

Date of Meeting: November 27-28, 1959

Date of Memo: November 5, 1959

Memorandum No. 1-a

Subject: Qualification of Declarant Under Proposed Rule 65-A.

Proposed Rule 65-A, as contained in Memorandum No. 1 (11/1/59) is intended to present certain policy questions to the Commission for decision. The second sentence of Rule 65-A contains the following provision:

The burden of establishing that a statement is inadmissible because of the provisions of this section is upon the person objecting to the admission of the evidence.

Because the sentence quoted above indicates only one of several alternative ways of phrasing the second sentence of Rule 65-A, the following provisions are also submitted for consideration:

The burden of establishing that a statement is not inadmissible because of the provisions of this section is upon the person offering the evidence of the statement.

If objection is made to the admission of the evidence of a statement on the grounds that the declarant at the time of making the statement did not possess the capacities requisite to qualify as a witness under Rule 17, the burden of establishing that the statement is not inadmissible because of the provisions of this section is upon the person offering the evidence of the statement.

Finally, the Commission may decide to omit the second sentence of Rule 65-A and make no provision concerning who has the burden of establishing that the hearsay declarant possessed the qualifications of a witness.

Respectfully submitted,

John H. DeMouilly
Executive Secretary