

# Tennessee State Laws on Optical Images

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## TENNESSEE RULES OF EVIDENCE

### ARTICLE IX. AUTHENTICATION

Rule 901. Requirement of authentication or identification. -- (a) General Provision. -- The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact 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 of Fact or Expert Witness. -- Comparison by 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 a 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 the 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, if authentic, it would likely be, and (C) has been in existence thirty 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 the Tennessee Legislature or by other rules prescribed by the Tennessee Supreme Court.

Advisory Commission Comments. Section (a) makes the trial judge arbiter of authentication issues, as does the common law.

Subsection (b)(3) lets the trier of fact or an expert compare exemplars and questioned documents. The proposed draft corrects the mistake in *Franklin v. Franklin*, 90 Tenn. 44, 16 S.W. 557 (1891), where the Supreme Court construed T.C.A. § 24-7-108 to disallow purported forger's exemplar. See *Arburn v. State*, 553 S.W. 2d 922 (Tenn. Crim. App. 1977), criticizing *Franklin*.

Subsection (b)(4) simply makes common sense. Without drawing the boundaries of practical possibilities, the rule allows proof to the court of a myriad of distinctive characteristics that may convince the judge that a questioned document is authentic enough to let the jury consider it.

Subsection (b)(9) treats authentication of computer documents. All that the lawyer need do is introduce evidence satisfying the court that the computer system produces accurate information.

Textbooks. Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rules 803(16), 901; §§ 104.2, 401.9, 401.10, 401.13, 401.20, 401.23, 401.25 -- 401.29, 609.11, 803(9).1, 803(16).1, 901.0 -- 901.11, 902.0, 1002.1.

Law Reviews. Some Comparisons Between the New Tennessee Rules of Evidence and the Federal Rules of Evidence Part I (Robert Banks, Jr.), 20 Mere. St. U.L. Rev. 283 (1990).

**Cited:** Federated Stores Realty, Inc. v. Hud-dleston, 852 S.W.2d 206 (Tenn. 1992).

## NOTES TO DECISIONS

### 1. Public Records and Reports.

Alabama uniform traffic ticket and complaint was properly admitted into evidence as a public record in an enhanced driving while under the influence (DUI) prosecution, **as** the ticket **did** not lack trustworthiness and bore several indicia of reliability. State v. Rea, 865 S.W.2d 923 (Tenn. Crim. App. 1992).

Collateral References. Cautionary instruc- considered in evaluating, voice identification tions to jury as to reliability of, or factors to be testimony. 17 A.L.R.Sth 851.

Rule 902. Self-authentication.--Extrinsic evidence of authenticity as a condition precedent to admissibility is not required as to the following:

(1) Domestic Public Documents Under Seal. -- A document bearing a seal purporting to be that of the State of Tennessee, the United States (or of any other 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, office, 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 (1) 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 execution or attestation, accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person or (B) of any foreign official whose certificate of genuineness or 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 general, 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 court 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 (1),

(2), or (3) of this rule or complying with any Act of Congress or the Tennessee Legislature or rule prescribed by the Tennessee Supreme Court.

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

(6) Newspapers and Periodicals. -- Printed material purporting to be newspapers and periodicals.

(7) Trade Inscriptions and the Like. -- Inscriptions, sign, 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, including all signatures, and related documents to the extent provided by general commercial law.

(10) Presumptions Under Acts of Congress or the Legislature. -- Any signature, document, or other matter declared by Act of Congress or the Tennessee Legislature to be presumptively or prima facie authentic.

**Advisory Commission Comments.** This rule lists documents that do not require authenticating evidence as a foundation to admissibility.

Part (9) refers to Tennessee's version of the Uniform Commercial Code, T.C.A. § 47-1-101 et seq. See in particular T.C.A. § 47-3-307, concerning signatures on commercial paper.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rules 902, 1005; § 8 609.11, 803(9).1, 901.0, 901.7, 902.0 -- 902.10, 1002.1, 1005.1.

**Cited:** Haury & Smith Realty Co. v. Piccadilly Partners I, 802 S.W. 2d 612 (Tenn. Ct. App. 1990); Town of Bruceton v. Arnold, 818 S.W.2d 347 (Tenn. Ct. App. 1991); State v. Gilboy, 857 S.W. 2d 884 (Tenn. Crim. App. 1993).

**Rule 903.** Subscribing witness' testimony unnecessary. -- The testimony of a subscribing witness is not necessary to authenticate a writing unless required by statute.

**Advisory Commission Comments.** In will contests, T.C.A. § 32-4-105 requires calling subscribing witnesses to a will.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 903; § 903.1.

## ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions, -- For purposes of this article the following definitions are applicable:

(1) Writings and Recordings. -- "Writings" and "recordings" consist of letters, words, numbers, sounds, 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 any print. If data are stored in a computer or similar device, any printout or other output readable by sight and shown to reflect the data accurately is an "original."

(4) Duplicate. -- A "duplicate" is a copy 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 reproduce the original.

**Advisory Commission Comments.** Tennessee's existing best evidence rule, also known as the original document rule, undergoes expansion in proposed Rules 1001 and 1003. As a practical matter, the most significant provision is the definition of "duplicate" in Rule 1001(4), which encompasses the copies familiar to all lawyers with copying machines. Support for admissibility can be found in *Bolton v. State*, 617 S.W. 2d 909 (Tenn. Crim. App. 1981). The copy usually would be admissible on an equal plane with an "original" under Rule 1003.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rules 1001 -- 1003; §§ 401.10, 401.12, 402.1, 1001.0, 1001.1, 1002.1, 1003.1.

**Law Reviews.** A Meta-Analysis of the Tennessee Rules of Evidence (Neil P. Cohen), 57 Tenn. L. Rev. i (1989).

Some Comparisons Between the New Tennessee Rules of Evidence and the Federal Rules of Evidence Part I (Robert Banks, Jr.), 20 Mere. St. U.L. Rev. 283 (1990).

**Rule 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 Act of Congress or the Tennessee Legislature.

**Advisory Commission Comments.** This rule states the traditional preference for an "original," but Rules 1001(4) and 1003 should be consulted. Usually the court will admit machine copies.

**Textbooks.** Tennessee Law of Evidence (2nd. ed., Cohen, Paine and Sheppard), Rule 1002; §§ 401.10, 401.12, 612.2, 1001.0, 1001.1, 1002.1, 1007.1, 1008.1.

**Cited:** *Riggs v. Royal Beauty Supply, Inc.*, 879 S.W.2d 848 (Tenn. Ct. App. 1994).

**Rule 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.

**Advisory Commission Comments.** This rule is the key to an understanding of the best evidence rule as the Commission contemplates it. Normally business people and lawyers accept machine copies as authentic. There is no reason why courts should not take the same approach, in most instances. See Rule 1001(4) for the definition of "duplicate."

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rules 1001 -- 1003; §§ 401.12, 1001.0, 1001.1, 1002.1, 1003.1, 1004.1, 1005.1, 1008.1.

**Cited:** State v. Chance, 778 S.W.2d 457 (Tenn. Crim. App. 1989).

**Rule 1004. Admissibility of other evidence of contents.** -- The original is not required, and other evidence of a writing, recording, or photograph is admissible if-

(1) Originals Lost or Destroyed. --All originals are lost or 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 pleadings or otherwise that the contents would be a subject of proof at the hearing but 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.

**Advisory Commission Comments.** In the rare situation where neither an "original" nor a 'duplicate" is offered, this rule enumerates the common law excuses for failure to present the best evidence.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 1004; §§ 401.10, 1001.0, 1001.1, 1002.1, 1004.1, 1004.2, 1007.1, 1008.

**Cited:** State v. Chance, 778 S.W.2d 457 (Tenn. Crim. App. 1989); Riggs v. Royal Beauty Supply, Inc., 879 S.W.2d 848 (Tenn. Ct. App. 1994).

**Rule 1005. Public records.** -- The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible may be proved by copy certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which compiles with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Advisory Commission Comments.** Copies of public records are the best evidence if certified or otherwise authenticated under the rule.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 1005; §§ 1001.0, 1002.1, 1005.1.

**Rule 1006. Summaries.** -- The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals or duplicates shall be made available for examination or copying, or both, by other parties at reasonable times and places. The court may order that they be produced in court.

**Advisory Commission Comments.** Summaries of the contents of voluminous documents have long been admissible in Tennessee. *State ex rel. Stewart v. Follis*, 140 Tenn. 513, 521, 205 S.W. 444 (1918).

**Textbooks.** Tennessee Forms (Robinson, Ramsey and Harwell), No. 3-16-1.

Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 1006; §§ 401.9, 401.13, 1001.0, 1002.1, 1006.1 -- 1006.3.

**Rule 1007. Testimony or written admission of party.** -- Contents of writings, recordings, or photographs may be proved by the testimony, deposition, or written admission of the party against whom offered, without accounting for nonproduction of the original.

**Advisory Commission Comments.** This rule dispenses with the original document requirement in the circumstances described. Note that the proposed rule requires an un-sworn statement of the contents of a document to be in writing.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 1007; §§ 1001.0, 1002.1, 1007.1.

**Rule 1008. Functions of court and jury.** -- When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question of whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. When an issue is raised as to (a) whether the asserted writing, recording, or photograph ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

**Advisory Commission Comments.** Division of responsibility between judge and jury is similar to the traditional provisions of Rule 104.

**Textbooks.** Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 1008; §§ 104.2, 402.1, 1001.0, 1001.1, 1008.1.