

12/12/86

Memorandum 87-4

Subject: New Topic

Attached is a letter from Paul Wyler, Chair of Administrative Law Committee, Los Angeles County Bar Association. He asks whether the Law Revision Commission is willing to study California administrative law and, if so, when the Commission would give active consideration to the subject.

We have received a number of suggestions for new topics during the past year. The staff has not presented these to the Commission because the Commission has determined that it will devote substantially all of its time and resources to the probate study, and that study will require a number of years to complete. Nevertheless, Mr. Wyler asked that the Commission consider his letter at the January meeting.

The Commission now has an agenda of 23 topics. Some of these are topics that have not been given active consideration, but many of the topics are ones that the Commission has retained on its agenda after submitting a recommendation which was enacted. These topics are retained on our agenda so that the Commission can submit supplemental recommendations to correct defects in the legislation enacted upon its recommendation or to deal with new developments in the particular field.

The Commission will not be in a position to undertake any new studies for several years, because we will be working on probate law. We could add this topic -- administrative law -- to our agenda and obtain an expert consultant to prepare a background study so that the study would be available when the Commission is ready to consider the topic. However, the cost of printing our recommendations relating to probate law during the next few years will require us to use money for printing that otherwise would be available to retain expert consultants to write studies. Accordingly, if the Commission requested authority to study administrative law, it would be perhaps three or four years before we could retain an expert to prepare a background study and the consultant would need several years to prepare the study.

The Commission would be the logical body to make a study of administrative law, a study that would require a number of years to make. The question is whether we want to request authority to study the topic now even though it would be a number of years before we could give the topic active consideration?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Los Angeles County Bar Association

PLEASE REPLY TO:
PAUL WYLER
1300 W. Olympic Bl., 5th Fl.
Los Angeles, CA 90015
(213) 744-2250

617 South Olive Street
Los Angeles, California
90014
(213) 627-2727

Mailing address:
P.O. Box 55020
Los Angeles, California
90055

November 12, 1986



Donald P. Baker
President

Larry R. Feldman
President-Elect

Margaret M. Morrow
Senior Vice-President

Harry L. Hathaway
Vice-President/Treasurer

Richard Walch
Executive Director

David R. Pascale
Associate Executive
Director
& Director of Finance

Jill Switzer
Associate Executive
Director
& General Counsel

Trustees

- Lorne J. Brown
- Allan Browne
- Robert DeMeter
- Jeffrey C. Freedman
- Ann Ruth Grant
- Lawrence P. Grassini
- William P. Green
- Patrick M. Kelly
- Katharine Krause
- Sheila James Kuehl
- Philip M. Madden
- Paul M. Mahoney
- Cheryl White Mason
- Robin Meadow
- Leonard, J. Meyberg, Jr.
- Neal S. Millard
- Andrea Sheridan Ordine
- Barbara Jean Penny
- Andria Kay Richey
- Marc L. Sallus
- Federico Castelan Sayre
- Richard J. Stone
- Jeffrey A. Tidus
- Howard L. Weitzman
- Donald M. Wessling
- Hermia Shegog Whitlock

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Dear Persons:

Enclosed herewith is a copy of 1986 State Bar Conference of Delegates Resolution 6-6 regarding a study of California state administrative proceedings.

The Conference of Delegates at its 1986 session in Monterey, California in September, 1986 defeated this resolution. While most speakers on this point admitted that California administrative proceedings need reform, many felt that the legislature is not the appropriate place to study the matter and propose reforms.

Is your Commission willing to study the same? Our Committee believes that greater uniformity of California administrative proceedings would be helpful to the administration of justice and believes that the concept of a central panel of administrative law judges (or uniform corps) is an interesting idea that should be studied and perhaps be enacted into law.

Please advise if your Commission can take up this subject. We have ample literature and materials in this matter which can be supplied to the Commission if desired.

Sincerely,

PAUL WYLER,
Chair of Administrative Law
Committee, Los Angeles County
Bar Association

PW:kc
Enclosure

RESOLVED that the Conference of Delegates recommends that a Joint Commission on Administrative Law of the State Senate and State Assembly be created and empowered to study the Administrative Procedure Act (Government Code Section 11370, et seq.) and related statutes and to recommend amendments to provide for:

- (a) a unified statutory scheme and a single State agency to hear and decide all cases and controversies in which an "adjudicative hearing", as defined in Section 11500(f), Government Code, is required by State law, within limits set by provisions of the State Constitution;
- (b) promulgation of rules of procedure and evidence, uniform as far as practicable, by said agency;
- (c) a requirement that any such hearing be presided over by an administrative law judge (ALJ) employed by said single agency and qualified as described in Section 11502, Government Code;
- (d) a requirement that such administrative law judges be independent of any other State agency;
- (e) a prohibition of any ex parte communication between an ALJ and any other person regarding a pending case; and
- (f) a prohibition of any association for employee representational purposes of ALJs with employees or members of any other State agency.

PROPONENT Lawyers Club of Los Angeles County

STATEMENT OF REASONS

This Resolution addresses problems in adjudication of controversies before State administrative agencies by administrative law judges. State agencies employing substantial numbers of administrative law judges are the Worker's Compensation Appeals Board, the Unemployment Insurance Appeals Board, the Public Utilities Commission and the Office of Administrative Hearings. The first three of these agencies have specialized subject-matter jurisdictions indicated by the agency names. The Office of Administrative Hearings has a jurisdiction defined generally by the Administrative Procedure Act and specifically by various Codes, including the Business and Professions Code, Insurance Code, Education Code and others.

The Office of Administrative Hearings (OAH) is the least specialized of the agencies employing administrative law judges. It provides a large number of State agencies with a central panel or unified corps of administrative law judges, modified by excluding certain subject-matter areas which, under State statute or Constitutional provision, are the domain of the specialized agencies, such as the three named above, who employ their own "in-house" judges.

Hearing procedure and rules of evidence vary substantially from agency to agency. Such lack of uniformity is burdensome to litigants and attorneys, except for private attorneys specializing in practice before one agency and except for State-employed attorneys, and increases costs for all parties. Employment of ALJs exclusively by one specialized agency creates a potential for narrowness of viewpoint and lack of decisional independence of the judges. Cost savings can be anticipated, as caseloads fluctuate, from coordinated calendaring of hearings or exchange of judges between agencies, where full unification is not practicable.

At present, by action of the Public Employment Relations Board (PERB), most administrative law judges are grouped with State-employed attorneys in one "appropriate unit" for negotiation of pay and other conditions of employment with the State as employer. This situation creates a potential for conflicts of interest. It was resisted by the judges before PERB but without success. It should be addressed by the legislature.

The legislative study contemplated in this Resolution could explore all these and other possibilities of improvement in economy, procedural uniformity and fairness in processes of administrative adjudication.

AUTHOR AND/OR PERMANENT CONTACT Ken Cameron (213) 458-9766
(213) 451-8678

RESPONSIBLE FLOOR DELEGATE Ken Cameron