

#59

2/21/69

Memorandum 69-48

Subject: Study 59 - Service of Process

Resolution Chapter 61 of the Statutes of 1958 authorized the Commission to make a study to determine whether the California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court. The topic is explained in more detail in the Commission's 1958 report.

The staff recommends that this topic be dropped from the Commission's agenda. Attached as Exhibit I is a statement that could be included in the next Annual Report to authorize us to drop this topic.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

Study Relating to Service of Process by Publication . .

In 1958, the Commission was authorized to make a study to determine whether the California statutes relating to service of process by publication should be revised.¹ The Commission requested authority to make this study because two United States Supreme Court decisions--one decided in 1950² and the other in 1956³--had placed new and substantial constitutional limitations on the service of process by publication in judicial proceedings. The Commission concluded that a comprehensive and detailed study was needed to make certain that all California statutory provisions which might be affected by the decisions were examined and any necessary revisions made.

The Commission delayed making such a study because the State Bar decided to undertake a study that included this topic.⁴ In 1966, the State Bar forwarded a proposed statute to the Judicial Council for joint study. In November 1968 the Judicial Council approved a proposed statute for presentation to the Legislature for enactment at the 1969 legislative session.⁵ The legislation recommended by the Judicial Council is intended to provide a modern law on jurisdiction and service of process. Accordingly, the Commission has concluded that no useful purpose would be served by the Commission making a study of service of process by publication.

¹ This study was authorized by Cal. Stats. 1958, Res. Ch. 61, p. 135. For a description of the topic, see 2 Cal. L. Revision Comm'n Reports, 1958 Report at 18 (1959).

² Millane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

³ Walker v. City of Hutchinson, 352 U.S. 112 (1956).

⁴ See 41 Cal. S.B.J. 737, 738 (1966); 38 Cal. S.B.J. 486 (1963); 37 Cal. S.B.J. 590 (1962).

⁵ See Revision of Title 5 (commencing with Section 405) of the Code of Civil Procedure Relating to Jurisdiction and Service of Process, 1959 Cal. Judicial Council Report (1969). See also _____ which was introduced at the 1969 Regular Session to effectuate the recommendation of the Judicial Council.