#34(L) 7/10/64

Memorandum 64-50

Subject: Study No. 34(L)-(Evidence Code--Division 11--Writings)

You will receive with this memorandum a revised Division 11 of the Evidence Code, relating to Writings. The comments to the sections appear separately and are also attached; they should be read together with the sections to which they relate. Pertinent portions of Part VII of Professor Degnan's study will also be considered in this memo. The following matters should be noted:

Evidence Code, Division 11

Organization of the division

At the beginning of the revised division, there is an outline of the division showing the location of each section in the division.

Organizational problems with this division are more difficult than they are with most other divisions. Sections relating to writings provide hearsay exceptions, authentication provisions, presumptions, and exceptions to the best evidence rule. Some of the sections relate to but one of these evidentiary problems, but many sections contain provisions relating to all of these subjects.

We left the chapters on business records and official reports in the hearsay division because those chapters relate solely to hearsay. Treatises on evidence usually consider those topics under the heading of hearsay and not under documentary evidence. The sections in those chapters are concerned with using statements in writings as evidence that the occurrences related

actually occurred. The sections we have placed in the division on writings are generally concerned only with proof of the writing itself or its content as distinguished from using a statement in the writing as evidence of some other fact.

Thus, Chapter 1 relates to authentication. It states the requirement and provides means for satisfying the requirement--such as by the presumptions in Article 3. Chapter 2 relates to the use of oral testimony or a copy of a document to prove the content of a document. We have included in this chapter the provision permitting proof of the content of an official writing by a certified copy, for the problem there is principally one of using one document--a copy--to prove the content of another. Of course, authentication is also involved in the section, and so is hearsay; but we believe the principal thrust of the section relates to the use of a copy of a document to prove the content of the original.

Chapter 3 contains a group of statutes that have but one thing in common--they all relate to writings affecting property. Some provide pure hearsay exceptions, and logically they could be placed in Division 10 under our general organizational theory. Others, however, contain authentication provisions and best evidence rule exceptions. There are only 6 sections in the chapter, and because of the fact that they all relate to property, we decided to keep them all together despite the theoretical violence to our organizational theory.

Section 1402

The Commission originally decided to repeal C.C.P. § 1982 without recodifying it in the Evidence Code. The reason for the decision was that the section is unnecessary in light of the Civil Code provisions discharging any

executory obligation on a materially altered writing. Civil Code § 1700. Commissioner Edwards, however, pointed out that a recent case indicated that the section may be valuable as an authentication section. We have looked into the matter further and recommend the section's retention as Evidence Code Section 1402.

The cases cited in the comment indicate that the section has been applied as an authentication provision in cases to which Civil Code Section 1700 could not be applied. For example, Miller v. Luco involved an altered deed with no executory obligation left to be discharged. The court held the document inadmissible unless an apparent alteration was explained. King v. Tarabino discusses the section's requirement at length and holds that "execution" means "signed" and does not include "delivered" within the meaning of the section.

Sections 1410-1422

Please read Professor Degnan's study, pp. 180-183. Read also the Comment to Section 1410. Should the Evidence Code contain a list of these various ways of authenticating a writing? Note that Section 1422 is a catch-all provision such as was recommended by Professor Degnan.

Section 1410

Professor Degnan's study points out that C.C.P. § 1940 was an oblique attempt to repudiate the common law rule--codified in § 1940 in 1872--that a subscribing witness must be called to authenticate a writing. URE Rule 71 directly attacked the common law rule; but we substituted the language of § 1940. Section 1410 is again a direct attack on the common law rule. The provisions we placed in Rule 71 are now listed in three other sectons--1412, 1413, and 1415.

Section 1411

The explanation in the Comment adequately explains this section. See also Professor Degnan's study at pp. 183-184 upon which the comment is based.

Sections 1412-1413

These sections are separate statements of two subdivisions of C.C.P. § 1940.

Section 1414

This, in substance, is C.C.P. § 1942. Section 1942 does not make sense. See Professor Degnan's study at pp. 184-186. The 1901 code revision made sense out of the section by deleting the reference to Section 1945. The 1901 version was as follows:

> A writing may also be proved by evidence that the party against whom it is offered has at any time admitted its execution, or by evidence that it is produced from his custody and has been acted upon by him as genuine.

See the comment to the section, also.

Section 1415

This is another subdivision of C.C.P. § 1940.

Section 1416

This is, in substance, C.C.P. § 1943. See the study at pp. 186-187. Again, the version we have codified is based on the 1901 code revision. This section perhaps should begin: "A witness [~~may~~] is competent to . . . ."

Section 1417

Section 1417 is based on C.C.P. § 1944. See the Study at pp. 187-188.

Section 1418

This is based on C.C.P. § 1945. See the Study at p. 188.

Section 1419

This is the ancient documents authentication--as opposed to presumption or hearsay--rule.

There is a problem relating to the relationship between this section and Section 403. Section 403 (formerly part of Rule 8) provides in part that on questions of authentication:

> If the judge admits the proffered evidence under this section:
>
> (1) He may, and on request shall, instruct the jury to determine the existence of the preliminary fact and to disregard the evidence unless the jury finds that the preliminary fact exists.
>
> (2) He shall instruct the jury to disregard the proffered evidence if he subsequently determines that a jury could not reasonably find that the preliminary fact exists.

Under this language, it appears that the judge should submit the question of the age, custody, and appearance of the writing to the jury inasmuch as its admissibility is conditioned on "evidence sufficient to sustain a finding" of the requisite age, custody and appearance. But submitting this question to the jury makes less than no sense when the jury can find the document authentic even when all of the conditions of age, appearance, and custody are not met. Asking the jury to decide whether the document is 30 years old is asking them to perform an academic exercise when they can find the document genuine even if it is 10 years old.

Of course, if the judge does not submit the question to the jury, no one will ever decide whether the document is 30 years old. The judge merely decides that there is evidence of that fact, and the jury never decides that fact.

Perhaps, since this rule is for the judge only under our draft, the judge should be required to find the document is 30 years old if it is to be admitted under this section. This would not preclude the judge from admitting a younger document if there is evidence sufficient to sustain a finding of the younger document's authenticity without regard to its age. Then the section would be clear that the question of the document's age is never sent to the jury--the jury merely determines the ultimate fact of authenticity.

Sections 1420-1422

The comments explain these sections. See the Study at pp. 182-183.

Section 1450

The Commission instructed the staff to add this section to the Evidence Code at the June meeting.

Section 1451

There is new language in subdivision (c). It is intended to state the "chain of certificates" principle approved by the Commission at the June meeting. Read the Comment for a fuller explanation.

Section 1500; Section 1552

Subdivision (h) was added by the Commission at the June meeting at the suggestion of the L. A. District Attorney's office. Subdivision (d) of Section 1501 was added as part of the same proposal.

Professor Degnan discusses a similar proposal at pages 166-169 of his study. We have taken the suggestion of Professor Degnan and have included Section 1552 in the Evidence Code to carry out his suggestion. Section 1552 seems to meet the problem for which subdivision (h) was added. Should subdivision (h) be deleted along with its companion provision (subdivision (d) of Section 1501)

as no longer necessary? Should Section 1552 be approved?

Section 1502

This is Section 1939 of the Code of Civil Procedure. Professor Degnan recommends the section be retained though unnecessary. It repudiates an old rule that has never applied in California.

Section 1510

Subdivision (a)(3) has been revised to state the "chain of certificates" method of proving copies of foreign writings that the Commission approved at the June meeting.

Section 1511

Professor Degnan suggests that C.C.P. § 1923 be left in the Code of Civil Procedure. We placed it here, however, because Section 1510 is the provision in the law to which it most closely relates. It is a procedural section, however, not an evidence section. (Note that Section 1551 refers to Section 1511.)

Section 1551

This is Section 1920b of the Code of Civil Procedure. See Professor Degnan's study, pp. 169-171. He recommends retention of the section, and this seems to be the most logical place to put it.

Sections 1560-1566

These are sections 1998-1998.5 of the Code of Civil Procedure together with a section (1566) that has been added to make sure that the sections remain applicable in all proceedings, not just judicial proceedings. The sections are discussed at pages 155-157 of Professor Degnan's study. He suggests that they

be left in the Code of Civil Procedure. We believe, however, that they relate primarily to the use of copies of records as evidence of the originals. Hence, they should be located here in the chapter on proof of writings by secondary evidence thereof.

Section 1600

Should the presumption in this section be classified as a Morgan presumption? There seems to be an underlying policy of protecting the record title of property.

Section 1601

This section is C.C.P. § 1855a. The section is discussed at pages 174 and 175 of the study. Whereas the other sections discussed in the study in connection with Section 1855a all establish special proceedings to have the authenticity of certain documents established, this section seems to relate only to the proof in an action of the content of a destroyed document by title abstracts, etc. Accordingly, we think that this section deserves a place in the Evidence Code, although the other sections mentioned in the study should be left where they are.

Sections 1602-1605

These sections were approved at the May meeting.

Code of Civil Procedure

Most of the matters discussed in Part VII of Professor Degnan's study are either discussed above or in Memorandum 64-52. There are two sections relating to writings, however, that have not been considered.

Section 1947

This section is discussed at pages 192-193 of the study. It provides:

> When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals.

We have not compiled the section in the Evidence Code because there seems to be no need for it. It was originally enacted to meet the shop-book rule requirement that the entry be the original entry. The business records exception no longer requires that the entry be the original entry so long as the entry was made at or near the time of the act, condition, or event. Thus, so far as the business records exception is concerned, Section 1947 serves no purpose at all.

The section might be considered an exception to the best evidence rule, but it is difficult to conceive of a case to which it might be applied. If the entry is sought to be proved under the business records exception, the best evidence rule does not require production of the original entry--it merely requires the production of the particular entry that is sought to be proved under the business records exception.

Accordingly, we believe, with the consultant, that the section may be repealed without harm. If it is retained, we suggest that it be codified in the article on the best evidence rule because it has no hearsay aspect at all.

Section 1950

This section is discussed at page 193 of the study. It has no evidentiary aspect. It prohibits removal of any public record, a transcript of which is admissible in evidence, except upon order of a court in cases where an inspection of the original is essential or where the court is held in the same building where the record is kept.

The section is in Article 3, Chapter 3, Title 2, of Part 4 of the Code of Civil Procedure. The article is entitled "Private Writings." The following sections will be left in the article after enactment of the Evidence Code (under present Commission proposals):

Sections 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1952, 1952.1, and 1952.2. Sections 1929-1935 classify private writings as sealed or unsealed, define and prescribe the significance of a seal (none), and define a subscribing witness. Sections 1952-1952.2 all relate to the destruction or return of exhibits.

Although Section 1950 may no longer relate to anything specific in the Code of Civil Procedure, we can see no logical place for it in the Evidence Code either. Actually, it should be located somewhere close to other sections relating to public writings, it is out of place in an aritcle on private writings. It would fit logically in Article 2 of the same chapter, entitled "Public Writings." That article has sections giving every citizen a right to inspect a public writing (1894), requiring public officials to give certified copies of public writings (1895), and defining public writings to include public records of private writings (1894).

However, since we are not undertaking to revise Part 4 of the Code of Civil Procedure into a logical scheme, we recommend that Section 1950 be left where it is.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

DIVISION 11. WRITINGS

CHAPTER 1. AUTHENTICATION AND PROOF OF WRITINGS

Article 1. Requirement of Authentication

Article 2. Means of Authenticating and Proving Writings

Article 3. Acknowledged Writings and Official Writings

CHAPTER 2. SECONDARY EVIDENCE OF WRITINGS

Article 1. Best Evidence Rule

Article 2. Official Writings and Recorded Writings

Article 3. Photographic Copies of Writings

Article 4. Hospital Records

CHAPTER 3. OFFICIAL WRITINGS AFFECTING PROPERTY

DIVISION 11. WRITINGS

CHAPTER 1. AUTHENTICATION AND PROOF OF WRITINGS

Article 1. Requirement of Authentication

§ 1400. Authentication defined.

1400. Authentication of a writing means the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is and that it was made or signed by the person the proponent of the evidence claims made or signed it or the establishment of such facts by any other means provided by law.

§ 1401. Authentication required.

1401. Authentication of a writing is required before it may be received in evidence. Authentication of a writing is required before secondary evidence of its content may be received in evidence.

§ 1402. Authentication of altered writing.

1402. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

Article 2. Means of Authenticating and Proving Writings

§ 1410. Subscribing witness' testimony unnecessary.

1410. Except as provided by statute, the testimony of a subscribing witness is not required to authenticate a writing.

§ 1411. Use of other evidence when subscribing witness' testimony required.

1411. If the testimony of a subscribing witness is required by statute to authenticate a writing and the subscribing witness denies or does not recollect the execution of the writing, the writing may be authenticated by other evidence.

§ 1412. Witness to the execution of a writing.

1412. A writing may be authenticated by anyone who saw the writing [illegible]

§ 1413. Subscribing witness.

1413. A writing may be authenticated by a subscribing witness.

§ 1414. Authentication by admission.

1414. A writing may be authenticated by evidence that:

(a) The party against whom it is offered has at any time admitted its execution; or

(b) The writing is produced from the custody of the party against whom it is offered and has been acted upon by him as genuine.

§ 1415. Authentication by handwriting evidence.

1415. A writing may be authenticated by evidence of the genuineness of the handwriting of the maker.

§ 1416. Proof of handwriting by person familiar therewith.

1416. A witness may state his opinion whether a writing is in the handwriting of a supposed writer if he has acquired knowledge of the handwriting of the supposed writer. Such knowledge may be acquired from:

(a) Having seen the supposed writer write;

(b) Having seen a writing purporting to be the writing of the supposed writer and upon which the supposed writer has acted or been charged;

(c) Having received letters in the due course of mail purporting to be from the supposed writer in response to letters duly addressed and mailed by him to the supposed writer; or

(d) Any other means of obtaining personal knowledge of the handwriting of the supposed writer.

1417. Comparison of handwriting with exemplar.

1417. The genuineness of handwriting, or its lack of genuineness, may be proved by a comparison made by an expert witness or by the trier of fact with writings (a) admitted or treated as genuine by the party against whom the evidence is offered or (b) proved to be genuine to the satisfaction of the judge.

1418. Exemplars when writing 30 years old.

1418. Where a writing is more than thirty years old, the comparison under Section 1417 may be made with writings purporting to be genuine, and generally respected and acted upon as such, by persons having an interest in knowing the fact.

§ 1419. Authentication by age, appearance, custody.

1419. (a) A writing is sufficiently authenticated to be received in evidence if there is evidence sufficient to sustain a finding that it :

(1) Is at least 30 years old at the time it is offered;

(2) Is in such condition as to create no suspicion concerning its authenticity; and

(3) Was kept, or when found was found, in a place where such writing, if authentic, would be likely to be kept or found.

(b) A writing may be found to be sufficiently authenticated to be received in evidence although the evidence of authenticity does not meet all of the conditions of this section.

§ 1420. Authentication by evidence of reply.

1420. A writing is sufficiently authenticated to be received in evidence if there is sufficient evidence to sustain a finding that the writing is a letter or telegram received in the due course of mail or telegraph in response to communications to the person who is claimed by the proponent of the evidence to be the writer of the letter or telegram.

§ 1421. Authentication by content.

1421. A writing is sufficiently authenticated to be received in evidence if there is sufficient evidence to sustain a finding that the writing refers to or states facts that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the writer of the writing.

1422. Construction of article.

1422. A writing may be authenticated by any other evidence sufficient to sustain a finding of the authenticity of the writing; and nothing in this article shall be construed to limit the means by which the authenticity of a writing may be shown.

Article 3. Acknowledged Writings and Official Writings

§ 1450. Acknowledged writings.

1450. A certificate of the acknowledgement of a writing other than a will, or a certificate of the proof of such a writing, is prima facie evidence of the facts recited in the certificate and the genuineness of the signature of each person by whom the writing purports to have been signed if the certificate meets the requirements of Article 3 (commencing with Section 1181) of Chapter 4, Title 4, Division 2 of the Civil Code. The presumption established by this section is a presumption affecting the burden of producing evidence.

§ 1451. Official seals and signatures.

1451. (a) A seal is presumed to be genuine and authorized if it purports to be the seal of :

(1) The United States or of a department, agency, or public employee of the United States.

(2) A public entity, or a department, agency, or public employee of a public entity, in any state of the United States.

(3) A nation or sovereign, or a department, agency, or officer of a nation or sovereign, recognized by the executive power of the United States.

(4) A governmental subdivision of a nation recognized by the executive power of the United States.

(5) A court of admiralty or maritime jurisdiction.

(6) A notary public within the United States or any state of the United States.

(b) A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of:

(1) A public employee of the United States.

(2) A public employee of any public entity in any state of the United States.

(3) A notary public within the United States or any state of the United States.

(c) A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of the sovereign, an officer, or deputy of an officer, of a nation or governmental subdivision of a nation recognized by the executive power of the United States and the writing to which the signature is affixed is accompanied by a final statement certifying the genuineness of the signature and the official position of (1) the person who executed the writing or (2) any foreign official who has certified either the genuineness of the signature and official position of the person executing the writing or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the person executing the writing. The final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in the nation, authenticated by the seal of his office.

(d) The presumptions established by this section are presumptions affecting the burden of producing evidence.

CHAPTER 2. SECONDARY EVIDENCE OF WRITINGS

Article 1. Best Evidence Rule

§ 1500. Secondary evidence of writing inadmissible; exceptions.

1500. Except as otherwise provided by statute, no evidence other than the writing itself is admissible to prove the content of a writing, unless the judge finds that:

(a) The writing is lost or has been destroyed without fraudulent intent on the part of the proponent;

(b) The writing was not reasonably procurable by the proponent by use of the court's process or by other available means;

(c) At a time when the writing was under the control of the opponent, the opponent was expressly or impliedly notified, by the pleadings or otherwise, that the writing would be needed at the hearing, and on request at the hearing the opponent has failed to produce such writing; but in a criminal action, the request at the hearing to produce the writing may not be made in the presence of the jury;

(d) The writing is not closely related to the controlling issues and it would be inexpedient to require its production;

(e) The writing is a record or other writing in the custody of a public employee;

(f) The writing has been recorded in the public records and the record

or an attested or a certified copy thereof is made evidence of the writing by statute; or

(g) The writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole; but the judge, in his discretion, may require that such accounts or other writings be produced for inspection by the adverse party.

(h) The writing has been produced at the hearing and made available for inspection by the adverse party.

§ 1501. Types of secondary evidence admissible.

1501. (a) Except as otherwise provided in this section, if the judge makes one of the findings specified in Section 1500, oral or written secondary evidence of the content of the writing is admissible.

(b) If the writing is one described in subdivision (a), (b), (c), or (d) of Section 1500, oral testimony of the content of the writing is inadmissible unless the judge finds either (1) that the proponent does not have in his possession or under his control a copy of the writing or (2) that the writing is also one described by subdivision (g) of Section 1500.

(c) If the writing is one described in subdivision (e) or (f) of Section 1500, oral testimony of the content of the writing is inadmissible unless the judge finds either (1) that the proponent does not have in his possession a copy of the writing and could not in the exercise of reasonable diligence have obtained a copy or (2) that the writing is also one described by subdivision (g) of Section 1500.

(d) If the writing is one described in subdivision (h) of Section 1500, oral testimony of the content of the writing is inadmissible.

§ 1502. Effect of production and inspection.

1502. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to introduce it as evidence in the action.

Article 2. Official Writings and Recorded Writings

§ 1510. Copy of writing in official custody.

1510. (a) A purported copy of a writing in the custody of a public employee, or of an entry in such a writing, is prima facie evidence of such writing or entry if:

(1) The copy purports to be published by the authority of the nation or state, or governmental subdivision thereof, in which the writing is kept;

(2) The office in which the writing is kept is within the United States or any state thereof or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing; or

(3) The office in which the writing is kept is not within the United States or any other place described in paragraph (2) and the copy is attested as a correct copy of the writing or entry by a person having authority to make the attestation. The attestation must be accompanied by a final statement

certifying the genuineness of the signature and the official position of (i) the person who attested the copy as a correct copy or (ii) any foreign official who has certified either the genuineness of the signature and official position of the person attesting the copy or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the person attesting the copy. The final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in the nation in which the writing is kept, authenticated by the seal of his office.

(b) The presumption in this section is a presumption affecting the burden of producing evidence.

§ 1511. Certification of copy for evidence.

1511. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

§ 1512. Official record of recorded writing.

1512. (a) The official record of a writing is prima facie evidence of the content of the original recorded writing if:

(1) The record is in fact a record of an office of a state or nation or of any governmental subdivision thereof; and

(2) A statute authorized such a writing to be recorded in that office.

(b) This presumption is a presumption affecting the burden of producing evidence.

Article 3. Photographic Copies of Writings

§ 1550. Photographic copies made as business records.

1550. A photostatic, microfilm, microcard, miniature photographic or other photographic copy or reproduction, or an enlargment thereof, of a writing is as admissible as the writing itself if such copy or reproduction was made and preserved as a part of the records of "a business" (as defined by Section 1270) in the regular course of such business. The introduction of such copy, reproduction or enlargment does not preclude admission of the original writing if it is still in existence.

§ 1551. Photographic copies where original destroyed or lost.

1551. A print, whether enlarged or not, from a photographic film (including a photographic plate, microphotographic film, photostatic negative, or similar reproduction) of an original writing destroyed or lost after such film was taken is as admissible as the original writing itself if, at the time of the taking of such film, the person under whose direction and control it was taken attached thereto, or to the sealed container in which it was placed and has been kept, or incorporated in the film, a certification complying with the provisions of Section 1511 and stating the date on which, and the fact that, it was so taken under his direction and control.

§ 1552. Other photographic copies.

1552. A photographic copy of a writing, certified to be a correct copy of the writing by the person under whose direction and control the photograph was taken, is as admissible as the writing itself if the judge finds that:

(a) The writing has been produced at the hearing and made available for inspection by the adverse party, or its production at the hearing can be compelled by the court's process;

(b) The photographic copy of the writing is legible; and

(c) A duplicate of the photographic copy was served upon the adverse party not later than the time of the pretrial conference if a pretrial conference is held or, if no pretrial conference is held, not later than twenty days before the beginning of the hearing.

Article 4. Hospital Records

§ 1560. Compliance with subpena duces tecum for hospital records.

1560. (a) Except as provided in Section 1564, when a subpena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital, state hospital, or hospital in an institution under the jurisdiction of the Department of Corrections in an action in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it is sufficient compliance therewith if the custodian or other officer of the hospital, within five days after the receipt of such subpena, delivers by mail or otherwise a true and correct copy (which may be a photographic or micro-photographic reproduction) of all the records described in such subpena to the clerk of court or to the court if there be no clerk or to such other person as described in subdivision (a) of Section 2010 of the Code of Civil Procedure, together with the affidavit described in Section 1561.

(b) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, directed as follows:

(1) If the subpena directs attendance in court, to the clerk of such court, or to the judge thereof if there be no clerk.

(2) If the subpena directs attendance at a deposition or other hearing, to the officer before whom the deposition is to be taken, at the place

designated in the subpena for the taking of the deposition or at his place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(c) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

§ 1561. Affidavit accompanying records.

1561. (a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

(1) That the affiant is the duly authorized custodian of the records and has authority to certify the records.

(2) That the copy is a true copy of all the records described in the subpena.

(3) That the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event.

(b) If the hospital has none of the records described, or only part thereof, the custodian shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Section 1562.

§ 1562. Admissibility of affidavit and copy of records.

1562. The copy of the records is admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. The affidavit is admissible in evidence and the matters stated therein are presumed true in the absence of a preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

§ 1563. Single witness or mileage fee.

1563. This article shall not be interpreted to require tender or payment of more than one witness and mileage fee or other charge unless there is an agreement to the contrary.

§ 1564. Personal attendance of custodian and production of original records.

1564. The personal attendance of the custodian or other qualified witness and the production of the original records is required if the subpena duces tecum contains a clause which reads:

"The procedure authorized pursuant to subdivision (a) of Section 1560, and Sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpena."

§ 1565. Service of more than one subpena duces tecum.

1565. If more than one subpena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital, state hospital, or hospital in an institution under the jurisdiction of the Department of Corrections and the personal attendance of the custodian or other qualified witness is required pursuant to Section 1564, the witness shall be deemed to be the witness of the party serving the first such subpena duces tecum.

§ 1566. Application of article.

1566. This article applies in any proceeding in which testimony can be compelled.

CHAPTER 3. OFFICIAL WRITINGS AFFECTING PROPERTY

§ 1600. Official record of document affecting an interest in property.

1600. The official record of a document purporting to establish or affect an interest in property is prima facie evidence of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed if:

(a) The record is in fact a record of an office of a state or nation or of any governmental subdivision thereof; and

(b) A statute authorized such a document to be recorded in that office.

§ 1601. Proof of content of lost official record affecting property.

1601. (a) Subject to subdivisions (b) and (c), when in any action it is desired to prove the contents of the official record of any writing

lost or destroyed by conflagration or other public calamity, after proof of such loss or destruction, the following may, without further proof, be admitted in evidence to prove the contents of such record:

(1) Any abstract of title made and issued and certified as correct prior to such loss or destruction, and purporting to have been prepared and made in the ordinary course of business by any person engaged in the business of preparing and making abstracts of title prior to such loss or destruction; or

(2) Any abstract of title, or of any instrument affecting title, made, issued and certified as correct by any person engaged in the business of insuring titles or issuing abstracts of title to real estate, whether the same was made, issued or certified before or after such loss or destruction and whether the same was made from the original records or from abstract and notes, or either, taken from such records in the preparation and upkeeping of its plant in the ordinary course of its business.

(b) No proof of the loss of the original writing is required other than the fact that the original is not known to the party desiring to prove its contents to be in existence.

(c) Any party desiring to use evidence admissible under this section shall give reasonable notice in writing to all other parties to the action who have appeared therein, of his intention to use such evidence at the trial of the action, and shall give all such other parties a reasonable opportunity to inspect the evidence, and also the abstracts, memoranda, or notes from which it was compiled, and to take copies thereof.

§ 1602. Recital in patent for mineral lands.

1602. If a patent for mineral lands within this State, issued or granted by the United States of America, contains a statement of the date of the

location of a claim or claims upon which the granting or issuance of such patent is based, such statement is prima facie evidence of the date of such location.

§ 1603. Deed by officer in pursuance of court process.

1603. A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of any of the courts of record of this State, acknowledged and recorded in the office of the recorder of the county wherein the real property therein described is situated, or the record of such deed, or a certified copy of such record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed.

§ 1604. Certificate of purchase or location of lands.

1604. A certificate of purchase, or of location, of any lands in this State, issued or made in pursuance of any law of the United States or of this State, is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing, a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

§ 1605. Authenticated Spanish title records.

1605. Duplicate copies and authenticated translations of original Spanish title papers relating to land claims in this State, derived from the Spanish or Mexican Governments, prepared under the supervision of the Keeper of Archives,

authenticated by the Surveyor-General or his successor and by the Keeper of Archives, and filed with a county recorder, in accordance with Chapter 281 of the Statutes of 1865-6, are receivable as prima facie evidence with like force and effect as the originals and without proving the execution of such originals.