

Land Court plan to expedite litigation is sound

By: admin | May 26, 2016

To the editor:

We write in response to Lawyers Weekly's May 12 editorial ("Land Court proposal needs revising") that criticized the Land Court's proposed new Rule 14, under which litigants before the Land Court could stipulate, with the approval of the court, to a judge rendering a decision without issuing findings of fact and conclusions of law.

Such a decision, under the proposed rule, would be treated like a jury verdict. The court could, where appropriate, return special or subsidiary findings on some or all of the issues tried. The editorial expressed a concern that this rule would inappropriately tempt parties to "trade fundamental rights for speed."

We are some of the members of the working group that worked with the Land Court on its consideration of options to increase efficiency. We write on our own behalf and not on behalf of the group as a whole.

We do not share the editorial's concern that the right to detailed, written findings of fact and conclusions of law is entitled to special protections or precedence over other rights and interests in the administration of justice. Every case involves the consideration of many different concerns and interests. The increasing time and cost of litigation are themselves a threat to some of these concerns, and can make litigation inaccessible or impractical for some. Our system has long permitted the waiver of certain rights, some of which are fundamental, such as the right to a trial by jury. And indeed, decisions rendered without detailed findings of fact and conclusions of law are familiar to our system in jury cases.

The waivers contemplated by the proposed new rule may well not be appropriate in many cases, but the rule provides for the safeguards that all parties must so stipulate and the court must approve. With these safeguards in place, there is no good reason not to permit the option for the parties and court to trade the waiver of findings of fact and conclusions of law for speed.

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