

11/2/66

Memorandum 66-70

Subject: Research contracts

The salary savings that result from the staff vacancy provide funds that will permit us to make a number of research contracts during the current fiscal year. It is desirable to make these as soon as possible because any studies that we contract for now must be completed within approximately two years. Past experience indicates that this is a minimum period of time within which to expect a member of a law faculty to complete a research study. In addition, making research contracts now will make it possible for the research consultants to plan to prepare the study or a substantial portion of the study during the next summer.

The following are the staff recommendations concerning the research studies we believe are needed. The topics are listed in the order of priority that we would give them. We would make contracts in this order to the extent that funds are available.

1. Evidence Code -- Code of Civil Procedure Revisions. We suggest that a research contract be made with a research consultant to prepare a study on the conforming changes needed in the Code of Civil Procedure. We suggest that \$750 would be a fair compensation for this study.
2. Condemnation Law and Procedure (Procedural Aspects). We have reviewed the amount of research that will be required in connection with a comprehensive statute on eminent domain. We are concerned that it will not be possible to prepare all the research studies needed using only the staff. (We have lost one member of the staff and the replacement probably will not produce a substantial quantity of work during the first year.) We have made a careful review of the entire

topic and have concluded that one portion of the topic could be handled by an outside research consultant if we can retain the type of person we need to produce a useful study. The portion we have identified is tentatively called "Procedural Aspects" and, roughly speaking, would include but not be limited to the matters set out below.

#### PROCEDURAL ASPECTS OF EMINENT DOMAIN

##### I. GENERALLY (CCP 1256)

##### II. PROCEDURE PRIOR TO FILING COMPLAINT

(includes public hearings, settlement negotiations, condemnor's offer, etc.)

##### III. JURISDICTION AND VENUE (CCP 170(6), (7); 640, 1243)

##### IV. PARTIES, PLEADINGS, AND SERVICE

(CCP 1244, 1245, 1245.2, 1245.3, 1245.4, 1246)(simplified owner's answer and related problems)

##### V. PRETRIAL PROCEDURES

Discovery

Other Pretrial matters (CCP 1265, 1247b)

##### VI. TRIAL PROCEDURE

Jury trial

Preference on Calendar

Order of presentation of evidence and burden of proof (CCP 1256.1)

Evidence (Evidence Code Provisions)

##### VII. COURT APPOINTMENT OF APPRAISERS AND THEIR COMPENSATION (1266.2)

##### VIII. ARBITRATION AS A SUBSTITUTE FOR A COURT PROCEEDING

##### IX. POST TRIAL PROCEEDINGS

(Ch. 16, Continuing Education of Bar book; CCP 1257, 1251, 1253, 1255, 1255a)

We believe that a fair rate of compensation for this study would be \$4,000.

3. Quasi-community property; division of property on divorce. We need studies on two related topics: (1) whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised, and (2) whether the law relating to the allocation or division of property on divorce or separate maintenance should be revised. We suggest that Professor Marsh be selected as the consultant and that the compensation for the two studies be fixed at \$1,500.
4. Pour-over trusts; powers of appointment. We need a research study on whether the law relating to devises and bequests to a trustee under, or in accordance with, terms of an existing inter vivos trust should be revised and whether the law relating to a power of appointment should be revised. Legislation was enacted on both subjects since the Legislature directed us to study this topic, but we need an expert to advise us whether the legislation is adequate and, if not, what changes in existing law are needed. We suggest that the compensation for this study be fixed at \$1,000.
5. Mutuality of remedy. We need a study on whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised. We suggest that the compensation for this study be fixed at \$1,000.
6. Putative spouse. We need a study on whether the law relating to the rights of a putative spouse should be revised. Suggested compensation \$3,000.

7. Small claims court. We need a study on whether the Small Claims Court Law should be revised. Suggested compensation \$1,000.
8. Custody jurisdiction. We need a study on whether the law respecting the jurisdiction of courts in proceedings affecting the custody of children should be revised. Suggested compensation \$1,000.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary