

§ 18.902

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

(3) *Comparison by judge or expert witness.* Comparison by the judge as 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—

(i) In the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

(ii) 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,

(i) Is in such condition as to create no suspicion concerning its authenticity,

(ii) Was in a place where it, if authentic, would likely be, and

(iii) 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.

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(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by Act of Congress, or by rule or regulation prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order.

§ 18.902 Self-authentication.

(a) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a)(1) of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position—

(i) Of the executing or attesting person, or

(ii) Of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or

accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the judge may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (a) (1), (2), or (3) of this section, with any Act of Congress, or with any rule or regulation prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions under Acts of Congress or administrative agency rules or regulations.* Any signature, document, or other matter declared by Act of Congress or by rule or regulation prescribed by the administrative agency pursuant to statutory authority or pursuant to executive order to be presumptively or prima facie genuine or authentic.

(11) *Certified records of regularly conducted activity.* The original or a duplicate of a record of regularly conducted activity, within the scope of §18.803(6), which the custodian thereof or another qualified individual certifies

(i) Was made, at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters,

(ii) Is kept in the course of the regularly conducted activity, and

(iii) Was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. A record so certified is not self-authenticating under this paragraph unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to object or meet it. As used in this subsection, *certifies* means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country.

(12) *Bills, estimates, and reports.* In actions involving injury, illness, disease, death, disability, or physical or mental impairment, or damage to property, the following bills, estimates, and reports provided that a copy of said bill, estimate, or report has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it:

(i) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.

(ii) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.

(iii) Bills of registered nurses, licensed practical nurses and physical therapists or other licensed health care providers, when dated and containing an itemized statement of the days and

hours of service and the charges therefor.

(iv) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.

(v) Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs were made in full or in part and by whom, the cost thereof, together with a copy of the bill therefor.

(vi) Reports of past earnings, or of the rate of earnings and time lost from work or lost compensation, prepared by an employer on official letterhead, when dated and itemized. The adverse party may not dispute the authenticity, therefor, unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, the adverse party will make if the bill, estimate, or report is offered at the time of the hearing. An adverse party may call the authors of the bill, estimate, or report as a witness and examine the witness as if under cross-examination.

(13) *Medical reports.* In actions involving injury, illness, disease, death, disability or physical or mental impairment, doctor, hospital, laboratory and other medical reports made for purposes of medical treatment, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the author of the medical report as a witness and examine the witness as if under cross-examination.

(14) *Written reports of expert witnesses.* Written reports of an expert witness prepared with a view toward litigation including but not limited to a diagnostic report of a physician, including inferences and opinions, when on official letterhead, when dated, when including a statement of the experts qualifications, when including a summary of experience as an expert witness in litigation, when including the basic facts, data, and opinions forming the basis of the inferences or opinions, and when including the reasons for or explanation of the inferences or opinions, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the expert as a witness and examine the witness as if under cross-examination.

(15) *Written statements of lay witnesses.* Written statements of a lay witness made under oath or affirmation and subject to the penalty of perjury, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided that:

(i) A copy of the written statement has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it, and

(ii) If the declarant is reasonably available as a witness, as determined by the judge, no adverse party has sufficiently in advance of the hearing filed and served upon the noticing party a written demand that the declarant be produced in person to testify at the hearing. An adverse party may call the declarant as a witness and examine the witness as if under cross-examination.

(16) *Deposition testimony.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, provided that a notice of intention to offer the deposition in evidence, together with a copy thereof if not otherwise previously provided, has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. An adverse party may call the deponent as a witness and examine the witness as if under cross-examination.

(b) [Reserved]

§ 18.903 Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

CONTENTS OF WRITINGS, RECORDINGS,
AND PHOTOGRAPHS

§ 18.1001 Definitions.

(a) For purposes of this article the following definitions are applicable:

(1) *Writings and recordings.* *Writings* and *recordings* consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs.* *Photographs* include still photographs, X-ray films, video tapes, and motion pictures.

(3) *Original.* An *original* of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An *original* of a photograph includes the negative or, other than with respect to X-ray films, any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by

sight, shown to reflect the data accurately, is an *original*.

(4) *Duplicate.* A *duplicate* is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

(b) [Reserved]

§ 18.1002 Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules, or by rule or regulation prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order, or by Act of Congress.

§ 18.1003 Admissibility of duplicates.

A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original, or in the circumstances it would be unfair to admit the duplicate in lieu of the original.

§ 18.1004 Admissibility of other evidence of contents.

(a) The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or

(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleading or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.

(b) [Reserved]