

J.P.D.

Place of Meeting

State Bar Building  
601 McAllister Street  
San Francisco

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

February 28 and 29, 1964

Friday, February 28 (meeting starts at 9:30 a.m.)

Saturday, February 29 (meeting starts at 9:00 a.m.)

1. Approval of Minutes:

December Meeting (sent 1/9/64; another copy sent 1/27/64)  
January Meeting (sent 2/11/64)

2. Administrative matters, if any

3. Study No. 34(L) - Uniform Rules of Evidence

Bring to Meeting: Printed pamphlet containing Uniform Rules of Evidence  
Report of New Jersey Supreme Court Committee on  
Evidence (this has a blue cover--you have a copy)  
Loose-leaf binder containing Uniform Rules of Evidence  
as Revised to Date (you have this)

Consideration of Material Approved for Printing

Tentative Recommendation on Extrinsic Policies

Memorandum 64-11 (enclosed)

Approval for Printing

Tentative Recommendation on Judicial Notice

Memorandum 64-7 (enclosed)

Review of Previously Considered Material

Article I. General Provisions

MINUTES OF MEETING

OF

FEBRUARY 28 AND 29, 1964

San Francisco

The regular meeting of the Law Revision Commission was held in San Francisco on February 28 and 29, 1964.

Present: John R. McDonough, Jr., Chairman  
Richard H. Keatinge, Vice Chairman  
Hon. Alfred H. Song  
Joseph A. Ball  
James R. Edwards  
Sho Sato  
Herman F. Selvin  
Thomas E. Stanton, Jr.  
Angus C. Morrison, ex officio

Absent: Hon. James A. Cobey

Messrs. John H. DeMouilly, Joseph B. Harvey, and Jon D. Smock of the Commission's staff also were present. Mr. Joseph T. Powers, Assistant Chief Trial Deputy from the office of the District Attorney of Los Angeles County, was present for the meeting. Mr. Lawrence C. Baker, Chairman of the State Bar Committee on the Uniform Rules of Evidence, was present on February 28.

ADMINISTRATIVE MATTERS

Minutes of December 1963 Meeting. The Commission approved the Minutes of the December 1963 meeting as submitted.

Minutes of January 1964 Meeting. The Commission approved the Minutes of the January 1964 meeting as submitted.

Termination of Agreement Number 1960-61(13). A motion was made by Mr. Sato, seconded by Mr. Keatinge, that Agreement Number 1960-61(13), dated June 15, 1961, be terminated, and that the Chairman be authorized to sign the termination agreement on behalf of the Commission.

It was noted that this agreement is being terminated because the pressure of other Commission work will not permit the Commission to work on the subject matter of Agreement Number 1960-61(13) until work on sovereign immunity, evidence, and condemnation law and procedure has been completed. Moreover, the funds encumbered to pay for Agreement Number 1960-61(13) have reverted to the General Fund, and at the last audit it was suggested that this agreement be terminated to relieve the State and the Contractor of further obligation under the agreement.

The Commission agreed unanimously to terminate Agreement Number 1960-61(13).

Panel on New Code of Evidence at 1964 Annual Meeting of State Bar.

The Chairman reported that he had received a request from the State Bar's 1964 Annual Meeting Committee for the California Law Revision Commission to arrange, for presentation at the 1964 Annual Meeting, a panel on the "New Code of Evidence."

The Committee also requests that the Commission furnish it a preliminary format of the panel and the names of suggested panelists by March 23.

The Commission approved a suggestion of the Chairman that a subcommittee consisting of the Chairman, Mr. Stanton, and the Executive Secretary be designated to comply with the request from the State Bar's 1964 Annual Meeting Committee.

Future meetings of the Commission. Future meetings are scheduled as follows:

March 22-24	Lake Tahoe
April 23-25	San Francisco
May 21-23	Los Angeles
June 18-20	San Francisco
July 23-25???	Los Angeles

The date of the July meeting will be determined by the date of the Russian-American Track Meet which will be held in Los Angeles. It was suggested that the July meeting might be held at a Law School close to the track meet. The first session of each three-day meeting will be held from 7:00 to 10:00 p.m.

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE

(ARTICLE I. GENERAL PROVISIONS)

The Commission considered Memorandum 64-9, the First Supplement to Memorandum 64-9, Memorandum 64-12, and Memorandum 64-15.

RULE 1. The Commission considered Memorandum 64-12 and Memorandum 64-15.

The following actions were taken:

Subdivision (1) was revised to read:

(1) "Evidence" means testimony, writings, other material objects presented to the senses, or other things that are offered to prove the existence or nonexistence of a fact in judicial or fact finding tribunals.

Subdivision (8) was revised to read:

(8) "Finding of fact," "finding," or "finds" means the determination from evidence or judicial notice of the existence or nonexistence of a fact. A ruling on the admissibility of evidence implies whatever supporting of fact is prerequisite thereto; a separate or formal finding is unnecessary unless required by statute.

The following additional definitions were added to Revised Rule 1:

"Action" includes a civil action or proceeding and a criminal action or proceeding.

"Civil action" means a civil action or proceeding.

"Criminal action" means a criminal action or proceeding.

"Public entity" includes the State, a county, city, district, public authority, public agency, and any other political subdivision or public corporation.

"Public employee" means an officer or employee of a public entity.

"State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

The staff is to check to be sure that Puerto Rico is included in the definition of "state."

RULE 8. The Commission considered Memorandum 64-9, the first supplement thereto, and a redraft of Rule 8 prepared by Commissioner Sato.

The Commission first discussed the standards for proof of preliminary facts. The Commission decided to draft Rule 8 to express the orthodox rule that most preliminary fact questions are to be decided by the judge upon the basis of a preponderance of the evidence, but if the relevancy of the evidence depends on the existence of the preliminary fact, the credibility of the evidence on the preliminary question must be left for the jury, the judge merely decides if there is sufficient evidence of the preliminary fact to permit the question to go to the jury.

The rule was then revised to read in substance as follows:

(1) As used in this rule:

(a) "Preliminary fact" means a fact upon the existence of which depends the admissibility or inadmissibility of evidence, the qualification or disqualification of a person to be a witness, or the existence or nonexistence of a privilege.

(b) "Proffered evidence" means evidence, the admissibility or inadmissibility of which is dependent on the existence of a preliminary fact.

(2) When the existence of a preliminary fact is disputed, its existence shall be determined as provided by this rule. On the admissibility of a confession or admission of a defendant in a criminal action, the judge shall hear and determine the matter out of the presence and hearing of the jury unless otherwise requested by the defendant. In other cases the judge may hear

and determine such matters out of the presence or hearing of the jury. In determining the existence of a preliminary fact under subdivision (3), exclusionary rules of evidence do not apply except for Rule 45 and the rules of privilege. This rule does not limit the right of a party to introduce before the trier of fact evidence relevant to weight or credibility.

(3) Subject to subdivisions (4) and (5), when a preliminary fact must be determined, the judge shall indicate who has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises and he shall determine its existence.

(4) The proffered evidence is inadmissible unless the proponent has produced evidence on the existence of the preliminary fact and the judge determines that such evidence is sufficient to sustain a finding of its existence when:

(a) The preliminary fact is the personal knowledge of a witness concerning the proffered evidence; or

(b) A preliminary fact must be determined with respect to the relevancy of the proffered evidence; or

(c) The preliminary fact is the authenticity of a writing or the identity of a person who made a statement or did a verbal act.

The staff was directed to add a subdivision (5) to prescribe the nature of the preliminary fact finding process under the privilege against self-incrimination. The subdivision should express the rule stated in Cohen v. Superior Court, 173 Cal. App.2d 61, 343 P.2d 286 (1959). That case held that the privilege claimant "has the burden of showing that the testimony . . . [sought] might be used in a prosecution to help establish his guilt"; but the judge may overrule the claim only if it is "perfectly clear, from a consideration of all the circumstances in the case, that the witness is mistaken and that the answer(s) cannot possibly have such tendency." 173 Cal. App.2d at 68, 72. A suggestion was made that the subdivision cross-refer to Rule 24, i.e., that it state that the objector must make a showing in accordance with the procedure stated in Rule 24 that the information sought might be incriminating.

AMENDMENTS AND REPEALS. The Commission considered Memorandum 64-12. The Commission determined that Section 1827 of the Code of Civil Procedure should be repealed in the tentative recommendation on General Provisions. This section is superseded by Rule 1(1). It was noted that the concept of "judicial notice" is a separate concept from "evidence." See Revised Rule 1(1) and 1(8).

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE

(ARTICLE II. JUDICIAL NOTICE)

The Commission considered Memorandum 64-7 and the proposed Tentative Recommendation Relating to Judicial Notice. The following actions were taken:

RULE 9

In subdivisions (1) and (2), the phrase ", whether or not requested by a party," was inserted in the introductory clause in place of "without request by a party" for clarity, making no substantive change in the mandatory nature of judicial notice required under these subdivisions.

The word "specific" preceding "facts and propositions" was deleted from subdivision (2) as being unnecessary.

Subdivision (3) was revised in several particulars as follows:

(1) Paragraph (b) was revised to include the substance of paragraph (e), thereby making paragraph (b) cover legislative enactments and regulations of governmental subdivisions or agencies of (i) the United States and (ii) any state, territory, or possession of the United States.

(2) Paragraph (d) was revised to read: "Records of any court of this State or of the United States." The revision was made to eliminate unnecessary language without changing the substance of the rule.

(3) Paragraph (e) was deleted following the incorporation of its substance into paragraph (b).

(4) Paragraphs (g) and (h) [relettered to (f) and (g), respectively] were revised by inserting "that are" in the relative clauses modifying

"specific facts and propositions." A motion to delete the word "specific" from each of these paragraphs died for lack of a second.

The Commission discussed at length the question of the requisite showing required under subdivision (4) in connection with deleted Rule 10(3), i.e., whether the judge must be persuaded of the propriety of taking judicial notice and the tenor thereof or whether the party requesting notice need produce only evidence sufficient to warrant the taking of judicial notice. The Commission approved a motion directing the staff to draft language to effectuate the following policy, leaving to the staff's discretion whether to state it in Rule 9, Rule 10, or in a separate rule: The judge shall take judicial notice of the matters specified in Rule 9(3) if a party (i) requests it, and (ii) gives reasonable notice to each adverse party, and (iii) furnishes information sufficient to warrant the taking of judicial notice and the tenor thereof, unless (iv) there is a dispute as to the propriety of taking notice or the tenor thereof, in which case the party requesting notice has the burden of persuading the judge as to the propriety of taking notice and the tenor thereof; and no notice shall be taken unless that burden is satisfactorily discharged.

The word "reasonable" was added to paragraph (b) of subdivision (4) preceding the word "notice." A suggestion by the Southern Section that the phrase "through the pleadings or otherwise" be deleted was disapproved since a bare requirement of notice suggests that a separate notice is required that cannot be satisfied by the pleadings.

RULE 10

Subdivision (1) was revised to eliminate the unnecessary duplication of language regarding the required hearing, but without changing the substance that the parties be afforded the opportunity of a hearing both as to the propriety of taking notice and the tenor of the notice to be taken.

Subdivision (2)(b) was expanded to require the judge to make a record of any matter considered by him that was not brought to the attention of the parties at the hearing and to give the parties an opportunity to rebut such matter.

RULE 11

A reference to paragraph (a) of subdivision (1) of Rule 9 was added to subdivision (1) of this rule.

RULE 12

This rule was approved without change.

AMENDMENTS AND REPEALS

This portion of the Tentative Recommendation was approved without change.

PRINTING AND DISTRIBUTION

The Commission directed the staff to revise the Tentative Recommendation to make it conform to the policies adopted, to make other necessary revisions as suggested by individual Commissioners, and approved this Tentative Recommendation as so revised for printing and distribution to interested persons. Voting aye: Commissioners McDonough, Keatinge, Sato, Selvin, Stanton. Absent: Commissioners Ball, Cobey, Edwards, Song.

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE

(ARTICLE III. PRESUMPTIONS)

The Commission considered Memorandum 64-8 and the first supplement thereto. The following actions were taken:

C.C.P. § 1963-37. That a trustee or other person, whose duty it was to convey real property to a particular person has actually conveyed to him, when such presumption is necessary to perfect title of such person or his successor in interest.

This presumption was classified as a Thayer presumption.

C.C.P. § 1963-38. The uninterrupted use by the public of land for a burial ground for five years, with the consent of the owner, and without a reservation of rights, is presumptive evidence of his intention to dedicate it to the public for that purpose.

This presumption is to be repealed. The subject matter is to be left to the substantive law relating to dedication. Under the substantive law, if the public continually uses property for five years with the owner's knowledge and without any assertion of rights by the owner, he has dedicated the property to the public. See Witkin, California Evidence § 28, p. 884.

C.C.P. § 1963-39. That there was good and sufficient consideration for a written contract.

C.C. § 1614. A written instrument is presumptive evidence of consideration.

These presumptions are to be repealed. They are rendered unnecessary by C.C. § 1615 which provides:

The burden of showing want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

If necessary, Section 1615 is to be revised to delete "an instrument" and insert in lieu thereof "a written contract or other written instrument".

C.C.P. § 1963-34. That a document or writing more than 30 years old is genuine, when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily explained.

The Commission discussed this presumption but reached no conclusion. A question was raised whether the ancient documents rule stated in Rule 67.5 requires the document to be 30 years old before an inference of authenticity may be drawn.

*[Faint, illegible text]*

*[Faint, illegible text]*

*[Faint, illegible text]*

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE

(ARTICLE VI. EXTRINSIC POLICIES AFFECTING ADMISSIBILITY)

The Commission considered Memorandum 64-11. Subdivision (3) of Revised Rule 47 was revised to read as follows:

(3) In a criminal action or proceeding, evidence of the character or a trait of character (in the form of opinion, ~~or~~ evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not inadmissible under this rule:

(a) When offered by the defendant to prove conduct of the victim in conformity with such character or trait of character.

(b) When offered by the prosecution to meet evidence previously offered by the defendant under paragraph (a).

The Comment is to be revised to conform to this change.

It was noted that this subdivision is limited to criminal proceedings. The revision of subdivision (3) will, for example, permit the defendant in a criminal forcible rape case to show specific acts of intercourse where the defense is consent. The revision retains existing law in forcible criminal rape cases. The revision also permits the defendant in a criminal homicide or assault case to show specific instances of conduct of the victim to show that the victim was the aggressor in the encounter where the defense of self-defense is raised by the defendant. This may be existing law, although the existing law is unclear.

It was conceded that this evidence is not very probative. But in a criminal case the defendant needs to create only a reasonable doubt, and this evidence may be enough to create a reasonable doubt.

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE  
(ARTICLE VIII. HEARSAY EVIDENCE)

The Commission considered Memorandum 64-13, First Supplement to Memorandum 64-13, Second Supplement to Memorandum 64-13, and Memorandum 64-14. The following actions were taken:  
FORM OF STATUTE ON HEARSAY EVIDENCE.

The Commission approved the following as a general scheme for organization of the portion of the new statute that will deal with Hearsay Evidence:

---

CHAPTER            HEARSAY EVIDENCE

ARTICLE 1. GENERAL PROVISIONS

Section 1. Definitions [Rule 62]

Section 2. General Rule excluding hearsay evidence.

Evidence of a statement which is made other than by a witness while testifying at the hearing and is offered to prove the truth of the matter stated is hearsay evidence and is inadmissible except as provided in Article 2 of this chapter.

Section 3. Credibility of declarant. [Rule 65]

Section 4. Multiple hearsay. [Rule 66]

Section 5. No implied repeal. [Rule 66.1]

ARTICLE 2. EXCEPTIONS TO HEARSAY RULE

Section 10. Previous statement of trial witness. [Rule 63(1)]

A statement made by a person who is a witness at the hearing, but not made at the hearing, is not inadmissible under Section 2 if the statement would . . .

[Remaining hearsay exceptions contained in separate sections similar in form to Section 10.]

---

GENERAL MATTERS.

The Commission considered the letter from Professor Davis. Commissioners who have considerable experience reported that they noted no significant difference in application of the hearsay rule in judge tried and jury tried cases. Moreover, they believe that the hearsay rule serves a desirable function in judge tried cases.

It was agreed that the phrase "the judge finds" can be eliminated from the various rules in view of the action taken on Rule 8 which spells out the nature of the preliminary rulings by the judge on the admissibility of evidence.

COMMENTS ON SPECIFIC RULES.

Rule 62(6). Subdivision (c) was revised to read:

(c) Dead or unable to attend or to testify at the hearing because of then existing physical or mental illness or infirmity.

An additional subdivision is to be added to Rule 62(6) to make it clear that when a prisoner is the declarant and his presence at the hearing cannot be obtained by the process of the court, the prisoner is unavailable as a witness. Thus, a new subdivision would be added to Rule 62(6), to read in substance:

(f) Absent from the hearing because of imprisonment and the court is unable to compel his appearance at the hearing by its process.

Rule 62--additional definitions. The suggestion of the Committee of the Conference of California Judges that two new definitions be added to Rule 62 was not accepted. The definitions would require a person to look to the definition to determine the meaning of various hearsay exceptions

without any significant saving in language in the sections containing the exceptions. The objective of the Committee--to make the exceptions shorter-- will be accomplished by the revision in the form of the Hearsay Article when it is drafted in statutory form. The advantage of self-contained exceptions outweighs any saving in language in the sections stating the exceptions.

Rule 63 (opening paragraph). No changes were made in the opening paragraph of Rule 63.

Rule 63(1). Paragraph (b) of Rule 63(1) was revised to read:

(b) Is offered after evidence of a prior inconsistent statement by the witness has been received, or after an express or implied charge has been made that his testimony at the hearing was recently fabricated, and the statement is one made before the alleged inconsistent statement or fabrication and is consistent with his testimony at the hearing; or

An additional exception was added to Rule 63(1), to read:

Is offered after an express or implied charge has been made that his testimony at the hearing is influenced by bias or improper motive and the statement is one made before the bias or motive is alleged to have arisen and is consistent with his testimony at the hearing; or

Rule 63(1.1)--The Gould Case. The Commission considered Memorandum 64-14 which contains a draft of subdivision (1.1) which would provide a hearsay exception based on the rule of the Gould case. After considerable discussion, it was determined that no specific exception should be added to Rule 63 to cover the Gould case. Paragraph (c) of subdivision (1) of Rule 63 provides a means for dealing with the case where the witness on the stand is no longer able to remember the person he identified at the police lineup.

Rule 63(3). The Commission considered the comment of the Conference of California Judges that "to cross-examine" be substituted for "for cross-

examination with an interest and motive similar to that which he has at the hearing" in subdivision (3)(b). After discussion, the Commission determined not to revise subdivision (3)(b) because the suggestion of the Conference would remove the guarantee of trustworthiness that is provided by the opportunity to cross-examine "with an interest and motive similar to that which he has at the hearing."

Rule 63(3.1). The Commission considered the comment of the Committee of the Conference of California Judges that this subdivision be eliminated and the comments of the office of the District Attorney of the County of Los Angeles and the office of the County Counsel of San Bernardino County.

The Commission determined to retain subdivision (3.1) without change. The evidence admissible under this subdivision is certain testimony that was given under oath by a declarant who was subject to cross-examination by a person who was motivated to make an adequate cross-examination and the declarant is not now available to repeat his testimony. This evidence is more reliable than most other hearsay evidence.

Rule 63(4). No change was made in this subdivision.

Rule 63(5). No change was made in this subdivision.

Rule 63(5.1). The following subdivision, approved in the tentative recommendation on Privileges in connection with the repeal of the Dead Man Statute, was added to Rule 63:

(5.1) When offered in an action or proceeding brought against an executor or administrator upon a claim or demand against the estate of a decedent, a statement of the decedent if the statement was made upon the personal knowledge of the declarant.

See Tentative Recommendation on the Privileges Article, pages 117-119.

Rule 63(6). The words "relative to the offense charged" were deleted as unnecessary. These words might raise an issue that would result in controversy. Any statement of a defendant in a criminal action should meet the test set out in subdivision (6).

Subdivision (c) was deleted. This subdivision was objected to by the Attorney General and the District Attorneys' Association.

The title should be changed to "Confessions and Admissions of Criminal Defendants."

Rule 63(7). No change was made in this subdivision.

Rule 63(8). No change was made in this subdivision.

Rule 63(9). The following changes were made in this subdivision:

(1) In paragraph (a), delete "before the termination of" and insert "during"; insert "as to the order of proof" after "discretion"; and delete "by independent evidence."

(2) In paragraph (b), delete "prior to the termination" and insert "during the existence"; and revise subparagraph (ii) to read: "(ii) the statement is offered after, or in the judge's discretion as to the order of proof subject to, proof [by-independent-evidenece] of the existence of the conspiracy . . . ."

These changes in subdivision (9) will revise the subdivision so that it states existing law.

Consideration should be given to dividing subdivision (9) into three sections when the subdivision is placed in statutory form.

Rule 63(10). The substance of the following was added at the end of this subdivision: "unless the statement would have been admissible against

the declarant under subdivision (6) if he were the defendant in a criminal action."

Rule 63(12). No change was made in this subdivision.

Rule 63(13). No change was made in this subdivision.

Rule 63(14). After considerable discussion, this subdivision was retained as set out in the tentative recommendation.

Rule 63(15). This subdivision was approved, but a provision is to be added to provide that whenever the author of such writing is called as a witness by the party against whom the writing is offered to testify concerning the subject matter of the writing, such witness may be examined as an adverse witness on cross-examination. If the staff believes that a general provision should be made to give this right whenever hearsay evidence is admitted and the declarant is not unavailable as a witness, a memorandum should be prepared to present the staff's proposal.

The Commission declined to extend subdivision (15) to include reports prepared by agencies of government prior to litigation dealing with natural or physical conditions.

Rule 63(15.1). The Commission considered the Second Supplement to Memorandum 64-13, relating to findings of presumed death and the like. No decisions were made and consideration of this matter was deferred until a research study on Code of Civil Procedure Sections 1928.1-1928.4 is available. The research study should indicate the pertinent federal statutes and cases interpreting them.

Rule 63(16). This subdivision was considered in connection with the problem of authentication. See the First Supplement to Memorandum 64-13.

The following new subdivision is to be added to Proposed Rule 67.7:

A writing purporting to be a record or report of a birth, fetal death, death, or marriage is presumed to be genuine if:

(a) A statute required writings made as a record or report of a birth, fetal death, death, or marriage to be filed in a designated public office; and

(b) The writing was filed in that office.

Rule 63(17). The references to authentication under Rules 68 and 69 were deleted, and the phrase "a writing purporting to be" were also deleted from subdivision (a).

The words "or an entry therein" are to be deleted from Rule 68 in order to make Rule 68 consistent with subdivision (17)(a).

Rule 63(18). No change was made in this subdivision.

Rule 63(19). No change was made in this subdivision.

Rule 63(20). Subdivision(20) was inserted in the revised rule to read as follows:

(20) Unless the judgment was based on a plea of nolo contendere, evidence of a final judgment adjudging a person guilty of a felony, to prove in a civil action any fact essential to the judgment.

In the Teitelbaum case, the court stated that a final judgment adjudging a defendant guilty of a felony is conclusive against that defendant in a later civil action involving the same issue. (In the Teitelbaum case, the criminal defendant was the plaintiff in the civil action.) Revised subdivision (20) makes such a final judgment evidence (although not conclusive) against a third person in a civil action involving the same issue. It was noted that a similar principle is recognized in subdivision (3.1), which makes the testimony in the former case admissible against a third person in a civil action involving the same issue. Also, Revised Rule 20 is consistent with subdivision (10)

which makes a plea of guilty in a criminal case admissible as a declaration against interest in a subsequent action or proceeding involving third parties. Thus, subdivision (20) is needed primarily in cases where the defendant pleads not guilty but is convicted of a felony. The exception for cases where the judgment is based on a plea of nolo contendere is a reflection of the policy expressed in Penal Code Section 1016.

Rule 63(21). No change was made in this subdivision.

Rule 63(21.1). No change was made in this subdivision.

Rule 63(22). This subdivision was deleted.

Rule 63(23). No change was made in this subdivision.

Rule 63(24). No change was made in this subdivision.

Rule 63(26). No change was made in this subdivision.

Rule 63(26.1). No change was made in this subdivision.

Rule 63(27). The following paragraph was added to subdivision (27) to preserve the rule in Simons v. Inyo Cerro Gordo Co., 48 Cal. App. 524 (1920):

(d) The interest of the public in property in the community if the reputation arose before the controversy.

Unlike existing law, this subdivision does not require that the reputation be more than 30 years old.

Rule 63(27.1). No change was made in this subdivision.

Rule 63(28). No change was made in this subdivision.

Rule 63(29). The words "real or personal" were inserted before "property" in the introductory clause of this subdivision.

Rule 63(29.1). No change was made in this subdivision.

Rule 63(30). No change was made in this subdivision.

Rule 63(31). No change was made in this subdivision.

Rule 63(32). No change was made in this subdivision.

Rule 64. This rule was previously disapproved by the Commission. In view of the comments received on the tentative recommendation, the Commission suggested that the staff prepare a memorandum containing the staff's suggestions on which, if any, subdivisions of Rule 63 should be subject to Rule 64. The memorandum is to assume that Rule 64 will apply to both civil and criminal cases and is to give special consideration to the application of Rule 64 in criminal cases.

Rule 65. No change was made in this rule.

Rule 66. No change was made in this rule.

Rule 66.1. No change was made in this rule.

Amendment of Code of Civil Procedure Section 2047. The staff is to prepare a memorandum discussing the amendment of this section. The amendment contained in the tentative recommendation fails to deal adequately with the case where the witness is unable to produce in court the writing he used to refresh his memory prior to the trial. It was suggested that in such cases the judge might be given the discretionary right to strike the witness' testimony if he is unable to produce the writing. It was noted that FAA reports may not be copied by the person making the report and may not be examined by any other person. The SEC, FPC, and CAB have somewhat similar regulations limiting examination of reports.

*mtg*

REVISED SCHEDULE OF DEADLINES IN STUDY OF UNIFORM RULES OF EVIDENCE

Revised March 2, 1964

<u>Subject Matter</u>	<u>Tentative Recommendation Sent to State Bar Committee</u>	<u>Receive Comments from State Bar Committee</u>	<u>Tentative Recommendation Approved for Printing</u>	<u>Tentative Recommendation Available in Printed Form</u>	<u>General Comments Reviewed</u>	<u>Final Action Taken</u>
Article VIII-- Hearsay	Sent	Received	Approved	Available	March 1964 Meeting	April 1964 Meeting
Article IX-- Authentication	Sent	Received	Approved	March 15, 1964	May 1964 Meeting	May 1964 Meeting
Article V-- Privileges	Sent	Received	Approved	April 15, 1964	July 1964 Meeting	July 1964 Meeting
Article VI-- Extrinsic Policies	Sent	Received	Approved	May 1, 1964	July 1964 Meeting	July 1964 Meeting
Article IV-- Witnesses	Sent	Received	Approved	May 1, 1964	July 1964 Meeting	July 1964 Meeting
Article II-- Judicial Notice	Sent	Received	Approved	May 1, 1964	July 1964 Meeting	July 1964 Meeting
Article VII-- Expert and Other Opinion Testimony	Sent	Received (Northern Section)	March 1964 Meeting	May 1, 1964	July 1964 Meeting	July 1964 Meeting
Article I-- General Provisions	Sent	April 5, 1964	April 1964 Meeting	June 1, 1964	July 1964 Meeting	July 1964 Meeting
Article III-- Presumptions	May 5, 1964 (April Meeting)	June 5, 1964	June 1964 Meeting	Aug. 1, 1964	Sept. 1964 Meeting	Sept. 1964 Meeting

Review of Existing Code Provisions

First Portion of Research Study Received

Begin work on Review of Existing Code Provisions -- March 1964 meeting

Additional portion of Research Study Received -- April 1, 1964

Final Portion of Research Study Received -- May 1, 1964

Complete work on Review of Existing Code Provisions  
and prepare tentative recommendation - - - - June 1964 meeting

Tentative Recommendation ready to distribute to  
State Bar Committee- - - - - July 5, 1964

Receive Comments of State Bar Committee - - - - Sept. 1, 1964

Final Action by Commission - - - - - Sept. 1964

Final Recommendation (New Evidence Code and Comments)

Begin work -- July 1964 meeting

Approve for printing -- September 1964 meeting

Ready to print -- October 15, 1964

Pamphlet

Available in printed form -- January 1965

Preprinted Bill

Available -- December 1, 1964