

AUTHENTICATION

REQUIREMENT OF SELF-AUTHENTICATION 901-903

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Rule 901 Requirement of Authentication or Identification

(a) *General Provision.* The requirement of authentication or identification as a condition precedent to admissibility is satis-

fied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of Witness with Knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert Opinion on Handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by Trier or Expert Witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive Characteristics and the Like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice Identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone Conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public Records or Reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient Documents or Data Compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity; (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) *Process or System.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods Provided by Statute or Rule.* Any method of authentication or identification provided by Act of Congress or by other rules prescribed by the Supreme Court pursuant to statutory authority.

Simplified Restatement

Authentication or identification is accomplished by proving that the evidence offered is what its proponent claims it to be.

Comments

This rule makes significant inroads upon the common law insistence on authentication and identification of evidence. Items included under Rule 902 are treated as prima facie genuine; the authentication and identification of certain items under Rule 901 are made significantly easier than under the common law.

The examples contained in subpart (b) of Rule 901 are not intended as an exclusive list but rather are meant to be a guide.

Illustrations

Testimony of a Witness With Knowledge. A witness present at the signing of a document testifies that a document was signed at a particular time and place.

Non-Expert Opinion on Handwriting. A witness who exchanged correspondence with an individual testifies that the handwriting on a document is the same handwriting as that on correspondence he received.

Comparison by Trier or Expert Witness. A handwriting expert compares a specimen identified as belonging to a particular person and testifies that the handwriting in question belongs to the same individual.

Distinctive Characteristics and the Like. A witness testifies that a particular letter is authentic based upon its content and circumstances indicating it was authored and sent in reply to a letter already authenticated and identified.

Voice Identification. A witness identifies a voice heard in the courtroom as the voice of the individual with whom he had a prior conversation.

Telephone Conversations. If the telephone number called belongs to an individual, the call can be authenticated if the person answers by identifying himself. If the telephone number called belongs to a business, the call can be authenticated if the resulting conversation relates to business normally transacted over the telephone.

Public Records or Reports. Records or reports will be considered authentic if it is shown that they came from the custody of the public authority.

Ancient Document or Data Compilation. A title document more than 20 years old in what appears to be original condition and maintained in a title office will be considered authentic.

Process or System. X-rays are authenticated if evidence describes the X-ray system and shows that it produces accurate results.

Methods Provided by Statute or Rule. Methods of authentication provided by Act of Congress and by the Rules of Civil and Criminal Procedure or by Bankruptcy Rules are not intended to be superseded.

Tactics

- ★ Consider how you are going to authenticate or identify each piece of evidence you intend to offer.
- ★ The examples in subsection (b) are not intended to be exclusive, but are merely illustrations.
- ★ Consider filing with your opponent a set of requests for admissions, which sets forth a list of writings and other evidence. Attach copies of those items you wish to have authenticated. This is one of the best uses of requests for admission provided by Rule 36 of the Federal Rules of Civil Procedure. You are then in the position to take advantage of the cost provisions of Rule 36 if your opponent will not admit them and you must offer proof.
- ★ Seek your costs and maximize the chance of obtaining those costs at the time your entitlement to those costs arises, once your requests for admissions relative to authenticity and genuineness of documents have been denied. For example, if your opponent has denied the authenticity and genuineness of documents and you are required to call a custodian of documents at trial, only to have your opponent not cross-examine that custodian, you should immediately request a sidebar conference at which time you will ask for an award of costs. By asking when the requisite proofs are offered, you will not

- only maximize the chances of obtaining the relief but you will also enhance your credibility with the court since you can demonstrate that your opponent has acted unreasonably.
- ★ If you can get the judge to issue pretrial orders, this may obviate a great many problems regarding authentication and identification.
 - ★ Consider all the other rules of evidence to determine whether there are other admissibility problems. For example, you may be able to authenticate and identify a particular piece of writing but you may not have met the requirements of the hearsay rule. Or the probative value of a particular piece of evidence may not outweigh its prejudicial nature.
 - ★ When transcripts of tape recordings are offered for use, they should be authenticated in the same manner as tape recordings that are offered in evidence, i.e., by testimony as to how they were prepared, the sources used, and the qualifications of the persons who prepared them. The First Circuit held in *United States v. Carbone*, 798 F.2d 21 (1st Cir. 1986), that although the transcripts were not properly authenticated using these guidelines, it was not an abuse of discretion for the trial judge to allow the jury to use them, considering that the defendant made no specific accuracy objections prior to the use of each transcript.

Cases

- Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir. 1999). The court had discretion to admit audio tape of reporter's contemporaneous conversations with police relating to his false arrest claim.
- United States v. Holmquist*, 36 F.3d 154 (1st Cir. 1994). The appearance, content, internal patterns and other **distinctive characteristics** of a document may satisfy the requirements of authentication.
- United States v. Stelmokas*, 100 F.3d 302 (3d Cir. 1996). Ancient documents will be admitted as an exception to the hearsay rule.
- McQueeny v. Wilmington Trust Co.*, 779 F.2d 916 (3d Cir. 1985). **Sea records** are admissible under this rule since the specificity, regularity and official appearance of the records increases their likelihood of being **authentic** even in the absence of testimony from a witness. Furthermore, they were produced in response to an explicit discovery request for sea service records and the specific information in such documents is not widely held.
- United States v. Price*, 788 F.2d 234 (4th Cir. 1986) The sufficiency of a showing of authenticity of a document sought to be introduced into evidence is a matter residing in the sound **discretion** of the trial judge.

United States v. Howard-Arias, 679 F.2d 363 (4th Cir. 1982), *cert. denied*, 459 U.S. 874, 103 S. Ct. 165 (1982). Resolution of **chain of custody** questions are within the discretion of the judge.

McConathy v. Dr. Pepper/Seven Up Corp., 131 F.3d 558 (5th Cir. 1997). An application for benefits was sufficiently authenticated by the signed application produced by the applicant.

Baulch v. Johns, 70 F.3d 813 (5th Cir. 1995). Authenticity does not have to be conclusively established prior to admission of disputed evidence. **Autopsy report** signed by medical examiner and produced in response to subpoena duces tecum is admissible.

United States v. Singh, 922 F.2d 1169 (5th Cir. 1991). Rule requires only evidence sufficient to support finding that the matter in question is what its proponent claims. **Conclusive proof of authenticity** is not a prerequisite to the admissibility of disputed evidence.

United States v. Wylie, 919 F.2d 969 (5th Cir. 1990). Rule allows the triers of fact to determine the genuineness of **handwriting** themselves and permits them to make judgments as to genuineness from **distinctive characteristics** taken in conjunction with the surrounding circumstances.

First State Bank of Benton v. Maryland Casualty Co., 918 F.2d 38 (5th Cir. 1990). Authentication requirement **does not require an admission** by a party opponent. To do so would ignore the true reason for requiring self identification; the primary authentication occurs because the **phone company usually is accurate**.

Snyder v. Whittaker Corp., 839 F.2d 1085 (5th Cir. 1988). Defendant's admission that the author was an employee and its production of notes during discovery was sufficient authentication. **Magazine article was self authenticating**.

Matter of Bobby Boggs, Inc., 819 F.2d 574 (5th Cir. 1987). This rule does not limit a proponent to the **ten illustrations** of sufficient authentication set forth in Rule 901(b).

Interfirst Bank of Abilene, N.A. v. Lull Mfg., 778 F.2d 228 (5th Cir. 1985). **Signatures** on a **promissory note and security agreements** are admissible under Uniform Commercial Code sections and Federal Rule of Evidence unless specifically denied in a pleading.

Ballou v. Henri Studios, Inc., 656 F.2d 1147 (5th Cir. 1981). Once the proponent of evidence meets the threshold requirement of showing a reasonable probability that the evidence has not been changed in any important respect from its original condition, any doubts raised concerning the **possibility of alteration of the evidence go to its weight and not to its admissibility**.

United States v. Russo, 480 F.2d 1228 (6th Cir. 1973). **Computer printouts** of certain medical payments that were maintained by a medical insurer were admissible once the reliability and trustworthiness of the information put into the computer had been established.

- Cooper v. Eagle River Memorial Hosp., Inc.*, 270 F.3d 456 (7th Cir. 2001). The evidence sufficiently established the authenticity of tissue samples without evidence establishing the chain of custody with respect to the tissue samples.
- Briggs v. Marshall*, 93 F.3d 355 (7th Cir. 1996). Unauthenticated hospital records are not admissible.
- Munson Transp., Inc. v. Hajjar*, 148 F.3d 711 (7th Cir. 1998). A foundation can be laid for admission of an unsigned document.
- Stringel v. Methodist Hosp.*, 89 F.3d 415 (7th Cir. 1996). Tape recording must be accompanied by proof that the recording is of what it purports to be.
- Cook v. Hoppin*, 783 F.2d 684 (7th Cir. 1986). Rule is applicable to offers of real proof as opposed to testimonial proof.
- United States v. Kairys*, 782 F.2d 1374 (7th Cir. 1986). It is not necessary to show a **chain of custody** for admission of an aged document.
- United States v. Clark*, 649 F.2d 534 (7th Cir. 1981). **Circumstantial** evidence is sufficient to establish the authenticity of a document.
- Banghart v. Origoverken*, 49 F.3d 1302 (8th Cir. 1995). Although there was no showing by whom **photographs** were taken or when they were taken, the photos were admissible in evidence because there is a rational basis to conclude photos are what they were asserted to be.
- United States v. O'Connel*, 841 F.2d 1408 (8th Cir. 1988). Government agents who would identify most of the **speakers' voices on a tape** is sufficient authentication.
- United States v. Vatale*, 549 F.2d 71 (8th Cir. 1977). Where a witness previously spoke to the defendant twice and could identify the defendant's **voice**, there is sufficient foundation to testify that he had spoken with the defendant over the telephone.
- United States v. Wilson*, 532 F.2d 641 (8th Cir. 1976). **Notebooks containing nicknames** for the defendants and code names for certain drugs found on the premises where drug operations were taking place were identified and authenticated by their contents.
- United States v. Brown*, 482 F.2d 1226 (8th Cir. 1973). The factors to be considered in making a determination of a physical exhibit's admissibility include (1) the nature of the article, (2) the circumstances surrounding its preservation and custody, and (3) the likelihood of others having tampered with it. If, after considering such factors, the court is satisfied that there is a reasonable probability the article has not been changed in any important aspect, it may be admitted.
- United States v. Merrill*, 484 F.2d 168 (8th Cir. 1973). The testimony of a motel clerk who observed the creation of a **registration card** is sufficient to authenticate that document.
- In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001). The authentication of evidence can be supplied by testimony that is sufficient to support a conclusion by a reasonable jury that the evidence is authentic.
- Pabl v. C.I.R.*, 150 F.3d 1124 (9th Cir. 1998). Admission of document, which witness saw executed, does not violate the "best evidence" rule.

- Villegas-Valenzuela v. I.N.S.*, 103 F.3d 805 (9th Cir. 1996). Authentication is required for admission of evidence presented in an administrative proceeding.
- Security Farms v. Inter'l Brotherhood of Teamsters*, 124 F.3d 999 (9th Cir. 1997). Decisions on the authentication of evidence are within the discretion of the court.
- U.S. for Use v. A.E. Lopez Enterprises*, 74 F.3d 972 (9th Cir. 1996). Controller has sufficient knowledge of **delivery tickets** to admit records into evidence.
- United States v. Saputski*, 496 F.2d 140 (9th Cir. 1974). An individual's employer is in a position to testify as to the **employee's handwriting** where he has had the opportunity to observe that handwriting.
- Purer & Co. v. Aktiebolaget Addo*, 410 F.2d 871 (9th Cir. 1969). **Letters** received in reply to another letter and which refer to that fact are considered as self-authenticating.
- Mich v. United States*, 283 F.2d 613 (9th Cir. 1960). Even though a **public document** may be competent evidence, it is not to be received into evidence unless and until it has been authenticated.
- United States v. Mora*, 845 F.2d 233 (10th Cir. 1988). As part of its foundation, the prosecution has to show that the physical evidence is in substantially the same condition as it was at the time of the crime. In making judgment, the judge should take into account the nature of the article, the circumstances of custody and the likelihood of tampering.
- United States v. Davis*, 780 F.2d 838 (10th Cir. 1985). A **note pad** seized from one defendant at the time of arrest following a meeting between the two defendants was sufficiently authenticated and is thus admissible. The owner testified it was his and identified the **handwriting** as his. It was relevant to circumstantial evidence of the author's knowledge and familiarity with the transactions of the type alleged.
- United States v. Smith*, 918 F.2d 1501 (11th Cir. 1990). The proponent of a document may authenticate it solely through the use of **circumstantial evidence**, including the document's own distinctive characteristics and the circumstances surrounding its discovery.
- United States v. Pappia*, 910 F.2d 1357 (11th Cir. 1990). This rule requires only that there be evidence sufficient to support a finding that the document is what the proponent says it is.
- United States v. Turner*, 485 F.2d 976 (D.C. Cir. 1973). Evidence of identification of a **voice on a telephone** is permitted where there is a basis on which to make a reasonably accurate identification.
- Biggers ex rel. Key v. Southern Ry. Co.*, 820 F. Supp. 1409 (N.D. Ga. 1993). **Map made by private company** was inadmissible in summary judgment motion in absence of any affidavit or deposition authenticating map.
- Bruther v. General Electric Co.*, 818 F. Supp. 1238 (S.D. Ind. 1993). Authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.