

#34(L)

6/3/64

Memorandum 64-40

Subject: Study No. 34(L) - Uniform Rules of Evidence (Form of Comments on Evidence Code)

We are now engaged in preparing the comments that will appear under the various proposed sections in our final report on the Evidence Code and which will appear under the code sections when they are compiled in the code. We have already prepared some of these comments and they will be considered at the June meeting.

A general problem is presented in the preparation of these comments. The comments serve two purposes: First, they explain the bill to those persons who are interested in the bill before it is enacted. Second, they explain the code sections after the bill is enacted. To serve the first purpose (to explain the bill), the comments should be written as if the bill were to be enacted in the future. Thus, sections to be repealed would be referred to as still in existence, and the law in effect prior to the enactment of the bill would be referred to as "existing law." On the other hand, to serve the second purpose (to explain the code sections after the bill is enacted), the comments should be written as if the bill already had been enacted. Thus, the sections repealed would be referred to as "former Code of Civil Procedure Section 1963" and the law in effect prior to the enactment of the Evidence Code would be referred to as "previously existing law."

If the comments are written as if the bill were to be enacted in the future, they will require extensive editorial revision if they are to make sense when they are inserted under the sections when compiled in the new code.

Since the staff believes that the most important purpose of the comments is to make legislative intent clear--i.e., to explain the code sections after they are enacted--we suggest that the comments be written as if the bill already had been enacted. This does not cause great difficulty in using the same comments to explain the bill. In our final recommendation that will contain the Evidence Code, we can include a paragraph indicating that the comments serve two purposes and advising the reader that they are written as if the recommendation had been enacted as law<sup>7/16</sup> will be sufficient warning to the reader.

The comments we have prepared for the June meeting are written in a form to carry out this staff recommendation. We suggest that you read these comments with this memorandum in mind so that we can establish a general policy on this matter at the June meeting. See Memorandum 64-32 (includes comments to Division 1), Memorandum 64-36 (includes comments to Division 2), Memorandum 64-39 (includes comments to Privileges division).

We plan to have the statute portion of the tentative recommendation on Burden of Producing Evidence, Burden of Proof, and Presumptions set in bill form after the June meeting. The legislature will pay the cost of setting this portion of the material, and we will use the type for our tentative recommendation. We also plan to set the comments in a form that we can use without change in our final report. Accordingly, we have written the comments in the form we suggest for the final report. We will discuss the matter of this tentative recommendation in connection with Memorandum 64-37.

Attached is a revised schedule of deadlines for this project.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

Revised: June 1, 1964

REVISED SCHEDULE OF DEADLINES IN STUDY OF UNIFORM RULES OF EVIDENCE

<u>Subject Matter</u>	<u>Definitive Recommendation Printed</u>	<u>Portion of Preprinted Bill to Printer</u>	<u>Comments to Printer</u>
Title of Bill	Will not be printed	August Meeting	None
Division 1 (Preliminary Provisions and Construction)	Will not be printed	July Meeting	July Meeting
Division 2 (Words and Phrases Defined)	Will not be printed	July Meeting	July Meeting
Division 3 (General Provisions)	July 1	August Meeting	August Meeting
Division 4 (Judicial Notice)	June 15	August Meeting	August Meeting
Division 5 (Burden of Producing Evidence, etc.)	July 15	June Meeting	June Meeting
Division 6 (Witnesses)	Printed	August Meeting	August Meeting
Division 7 (Experts, etc.)	July 1	August Meeting	August Meeting
Division 8 (Privileges)	Printed	June Meeting	June Meeting
Division 9 (Extrinsic Policies)	Printed	July Meeting	July Meeting
Division 10 (Hearsay Evidence)	Printed	July Meeting	July Meeting
Division 11 (Writings)	Printed (Authentication and Contents of Writings only)	July Meeting	July Meeting
Amendments and Repeals	Will not be printed	July Meeting	September Meeting
General Introductory Portion of Final Recommendation			September Meeting