

#34

6/17/64

Memorandum 64-41

Subject: Division 1 (Preliminary Provisions) of Proposed Evidence Code

We have revised the sections in Division 1 in accordance with instructions given us at the June meeting. We attach a copy of Division 1 as revised. We want to send Division 1 to the printer after the July meeting.

Attached are the Comments to Division 1. We plan to have these set in type after the July meeting. We do not plan to discuss them at the meeting unless a member of the Commission believes a change should be made before the Comments are set in type.

We call the following matters to your attention:

Section 5.

We have added the word "section" in the text of Section 5. We find that similar provisions in other codes cover not only division, chapter, and article headings, but also section headings. Since we plan to include section headings in the preprinted bill (but not the bill as introduced), we believe this is a desirable revision.

Section 12.

At the June meeting, the Commission struggled with the wording of a section similar to Section 12 in the Proposed Evidence Code. The Commission approved the substance of the following language, but requested the staff to attempt to improve the drafting:

No proceeding taken before the effective date of this code is affected by the provisions of this code, but all proceedings taken on or after the effective date of this code shall conform to the provisions of this code so far as possible.

C We have included in the Proposed Evidence Code a provision that we believe more clearly expresses this policy decision. The provision we included in the Proposed Evidence Code is based on a section contained in the 1957 Discovery Act, which read:

This act shall not become operative until January 1, 1958, and shall govern proceedings in actions brought on or after said date and also further proceedings in actions pending on said date.

It should be noted that Section 12 applies only to the Evidence Code; it does not apply to the various amendments, repeals, and additions to other codes. Accordingly, the following section should be added at the end of the bill to create the Evidence Code:

SEC. . . Sections 2 to . . . , inclusive, of this act shall not take effect until January 1, 1967.

C This suggested scheme is based on the scheme used when the Commercial Code was enacted. Section 10101 of the Commercial Code (part of the Commercial Code itself) provides: "This code shall become effective on January 1, 1965. . . ." And Section 52 (not compiled in the Commercial Code) of the session law that enacted the Commercial Code provides: "This act shall take effect on January 1, 1965." Section 52 applies to the amendments, repeals, and additions to other codes, although it is not clear from the wording of the section that that is the case.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EVIDENCE CODE

DIVISION 1. PRELIMINARY PROVISIONS AND CONSTRUCTION

1. Short title.

1. This code shall be known as the Evidence Code.

2. Common law rule construing code abrogated.

2. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. This code establishes the law of this State respecting the subject to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

3. Constitutionality.

3. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

4. Construction of code.

4. Unless the provision or the context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this code.

5. Effect of headings.

5. Division, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

6. References to statutes.

6. Whenever any reference is made to any portion of this code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

7. "Division," "chapter," "article," "section," "subdivision," and "paragraph."

7. Unless otherwise expressly stated:

- (a) "Division" means a division of this code.
- (b) "Chapter" means a chapter of the division in which that term occurs.
- (c) "Article" means an article of the chapter in which that term occurs.
- (d) "Section" means a section of this code.
- (e) "Subdivision" means a subdivision of the section in which that term occurs.
- (f) "Paragraph" means a paragraph of the subdivision in which that term occurs.

8. Construction of tenses.

8. The present tense includes the past and future tenses; and the future, the present.

9. Construction of genders.

9. The masculine gender includes the feminine and neuter.

10. Construction of singular and plural.

10. The singular number includes the plural; and the plural, the singular.

11. "Shall" and "may."

11. "Shall" is mandatory and "may" is permissive.

12. When code becomes operative.

12. This code shall not become operative until January 1, 1967, and shall govern proceedings in actions brought on or after that date and also further proceedings in actions pending on that date. The provisions of Division 8 (commencing with Section 900) relating to privileges shall govern any claim of privilege made after December 31, 1966.

DIVISION 1. PRELIMINARY PROVISIONS AND CONSTRUCTION

§ 1

Comment. This section is similar to comparable sections in recently enacted California codes. E.g., VEHICLE CODE § 1. See also CODE CIV. PROC. §§ 1, 19.

§ 2

Comment. This section is the same as Code of Civil Procedure Section 4.

§ 3

Comment. Section 3 is the same as Commercial Code Section 1108. See also, e.g., VEHICLE CODE § 5. This "severability" provision permits the repeal of comparable provisions applicable to sections formerly compiled in the Code of Civil Procedure that are now compiled in the Evidence Code and makes it unnecessary to include similar provisions in future amendments of this code. See CODE CIV. PROC. § 1928.4 (superseded by Evidence Code).

§ 4

Comment. This is a standard provision in various California codes. E.g., VEHICLE CODE § 6.

§ 5

Comment. Similar provisions appear in all the existing California codes, except the Civil Code and the Code of Civil Procedure. E.g., VEHICLE CODE § 7.

§ 6

Comment. This is a standard provision in various California codes.

E.g., VEHICLE CODE § 10.

§ 7

Comment. Somewhat similar provisions appear in various California codes. E.g., VEHICLE CODE § 11. See also CODE CIV. PROC. § 17(8).

§ 8

Comment. This is a standard provision in various California codes.

E.g., VEHICLE CODE § 12. See also CODE CIV. PROC. § 17.

§ 9

Comment. This is a standard provision in various California codes.

E.g., VEHICLE CODE § 13. See also CODE CIV. PROC. § 17.

§ 10

Comment. This is a standard provision in various California codes.

E.g., VEHICLE CODE § 14. See also CODE CIV. PROC. § 17.

§ 11

Comment. This is a standard provision in various California codes.

E.g., VEHICLE CODE § 15.

§ 12

Comment. The delayed operative date permits time for California judges and attorneys to become familiar with the code before it goes

into effect. Section 12 makes it clear that the Evidence Code governs all proceedings after December 31, 1966. Thus, if the trial court makes a ruling on the admission of evidence prior to January 1, 1967, such ruling is not affected by the enactment of the Evidence Code. If an appeal is taken from the ruling, the appellate court will apply the law applicable at the time the ruling was made. On the other hand, any ruling made by the trial court on the admission of evidence after December 31, 1966, is governed by the Evidence Code, even if the particular action was commenced prior to that date.