

Memorandum 75-11

Subject: Study 63 - Admissibility of "Duplicates" in Evidence

At the November meeting, Commissioner Miller called to our attention Dugar v. Happy Tiger Records, Inc., 41 Cal. App.3d 811 (September 17, 1974). A copy of this case is attached as Exhibit I.

The staff believes that this case points out a defect in the California Evidence Code. This defect is corrected in the proposed Federal Rules of Evidence. The defect is the lack of an exception to the best evidence rule for a "duplicate."

Rule 1001 (4) of the proposed Federal Rules of Evidence defines "duplicate" as follows:

A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Section 1003 of the proposed Federal Rules of Evidence provides:

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicative in lieu of the original.

We are using a 1973 version of the proposed Federal Rules of Evidence. This is sufficient to present the issue. We attach as Exhibit II the text and Comments to Rules 1001 and 1003.

The staff believes that this problem is one that merits Commission study. If the Commission agrees, we will prepare a tentative recommendation for consideration at a future meeting.

Respectfully submitted,

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Executive Secretary