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CALIFORNIA LAW REVISION COMMISSION

Place of Meeting

Room 3188-Lounge-Assembly
Rules Committee
State Capitol
Sacramento

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

Friday and Saturday
February 10-11, 1961

Friday, February 10 (meeting starts at 9:30 a.m.)

1. Minutes of January 1961 meeting (sent 2/1/61)
2. Establishment of Priorities for 1963 Legislative Program
See: Memorandum No. 102(1960) (sent 12/6/60)
Supplement to Memorandum No. 102(1960) (enclosed)
3. New Topics for Study by Law Revision Commission
See: Memorandum No. 104(1960) (sent 12/6/60)
4. Study No. 37(L) - Claims
See: Memorandum No. 8(1961) (sent 2/2/61)
5. Study No. 34(L) - Uniform Rules of Evidence
See: Memorandum No. 7(1961) (tentative hearsay recommendation (sent 2/2/61)
Supplement to Memorandum No. 7(1961) (enclosed)
Printed pamphlet containing Uniform Rules of Evidence (you have this)
Chadbourne's studies on hearsay portion of Uniform Rules of Evidence (you have these)

Memorandum No. 1(1961) (sent 12/30/60)
Memorandum No. 2(1961) (sent 12/30/60)
6. Study No. 36(L) - Condemnation
See: Memorandum No. 9(1961) (pretrial conferences and discovery)
(sent 2/1/61)
Consultant's Study on Pretrial Conferences and Discovery
(you have this)

Memorandum No. 78(1960) (apportionment of award) (sent 9/22/60)
Revised Supplement to Memorandum No. 78(1960) (sent 10/13/60)
Consultant's Study on Apportionment of Award (you have this)

Memorandum No. 101(1960) (date of valuation) (sent 12/9/60)
Consultant's Study on Date of Valuation (you have this)

Saturday, February 11 (meeting starts at 9:30 a.m.)

Continuation of agenda items listed above.

MINUTES OF MEETING

of

February 10 and 11, 1961

Sacramento

A regular meeting of the Law Revision Commission was held in Sacramento on February 10 and 11, 1961.

Present: Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable James A. Cobey (February 11)
Joseph A. Ball
George G. Grover
Sho Sato
Vaino H. Spencer
Thomas E. Stanton, Jr.
Ralph N. Kleps, ex officio (February 10)

Absent: Honorable Clark L. Bradley

Messrs. John H. DeMouilly and Joseph B. Harvey and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Governor Edmund G. Brown honored the Commission with his presence during a part of the meeting.

The minutes of the meeting of January 13 and 14, 1961, were approved as presented.

I. ADMINISTRATIVE MATTERS

A. Governor Brown's presence at the Commission Meeting: The Commission was honored by the presence of Governor Brown at which time he expressed his appreciation to the Commission for its conscientious efforts and performance.

B. Resignation of George G. Grover: The Commission extended its congratulations to George G. Grover upon his appointment as a member of the State Public Utilities Commission and expressed its appreciation for his material contribution toward the activities of the Commission.

C. Priorities for 1963 Legislative Program: The Commission considered Memorandum No. 102(1960) and the exhibits attached thereto. During the discussion Senator Cobey stated that in view of the present turmoil resulting from the recent California Supreme Court decision abolishing the doctrine of sovereign immunity in this State, the Commission should give priority to its study of sovereign immunity and submit its recommendation to the 1962 Session of the Legislature if possible. The Executive Secretary was directed to contact Professor Van Alstyne to determine whether he can complete his study on sovereign immunity by June or July of this year.

It was agreed that the study on sovereign immunity should have top priority on the Commission's current agenda, and the Commission

should strive to submit its recommendation and proposed legislation on this matter to the 1962 Session.

It was also agreed that the Commission should devote its remaining efforts to the studies on the Uniform Rules of Evidence and on eminent domain.

D. Future Meetings: The Commission meeting scheduled for April 21 and 22, 1961, was rescheduled for April 14 and 15, 1961-Sacramento.

II. CURRENT STUDIES

A. Study No. 34(L) -Uniform Rules of Evidence. The Commission considered Memorandum No. 7(1961) and its tentative recommendation and draft statute relating to hearsay evidence. The following actions were taken:

Rule 62

The definition of "statement" was relocated as subdivision (1).

Subdivisions (6) and (7) were revised to refer uniformly to the person who made the statement as the "declarant."

Clause (d) of subdivision (6) was revised to read:

(d) Absent beyond the jurisdiction of the court to compel appearance by its process and the proponent of his statement was unable in the exercise of reasonable diligence to secure the presence of the declarant at the hearing.

Subdivision (7) was revised to read as proposed on page 6 of Memorandum No. 7(1961); but, clause (b) was deleted and clause (c) was redesignated "(b)."

Rule 63 Opening Paragraph

The words "and is" were added before "offered" and "is" was added before "inadmissible."

A motion was made but not adopted to add after "except" the words "that the following hearsay evidence is not inadmissible to prove the truth of the matter stated therein."

Rule 63(1)

The opening paragraph of subdivision (1) was revised to read:

(1) A statement made by a person who is a witness at the hearing, but not made at the hearing, if the statement would have been admissible if made by him while testifying and the statement:

Subdivision (1) (c) is to be revised to require the witness whose recorded recollection is being introduced to testify that the statement he made was true.

Rule 63(2)

Rule 63(2) was deleted because Rule 63(32) and Rule 63A accomplish the same thing as Rule 63(2). Messrs. Selvin and Stanton voted against this motion.

Rule 63(2a)

Rule 63(2a) was deleted because Rule 63(3) covers this matter insofar as evidence covered by (2a) should be admitted. Mr. Stanton voted against this motion.

Rule 63(5)

The words "since deceased" were substituted for "unavailable as a witness because of his death."

Rule 63(6)

Subdivision (6) was revised to provide the substance of the following:

(6) In a criminal action or proceeding, as against the defendant, a previous statement by him relative to the offense charged, if the judge finds pursuant to the procedures set forth in Rule 8 that the statement was made freely and voluntarily

and was not made:

- (a) Under circumstances likely to cause the defendant to make a false statement; or
- (b) Under such circumstances that it is inadmissible under the Constitution of the United States or the Constitution of this State; or
- (c) During a period while the defendant was illegally detained.

Messrs. McDonough and Stanton voted against this revision.

Rule 63(7)

Subdivision (7) was revised to read as follows:

(7) As against himself in either his individual or representative capacity, a statement by a person who is a party to a civil action or proceeding irrespective of whether such statement was made in his individual or representative capacity.

Rule 63(9)

Clause (a) of subdivision (9) was revised as follows:

(a) The statement is that of an agent, partner or employee of the party and (i) the statement was made prior to the termination of the relationship and concerned a matter within the scope of the declarant for the party and (ii) the statement is offered after, or in the judge's discretion subject to, proof by independent evidence of the existence of the relationship between the declarant and the party.

Rule 63(10)

The first four lines of subdivision (10) were revised as follows:

(10) If the declarant is not a party to the action or proceeding and the judge finds that the declarant is unavailable as a witness and had sufficient knowledge of the subject, a statement

The words "social disgrace" were substituted for "social disapproval".

Rule 63(12)

The principle of clause (c) of subdivision (12) was approved.

Clause (c) was then revised as follows:

(c) A declarant who is unavailable as a witness that he has or has not made a will, or has or has not revoked his will, or that identifies his will.

Clause (d) was added to provide as follows:

(d) The declarant's intent, plan, motive or design at a time prior to the statement when the prior intent, plan, motive or design of the declarant is itself an issue in the action or proceeding and the declarant is unavailable as a witness.

Mr. Selvin voted against this motion.

Rule 63(13)

The word "subdivision" was substituted for the word "paragraph".

Rule 63(15)

Subdivision (15) was revised as follows:

The words "or record" were added after "a written report" in the second line; "or recorded" was added in clause (a) after "reported". And the last three lines of the opening paragraph were revised to read as follows:

United States, if the judge finds that such statement would be admissible if made by him at the hearing and that the making thereof was within the scope of the duty of such officer or employee and that it was his duty to:

Mr. Sato voted against the motion to add the words "or record" and "or recorded" and Messrs. McDonough and Stanton voted against the motion to add the phrase "such statement would be admissible if made by him at the hearing and".

A motion to delete Rule 63(15) did not carry. The staff was directed to consider and submit a report on whether the exception is adequately covered by Rule 63(31) and (32) and the provisions relating to judicial notice. The staff is also to consider a possible distinction between official reports of a statistical nature which relate the results of investigations of particular events.

Rule 63(16)

Rule 63(16) was deleted because its subject matter is covered by specific statutes which will remain in effect under subdivision (32). Mr. Stanton voted against this motion.

Rule 63(18)

The first portion of subdivision (18) was revised as follows:

(18) A certificate that the maker thereof performed a marriage ceremony, to prove the fact, time and place of the marriage, if the judge finds that:

Mr. Stanton voted against this motion.

Rule 63(20)

Subdivision (20) was deleted as the evidence was thought to be too prejudicial. Messrs. McDonough and Stanton voted against this motion.

Rule 63(21)

A motion to delete Rule 63(21) did not carry. The staff was directed to redraft this subdivision along the lines suggested by the State Bar Committee and to consider the addition of language relating to the warranty cases.

Rule 63(23)

The last six lines of subdivision (23) were revised in substance as follows:

unless the judge finds that the statement was made under such circumstances that the declarant in making such statement had motive or reason to deviate from the truth.

The staff is to submit recommended language that will make the intent of the Commission clear.

Rule 63(24)

Subdivision (24) is to be revised to conform to subdivision (23) as revised.

Rule 63(26)

The phrase "to prove the truth of the matter reputed" was added after "members of a family". Messrs. Grover and Sato voted against this motion.

Rule 63(27)

The words "as tending" were deleted from the introductory clause of subdivision (27). Messrs. Grover and Sato voted against this motion.

Rule 63(29)

The phrase "offered as tending to prove the truth of the matter stated, "was deleted from paragraph (a).

Rule 63(30)

The phrase "to prove the truth of any relevant matter so stated" was deleted from subdivision (30).

Rule 63(32)

The words "other than Rule 7" were added at the end of the subdivision.

Rule 63A

The words "other than Rule 7" were added after "State" in the second line.

Title Page and Letter of Transmittal

On the cover page the line above "Article VIII. Hearsay Evidence" was deleted.

In the letter of transmittal the third line of the address was revised to read "and to the Legislature." In the third paragraph on page 1 the word "persons" was substituted for "members of the bench and bar," and the words "carefully" and "detailed" were deleted from the second and third lines from the bottom of the page.

The last paragraph of the letter of transmittal was deleted, and the staff was directed to substitute a brief statement to the effect that a State Bar Committee has reviewed the Commission's work on the rules.

A motion was adopted authorizing the Executive Secretary to have printed and to distribute the study relating to hearsay evidence and the Commission's tentative recommendation when it is finally approved.

B. Study No. 37(L) - Claims Against Public Officers and Employees: The Commission considered Memorandum No. 8(1961) and the attached draft statute prescribing a procedure for presenting certain claims against public officers and employees. During the discussion of this statute (which was to be used if the Commission's recommendation to eliminate the claims presentation requirement is rejected by the Legislature), Mr. Kleps raised the question whether it would be desirable for the Commission to suggest an alternative claims procedure bill. A motion was adopted to defer further consideration of the proposed alternative claims procedure statute.

Prior to the motion deferring consideration of the alternative bill, a motion was adopted to delete ", deputy, assistant" from Section 800(c).

C. Study Nos. 48 and 50- Juvenile's Right to Counsel and

Use of the Term "Ward of the Juvenile Court." The Executive Secretary reported that the Governor's Special Study Commission on Juvenile Justice introduced its bills relating to juvenile courts in the Senate, that the Commission's two bills (S.B. Nos. 219 and 220) relating to juvenile courts were also introduced in the Senate, and that a hearing before the Senate Judiciary Committee has been scheduled for March 16.

The question was then raised as to what approach the Commission should adopt regarding the Governor's Special Commission's proposed legislation and the Law Revision Commission's own proposed legislation on the same matter. During the discussion it was agreed that Senate Bill No. 219 (relating to the separation of the delinquent from the non-delinquent minor in juvenile court proceedings) should not be set for hearing on March 16. A motion then carried directing the Executive Secretary to point out the differences in the two bills relating to the juvenile's right to counsel, and to suggest to the legislative committee that the Commission approves the principles contained in both bills although it favors its own bill insofar as there are differences in detail.

Respectfully submitted,

John H. DeMouilly
Executive Secretary