

#34

1/16/64

Memorandum 64-3

Subject: Study No. 34(L) - Uniform Rules of Evidence (Article I. General Provisions)

Attached are two copies of a tentative recommendation on Article I (General Provisions) of the Uniform Rules of Evidence. The extra copy is provided so that you can mark your suggested revisions in the comments and turn it in to the staff at the January meeting.

Article I consists of Rules 1 through 8. Rules 2 through 7 have been acted upon. You should examine the comments to these rules to determine if they are satisfactory.

Rule 1 is discussed in this memorandum. Rule 8 is discussed in Memorandum 64-5 which will be sent to you as soon as it has been prepared.

The staff suggests that Rule 1 be approved in the form contained in the tentative recommendation. The Commission started to consider Rule 1 at the August 1963 meeting and, after disapproving subdivisions (1) and (2), deferred consideration of the remainder of Rule 1.

Subdivision (1) will supersede the existing definition of "evidence" in the Code of Civil Procedure. Subdivision (1) is a more accurate statement of existing California law than Code of Civil Procedure Section 1823, and should be approved so that we know what we mean when we use the word "evidence" in the revised rules and in the sections of existing law that we will be adding to the revised rules when we prepare the comprehensive statute. Having a definition of "evidence" in Rule 1(1) permits the repeal of C.C.P. Section 1823. We strongly urge approval of subdivision (1).

Subdivision (2) defines relevant evidence. This section was disapproved, and its substance was added to Rule 7(f) which was revised (at the December

meeting) to read "all evidence is admissible except evidence not having a tendency in reason to prove any fact material to the proceeding." The staff recommends that we have a definition of "relevant evidence" which we can use in the revised rules and in the existing code sections that we will be adding when we prepare the comprehensive statute. Having a definition of "relevant evidence" will be of considerable value in determining what action to take on various existing code sections. Since the definition of "relevant evidence" states existing law, the staff can see no reason why it should not be tentatively approved as contained in the URE. Accordingly, we suggest that Rule 7(f) be restored to its original URE form and that the definition of "relevant evidence" be approved.

The definition of guardian in Rule 1(9) defines a term that is used only in the privileges rules. Should we delete the language "or of a person who is not an incompetent but who has a guardian" from subdivision (9)? In other words, should a competent person who has a guardian be the holder of the privilege or should his guardian be the holder?

We have not had time to make a careful check of the parts of the Comment to Rule 1 that list where the defined terms are used. We will do so before the meeting, if possible, and in any event before we send the tentative recommendation to the State Bar Committee.

The other definitions and comments thereto are adequately covered in the tentative recommendation.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary