

Texas Rules of Evidence

Authentication and Identification

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

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

(2) *Nonexpert Opinion About Handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison by an expert witness or the trier of fact with a specimen that the court has found is genuine.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a statute or other rule prescribed under statutory authority.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears:

- (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
- (B) a signature purporting to be an execution or attestation.

(2) ***Domestic Public Documents That Are Not Sealed But Are Signed and Certified.*** A document that bears no seal if:

- (A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and
- (B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so.

(A) ***In General.*** The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(B) ***If Parties Have Reasonable Opportunity to Investigate.*** If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

- (i) order that it be treated as presumptively authentic without final certification; or
- (ii) allow it to be evidenced by an attested summary with or without final certification.

(C) ***If a Treaty Abolishes or Displaces the Final Certification Requirement.*** If the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces the final certification requirement, the record and attestation must be certified under the terms of the treaty or convention.

(4) ***Certified Copies of Public Records.*** A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

- (A) the custodian or another person authorized to make the certification; or
- (B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed under statutory authority.

(5) ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.

(7) ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Business Records Accompanied by Affidavit. The original or a copy of a record that meets the requirements of Rule 803(6) or (7), if the record is accompanied by an affidavit that complies with subparagraph (B) of this rule and any other requirements of law, and the record and affidavit are served in accordance with subparagraph (A). For good cause shown, the court may order that a business record be treated as presumptively authentic even if the proponent fails to comply with subparagraph (A).

(A) Service Requirement. The proponent of a record must serve the record and the accompanying affidavit on each other party to the case at least 14 days before trial. The record and affidavit may be served by any method permitted by Rule of Civil Procedure 21a.

(B) Form of Affidavit. An affidavit is sufficient if it includes the following language, but this form is not exclusive. The proponent may use an unsworn declaration made under penalty of perjury in place of an affidavit.

1. I am the custodian of records [or I am an employee or owner] of _____ and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records.

3. The records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth. [or It is the regular practice of _____ to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the record.]

4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. [or It is the regular practice of _____ for this type of record to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them.]

5. The records were kept in the course of regularly conducted business activity. [or It is the regular practice of _____ to keep this type of record in the course of regularly conducted business activity.]

6. It is the regular practice of the business activity to make the records.

(11) Presumptions Under a Statute or Rule. A signature, document, or anything else that a statute or rule prescribed under statutory authority declares to be presumptively or prima facie genuine or authentic.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.