

7/12/61

Fifth Supplement to Memorandum No. 19(1961)

Attached as Exhibit I are the minutes of the meeting held on June 10, 1961, by the Southern Section of the State Bar Committee to Consider the Uniform Rules of Evidence.

An examination of the minutes will disclose that some of the subdivisions of Rule 63 as previously approved by the Commission have now been approved by both sections of the State Bar Committee. Some of these subdivisions have been since redrafted by the Commission to improve the form of the subdivisions. It is not suggested that these subdivisions be reconsidered by the Commission. When the Commission completes its work on the tentative recommendation on hearsay and sends it to the State Bar Committee, the staff will advise the State Bar Committee on these changes.

The Southern Section notes the following matters in connection with the proposed adjustments and repeals of existing code sections. These should be considered by the Commission.

1. Both the Northern and Southern Sections believe that C.C.P. § 1849 should not be repealed. See Exhibit I, page 4. The Commission recommends repeal of this section.

2. The Southern Section believes that the second sentence of subdivision 5 of C.C.P. § 1870 should be retained. See Exhibit I, pages 5 and 6. The Commission recommends deletion of this sentence.

3. The Southern Section agrees with the Commission that C.C.P.

§ 1848 should be repealed. However, the Commission may want to revise the comment under this section in the tentative recommendation in view of the comment of the Southern Section concerning this section. See Exhibit I, page 4.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I
EXCERPT FROM

MINUTES OF MEETING OF SOUTHERN SECTION OF STATE BAR COMMITTEE
TO CONSIDER UNIFORM RULES OF EVIDENCE

[June 10, 1961]

Rule 63, subdivision (20).

The Baker letter states that the Northern Section has voted to adopt subdivision (20) as revised by the Law Revision Commission; that it does not appear that the Southern Section has acted upon this proposal.

The records of the Southern Section differ from those of the North. Our records show that prior to the joint meeting with the Law Revision Commission on October 8, 1958, the full State Bar Committee had disapproved subdivision (20) of Rule 63 on the ground that, while a judgment of previous conviction is relevant and probative, it is too prejudicial. At the 1958 joint meeting with the Commission, the State Bar Committee affirmed its disapproval of subdivision (20).

The only formal record that the Southern Section has with respect to action taken by the Northern Section on subdivision (20) is the record contained in the minutes of the meeting of the Northern Section held on April 23, 1958. Those minutes state as follows:

"After an extended discussion, the Committee voted to disapprove Subdivision (20) in toto. It is the Committee's belief that the extension of the admissibility of proof of commission of a felony which the Subdivision permits is undesirable because the introduction of such evidence is always highly prejudicial to the person who was so convicted and the Committee believes that the countervailing argument of convenience is not sufficient to justify

the introduction of evidence so prejudicial. In addition, under the comparatively loose California practice, it's often not possible to determine precisely what fact or facts was or were essential to sustain a particular judgment of conviction of a felony."

Although Mr. Baker's letter dated March 16, 1961, to the Law Revision Commission indicates that the Northern Section as presently constituted has reconsidered and altered its former position, we are able to find no record of when such reconsideration took place or of the Northern Section's reasons for changing its position.

On the basis of this past record, the members of the Southern Section again gave consideration to the desirability of approving subdivision (20) in the form approved by the Commission. After reconsideration, the Southern Section concluded that the previous position of the State Bar Committee was sound; that evidence of a previous felony conviction is too prejudicial to warrant admissibility as an exception to the hearsay rule, despite its relevancy and probative value. Therefore, subdivision (20) was disapproved.

Rule 63, subdivision (23).

It was noted that the Northern Section, although agreeing that the Commission's wording of subdivision (23) may be somewhat awkward, nevertheless has approved the Commission's draft of this subdivision.

Previously, the Southern Section had suggested that the word "controversy" was too broad and might be construed as relating to non-legal as well as legal controversies; that the language of the subdivision regarding motive, etc. would have little practical application except as to the matter of age; and that, logically, the question of whether there was an existing controversy or a motive to misstate should go to weight rather than to admissibility.

After reconsideration, the Southern Section concluded that (i) since the Northern Section and the Commission are in agreement as to the language of this subdivision, the Southern Section should, for the sake of uniformity, withdraw its earlier objections regarding language; (ii) since any recommendation that would make motive for misstatement a matter of weight rather than admissibility would constitute a deviation from present California law that would have little, if any, chance for legislative approval, the Southern Section should withdraw its previous suggestion in that regard. The Southern Section then approved the Commission's current redraft of subdivision (23).

Rule 63, subdivision (24).

The Southern Section voted to approve the Commission's redraft of subdivision (24), for the same reasons that are given in support of the action taken upon reconsideration of subdivision (23).

Rule 63, subdivision (32).

The Southern Section previously had approved the Law Revision Commission's proposed new subdivision (32) but was of the opinion that since subdivisions (1) through (32) of Rule 63 establish standards of admissibility rather than inadmissibility, the wording of subdivision (32) should reflect this. The Northern Section, while recognizing that there may be some theoretical merit to the Southern Section's view, has indicated that it is content to accept the Commission's wording.

Upon reconsideration, the Southern Section decided to approve the Commission's draft of subdivision (20), but with the suggestion that two minor changes in the Commission's language might improve the wording. The changes suggested are shown by the underlined words in the following suggested

revised text:

"(32) Any hearsay evidence not made admissible by subdivisions (1) through (31) of this rule but declared by other law of this State to be admissible."

Repeal of sections of Code of Civil Procedure.

The Southern Section then considered the Commission's proposed repeal of certain sections of the Code of Civil Procedure and its proposed deletion of parts of other sections. The action taken by the Southern Section with respect to each of the code sections considered is indicated below, subject, of course, to the assumption that URE Rules 62-66, as revised, become law.

-- C.C.P. § 1848: Proposed repeal of this section was approved, despite the fact that Prof. Chadbourn does not recommend repeal (he fails to comment at all) and despite the fact that the section does not appear to have any particular applicability to the rules on hearsay. The members of the Southern Section felt that C.C.P. § 1848 is so ambiguous and, on its face, so idiotic that no useful purpose would be served by retaining it.

-- C.C.P. § 1849: The Southern Section agreed with the Northern Section that C.C.P. § 1849 should remain a part of our law and should not be repealed; that the matters covered by § 1849 are not covered by anything in the hearsay rules as adopted by the Commission.

-- C.C.P. § 1850: Proposed repeal of this section was approved.

- C.C.P. § 1851: Proposed repeal of this section was approved.
- C.C.P. § 1852: Proposed repeal of this section was approved.
- C.C.P. § 1853: Proposed repeal of this section was approved.
- C.C.P. § 1901: Proposed repeal of this section was approved.
- C.C.P. § 1905: Proposed repeal of this section was approved.
- C.C.P. § 1906: Proposed repeal of this section was approved.
- C.C.P. § 1907: Proposed repeal of this section was approved.
- C.C.P. § 1918: Proposed repeal of this section was approved.
- C.C.P. § 1919: Proposed repeal of this section was approved.
- C.C.P. § 1920: Proposed repeal of this section was approved.
- C.C.P. § 1920a: Proposed repeal of this section was approved.
- C.C.P. § 1921: Proposed repeal of this section was approved.
- C.C.P. § 1926: Proposed repeal of this section was approved.
- C.C.P. § 1936: Proposed repeal of this section was approved.
- C.C.P. § 1946: Proposed repeal of this section was approved.
- C.C.P. § 1947: Proposed repeal of this section was approved.
- C.C.P. §§ 1953e-1953h: Proposed repeal of these sections was approved.
- C.C.P. § 1870: With one exception, the Southern Section agreed with the Commission that subdivision (2) through (8), and subdivisions (11) and (13), of C.C.P § 1870 should be deleted. The exception is that it seems to the Southern Section that the second sentence of subdivision (5) should remain a part of our law, although its language necessarily would have to be modified somewhat. As far as

the Southern Section has been able to determine, the subject matter of the second sentence of subdivision (5) is not covered in any of the new hearsay rules. Prof. Chadbourn, in his study, recommends that the second sentence of C.C.P. § 1870(5) should remain a part of our law.

- C.C.P. §1951: Concurred in the recommendation made by the Commission that C.C.P. § 1951 should be reconsidered when the Uniform Rules relating to authentication are considered.
- C.C.P. § 2047: Approved the Commission's recommendation that the first two sentences of this section be retained and that the last sentence be deleted.