

24 Jan

Memorandum 64-12

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

Rule 1(1). At the last meeting, Rule 1(1) was revised to read:

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

This definition supersedes Sections 1823 and 1827 of the Code of Civil Procedure. These sections provide:

1823. EVIDENCE DEFINED. Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact.

1827. KINDS OF EVIDENCE. There are four kinds of evidence:

1. The knowledge of the court;
2. The testimony of witnesses;
3. Writings;
4. Other material objects presented to the senses.

We have already determined to repeal Section 1823. It is suggested that Section 1827 also should be repealed. Revised Rule 1(1) duplicates subdivisions 2, 3, and 4 of Section 1827 and is inconsistent with subdivision 1 of Section 1827 because under the scheme of the Uniform Rules (as drafted and as revised) a finding may be based on evidence or judicial notice. See Rule 1(8).

Accordingly, it is suggested that Section 1827 be repealed in the tentative recommendation.

Consideration should be given to whether Revised Rule 1(1) adequately covers "material objects presented to the senses."

Rule 1(8). For consistency, the words "or nonexistence" should be added after "existence" in Revised Rule 1(8).

Respectfully submitted,

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Executive Secretary