. Mr. Babbage made a motion which was seconded by Mr. Shaw and unanimously adopted that the Commission retain a Research Consultant to make a study and report on Topic No. 5.

3. Mr. Shaw made a motion which was seconded by Mr. Babbage and unanimously adopted that Topic No. 16 be studied and reported upon by the staff.

4. Mr. Ball made a motion which was seconded by Mr. Thurman and unanimously adopted that a Research Consultant be retained to make a study and report on Topic No. 14.

5. Mr. Thurman made a motion which was seconded by Mr. Ball and unanimously adopted that Research Consultants be retained to make studies and reports on Topics Nos. 1, 2, 4, 6, 9, 10 and 20.

The Commission adjourned for lunch at noon. The afternoon session of the meeting was called to order at 1:45 p.m.

B. Selection of Research Consultants. The Commission discussed a number of questions relating to the selection of Research Consultants and the contractual arrangements to be made with them. Mr. Shaw made a motion which was seconded by

Mr. Babbage and unanimously adopted that the Chairman be given authority to retain qualified Research Consultants and to make such arrangements with them as he deems appropriate. The Commission discussed the form contract submitted by the Executive Secretary for use in contracting with Research Consultants and approved the form in principle.

C. Compensation of Research Consultants. The Commission discussed the compensation to be paid Research Consultants. The Commission decided that the compensation should be on a modest scale, as paid in connection with public service rather than at regular professional rates. It was decided that payment should be made on a lump sum rather than hourly basis. The Commission discussed whether a single payment should be made or whether part of the payment should be made before the work is completed or even at the time when the work was started. The Commission also discussed whether it should contract for services with respect to a particular study on a fiscal year basis so that at the end of the first fiscal year covered by a study, a second contract could be made in light of the facts then known as to the amount of work done and remaining to be done. At the end of this discussion, a motion was made by Mr. Babbage, seconded by Mr. Thurman and unanimously adopted that the compensation of the Research Consultants and the manner of its payment should be left to the discretion of the Chairman under the authority given to him earlier to contract for the services of Research Consultants.

D. Form of Reports. The Commission discussed what form of report it wishes to have by the staff or a Research Consultant as the case may be. It was decided that, generally speaking, a report should cover the history and present state of the California law and the law of all or representative other states relating to the problem. It was also decided that, at least with respect to the principal cases discussed in the report, the facts should be stated and, where possible, the pertinent parts of the opinion should be quoted. It was also decided that the report should include the writer's recommendations with respect to the position to be taken by the Commission and a draft of such proposed legislation as would be necessary to give effect to such recommendations. The Commission deferred for discussion at a later time whether the writer's recommendations will be included in the published version of his report.

E. Research Consultants for Specific Topics. The Commission considered the Executive Secretary's recommendation that certain individuals be retained as Research Consultants in connection with specific Topics. The Commission decided that the Chairman and Executive Secretary should ultimately decide whether these particular individuals should be retained. Mr. Shaw made a motion which was seconded by Mr. Thurman that the Executive Secretary's recommendation that Professors Ehrenzweig, Chadbourn, Marsh, Howell and F. E. Jones be retained for Topics Nos. 2, 4, 6, 19 and 20, respectively, be approved in principle. The motion was unanimously adopted except that Mr. Babbage voted against the retention of Professor Ehrenzweig in connection

with Topic No. 2.

A number of suggestions were made by members of the Commission with respect to persons who might be retained as Research Consultants for particular Topics.

III. INHERITANCE AND GIFT TAX LAW STUDY

The Commission discussed the study of the California Inheritance and Gift Tax Laws which it is required to make under Res. Ch. 205 (A.C.R. 33). Mr. Ball made a motion which was seconded by Mr. Shaw and unanimously adopted that the Commission should (1) discuss Res. Ch. 205 with Assemblyman McFall, the sponsor of A.C.R. 33, and with Mr. Robert Kirkwood, the Controller; (2) inform the Board of Governors of the State Bar about Res. Ch. 205 and request the State Bar to give the Commission its view with respect to the feasibility and scope of the contemplated study; and (3) determine what further steps, if any, should be taken with respect to this assignment after the views of these persons have been obtained.

IV. FISH AND GAME CODE STUDY

The Commission discussed the Fish and Game Code study which it is required to make under Res. Ch. 204 (A.C.R. 63). The Chairman inquired of Mr. Johnson whether the Legislative Counsel's office could undertake to make the study required by Res. Ch. 204 under a contract with the Commission. Mr. Johnson indicated that this could probably be arranged but that he would like to discuss the matter with Mr. Kleps before

a commitment to do so is made. A motion was made by Mr. Ball, seconded by Mr. Babbage and unanimously adopted that the Chairman be authorized to enter into a contract with the Legislative Counsel to make this study for the Commission. It was also decided that the Commission should communicate with the Fish and Game Commission, advising that Commission of this assignment and inviting its suggestions as to revision of the Fish and Game Code.

V. ADMINISTRATIVE MATTERS

A. Personnel and Equipment. The Executive Secretary reported that Miss Pellicone, the senior stenographer-clerk in his office, has been ill but that she is expected to return to her duties on July 1. He also reported that the budget for the fiscal year 1955-56 includes funds for the purpose of hiring an additional stenographer-clerk (Intermediate classification) and to purchase a desk, chair and typewriter for this stenographer, and a mimeographing machine. He reported that there is no immediate need for the services of an additional stenographer but that he anticipates that as the program of the Commission gets under way, a need for the services of a second stenographer on a part-time and then a full-time basis will develop. The Executive Secretary recommended that (1) the Commission immediately acquire the equipment authorized so that it will be available when needed; (2) as soon as it becomes necessary, the Commission hire a stenographer on a part-time basis; and (3) the Commission hire a stenographer on a full-time basis when this becomes necessary.

A motion was made by Mr. Thurman, seconded by Mr. Ball and unanimously adopted that the Executive Secretary's recommendations be accepted and that he be authorized to acquire the equipment immediately and the services of a stenographer on a part-and full-time basis as the need develops.

B. Education Code Contract. The Executive Secretary reported that the Commission's second Education Code contract with Stanford University was intended by both parties to cover the period January 1 through March 31, 1955, but that through a clerical mistake, the contract was actually written to cover the period January 1 to March 1, 1955. He reported that this mistake had not been noted until recently and that services had been rendered by Stanford under the contract during March, 1955. A motion was thereupon made by Mr. Babbage, seconded by Mr. Shaw and unanimously adopted that the Chairman be authorized to enter into an agreement with Stanford University extending the period of the second Education Code contract to and including March 31, 1955, or to take such other action as may be necessary for the reimbursement of Stanford for services performed for the Commission during March, 1955.

C. Copies of Report for Washington Bar. The Executive Secretary reported that he had received an inquiry from Mr. Leonard F. Jansen, an attorney in the State of Washington, as to whether the Commission can make available to him for distribution to the Washington State Bar 100 copies of the

Commission's Report to the Legislature in order to stimulate interest in the establishment of a law revision commission in that state. The Commission decided that the Secretary should be authorized to send Mr. Jansen a dozen copies of the Commission's report and to advise him that if a need for further copies should develop, the Commission will reconsider the matter.

F. Disposition of Education Code Materials. The Executive Secretary raised the question what, if any, disposition should be made of the material in the files of the Commission relating to the Education Code revision study. He reported that a considerable volume of such material has been accumulated. It was decided that for the time being this material should be retained by the Commission.

E. Salary of Executive Secretary. A motion was made by Mr. Shaw, seconded by Mr. Babbage and unanimously adopted that the salary of the Executive Secretary be increased by 5% effective July 1, 1965.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

STATE OF NEW YORK
LAW REVISION COMMISSION
Ithaca, N. Y.
June 21, 1955

Professor John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California

Dear Professor McDonough:

Mr. MacDonald will be abroad for several weeks. He will see your letter on his return, but perhaps in the meantime you would like to have from me answers to your questions before your June 25th meeting.

First, as to your numbered questions:

1. We do not attempt to work out a basis of compensation commensurate with what a research consultant would receive for like services in the practice of law - e.g., in working up materials for an opinion to counsel, or to a business organization that could or would require for a project the careful and detailed analysis we expect. Quite possibly the compensation we pay would conform with the return in royalties that might be expected from a published treatise -- or for the proportion of royalties on a book corresponding to the work on a segment of it roughly equal in quantity to the study the Consultant does. At any rate, that is a closer standard of comparison. Approaching it from the other end, the honorarium does constitute some monetary compensation for a kind of work more frequently done, without any monetary compensation, in the way of law review articles. Since most of our Consultants are law teachers, the inducement lies partly in the benefits from publication. Most of our Consultants have regarded their studies for the Commission as being in that category. Some, including a few who are not law teachers, have, I believe, thought of it in something of the same light as work for a bar association committee, or the American Law Institute. In addition to the public service aspect, there is also some element of prestige.

In some cases -- I am thinking particularly of one very good consultant -- the consultant will be willing to work for an honorarium within our range because she is interested only in occasional and part-time work. We could not pay her the equivalent of the salary she could command in a big office, but the honorarium we pay does represent for her an inducement to do a study for us rather than some other piece job that might be available.

2. In fixing compensation we do not attempt any specific estimate of the number of hours the study will take. I think in some cases some of our Consultants who were especially familiar with the problem they were undertaking have made a fairly close estimate, in deciding whether they would accept. From our point of view, the approach is rather one of allocating our available budget. The factors that enter into the fixing of the honorarium are,

- (1) What are the topics we want to study in a particular year?
- (2) How they range in
 - (a) importance, i.e., as a significant law reform if they do work out to a proposal;
 - (b) size in terms of the quantity of data we think will have to be covered;
 - (c) the degree of expertise and judgment we think will be needed in collecting and presenting all pertinent data, and the extent to which the views of the Consultant as an expert will be needed;
 - (d) tie-in with other things we have done or may do;
 - (e) availability of someone who qualifies as an expert with specific reference to the particular problem;
- (3) What proportions of our budget for consultant service will be absorbed by important topics (not necessarily the largest) that are clearly indicated for study in that year;
- (4) What we have paid the particular consultant for other studies;
- (5) What we have paid or plan to pay other consultants for studies that look, from the preliminary analysis, comparable to the one in question;
- (6) To what extent, so far as we can anticipate, the particular consultant is himself sufficiently interested in the particular question that he will want to undertake it for his own satisfaction;
- (7) How high up in the scale of eminent experts the consultant is.

3. The compensation has not actually been a matter of bargaining in more than a half-dozen instances that I can think of, off-hand. The procedure is first to arrive at an estimate of what we think we can pay for the job, and will be acceptable to the Consultant. This is done substantially at one time for everything on the list of topics we plan to study that year. Then letters are written to each of the prospective consultants, describing the project and asking them whether they would be willing to undertake the job for that honorarium, and saying that if the prospective consultant agrees, he will be recommended to the Commission at that honorarium. The letter is accompanied by a copy of the original project suggestion and the excerpt from the project report. The letter also summarizes any discussion of the Projects Meeting that may have defined the project further, and if it is related to any other study we have made, or anything else on our calendar, the letter refers to them and attempts to indicate what then seems to be the relation of the new study. In some cases where a topic has been on our calendar, there is some accumulation of data on it, and the letter attempts also to present that. In some cases the letter has attempted

to identify specific elements of the problem. In no case, however, is this letter a limitation on the treatment to be given when the study is made. If the Consultant accepts, the nomination is presented to the Commission. In a few cases the prospective Consultant has replied that he would need to have a somewhat larger honorarium. I do not now recall whether there was ever a case where it was decided that we could not manage the further amount. I do recall that in several cases, the honorarium has been authorized for the larger amount.

In addition to these instances, there has been what might be called "negotiation" in some cases on the matter of research assistance and of stenographic services. In several cases, we have offered, along with the honorarium, a small flat sum in addition for research services for the Consultant, or the services of a member of our staff, or we have undertaken to pay directly as a temporary staff member, on an hourly rate, a student assistant selected and supervised by the Consultant. This is a useful method of making the remuneration more flexible, especially in cases when it is difficult to predict just how much library research will be needed on a particular job.

Typing is strictly a matter of negotiation. We would very much like to have in every case a typewritten manuscript such as your contract calls for. In some cases, however, we have offered to pay disbursements for typing, or have accepted longhand manuscripts. It is, surprisingly, a determining factor in some cases.

I think some Consultants like to have their research assistance and typing service furnished from staff, as it saves them clerical work on tax withholding, social security reports, etc. On the other hand, some Consultants are accustomed to hiring student help and typing service for other work, and take it for granted they will do the same in our studies.

I believe my reply to question 3 carries the suggestion that assumption of the cost of research assistance, in one way or another, may be a useful way of getting the services of the particular Consultant you want at a fairly modest honorarium for himself. Perhaps my answer to question 3 suggests that if you go outside the teaching field for a Consultant, you will perhaps need to find someone who has a special reason for contributing high value legal talent at a low remuneration. We have had good experience in four categories:

- (1) a practicing lawyer really expert in the field who will do a single job because he thinks it is important and he can afford to make the contribution to public service;
- (2) a practicing lawyer of moderate expertise in the general field, who will take on a single job because he is interested in making himself the expert in that particular problem, and in the prestige he hopes will accrue;
- (3) a young, but not too recently graduated lawyer, who is just beginning to establish his own practice in a small town, after some big office experience. You will not be able to get them more than once or twice, if they are as good as they should be for the kind of work you want.

- (4) women lawyers, who, being wives and mothers, are not in active practice or available for salaried jobs commensurate with their abilities, but will undertake a research job.

Your Civil Service rules may limit you to the first category.

One thing I should mention is the question of reviewing adequacy of the honorarium if the study as it develops proves to be more than was anticipated. This can also work the other way. On one occasion, the Consultant demonstrated in a very brief memorandum that the project would not work out as contemplated, and, when we arranged for him to study another topic instead, the original honorarium on the first one was, I believe, reduced.

There is a lower limit to the amount that can be offered, even on quite small problems. However, we have sometimes offered a combined honorarium for two small and unrelated topics.

I have some hesitancy in answering your question following the numbered questions. However, I should say that it would be incorrect to say that Commission approval is a formality in any sense. The initiative Mr. MacDonald takes is predicated on a long experience. The situation is not that the Commission delegates to him the substantial matter of selecting Consultants and allocating our consultant budget; it is rather that Mr. MacDonald is able in general to anticipate what the judgment of the Commission will be in the particular cases. A great many of the Consultants we have had have made several studies for the Commission, and the Commissioners are acquainted with their abilities. In every case when a Consultant is nominated for the first time, the nominating letter contains a fairly detailed statement of the prospective Consultant's background. Where the reason is not obvious to the Commissioners because of their acquaintance with the Consultant, the letter does explain why Mr. MacDonald proposes him for the particular study. I believe that Mr. MacDonald also discusses the possible nominees for Consultants informally with the Commissioners before he writes asking whether they are interested in taking the assignment. In a number of cases, the availability of a Consultant for a particular study is discussed when the topic is placed on the Immediate Study List at the Projects Meeting. I know that individual members of the Commission have at times brought up the name of a possible Consultant. It is also my understanding that specific allocations of the Consultant budget to particular topics enters into the discussions of budget matters generally.

The recitals in your proposed contract suggest to me two limitations that do not apply in our employment of Consultants. I gather that they are unavoidable for you, but I should point out how they would preclude use of our procedures. First, the first "whereas" and the "Now therefore" clause both contain a fairly concrete description of the specific legislation that might result from the study. Under these terms, the conclusion to be drawn from the study would be "yes" or "no" for a specific proposal. If Assembly

Concurrent Resolution No. 82 was framed in those terms, I assume the Commission itself is limited to a recommendation in those terms. However, does A.C.R. No. 82 mean that you can not, in order to prepare yourselves for a recommendation in those terms, expend funds for a broader and less explicitly stated study?

There have been many occasions when our studies could have been formulated in similar terms. However, they almost never are. As you know, the caption we give the projects in the Calendar is usually a mere reference to the subject matter. Within the limits that may be laid down by the Commission itself in discussion at the Projects Meeting, or subsequently by the Committee and the Commission as the study progresses, we expect the Consultant himself to find out and report just what is involved in the study, using the project suggestion and report, and the letter of invitation and accompanying data as a starting point and general frame of reference. He may arrive at a more specific delineation by a "preliminary" Committee Meeting, or short of that, he may check with Mr. MacDonald or me by correspondence or conference to see whether we concur with his view as to scope and points of coverage. We ask him to formulate his concrete recommendations, as a part of the study, but the nature of what his recommendation might be is never circumscribed in any sense that his contract defines it. Requests for his specific recommendation on any single point are an element of supervision of the study by the Committee, and in some cases by Mr. MacDonald or by me in anticipation of what we believe the Committee will want.

We also have had a number of broadly exploratory studies, designed to find out what, if anything, should be studied specifically.

My concrete suggestion as to this first point is that it would be advantageous in the long run if you could make the "Now therefore" clause tie up with the second "Whereas", rather than the first.

I assume you do not want to put into the formal contract any specification of the specific points you want covered, and this aspect comes under points 1 and 5 of the Contract. However, you may want to have an understanding at the outset that the Consultant is going to report broadly on third-party procedure, including but not limited to the operation in the decisions of the present rules, the definition of "indispensable" parties, the related operation of other procedural devices, the constitutional and existing statutory limits in getting personal jurisdiction, etc. -- whatever you think is especially significant for the problem as you have it in California.

It occurs to me also that if you define the study your Consultant is to make in the concrete terms of the contemplated Report of the Commission itself you add one more factor to the difficult problem of maintaining a distinction between the research study made for the Commission and the Commission's report based on its consideration of that study.

Second, the second and third recitals set up a criterion of "expertness". As you know, many of our studies have been done by Consultants who were "recognized experts" before they undertook the work, and there is no doubt that expertness is necessary for some topics and a status of general recognition of the Consultants as experts is a good thing until the Commission's own work acquires such recognition that reliability of the studies will be generally assumed. On the other hand, some of our very good studies have

been done by people who did not qualify as recognized experts before the study, although they may have become experts in the course of the study and acquired general recognition through publication of the study. We have been able to use Consultants on this basis as well as staff members, the Consultant status importing an independent contractor basis of employment. Of course, our staff employments are not on Civil Service either. Not knowing exactly what your civil service regulations require, I cannot offer any suggestions on this, but I should point out that you may not be able to draw Consultant service from as wide a field as we do.

I mentioned the question of submission of reports in typewritten form, and the expense of clerical and stenographic services above. I also mentioned the possibility of treating expense of research assistants as a compensable disbursement, or furnishing it from staff.

As to point (4) of the Contract, we have never asked our Consultants to attend any legislative hearings. As a matter of fact I do not believe that such attendance has ever been suggested. My personal feeling is that to bring the Consultant before the Legislature to explain a statute or even to answer questions would subvert the Commission's position that it makes the Recommendation, having considered the Consultant's report. I have a recollection of hearing that the practice of the Massachusetts Judicial Council is different on this, although I may be wrong. A lot may depend on the practices of legislative committees in a particular legislature; if they ask to hear the Consultant, it cannot very well be refused.

In New York, vouchers for travel expenses for Consultants go in and are paid under the Rules of the Comptroller, in the same manner as for employees. I am not clear as to whether your language "on a scale commensurate" implies something different.

(5) The clause requiring Consultant to revise and supplement his study seems like a good idea; do you think you would also like to have a clause under which you reserve the right to do some editing yourselves? That editing could, of course, be worked out under Clause (5) as you have it. As a matter of fact, some of the editing I do is a short-cut to asking the Consultant to revise according to particular instructions and then considering whether the revision is adequate.

(6) The express provision for modification of the contract is a good thing. I think the possibility of such a modification is understood in our employments, and there have been modifications in several instances. Would any modification have to be set up as a formal contract as well? The provision that nothing is payable until acceptance of the Report may be a desirable safeguard until you get to know just what your Consultants will do. However, it may be a difficulty when you have a long study. Also some Consultants may not be happy about being out of pocket for research assistance and typing costs for that long.

I hope these comments will be useful.

I know that Mr. MacDonald will be interested to know of your experience in your first legislative year, as I was. If you have your agenda set up in mimeograph or other distributable form, we would be glad to see it. As you know, we are still working on the Uniform Commercial Code this year, but we are looking forward to a return to our regular work next year.

Sincerely yours,

s/ Laura T. Mulvaney

Laura T. Mulvaney
Assistant to the
Director of Research

LTM:tc

GOODWIN J. KNIGHT
GOVERNOR



STATE OF CALIFORNIA

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JOHN HAROLD SWAN, SACRAMENTO

SAMUEL D. THURMAN, STANFORD

RALPH N. KLEPS, EX OFFICIO, SACRAMENTO
LEGISLATIVE COUNSEL

June 3, 1955

Mr. John R. McDonough, Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

I return herewith the letter which you prepared for transmittal to Norris J. Burke, Chief Research Attorney of the Judicial Council, under date of May 31, 1955.

For reasons which I explained to you, I do not believe that we should proceed with further correspondence with Mr. Burke on this subject until after the Commission has had an opportunity to review the entire subject of the Commission's relationship to the Judicial Council. I suggest that a discussion of this topic be included on the agenda for the forthcoming meeting of the Commission.

Yours very truly,

A handwritten signature in cursive script that reads "Tom".

THOMAS E. STANTON, JR.
Chairman

TES:bd
Encl.

GOODWIN J. KNIGHT
GOVERNOR



JESS R. DORSEY, BAKERSFIELD
MEMBER OF SENATE
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STATE OF CALIFORNIA

California Law Revision Commission

May 31, 1955

Mr. Norris J. Burke, Chief Research Attorney
The Judicial Council of the State of California
State Building
San Francisco 2, California

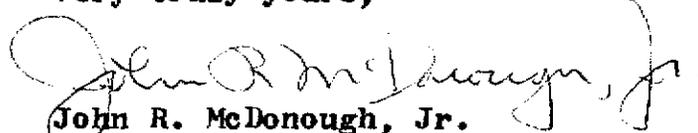
Dear Mr. Burke:

I enclose copies of two suggestions for law revision which have been received by the Law Revision Commission.

Judge Rich's letter states that under the present law the date of trial must always be continued a few days when a jury trial has been waived by failure to deposit fees within ten days prior to trial. Because part of the problem raised by Judge Rich involves Rule 20 of the Rules for Municipal Courts, the Agenda Committee of the Law Revision Commission has directed me to ask you whether the Judicial Council would prefer that the Commission refrain from interesting itself in this matter.

The Memorandum to the Law Revision Commission presents a suggestion made by Mr. Thomas E. Stanton, Jr. that the matter of review of decisions of the Appellate Departments of the Superior Courts might be studied. The Agenda Committee of the Commission decided that this problem is one which might be deemed to fall within the jurisdiction of the Judicial Council. I have, accordingly, been instructed to forward this suggestion to you.

Very truly yours,


John R. McDonough, Jr.
Executive Secretary

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1954 Suggestion No. 74

MUNICIPAL COURT

Riverside Judicial District
in and for the
County of Riverside
Chambers of
Elwood M. Rich
Judge of the Municipal Court

Court House Annex
Riverside, California
December 15, 1954

Professor John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Professor McDonough:

I would like to direct your attention to Sections 631 and 1013 of the C.C.P. and to Rule 20 of Rules for Municipal Courts. Section 631 of the C.C.P. provides that a jury trial is waived by operation of law if the fees are not deposited ten days prior to the trial date. The same Section and Rule 20 provides that where there is a waiver of jury trial by operation of law that the clerk must give ten days written notice to the adverse party or parties of such waiver, and it further provides if it is impossible for the clerk to give such ten days notice by reason of the trial date that the trial of said action shall be continued by the court for a sufficient length of time to enable the giving of such notice by the clerk. C.C.P. Section 1013 of course, covers the matter of when a notice given by mail is effective.

From the above it seems to me that since a waiver of jury trial by operation of law comes into effect when the fees are not deposited within ten days before the trial date that it will always be in that situation impossible for the clerk to give ten days written notice of such waiver to the opposite party. Thus in this situation the trial must always be continued at least a few number of days in order to give the clerk the requisite ten days in which to notify the adverse party. It is my understanding under C.C.P. 1013 that where the notice is given by mail that the party would be entitled to at least one extra day together with an additional one day for every 100 miles of distance between the place of mailing and the place of receiving. Thus a clerk would need at least eleven days and sometimes more in order to give the requisite ten days notice.

To have to continue every case in this type of situation in order to enable the clerk to have the time needed seems very undesirable. As a practical matter it is rare that the adverse party ever demands a jury trial as a result of such a notice. It would seem that either the period of time

(1954 Suggestion No. 74, continued.)

within which the deposit is made should be increased three, four or five days or that the period of time within which the clerk should notify the adverse party should be decreased four or five days.

I haven't researched this problem and sometimes one can overlook an obvious thing and be mistaken. If I am incorrect about this matter I would appreciate your pointing it out.

Yours very truly,

Elwood M. Rich

EMP: P

1954 Suggestion No. 81

Originator: Thomas E. Stanton, Jr.

Memorandum to Commission

Chairman Stanton has asked me to call your attention to Agran v. Shaniro, 127 A.C.A. 129, decided June 14, 1954 by the Appellate Department of the Los Angeles Superior Court. The court held, in a case of first impression, that the plaintiff, a certified public accountant, could not recover for certain services rendered to his client in connection with a tax matter, because they involved the practice of law. At the conclusion of the opinion Judge Patrosso, writing for the Court, said

"In concluding this opinion, we cannot refrain from offering the comment that this case serves to demonstrate the desirability of legislation which would permit this court to certify questions of first impression and great importance such as those here presented, to the highest court of the State for ultimate determination."

In this connection you may be interested in having a look at Bernie Witkin's article, "The Extraordinary Writ - Friend or Enemy," in the current issue of the State Bar Journal (Volume 29 No. 6 Nov.-Dec. 1954), particularly at pages 477-479.

John R. McDonough, Jr.