

Second Supplement to Memorandum 64-13

Subject: Study No.34(L) - Uniform Rules of Evidence (Article VIII.
Hearsay Evidence)

It is suggested that a new subdivision be added to Revised Rule 63,
to read as follows:

(15.1) An official written finding, report, or record, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is presumed dead, or is alive, made by a public employee of the United States authorized by any law of the United States to make such finding, report, or record is admissible to prove that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be, and the date, circumstances, and place thereof.

This subdivision is based on C.C.P. Sections 1928.1 and 1928.2, which read:

§ 1928.1. Finding of Presumed Death. A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to make such finding, pursuant to the Federal Missing Persons Act (56 Stats. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App. Supp. 1001-17), as it read on May 3, 1945, or is thereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this State as evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his disappearance. Leg. H. 1953 ch. 52.

§ 1928.2. Official Report of Death, Internment, Missing in Action, etc. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by any law of the United States to make such report or record, shall be received in any court, office, or other place in this State as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be. Leg. H. 1953 ch. 52.

If the new subdivision (15.1) is added to Rule 63, we suggest that a new rule be added to Article IX (Authentication and Content of Writings) to read:

RULE 67.8. PRESUMPTION CONCERNING REPORTS OF PERSONS MISSING
IN ACTION AND THE LIKE.

(1) Any finding, report, or record that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is presumed dead, or is alive, purporting to have been signed by a public employee of the United States who purports to be authorized by any law of the United States to make such finding, report, or record, is presumed to have been signed and issued by such a public employee pursuant to law, and the person signing such finding, report, or record is presumed to have acted within the scope of his authority.

(2) The presumptions established by this section require the trier of fact to find the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumptions established by this section.

Subdivision (2) of the proposed rule is based on subdivision (4) of

Revised Rule 67.7. Subdivision (1) is based on C.C.P. Section 1928.3

which reads:

§ 1928.3. Presumption of Execution and Authority. For the purposes of this article any finding, report, or record, or duly certified copy thereof, purporting to have been signed by an officer or employee of the United States described in this article shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing such report or record shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify it, such certified copy shall be prima facie evidence of his authority so to certify. Leg. H. 1953 ch. 52.

Consideration should be given to whether Rule 67.8 is necessary in view of Rule 67.7(2).

Respectfully submitted,

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