

1

ORIGINAL

Case No. S179378

IN THE  
SUPREME COURT OF CALIFORNIA

SUPREME COURT  
FILED

TARRANT BELL PROPERTY, LLC, et al.  
Petitioners,

OCT 19 2010

Frederick K. Olinick Clerk  
JEN  
Deputy

vs.

THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent  
REYNALDO ABAYA, et al., Real Parties in Interest

SPANISH RANCH I, L.P.  
Petitioner,

vs.

THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent  
REYNALDO ABAYA, et al.,  
Real Parties in Interest

After a Decision by the Court of Appeal  
First Appellate District, Division Four  
Civil Nos. A125496, A125714

Superior Court Alameda County, No. HG08418168  
Hon. George C. Hernandez, Jr.

**REAL PARTIES IN INTEREST REYNALDO ABAYA, ET AL.'S  
REQUEST FOR JUDICIAL NOTICE**

HENRY E. HEATER (SBN 99007) [hheater@elthlaw.com](mailto:hheater@elthlaw.com)  
LINDA B. REICH (SBN 87619) [lreich@elthlaw.com](mailto:lreich@elthlaw.com)  
Endeman, Lincoln, Turek & Heater LLP  
600 B Street, Suite 2400, San Diego, CA 92101  
Telephone: 619-544-0123  
Facsimile: 619-544-9110  
Attorneys for Real Parties in Interest,  
REYNALDO ABAYA, et al.

RECEIVED

OCT 19 2010

CLERK SUPREME COURT

Case No. S179378

IN THE  
SUPREME COURT OF CALIFORNIA

---

TARRANT BELL PROPERTY, LLC, et al.  
Petitioners,

vs.

THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent  
REYNALDO ABAYA, et al., Real Parties in Interest

---

SPANISH RANCH I, L.P.  
Petitioner,

vs.

THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent  
REYNALDO ABAYA, et al.,  
Real Parties in Interest

---

After a Decision by the Court of Appeal  
First Appellate District, Division Four  
Civil Nos. A125496, A125714

Superior Court Alameda County, No. HG08418168  
Hon. George C. Hernandez, Jr.

---

**REAL PARTIES IN INTEREST REYNALDO ABAYA, ET AL.'S  
REQUEST FOR JUDICIAL NOTICE**

---

HENRY E. HEATER (SBN 99007) [hheater@elthlaw.com](mailto:hheater@elthlaw.com)  
LINDA B. REICH (SBN 87619) [lreich@elthlaw.com](mailto:lreich@elthlaw.com)  
Endeman, Lincoln, Turek & Heater LLP  
600 B Street, Suite 2400, San Diego, CA 92101  
Telephone: 619-544-0123  
Facsimile: 619-544-9110  
Attorneys for Real Parties in Interest,  
REYNALDO ABAYA, et al.

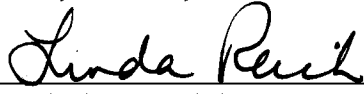
TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF  
THE CALIFORNIA SUPREME COURT, AND THE HONORABLE  
ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Real Parties in Interest hereby request that this Court take judicial  
notice, pursuant to Evidence Code, sections 459, 451(a) and 452(a), (b) and  
(c), of a true and correct copy of the Legislative History of the 1982  
amendment to Code of Civil Procedure, section 638, attached hereto as  
Exhibit "A."

Dated: Oct. 18, 2010

Respectfully submitted,

Henry E. Heater  
Linda B. Reich  
Endeman, Lincoln, Turek & Heater LLP

By:   
Linda B. Reich  
Attorneys for Real Parties in Interest  
Reynaldo Abaya, et al.

**EXHIBIT A**



# LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695  
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

---

## DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 3657 of 1982. Assembly Bill 3657 was approved by the Legislature and was enacted as Chapter 440 of the Statutes of 1982.

The following list identifies all documents obtained by the staff of Legislative Intent Service on Assembly Bill 3657 of 1982. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service operated under directions to locate and obtain all available material on the bill.

### **ASSEMBLY BILL 3657 (ROSENTHAL-1982):**

1. All versions of Assembly Bill 3657 (Rosenthal-1982);
2. Procedural history of Assembly Bill 3657 from the 1981-82 Assembly Final History;
3. Analysis of Assembly Bill 3657 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 3657;
5. Analysis of Assembly Bill 3657 prepared for the Senate Committee on Judiciary;
6. Consent analysis of Assembly Bill 3657 prepared by the Senate Democratic Caucus;
7. Consent Calendar analysis of Assembly Bill 3657 prepared by the Senate Republican Caucus;

8. Material from the legislative bill file of Assembly member Herschel Rosenthal on Assembly Bill 3657;
9. Post-enrollment documents regarding Assembly Bill 3657;
10. Excerpt regarding Assembly Bill 3657 from the 1981-82 Summary Digest of Statutes Enacted, prepared by the Legislative Counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6<sup>th</sup> day of October, 2010 at Woodland, California.



---

MARIA A. SANDERS

**ASSEMBLY BILL**

**No. 3657**

**Introduced by Assemblyman Rosenthal**

March 18, 1982

An act to amend Section 638 of the Code of Civil Procedure, relating to actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 3657, as introduced, Rosenthal. Actions: reference.

Existing law provides, upon agreement of the parties and the order of the court, for the trial of any or all issues in an action or proceeding, or the ascertainment of a fact necessary to enable the court to determine an action or proceeding, by reference.

This bill would provide that the parties to a written contract or lease may provide that any controversy arising therefrom will be heard by a reference and any party to such an agreement may move the court to compel the reference; and if the court finds a reference agreement existing between the parties, the reference shall be ordered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 638 of the Code of Civil
- 2 Procedure is amended to read:
- 3 638. (a) A reference may be ordered upon the
- 4 agreement of the parties filed with the clerk, or judge, or
- 5 entered in the minutes or in the docket:
- 6 1. To try any or all of the issues in an action or
- 7 proceeding, whether of fact or of law, and to report a
- 8 finding and judgment thereon;



1     2. To ascertain a fact necessary to enable the court to  
2 determine an action or proceeding.  
3     ***(b) Parties to a written contract or lease may provide***  
4 ***that any controversy arising therefrom will be heard by***  
5 ***a reference and any party to such an agreement may***  
6 ***move the court to compel the reference. If the court finds***  
7 ***a reference agreement existing between the parties, the***  
8 ***reference shall be ordered.***

O





AMENDED IN ASSEMBLY MAY 10, 1982

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 3657

Introduced by Assemblyman Rosenthal

March 18, 1982

An act to amend Section 638 of the Code of Civil Procedure,  
relating to actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 3657, as amended, Rosenthal. Actions: reference.  
Existing law provides, upon agreement of the parties and  
the order of the court, for the trial of any or all issues in an  
action or proceeding, or the ascertainment of a fact necessary  
to enable the court to determine an action or proceeding, by  
reference.

This bill would provide that ~~the parties~~ *the court may order  
such a reference upon the motion of a party to a written  
contract or lease may provide which provides that any  
controversy arising therefrom will be heard by a reference  
and any party to such an agreement may move the court to  
compel the reference; and if the court finds a reference  
agreement existing exists between the parties; the reference  
shall be ordered.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 638 of the Code of Civil
- 2 Procedure is amended to read:
- 3 638. (a) A reference may be ordered upon the
- 4 agreement of the parties filed with the clerk, or judge, or



1 entered in the minutes or in the docket, or upon the  
2 motion of a party to a written contract or lease which  
3 provides that any controversy arising therefrom shall be  
4 heard by a reference if the court finds a reference  
5 agreement exists between the parties.

6 1. To try any or all of the issues in an action or  
7 proceeding, whether of fact or of law, and to report a  
8 finding and judgment thereon;

9 2. To ascertain a fact necessary to enable the court to  
10 determine an action or proceeding.

11 ~~(b) Parties to a written contract or lease may provide~~  
12 ~~that any controversy arising therefrom will be heard by~~  
13 ~~a reference and any party to such an agreement may~~  
14 ~~move the court to compel the reference. If the court finds~~  
15 ~~a reference agreement existing between the parties, the~~  
16 ~~reference shall be ordered.~~



## CHAPTER 440

An act to amend Section 638 of the Code of Civil Procedure, relating to actions.

[Approved by Governor July 7, 1982. Filed with  
Secretary of State July 8, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 638 of the Code of Civil Procedure is amended to read:

638. A reference may be ordered upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes or in the docket, or upon the motion of a party to a written contract or lease which provides that any controversy arising therefrom shall be heard by a reference if the court finds a reference agreement exists between the parties:

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;
2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

---

 CHAPTER 441

An act to amend Section 926 of the Penal Code, relating to grand juries.

[Approved by Governor July 7, 1982. Filed with  
Secretary of State July 8, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 926 of the Penal Code is amended to read:

926. (a) If, in the judgment of the grand jury, the services of one or more experts are necessary for the purposes of Sections 925, 925a, 928, 933.1, and 933.5 or any of them, the grand jury may employ one or more experts, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court. Expenditures for the services of experts and assistants for the purposes of Section 933.5 shall not exceed the sum of thirty thousand dollars (\$30,000) annually, unless such expenditures shall also be approved by the board of supervisors.

(b) When making an examination of the books, records, accounts, and documents maintained and processed by the county assessor, the



VOLUME 2  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1981-82 REGULAR SESSION  
1981-82 FIRST EXTRAORDINARY SESSION

---

ASSEMBLY FINAL HISTORY

SYNOPSIS OF  
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,  
JOINT, AND HOUSE RESOLUTIONS

---

Assembly Convened December 1, 1980  
Recessed December 2, 1980                      Reconvened January 5, 1981  
Recessed April 9, 1981                          Reconvened April 20, 1981  
Recessed July 7, 1981                          Reconvened July 10, 1981  
Recessed July 10, 1981                        Reconvened August 10, 1981  
Recessed September 15, 1981                Reconvened January 4, 1982  
Recessed April 1, 1982                        Reconvened April 12, 1982  
Recessed June 30, 1982                        Reconvened August 2, 1982  
Adjourned September 1, 1982  
Adjourned Sine Die November 30, 1982  
Legislative Days..... 248

---

HON. WILLIE L. BROWN, JR.  
*Speaker*

HON. LEO T. MCCARTHY  
*Speaker pro Tempore*  
HON. MIKE ROOS  
*Majority Floor Leader*

HON. TOM BANE  
*Assistant Speaker pro Tempore*  
HON. ROBERT W. NAYLOR  
*Minority Floor Leader*

*Compiled Under the Direction of*  
JAMES D. DRISCOLL  
*Chief Clerk*

GUNVOR ENGLE  
*History Clerk*



## ✓ A.B. No. 3657—Rosenthal.

An act to amend Section 638 of the Code of Civil Procedure, relating to actions,  
1982

- Mar. 18—Read first time. To print.
- Mar. 19—From printer. May be heard in committee April 18.
- Mar. 30—Referred to Com. on JUD.
- April 28—In committee: Set, first hearing. Hearing canceled at the request of author.
- May 6—From committee: Amend, and do pass as amended. To Consent Calendar. (April 28.)
- May 10—Read second time and amended. Ordered returned to second reading.
- May 11—Read second time. To Consent Calendar.
- May 13—Read third time, passed, and to Senate. (Ayes 71. Noes 0. Page 13229.)
- May 13—In Senate. Read first time. To Com. on RLS. for assignment.
- May 20—Referred to Com. on JUD.
- June 23—From committee: Do pass. To Consent Calendar.
- June 24—Read second time. To Consent Calendar.
- June 28—Read third time, passed, and to Assembly. (Ayes 35. Noes 0. Page 11564.)
- June 28—In Assembly. To enrollment.
- June 29—Enrolled and to the Governor at 5 p.m.
- July 7—Approved by the Governor.
- July 8—Chaptered by Secretary of State—Chapter 440, Statutes of 1982.

## A.B. No. 3658—Rosenthal.

An act to amend Sections 4351 and 4601 of the Civil Code, relating to family law,  
1982

- Mar. 18—Read first time. To print.
- Mar. 19—From printer. May be heard in committee April 18.
- Mar. 30—Referred to Com. on JUD.
- Nov. 30—From committee without further action.

## A.B. No. 3659—Floyd.

An act relating to county superintendents of schools,  
1982

- Mar. 18—Read first time. To print.
- Mar. 19—From printer. May be heard in committee April 18.
- Mar. 30—Referred to Com. on ED.
- April 20—In committee: Set, first hearing. Hearing canceled at the request of author.
- April 27—In committee: Set, second hearing. Failed passage.
- May 4—In committee: Reconsideration granted.
- May 5—From committee: Amend, and do pass as amended. (Ayes 7. Noes 3.) (May 4.)
- May 6—Read second time and amended. Ordered returned to second reading.
- May 10—Read second time. To third reading.
- June 10—Read third time, passed, and to Senate. (Ayes 66. Noes 3. Page 14865.)
- June 10—In Senate. Read first time. To Com. on RLS. for assignment.
- June 17—Referred to Com. on ED.
- June 24—From committee: Do pass. (Ayes 6. Noes 2.)
- June 25—Read second time. To third reading.
- Aug. 25—Ordered placed on inactive file.
- Aug. 26—From inactive file. To third reading.
- Aug. 27—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 14105.)
- Aug. 30—In Assembly. To enrollment.
- Aug. 31—Enrolled and to the Governor at 4 p.m.
- Sept. 14—Approved by the Governor.
- Sept. 15—Chaptered by Secretary of State—Chapter 1052, Statutes of 1982.



ELIHU M. HARRIS, Chairman

AB 3657 (Rosenthal) As introduced 3/18/82

SUBJECT

This bill is intended to require courts to enforce contractual agreements which provide that controversies will be heard by a referee.

DIGEST

Existing law provides that, upon agreement of the parties to civil litigation, a court may appoint a general referee to try any or all of the issues in an action, and to report a finding and judgment thereon or a special referee to ascertain a fact necessary to enable the court to determine the action when the parties do not consent to a reference the court may nonetheless order a reference when it determines that it is necessary.

This bill would provide that, when parties have provided in a written contract that any controversy arising therefrom will be heard by a referee, the court must, upon motion of any party, order enforcement of the reference agreement.

STAFF COMMENTS

1. According to the source of this bill, "current court congestion, particularly in Los Angeles County, has made the use of referees under Section 638(1) of the California Code of Civil Procedure a far more attractive remedy than it has previously been. The use of a referee in complex business or real property matters has, in some cases, become almost essential due to the complexity of some of these matters and the time required to bring them to trial." It is argued that this bill is needed because there is no present procedure for compelling a reference if one party unilaterally decides not to abide by a prior agreement that any dispute may be submitted to a referee.
2. Existing law provides that, upon agreement of the parties, or when it deems it necessary, a court may order a special or general reference. This bill would re-quire a court to compel a reference if there is a pre-dispute agreement to refer. Should not the court have the discretion to decide that, despite the existence of the pre-dispute agreement, the issues would be more

(CONTINUED)



properly or efficiently decided by the judge? Therefore, should not this bill simply create a presumption that a court should compel a reference when parties have contractually agreed to one, thereby permitting the court to determine that such a reference would be inappropriate?



RL

AB 3657

HEARING DATE: 4/28/82

SOURCE

State Bar of California

SUPPORT

Unknown

OPPOSITION

Unknown





ELIHU M. HARRIS, Chairman

\* AB 3657 (Rosenthal) As introduced 3/18/82

SUBJECT

This bill is intended to require courts to enforce contractual agreements which provide that controversies will be heard by a referee.

DIGEST

Existing law provides that, upon agreement of the parties to civil litigation, a court may appoint a general referee to try any or all of the issues in an action, and to report a finding and judgment thereon or a special referee to ascertain a fact necessary to enable the court to determine the action when the parties do not consent to a reference the court may nonetheless order a reference when it determines that it is necessary.

This bill would provide that, when parties have provided in a written contract that any controversy arising therefrom will be heard by a referee, the court ~~must~~ <sup>may</sup> upon motion of any party, order enforcement of the reference agreement.

STAFF COMMENTS

1. According to the source of this bill, "current court congestion, particularly in Los Angeles County, has made the use of referees under Section 638(1) of the California Code of Civil Procedure a far more attractive remedy than it has previously been. The use of a referee in complex business or real property matters has, in some cases, become almost essential due to the complexity of some of these matters and the time required to bring them to trial." It is argued that this bill is needed because there is no present procedure for compelling a reference if one party unilaterally decides not to abide by a prior agreement that any dispute may be submitted to a referee.

- ~~2. Existing law provides that, upon agreement of the parties, or when it deems it necessary, a court may order a special or general reference. This bill would require a court to compel a reference if there is a pre-dispute agreement to refer. Should not the court have the discretion to decide that, despite the existence of the pre-dispute agreement, the issues would be more~~

\*AMENDED IN COMMITTEE:

(CONTINUED)

Consultant R. LeBov  
4/28/82

LIS-4

AB 3657



~~properly or efficiently decided by the judge? There-  
fore, should not this bill simply create a presumption  
that a court should compel a reference when parties  
have contractually agreed to one, thereby permitting  
the court to determine that such a reference would be  
inappropriate?~~



RL

AB 3657

HEARING DATE: 4/28/82

SOURCE

State Bar of California

SUPPORT

Unknown

OPPOSITION

Unknown

LEGISLATIVE INTENT SERVICE (800) 666-1917



PLEASE RETURN IMMEDIATELY TO  
ASSEMBLY COMMITTEE ON JUDICIARY

6031 State Capitol

Work Sheet

RE: Bill No. AB 3657 - Rosenthal

Please complete this form and return it to the Assembly Committee on Judiciary as soon as possible.

1. Origin of the bill:

(a) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)

State Bar - 444-2762 - Peter J. Jensen

(b) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the Session, bill number and disposition of the bill.

(c) Has there been an interim committee report on the bill? If so, please identify the report.

2. Problem or deficiency in the present law which the bill seeks to remedy:

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by the committee staff and letters of support or opposition.

4. Hearing:

- (a) Approximate amount of time necessary for hearing. 10 min
- (b) Preference for date of hearing.
- (c) Names of witnesses to testify at the hearing.

LEGISLATIVE INTENT SERVICE (800) 666-1919



APPROPRIATION: No

AMENDED: as introduced

LOCAL MANDATE: No

AUTHOR: Rosenthal

URGENCY: No

CONSULTANT: Prosser

COMMENTS: Under existing law a reference may be ordered by the court:

1. On the case as a whole or an issue thereof by agreement of the parties, or
2. to determine specific issues of fact or discovery matters, on the courts own motion.

Findings of the referee must stand as the findings of the court. Thus, if the parties agree to a reference of the whole case, it is in essence a waiver of a jury trial. Note: The court cannot order reference of the whole case except by agreement of the parties.

This bill would permit parties to a lease or other written contract to provide for reference in the agreement. Thus, a waiver of the right to a jury trial.

While this type of provision may be viewed analogous to arbitration provisions, it has the same pitfalls. Arbitration provisions can be set aside as being the product of a contract of adhesion, or a lack of notice.

SUPPORT: State Bar

OPPOSE: Unknown

Recommendation: Yes, if amended,



COX, CASTLE & NICHOLSON

LAWYERS

TWO CENTURY PLAZA  
TWENTY-EIGHTH FLOOR  
2049 CENTURY PARK EAST  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE (213) 277-4222  
TELEX 69-6117  
TELECOPIER (213) 277-7888

RICHARD M. CASTLE  
OF COUNSEL  
ORANGE COUNTY OFFICE  
2222 MARTIN STREET  
SUITE 140  
IRVINE, CALIFORNIA 92718  
TELEPHONE (714) 973-0030

GEORGE H. COE  
LAWRENCE J. TRACY  
LAWRENCE TEPLIN  
JULIE CAPUT  
STEPHEN G. SHAPIRO  
PAUL R. GREENBERG  
GEORGE D. CALKINS II  
JAMES W. MERCER  
JOHN H. KUHL  
DAVID C. WRIGHT  
JEFFREY LAPOTA  
FRANK L. RUGANI  
JOHN F. NICHOLSON  
CHARLES E. NONEMAN  
JENNIFER WASHBURN SHAW  
ROBBIE E. HONEMA  
GARY SWIN  
ROBERT D. INFELUSE  
MARTIN AGESEON

PHILIP D. NICHOLSON  
JOHN R. SIMON  
JOHN H. STEPHENS  
RONALD I. SILVERMAN  
JAMES P. WATSON  
MARIO CAMARA  
WARREN J. KESSLER  
KARL OTTO TUSCHKA  
PHILIP E. HIMELSTEIN  
ARTHUR O. SPAULDING, JR.  
JOHN S. MILLER, JR.  
JOHN MORRIS  
LYNWOOD L. SPINKS  
ROBERT G. MAYHURST  
MARLENE D. GOODFRIED  
REBECCA D. MOCCIARO  
JEFFREY D. MASTERS  
SUSAN BRAUN RICE

March 27, 1981

OUR FILE NO. \_\_\_\_\_

Monroe Baer, Esq.  
State Bar of California  
555 Franklin Street  
San Francisco, California 94102

Dear Monroe:

Current court congestion, particularly in Los Angeles County, has made the use of referees under Section 638(1) of the California Code of Civil Procedure a far more attractive remedy than it has previously been. The use of a referee in complex business or real property matters has, in some cases, become almost essential due to the complexity of some of these matters and the time required to bring them to trial. A complicated real estate transaction where a lis pendens has been filed, for example, simply will not stand a delay of five years.

Under the present provisions of Section 638(1) reference may be ordered upon "the agreement of the parties filed with the clerk of the court, or entered in the minutes or in the docket". The reference may be to try all of the issues in an action or proceeding and make judgment thereon or to simply ascertain a fact necessary to enable the court to determine an action or proceeding.

Recently, during negotiating several contracts, the question has arisen as to whether or not the parties may agree prior to a dispute that any dispute under an agreement may be submitted to a referee under Section 638 in the same fashion as arbitration. Although the parties can, obviously, agree to submit their disputes to a reference, there is no present pro-



Monroe Baer, Esq.  
State Bar of California  
March 27, 1981  
Page 2

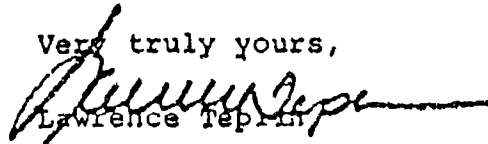
cedure for compelling such a reference if one party unilaterally determines not to abide by the agreement. The comprehensive provisions of the California Code of Civil Procedure dealing with arbitration, including the means of compelling arbitration by motion and entering of judgment upon the award, ~~and the overall procedure is not applicable to a reference.~~

There are those practitioners and clients who would not arbitrate a matter because of the lack of any requirement that the arbitrator make findings of fact or conclusions of law or, indeed, because of the absence of a total requirement that the arbitrator even follow the facts of the law. There is a widely held, although perhaps erroneous, perception that arbitrators may often act in a "equitable" rather than a legal manner. For those who prefer the legalities of courtroom and a judge with the full protection of the rules of evidence and appellate review, therefore, the reference is a desired procedure.

I believe the incorporation of provisions in the Code of Civil Procedure which would authorize compelling of a reference upon the prior agreement of the parties and a procedure for entry of judgment upon the award of the referee, would provide a viable alternative to the present situation of arbitration, reference after a dispute by mutual agreement only, and the formal trial proceedings. I would appreciate it if you would submit the proposal to the appropriate committee of the Bar for study and reporting.

In order to assist the panel, I am enclosing a copy of an article by Thomas A. Freiberg, Jr. on the use of referees which appeared in Los Angeles Lawyer, November 1978 issue, a copy of an article by the Honorable Steven S. Weisman which appeared in the Association of Business Trial Lawyers, Report Volume III, Number 1.

Very truly yours,

  
Lawrence Tepin

LT:ss  
Enc.

cc: Judge Steven S. Weisman  
Thomas A. Freiberg, Jr.

LEGISLATIVE INTENT SERVICE (800) 666-1917

# AVOIDING TRIAL REFEREES IN SUPERIOR COURT

The backlog of cases in Superior Court may lead attorneys to seek alternatives to Superior Court trial. As one alternative, attorneys and clients can choose to have their civil cases decided by court referees. And, as a result of recent legislation, mandatory arbitration in Superior Court will take effect next year.

By Thomas A. Freiberg, Jr.

The line at the courthouse is getting longer every day. It has become increasingly apparent that in certain types of civil litigation, neither party can afford to wait for the case to come to a Superior Court trial.<sup>1</sup> In some instances, the line can be avoided by bringing a referee into the law office through Code of Civil Procedure Section 638(1), which provides:

"A reference may be ordered upon the agreement of the parties filed with the clerk, or judge, or entered into the minutes or in the docket:

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;"<sup>2</sup>

Although little known and infrequently used,<sup>3</sup> Section 638(1) offers a procedure by which a Superior Court judgment can be obtained without having to wait for the case to reach Department 1, the Master Calendar Court. The writer's view is that its lack of notoriety can be

attributed in part to the desire of most attorneys to try their cases before judges and juries, but also in part to the fact that, at least until recent times, access to a trial court has been within a time acceptable to litigants. Statistics demonstrate, however, that the time between the filing of the complaint and trial has been increasing dramatically each year.<sup>4</sup> Through the utilization of retired judges and practicing lawyers as referees,<sup>5</sup> Section 638(1) offers a meaningful alternative to "standing in line."

This article will explore the advantages and disadvantages of Section 638(1) compared to a Superior Court trial. Some comparisons will also be made to arbitration conducted under the auspices of the American Arbitration Association (AAA).<sup>6</sup>

## THE PETITION

In order to invoke Section 638(1), all parties must stipulate to a Petition for General Reference Pursuant to Code of Civil Procedure Section 638(1). This can be done at the outset or at any time during the course of the litigation. Although there are no statutory requirements for its contents, the petition usually includes the identity of the parties, recitals of facts, the designation of a referee together with a provision for his compensation, the ground rules for discovery, the hearing date, and the issues to be resolved. A model Petition for General Reference appears as Appendix A.<sup>7</sup> By adopting the procedure from the outset and by jointly framing the issues, the parties eliminate the need for pleadings.

## EARLY RESOLUTION OF THE CASE

In most commercial litigation, one or more of the parties perceives an advantage

to delaying a settlement or trial. However, in a significant minority of nonjury cases, innovative and responsible attorneys who understand the benefit to their clients of an early resolution of the case can find the means in Section 638(1). Although it could be adapted to any case, its optimum utility is in cases in which the future viability of personal or

<sup>1</sup>The situation is likely to be exacerbated by the passage of the Jarvis-Gann Initiative Constitutional Amendment, CAL CONST. art. XIII A.

<sup>2</sup>Code of CIV PROC. § 638(2) permits a referee by agreement "(t)o ascertain a fact necessary to enable the court to determine an action or proceeding." This article will address itself solely to subsection (1).

<sup>3</sup>To the writer's knowledge, there are no statistics available on the frequency of the use of § 638(1) in California.

<sup>4</sup>The Los Angeles Superior Court Monthly Spectus for January, 1977, and for January, 1978, reveal the following median time spans for civil cases from the filing of the At-Issue Memorandum to the date the case is set for trial in Department 1:

	1977	
	Entire County	Central District
Jury trial	23 months	25 months
Non jury trial	13 months	16 1/2 months
	1978	
Jury trial	26 months	31 months
Non jury trial	24 months	29 months

According to the Superior Court Monthly Spectus for January, 1977, and for January, 1978, the Civil Active List for the entire county had grown from 42,627 cases in January, 1977, to 51,568 cases in January, 1978. During the same period, it had grown in the Central District from 23,527 cases in January, 1977, to 31,136 cases in January, 1978.

<sup>5</sup>The qualifications to serve as a referee are the same as those to serve as a juror, CODE CIV. PROC. § 641(1).

<sup>6</sup>The Commercial Arbitration Rules of the American Arbitration Association permit initiation of arbitration by a Demand, pursuant to an arbitration provision in a contract (Section 7), or by a Submission when the parties to any existing dispute agree to resolve it through arbitration (Section 9).

<sup>7</sup>Appendix A was prepared by Judge Steven S. Weisman (retired).

(Continued on page 38)



## Referees

(Continued from page 34)

business relationships is at stake, and all parties will suffer if the dispute is not resolved expeditiously. An example of the latter is a partnership dissolution where an early accounting can prevent a dissipation of assets, loss of business, loss of goodwill, and perhaps most important, loss of ability to plan the future course of the business.

### CONTROL OVER THE TIMING AND CONDUCT OF THE TRIAL

The parties, lawyers, and referee can coordinate the timing of the trial with their other business commitments. This benefit speaks for itself.

Because of the informality of the procedure, the hours of the trial can be adjusted from day to day, trial days need not be continuous, and testimony can be taken on weekends. There is extraordinary ability to accommodate witnesses, since the procedures can either be agreed to in the Petition at the outset, agreed to by the parties during the trial, or ordered by the referee during the trial. For example, if a witness is out of town, it is possible for him to testify by declaration, over a speaker phone, or by videotape.

### THE PARTIES CAN SELECT THEIR OWN REFEREE

There are many excellent judges of the



Thomas A. Freiberg, Jr., an attorney with Dreisen, Kassoy & Freiberg, specializes in business and real estate litigation. He is chairperson of the Los Angeles County Assessor's Task Force on the Implementation of Proposition 13 and the Condemnation Procedures Committee of the Association.

Superior Court who have had limited experience with civil litigation while in private practice or on the bench. The potential for being assigned a judge with a modest background in a particular subject matter could affect an attorney's decision whether to try the case in the Superior Court or before a referee.

A great deal of time can be consumed in the trial court "educating" the trial judge. This problem is inherent in the judicial system, because no judge can be expected to be knowledgeable in every area of the law. Section 638(1) provides an opportunity to overcome this shortcoming by offering the parties the option to choose a referee with expertise in the subject matter involved in the dispute. Although there is always some possibility in certain cases that the referee will substitute his knowledge for that of the witnesses, the result usually should be a shorter trial and a judgment based on a complete understanding of the issues and the evidence.

### ADVANTAGES IN CONTRAST TO ARBITRATION

Compared to the reference procedure which permits the litigants to choose a referee who will be known to them, one of the major drawbacks to AAA arbitration is that a party may know nothing about any of the prospective arbitrators.<sup>6</sup> Even a time-consuming investigation may turn up little information. It is an uncomfortable feeling not to know the background, competence, or potential biases of an arbitrator. The AAA arbitrator may not be a lawyer, which could be an advantage or disadvantage, depending on the factual content of the case.

In the reference proceeding, discovery is permitted unless specifically prohibited by stipulation.<sup>9</sup> In arbitration, discovery is available in cases concerning injury to or death of a person caused by a negligent or wrongful act,<sup>10</sup> except that depositions for discovery, as opposed to evidentiary, purposes cannot be taken unless permitted by the arbitrator.<sup>11</sup> In all other cases the provisions for discovery are applicable only when provided for in the agreement to arbitrate.<sup>12</sup>

The trial by referee in most cases should be shorter than AAA arbitration since the rules of evidence apply in the reference proceeding<sup>13</sup> while in arbitration "conformity to the rules of evidence shall not be necessary."<sup>14</sup> Theoretically,

less extraneous testimony will be allowed.

### RIGHT TO APPEAL JUDGMENT AS ANY SUPERIOR COURT JUDGMENT

A judgment may be entered in a reference proceeding in the same manner as if it had been tried by a court.<sup>15</sup> The right to appeal and the grounds for the appeal are the same as for any other Superior Court judgment.<sup>16</sup>

On the other hand, a party appealing from an arbitration award to obtain vacation of the award must show the equivalent of fraud arising from gross error or misconduct.<sup>17</sup>

### EFFECT OF REFERENCE PROCEDURE ON THE TOTAL COST OF THE CASE TO THE PARTIES

An obvious difference between trial by judge and by referee is that the cost of the referee and court reporter must be borne by the parties. Depending on the referee's hourly or daily rate and the length of the trial, the cost could be significant. The parties have to weigh that cost against the cost of not resolving the dispute for several years.

A further saving could occur from not having to wait for an assignment from Department 1 when there is a backlog of trailing cases. Although the problem has been ameliorated somewhat by the Los

<sup>6</sup>Section 12 of the Commercial Arbitration Rules of the American Arbitration Association provides that "[i]mmediately after the filing of the Demand for Submission, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel." Section 14 requires that "[i]f the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the AAA, in its discretion, directs that a greater number of Arbitrators be appointed." Section 15 provides further that "[e]ach party to the dispute shall . . . cross off any names to which he objects [and] number the remaining names indicating his order of preference . . ."

<sup>7</sup>CODE CIV. PROC. § 2016.

<sup>8</sup>CODE CIV. PROC. § 1283.1.

<sup>9</sup>CODE CIV. PROC. § 1283.03(e).

<sup>10</sup>CODE CIV. PROC. § 1283.1.

<sup>11</sup>EVID. CODE § 300.

<sup>12</sup>Section 30, Commercial Arbitration Rules of the American Arbitration Association.

<sup>13</sup>CODE CIV. PROC. § 644.

<sup>14</sup>CODE CIV. PROC. § 645.

<sup>15</sup>CODE CIV. PROC. § 1286.2, illustrative of the cases that construe § 1286.2 in State Farm Mutual Automobile Insurance Co. v. Gulesterian, 28 Cal. App.3d 397, 402-03 (1972).

(Continued on page 41)

## Referees

(Continued from page 38)

Angeles County Bar Association "beeper rental service,"<sup>18</sup> the cost to the parties resulting from their lawyers having to appear periodically in Department J or being in contact with it cannot be eliminated entirely.

Based on the observations of lawyers and retired judges who have been involved in references, despite the cost of the referee and reporter, the reference procedure will usually save money for the parties. Pleadings can be eliminated, discovery can be carefully planned, and trial can be timed to accommodate all participants. The procedure which establishes a "judge for all purposes" has the effect of encouraging the lawyers and parties to focus on the job of prevailing in the lawsuit and to resist the temptation to engage in unproductive motions and discovery.

## INTEGRATION WITH THE SUPERIOR COURT

Since lawyers are often reluctant to use new procedures, maximum acceptance and use of referees will best be achieved by bringing the reference procedure within the overall scheme of the Superior Court system. The procedure can be adopted at any time during the case, so if the parties have not utilized it from the outset, at some point they should be advised of the availability of referees and encouraged to use one. For instance, following an unsuccessful voluntary settlement conference, they might be receptive to the reference procedure, since they have already indicated their desire to effect an early resolution of the matter. Of the 11,115 voluntary settlement conferences held during 1977 in Los Angeles County, settlement was achieved in 4,252.<sup>19</sup> It would have been relatively simple in the 6,863 unsettled cases for the settlement judge to have informed the parties and their lawyers of the reference procedure and to have urged them to give it careful consideration. Reluctant parties will probably be more inclined to adopt the procedure if it is explained and endorsed by a judge rather than their lawyers. The Superior Court could assist by publishing a list of lawyers and retired judges who are interested in serving as referees. Since the Superior Court would be a prime beneficiary if the procedure were to receive

wider acceptance, it has every incentive to develop such a program.

It would assist both the Superior Court and the civil litigation bar if the appropriate committee of the Los Angeles County Bar Association initiated a project in this area. Some of the areas of study could include the method for establishing and maintaining a list of referees, guidelines for their fees, and a procedure for gathering statistical data from those who avail themselves of the procedure.

It has been said that necessity is the mother of invention. Section 638(1) was "invented" in 1872, and, because of current necessities, should be rediscovered. It could be an important partial solution to the problem of court congestion.

<sup>18</sup>A subscriber must keep the beeper in a pocket, briefcase, or handbag. When he or she is signalled, the subscriber must telephone the court within ten minutes to be advised of his or her courtroom assignment and report to the courtroom within one hour.

<sup>19</sup>The Superior Court Settlement Conference Report for Calendar Year 1977 prepared by Arnold R. Penn, Civil Courts Coordinator.

## APPENDIX A

### GARY GREEN

1234 West Main Street  
Los Angeles, California 90002  
(213) 123-4567

Attorney for John Jones

### WILLIAM WHITE

9876 East Spring Street  
Los Angeles, California 90001  
(213) 765-4321

Attorney for Sam Smith

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

In the Matter of a

Reference between

SAM SMITH, on the one hand,  
and JOHN JONES, on the  
other hand.

No. \_\_\_\_\_

PETITION FOR A GENERAL  
REFERENCE PURSUANT TO  
C.C.P. § 638(1) AND  
AGREEMENTS OF THE PARTIES  
RELATED THERETO, AND  
ORDER THEREON

### PETITION FOR REFERENCE

1. Petitioners Sam Smith and John Jones through their attorneys of record petition the above-entitled Court for a general reference pursuant to C.C.P. § 638(1) and in connection therewith agree:

#### PARTIES

2. The parties to this reference are:  
a. Sam Smith ("Smith"), represented herein by William White, 9876 East Spring Street, Los Angeles, California 90001.

b. John Jones ("Jones"), represented herein by Gary Green, 1234 West Main Street, Los Angeles, California 90002.

#### RECITALS

3. [To be filled in.]

#### REFEREE

4. The parties designate Judge Bunon Brown

(retired) to act as the referee. Should Judge Brown be unable for any reason to act as referee, the parties shall attempt to agree to the selection of an alternative referee. Absent such an agreement, this agreement to submit the matter for a reference shall be of no force or effect.

#### COMPENSATION FOR REFEREE COSTS

5. The parties anticipate reaching an agreement as to the payment of the fees of the referee. Absent such an agreement, the Court may fix such fees as provided under C.C.P. § 1023. As to costs of transcripts, deposition costs and other costs that would ordinarily be taxable under the California Code of Civil Procedure, each side (Smith on the one hand, Jones on the other hand) shall bear their respective costs. Each side shall bear one-half of the fees of the referee. Unless waived by each side, a reporter shall be present at all proceedings before the referee and the fees of any reporter shall be borne equally by each side. Neither the fees of the referee nor any costs shall be taxable. Neither side shall be entitled to reimbursement of their respective attorneys' fees from the other party, except, however, the prevailing party on any appeal from the judgment of the Superior Court, based upon the order of the referee, shall be entitled to reasonable attorneys' fees and costs relating solely to the appeal.

#### RULES GOVERNING REFERENCE

6. Except as hereafter agreed by the parties, the referee shall apply all California rules of procedure and evidence and shall apply the substantive law of California in deciding the issues submitted hereunder. Formal pleadings, however, shall not be required. Reasonable notice of any motions before the referee shall be given and all matters shall be set at the convenience of the referee.

#### REVIEW

7. The referee's decision under C.C.P. § 644 shall stand as the judgment of this Court, subject to review as provided by the law of this state.

#### DISCOVERY

8. Smith anticipates taking the deposition of Jones. Jones plans to depose Smith. Additional discovery shall be conducted as the parties might agree or as allowed by the referee.

#### HEARING DATE

9. The parties desire to have the matter determined as soon as practically possible. The trial date shall be determined by agreement of the parties and the referee, or if the parties cannot agree, then by the referee.

#### ISSUES TO BE SUBMITTED

10. The following issues shall be submitted for determination by the referee: [To be filled in.]

Dated: \_\_\_\_\_

Approved as to form:

WILLIAM WHITE  
Attorney for Smith

SAM SMITH

GARY GREEN  
Attorney for Jones

JOHN JONES

#### ORDER

The petition for a reference pursuant to C.C.P. § 638(1) is granted and the Honorable Bunon Brown is appointed as the referee and is granted all powers as such pursuant to the California Code of Civil Procedure.

DATED: \_\_\_\_\_

\_\_\_\_\_  
DIXIE DEAN  
PRESIDING JUDGE  
OF THE SUPERIOR COURT

LEGISLATIVE INTENT SERVICE (800) 666-1917



Volume III  
Number 1

# REPORT

January, 1980

ASSOCIATION OF BUSINESS TRIAL LAWYERS

# !

## Shortcut to Trial: Use of Orders of Reference and Judges Pro Tem

As of November 30, 1979, there were 38,266 civil cases awaiting trial in the Central District of the Superior Court of Los Angeles County. The average civil case does not reach our Master Calendar (Department 1) for trial until approximately 39 months after the "At-Issue" Memorandum has been filed. The time involved from the filing of the complaint to the "at issue" stage ranges from 2 months to one year.<sup>1</sup> In addition, cases may trail from 5-10 days or more in our Master Calendar when they are called for trial. Regardless of the capability of our judiciary, our civil courts are being so inundated with criminal matters that very few judges are available for complicated or lengthy civil cases - and this condition is steadily worsening.

The above "legal logjam" can be substantially allevi-

General Order of Reference or Temporary Judge, or Judge Pro Tem.

### 1. General Order of Reference<sup>1</sup>

By agreement of the parties, a referee can be selected "to try any or all of the issues in an action or proceeding whether of fact or of law, and to report a finding and judgment thereon."<sup>2</sup> This procedure may be initiated at the outset of litigation whereunder, in lieu of a complaint, there is filed a "Petition for a General Reference Pursuant to C.C.P. §638 (1) and Agreement of the Parties Relative Thereto and Order Thereon." The order is signed by the presiding judge or the assistant presiding judge.

As an alternative and more widely used procedure, such a Petition for General Reference can be filed and ordered at any time after the complaint has been filed by stipulation and order approving same. This latter procedure ordinarily is followed after all discovery has been completed, and counsel, rather than incurring the wrath of the presiding judge by frowned upon "judge shopping", can bask in the approval of the presiding judge by "retired judge choosing."



The referee's findings must stand as the finding of the court, and the judge appointing the referee has the ministerial task of signing the judgment in accordance with the findings.<sup>4</sup> Most important, unlike arbitration, the judgment under this procedure is subject to appeal in the same manner as in an ordinary trial court judgment.<sup>5</sup> In short, when the

Hon. Steven S. Weisman General Order of Reference is signed by the Court, the "referee" becomes, for all practical purposes, "a sitting all-purpose judge" in the case.

The minimum fee for the referee has been in the area of \$100.00 per hour, with a minimum of \$500.00 per diem, and covers not only trial time, but preparation and research time. The parties bear the cost of the referee and reporter equally, and such cost may be made taxable if the parties so agree. The amount of the referee's fee and cost of the reporter pales into insignificance when compared to the time delay in getting to trial, and the "filling" in the Master Calendar. Top attorneys in the Los Angeles area command a fee of approximately \$1,000.00 per day for trial time, and the trail time is normal, considered trial time.

To summarize, the General Order of Reference vehicle would seem to be the answer to many of our present problems as follows:

- (a) Master Calendar would welcome it, as it would help relieve the congestion of the calendar;
- (b) Clients would welcome it because of the elimination of the long delay in coming to trial and the saving in costs and fees;
- (c) Attorneys would welcome it because it would allow them the opportunity to select a particular retired judge whose specialty is in the field of the pending litigation;
- (d) The trial can be scheduled for a certain date and the matter is guaranteed to go to trial on that date;
- (e) The schedules of those involved can be accommodated more easily by working later or starting earlier.

Continued from Page 3

Also, breaks in the proceedings are more easily arranged. Because of budgetary problems, the Superior Court is generally not able to hold trial before or after business hours or on weekends. The General Order of Reference vehicle would permit this if necessary:

(f) Other factors under this procedure include a greater degree of informality, the ability to change the location of the trial if required (the trial can be held either in a vacant courtroom or at the office of either counsel or referee); and finally, because counsel are required to cooperate to obtain a reference, that cooperation may well carry over into the trial.

2. Temporary Judge or Judge Pro Tem<sup>4</sup>

This vehicle has all the advantages hereinabove set forth that relate to General Orders of Reference. In addition, the following advantages, the first practical and the second psychological, exist under this latter procedure.

1. Findings can be waived and the Temporary Judge or Judge Pro Tem signs the judgment himself. (Under a General Order of Reference, findings cannot be waived, as the judgment thereunder is signed and entered by the presiding judge based solely upon such findings.)

2. To a layman, the title "referee" connotes a pugilistic rather than a legalistic officer.

Pragmatically speaking, it would seem more appropriate to allow counsel to stipulate to a referee or Temporary Judge or Judge Pro Tem from a panel available to them, rather than to feel required to opt for one or two particular retired judges. In this connection, a panel of available retired judges is on file with our Master Calendar (Department 1), and with each supervising judge of each District Superior Court in Los Angeles County.

—Steven S. Weisman  
Judge of the Superior Court (Retired)

FOOTNOTES

1. Statutes obtained through the courtesy of Arnold R. Posa, Civil Courts Coordinator of the Los Angeles County Superior Court.
2. C.C.P. § 633.444
3. C.C.P. § 633.1
4. C.C.P. § 633
5. C.C.P. § 633
6. California Constitution, Article VI, Section 21, and California Rules of Court, Rule 200(a). See in general (a) Witkin, California Procedure, 2d Edition, Volume 1, Courts, Sections 232, 231, and 233 (P.P. 186-189); (b) California Forms of Pleading & Practice, Annotated, (Matthew Bender), Volume 1, Judges, pp. 33-37.

Report on ABTL Seminar:  
"Discovery"

The Sixth Annual ABTL Seminar on the subject of "Discovery" reached new heights in the continuing success of ABTL Seminars. Amid perfect late October weather and the beauty of the Santa Barbara Biltmore, a record seminar attendance of 86 registrants, accompanied by wives and guests, had an enjoyable and instructional weekend.

The first seminar panel, on Friday afternoon, addressed the twin topics of "Formulating a Discovery Strategy" and "Means of Discovery Other Than Depositions." These

of Sheppard, Mullin, Richter & Hampton; Melvin B. Fliegel of Schwartz, Alschuler & Grossman and Ray Fisher of Tuttle & Taylor. On Saturday morning, "Opposing, Limiting and Compelling Discovery" and "Depositions" were the subjects. The Saturday panel included Judge Mariana Pfelzer of the United States District Court for the Central District of California, who described the history of recent efforts to change the scope of discovery permitted by Rule 26 F.R.C.P.; William W. Vaughn of O'Melveny & Myers and Richard C. Field of Adams, Duque & Hazeltine. On Sunday, "Organizing the Fruits of Discovery" and "Introduction of Discovered Evidence" were covered. The panel included Judge Robert Well of the Los Angeles County Superior Court, Peter Taft of Munger, Tolles & Rickershauser and Richard D. Fybel of Nossaman, Krueger & Marsh.

All panels were of exceptional quality, both in the interesting and often entertaining presentations of their material and the careful preplanning among speakers to avoid repetition. The Association is deeply appreciative of their contributions.

Registrants at the program also received written program materials comprising a hard cover, three-ring binder containing a six chapter, 172-page exposition of the principal areas of discovery. The chapters were prepared by the 1979 Seminar Committee as follows: Robert J. White of O'Melveny & Myers, "Formulating a Discovery Strategy"; Ronald P. Kaplan of Sheppard, Mullin, Richter & Hampton, "Means of Discovery Other Than Depositions"; Robert A. Schlacter of Schwartz, Alschuler & Grossman, "Opposing, Limiting and Compelling Discovery"; Thomas J. Weiss of Nossaman, Krueger & Marsh, "Depositions on Oral Examination"; Gary A. Clark of Fulwider, Patton, Rieber, Lee & Utecht, "Organizing the Fruits of Discovery"; and Martha G. Bankerman of Adams, Duque & Hazeltine, "Introduction of Discovered Evidence." The Seminar was organized by the Chairman of the 1979 Seminar Committee, Laurence H. Pretty of Fulwider, Patton, Rieber, Lee & Utecht.

Social events at the seminar included a Friday night wine and cheese party at the Coral Casino Club overlooking the ocean and a Saturday night cocktail reception and banquet at which the President of the Association, Loren R. Rothschild of Fogel, Julber, Reinhardt, Rothschild & Feldman, welcomed the attendees and honored the speakers.

—Laurence H. P.

Contributors to this Issue:

Judge Richard Schauer is Presiding Judge of the Los Angeles County Superior Court.

Judge Steven S. Weisman, retired Los Angeles County Superior Court Judge, is presently acting as an arbitrator, referee, special master, Judge Pro Tem and in similar capacities.

Eddy S. Feldman, an attorney in Los Angeles, acts as an arbitrator and served as a consultant on small claims arbitration to the SEC in 1977-78.

Loren R. Rothschild is a partner in the firm of Fogel, Julber, Reinhardt, Rothschild & Feldman.

Laurence H. Pretty is a partner in the firm of Fulwider, Patton, Rieber, Lee & Utecht.

SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 3657 (Rosenthal)  
As amended May 10  
Code of Civil Procedure  
MRR

A  
B  
3  
6  
5  
7

REFEREES  
CONTRACTUAL AGREEMENTS

HISTORY

Source: State Bar of California

Prior Legislation: None

Support: Unknown

Opposition: No Known

Assembly floor vote: Ayes 71 - Noes 0.

(800) 666-1917

KEY ISSUE

IF THE COURT FINDS THAT A REFERENCE AGREEMENT EXISTS BETWEEN PARTIES TO A WRITTEN CONTRACT OR LEASE, SHOULD THE COURT BE EMPOWERED TO ORDER A REFERENCE UPON THE MOTION OF A PARTY?

LEGISLATIVE INTENT SERVICE

PURPOSE

Existing law provides that, upon consent of the parties to civil litigation, a court may appoint a general referee to try any or all issues in an action and to report a finding and judgment or to ascertain a fact necessary to enable the court to determine an action or proceeding. In addition when the parties do not consent, the court may, upon the application of any party or its own motion, direct a reference in specified circumstances.



(More)

A  
B  
3  
6  
5  
7

This bill would provide that the court could also order a reference upon the motion of a party to a written contract or lease that provided that any controversy arising from its terms would be heard by reference.

The purpose of this bill is to aid courts in enforcing reference agreements.

COMMENT

1. Definition of "reference"

In law "reference" is the act of sending a cause pending in court to a referee for her examination and decision.

2. No present procedure to compel reference

According to the bill's source, the current court congestion, especially in Los Angeles, has made the use of referees a far more attractive remedy than it previously had been. "The use of a referee in complex business or real property matters has, in some cases, become almost essential due to the complexity of some of these matters and the time required to bring them to trial."

The source, therefore, argues that the court should be empowered to compel a reference if one party unilaterally decides not to abide by a prior reference agreement.

Under existing law the court is not able to do so because of the requirement that the parties to an action must, in most cases, consent to the reference before it may be ordered.

\*\*\*\*\*

LEGISLATIVE INTENT SERVICE (800) 666-1917



CONSENT

<p style="text-align: center;"><b>SENATE DEMOCRATIC CAUCUS</b></p> <p style="text-align: center;">SENATOR PAUL B. CARPENTER Chairman</p>	<p>Bill No.: AB 3657 Amended: 5-10-82</p> <p>Author: Rosenthal (D)</p> <p>Vote Required: Majority</p> <p>Assembly Floor Vote: 71 - 0</p>
--	--

SUBJECT: Actions: reference

POLICY COMMITTEE: Judiciary

AYES: (7) Doolittle, Petris, Robbins, Sieroty, Watson, Davis, Rains

NOES: (0)

SUMMARY OF LEGISLATION:

Existing law provides that, upon consent of the parties to civil litigation, a court may appoint a general referee to try any or all issues in an action and to report a finding and judgment or to ascertain a fact necessary to enable the court to determine an action or proceeding. In addition, when the parties do not consent, the court may, upon the application of any party or its own motion, direct a reference in specified circumstances.

This bill would provide that the court could also order a reference upon the motion of a party to a written contract or lease that provided that any controversy arising from its terms would be heard by reference.

FISCAL EFFECT: No state cost

PROPOSERS:

State Bar of California (sponsor)

OPPOSERS:

---

ARGUMENTS IN SUPPORT:

According to the bill's source, the current court congestion, especially in Los Angeles, has made the use of referees a far more attractive remedy than it previously had been. "The use of a referee in complex business or real property matters has, in some cases, become almost essential due to the complexity of some of these matters and the time required to bring them to trial."

The source, therefore, argues that the court should be empowered to compel a reference if one party unilaterally decides not to abide by a prior reference agreement.

CONTINUED



ARGUMENTS IN SUPPORT, Continued:

Under existing law the court is not able to do so because of the requirement that the parties to an action must, in most cases, consent to the reference before it may be ordered.

**Assembly Bill 3657**—An act to amend Section 638 of the Code of Civil Procedure, relating to actions.

Bill read third time.

**Roll Call**

The roll was called and the bill was passed by the following vote:

**AYES (35)**—Senators Alquist, Ayala, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Dills, Doolittle, Ellis, Foran, Marz Garcia, Greene, Johnson, Keene, Marks, Mello, Mills, Montoya, Nielsen, O'Keefe, Petris, Presley, Rains, Richardson, Robbins, Roberti, Schmitz, Seymour, Sieroty, Speraw, Stiern, Vuich, and Watson.

**NOES (0)**—None.

Bill ordered transmitted to the Assembly.

6-28-82

p. 11564





# SENATE REPUBLICAN CAUCUS

## SENATOR KENNETH L. MADDY, Chairman

**POSITIONS:**

SOURCE: State Bar

BILL NUMBER: AB 3657

AUTHOR: Rosenthal

AMENDED COPY: 5-10-82

MAJORITY VOTE

CONSENT CALENDAR

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY	
BILL NO.	
DATE OF HEARING:	
SENATORS:	AYE   NO
Doollittle	✓
Petris	✓
Presley	✓
Robbins	✓
Roberti	✓
Sieroty	✓
Watson	✓
Davis (V.Chair.)	✓
Rains (Chairman)	✓
TOTAL:	70

Assembly Floor Vote: 71-0, Pg. 13229 (5-13-82)

DIGEST

1 This bill, in cases where the court finds that a reference agreement  
 2 exists between parties to a written contract or lease, provides  
 3 that a court may order a reference upon the motion of a party.

4  
 5 FISCAL EFFECT:

6 Appropriation: No.            Fiscal Committee: No.            Local: No.

7  
 8 COMMENTS:

9 Existing law provides that, upon consent of the parties to civil  
 10 litigation, a court may appoint a general referee to try any or  
 11 all issues in an action and to report a finding and judgment or  
 12 to ascertain a fact necessary to enable the court to determine an  
 13 action or proceeding. In addition when the parties do not consent,  
 14 the court may, upon the application of any party of its own motion,  
 15 direct a reference in specified circumstances.

16  
 17 This bill would provide that the court could also order a reference  
 18 upon the motion of a party to a written contract or lease that  
 19 provided that any controversy arising from its terms would be heard  
 20 by reference.

21  
 22 According to the bill's source, the current court congestion,  
 23 especially in Los Angeles, has made the use of referees a far more  
 24 attractive remedy than it previously had been. "The use of a  
 25 referee in complex business or real property matters has, in some  
 26 cases, become almost essential due to the complexity of some of these  
 27 matters and the time required to bring them to trial."

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 The source, therefore, argues that the court should be empowered to  
2 compel a reference if one party unilaterally decides not to abide  
3 by a prior reference agreement.

4  
5 Under existing law the court is not able to do so because of the  
6 requirement that the parties to an action must, in most cases,  
7 consent to the reference before it may be ordered.  
8

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57

6-23-82/nf



STATEMENT AB 3657 - REFERENCE AGREEMENTS

The purpose of this bill is to aid courts in enforcing reference agreements.

Existing law provides that, upon consent of the parties to civil litigation, a court may appoint a general referee to try any or all issues in an action and to report a finding and judgment or to ascertain a fact necessary to enable the court to determine an action or proceeding. In addition when the parties do not consent, the court may, upon the application of any party or its own motion, direct a reference in specified circumstances.

This bill would provide that the court could also order a reference upon the motion of a party to a written contract or lease that provided that any controversy arising from its terms would be heard by reference.

The bill is sponsored by the State Bar of California.

Mr. Peter Jensen is here to answer any questions you may have.



# CALIFORNIA JUDGES ASSOCIATION

Fox Plaza, Suite 416 • 1390 Market Street • San Francisco, California 94102 • (415) 552-7660

## EXECUTIVE BOARD 1981-1982

Hon. Earl J. Cantos  
President  
Hon. Gilbert Harelson  
Vice President  
Hon. Thomas M. Jenkins  
Vice President  
Hon. Roy L. Wonder  
Secretary-Treasurer  
Hon. William R. Bailey, Jr.  
Hon. Jay R. Ballantyne  
Hon. George A. Brown  
Hon. Richard P. Byrne  
Hon. Marie Bertillion Collins  
Hon. Robert J. Cooney  
Hon. Brian D. Crahan  
Hon. George M. Dell  
Hon. Allen P. Fields  
Hon. Ronald M. George  
Hon. Margaret J. Kemp  
Hon. James E. Kleaver  
Hon. Xenophon F. Lang  
Hon. Fred W. Marler, Jr.  
Hon. Steven R. McNelis  
Hon. J. Barton Phelps  
Hon. G. Tom Thompson  
Hon. James K. Turner

---

Sue U. Malone  
Executive Director

June 22, 1982

Hon. Herschel Rosenthal  
Assemblyman  
State Capitol, Room 5156  
Sacramento, CA 95814

Dear Assemblyman Rosenthal:

I am writing on behalf of the California Judges Association to express our support for AB 3657 dealing with the ability of parties to write into contracts and leases that disputes would be settled by reference. As you know, parties now can stipulate to arbitration. This bill would give added flexibility by allowing a stipulation to trials by reference. We believe adoption of this provision would be helpful to the parties and to already overburdened courts.

Sincerely,

Sue U. Malone  
Executive Director

SUM:gk

cc: Members, Senate Judiciary Committee  
Hon. Earl J. Cantos

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 3657  
Support

MARTIN, BARKER & CROSKEY  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

TWO CENTURY PLAZA

2049 CENTURY PARK EAST, SUITE 3100

LOS ANGELES, CALIFORNIA 90067

(213) 277-0200

WILLIAM L. KUMLER  
IVOR F. THOMAS  
OF COUNSEL

LAURENCE B. MARTIN (1900-1979)

MODESTO OFFICE  
3340 TULLY ROAD - SUITE A  
MODESTO, CALIFORNIA 95350  
(209) 521-9521

LOS ANGELES

H. WALTER CROSKEY\*  
STEPHEN C. KLAUSEN

MODESTO

LAURENCE H. MARTIN\*\*  
H. E. BARKER, JR.\*\*  
MICHAEL G. LOEFFLER\*\*  
CARL O. WAGGONER\*\*  
THOMAS J. QUINLAN  
RUSSELL A. NEWMAN

June 23, 1982

\*A PROFESSIONAL CORPORATION  
\*\*MEMBERS OF A PROFESSIONAL CORPORATION

The Honorable Omer L. Rains  
Chairman, Senate Judiciary Committee  
State Capitol  
Sacramento, California 95814

Re: Assembly Bill 3657

Dear Senator Rains:

On behalf of the Trial Lawyers Section of the Los Angeles County Bar Association, I am writing to advise you that the Section supports the passage of AB 3657.

The Section strongly supports this proposed legislation. The Section believes that this is a very substantial and constructive idea, which, in the long run, may have a significant beneficial impact on court congestion. Although the so-called "rent-a-judge" system which has sprung up under Code of Civil Procedure Section 638, et seq., has proved somewhat controversial, all those who have come in contact with this process are satisfied that it is a valuable and functional method to resolve complicated and expensive litigation matters.

The one drawback which the "reference" procedure now has is that it depends for its viability on the stipulation and consent of all parties. The willingness of parties to give that consent may well be substantially greater prior to the existence of a dispute than after it has arisen. Therefore, to permit parties to include in their contracts a binding obligation to submit the matter to an appointed referee would seem to be a salutary proposal indeed. Provided that such contractual commitments are given the judicial support which has been provided to the arbitration procedures under Code of Civil



LEGISLATIVE INTENT SERVICE (800) 666-1917

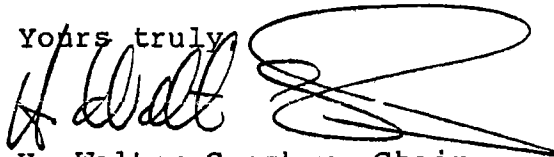


The Honorable Omer L. Rains  
June 23, 1982  
Page 2

Procedure Sections 1281, et seq., this proposal could become an important and valuable part of the litigation process.

Your Committee's consideration of the views of the Trial Lawyers Section of the Los Angeles County Bar Association is very much appreciated.

Yours truly



H. Walter Croskey, Chair  
Legislative Review Committee  
Trial Lawyers Section of the  
Los Angeles County Bar Association

HWC:ly

cc: The Honorable Herschel Rosenthal  
Assemblyman, 45th Assembly District  
Richard M. Coleman, Esquire  
President, Los Angeles County  
Bar Association  
Robert G. Overby, Esquire  
Chairman, Executive Committee  
of the Trial Lawyers Section,  
Los Angeles County Bar Association  
Richard H. Chernick, Esquire  
Vice Chairman, Executive Committee  
of the Trial Lawyers Section,  
Los Angeles County Bar Association  
Georgia Franklin, Esquire  
Executive Director, Los Angeles  
County Bar Association

(800) 666-1917

LEGISLATIVE INTENT SERVICE



ASSEMBLY BILL NO. 3657 1982 REGULAR SESSION CHAPTER 440

AUTHOR Rosenthal

DATE RECEIVED 6/29 1982

LC	<input checked="" type="checkbox"/>	IR	<input checked="" type="checkbox"/>	PUC	<input type="checkbox"/>
BTH	<input type="checkbox"/>	LEGAL	<input checked="" type="checkbox"/>	OER	<input type="checkbox"/>
EQ	<input type="checkbox"/>	OPR	<input type="checkbox"/>		<input type="checkbox"/>
FIN	<input type="checkbox"/>	RES	<input type="checkbox"/>		<input type="checkbox"/>
F&A	<input type="checkbox"/>	SCS	<input type="checkbox"/>		<input type="checkbox"/>
H&W	<input type="checkbox"/>	YAC	<input type="checkbox"/>		<input type="checkbox"/>

LAST DAY TO ACT 7/11 1982

ACTION OF GOVERNOR 7-7 1982

LIS-9

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE 7-6-82
BILL NO. AB 3657	AUTHOR Rosenthal

Vote—Senate      \_\_\_\_\_ Unanimous

Ayes— 35  
Noes— 0

Vote—Assembly      \_\_\_\_\_ Unanimous

Ayes— 71  
Noes— 0

AB 3657 - Rosenthal

Existing law provides that, upon consent of the parties to civil litigation, a court may appoint a general referee to try any or all issues in an action and to report a finding and judgment or to ascertain a fact necessary to enable the court to determine an action or proceeding. In addition, when the parties do not consent, the court may, upon the application of any party or its own motion, direct a reference in specified circumstances.

This bill would provide that the court could also order a reference upon the motion of a party to a written contract or lease that provided that any controversy arising from its terms would be heard by reference.

SPONSOR

State Bar

SUPPORT

Legal Affairs Unit

OPPOSITION

No known opposition

FISCAL IMPACT

None

Recommendation	APPROVE
----------------	---------

LEGISLATIVE INTENT SERVICE (800) 666-1917





GWEN R. KUNS  
RAY H. WHITAKER  
CHIEF DEPUTIES

JERRY L. BASSETT  
KENT L. DECHAMBEAU  
STANLEY M. LOURIMORE  
EDWARD K. PURCELL  
JOHN T. STUDEBAKER

JOHN CORZINE  
ROBERT CULLEN DUFFY  
ROBERT D. GRONKE  
SHERWIN C. MACKENZIE, JR.  
ANN M. MACEY  
TRACY O. POWELL, II  
RUSSELL L. SPARLING  
JIMMIE WYNG  
PRINCIPAL DEPUTIES

3021 STATE CAPITOL  
SACRAMENTO 95814  
(916) 445-3057

8011 STATE BUILDING  
107 SOUTH BROADWAY  
LOS ANGELES 90012  
(213) 620-2550

# Legislative Counsel of California

BION M. GREGORY

GERALD ROSS ADAMS  
DAVID D. ALVES  
MARTIN L. ANDERSON  
PAUL ANTILLA  
CHARLES C. ASBILL  
JAMES L. ASHFORD  
SHARON G. BIRNBAUM  
EILEEN J. BURTON  
HENRY J. CONTRERAS  
BEN E. DALE  
CUMTUN J. DEWITT  
C. DAVID DICKERSON  
KATHRYN E. DONOVAN  
FRANCE S. DORBIN  
LAWRENCE H. FEIN  
SHARON R. FISHER  
JOHN FOSSETTE  
HARVEY J. FOSTER  
CLAY FULLER  
ALVIN D. GRESS  
JOYCE E. HEE  
THOMAS R. HEUER  
JACK I. HORTON  
SANDRA HUGHES  
MICHAEL J. KERSTEN  
L. DOUGLAS KINNEY  
VICTOR KOZIELSKI  
ROMULO I. LOPEZ  
JAMES A. MARSALE  
ROBERT G. MILLER  
JOHN A. MOGER  
VERNE L. OLIVER  
EUGENE L. PAINE  
MARGUERITE ROTH  
JERRY J. RUIZ  
MICHAEL B. SALERNO  
MARY SHAW  
WILLIAM K. STARK  
MARK FRANKLIN TERRY  
JEFF THOM  
RICHARD B. WEISBERG  
DANIEL A. WEITZMAN  
THOMAS D. WHELAN  
CHRISTOPHER ZIRKLE  
DEPUTIES

Sacramento, California  
July 2, 1982

Honorable Edmund G. Brown Jr.  
Governor of California  
Sacramento, CA

Assembly Bill No. 3657

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Assemblyman Rosenthal and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

By *John T. Studebaker*  
John T. Studebaker  
Principal Deputy

JTS:AB

Two copies to Honorable Herschel Rosenthal, pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917



# ENROLLED BILL REPORT

AGENCY GOVERNOR'S OFFICE	BILL NUMBER AB 3657
DEPARTMENT, BOARD OR COMMISSION LEGAL AFFAIRS	AUTHOR Rosenthal

Existing law permits the court, upon consent of the parties, to appoint a general referee to try any or all issues or make specific findings of fact.

This bill, sponsored by the State Bar, now also recognizes reference agreements in private contracts. According to the State Bar, in some counties such as Los Angeles judicial delays have become such a problem that commercial contracts are increasingly including clauses agreeing to submit disputes arising under the contract to judicial referees for resolution. There is no opposition to the bill.

LEGISLATIVE INTENT SERVICE (800) 666-1917



RECOMMENDATION: SIGN

ANALYST  
Allen Sumner

DATE  
7/6/82

LEGAL AFFAIRS SECRETARY  
*Byron S. Georgiou*  
Byron S. Georgiou

DATE  
7/6/82

AB 3657

Ch. 440



# THE STATE BAR OF CALIFORNIA

Office of the Legislative Representative

1210 K STREET

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 444-2762

July 6, 1982

The Honorable Edmund G. Brown, Jr.  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Brown:

RE: Assembly Bill 3657 (Rosenthal)

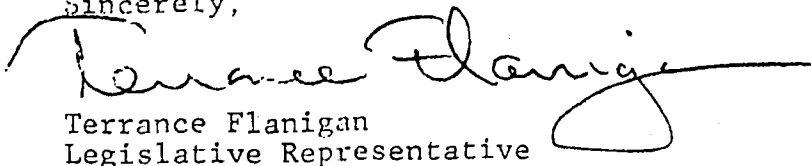
On behalf of the State Bar of California, I request that you sign into law Assembly Bill 3657 (Rosenthal) which has recently been sent to you for your consideration. This proposed change in the law intended to aid courts in the enforcement of reference agreements is part of the Bar's current Legislative Program at the suggestion of the Bar's Committee on the Administration of Justice.

Current court congestion, particularly in the Los Angeles area, has made the use of referees under Section 638(1) of the Code of Civil Procedure a far more attractive remedy than in the past. The use of referees in complex business or real property matters has, in some cases, become almost essential.

Under current law, a reference may be ordered upon the agreement of the parties. Recently, the question has arisen as to whether or not the parties may, prior to a dispute, agree that any dispute that should arise will be submitted to a referee. While the parties can obviously so agree, there is no procedure for compelling such a reference if one party unilaterally decides not to abide by the agreement. Assembly Bill 3657 would provide in this situation that the court may order such a reference upon the motion of one of the parties.

Again, the Bar believes that this proposal is worthy of your approval.

Sincerely,

  
Terrance Flanigan  
Legislative Representative

TF:mr

LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA LEGISLATURE

1981-82 REGULAR SESSION  
1981-82 FIRST EXTRAORDINARY SESSION

# SUMMARY DIGEST

*of*

Statutes Enacted and Resolutions (Including Proposed  
Constitutional Amendments) Adopted in 1982

*and*

1979-1982 Statutory Record



DARRYL R. WHITE  
*Secretary of the Senate*

JAMES D. DRISCOLL  
*Chief Clerk of the Assembly*

Compiled by  
BION M. GREGORY  
*Legislative Counsel*

LIS-10

LEGISLATIVE INTENT SERVICE (800) 666-1917



services if, without good cause, the employee fails to report for duty at the beginning of the school year after having notified the board of his or her intention to remain in the service of the district, as specified. This bill would specify that this provision is applicable only to employees who were on leave of absence for 20 or more consecutive working days after April 30th of the previous school year.

**Ch. 435 (AB 3545) Harris. Public contracts: relief of bidders.**

The Government Code presently contains provisions relating to the relief of bidders on public contracts.

This bill would transfer those provisions to the Public Contract Code.

**Ch. 436 (AB 3432) Frazee. Local agency formation commissions**

Existing law requires a county board of supervisors to provide the amount of funds for the use of a local agency formation commission as the commission estimates are required for necessary quarters, equipment, supplies, and the usual and necessary operating expenses incurred by the commission.

This bill would, instead, require the board of supervisors to provide for the use of the commission an amount which is not less than one of the following: (1) the amount fixed by the commission; (2) the amount provided during the previous fiscal year, increased by the same percentage as the increase in the county's revenue limit; or (3) the amount calculated in (2) plus any additional amount deemed necessary by the board of supervisors.

**Ch. 437 (AB 3599) Tucker. State Board of Optometry.**

Existing law provides that members of the State Board of Optometry, except the public members, are to be registered optometrists and actually engaged in the practice of optometry and prohibits any person who is, among other things, a member of the faculty of any school of optometry from being a member of the State Board of Optometry.

This bill would provide that members of the board, except the public members, may be either practicing optometrists or faculty members of a school of optometry and would provide that no more than 2 faculty members shall be on the board at any one time.

**Ch. 438 (AB 3641) Bane. Search warrants**

Existing law provides, with specified exceptions, the grounds and conditions upon which a search warrant may issue.

This bill would provide another ground upon which a search warrant may issue; that the property or things to be seized consist of evidence which tends to show that sexual exploitation of a child, as defined, has occurred or is occurring.

**Ch. 439 (AB 3650) Sher. Restraining orders.**

Restraining orders entered after notice and hearing pursuant to the Uniform Parentage Act, generally speaking, may remain in effect only up to 90 days.

This bill would provide that restraining orders entered after notice and hearing pursuant to the Uniform Parentage Act may remain in effect up to 1 year, as specified.

It also would make clarifying changes.

**Ch. 440 (AB 3657) Rosenthal. Actions: reference**

Existing law provides, upon agreement of the parties and the order of the court, for the trial of any or all issues in an action or proceeding, or the ascertainment of a fact necessary to enable the court to determine an action or proceeding, by reference.

This bill would provide that the court may order such a reference upon the motion of a party to a written contract or lease which provides that any controversy arising therefrom will be heard by a reference if the court finds a reference agreement exists between the parties.

**Ch. 441 (AB 3674) Nolan. Grand juries: experts.**

Existing law authorizes a grand jury to employ 1 or more experts to assist in specified investigations and reports, at an agreed compensation, to be first approved by the court.

This bill would expand that provision to authorize the employment of 1 or more experts to assist in investigations and reports regarding redevelopment agencies.

