

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE
REPORT NO. 93-650

The Committee amended this Rule expressly to include “video tapes” in the definition of “photographs.”

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 1001 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1946; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The rule is the familiar one requiring production of the original of a document to prove its contents, expanded to include writings, recordings, and photographs, as defined in Rule 1001(1) and (2), *supra*.

Application of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered. McCormick §198; 4 Wigmore §1245. Nor does the rule apply to testimony that books or records have been examined and found not to contain any reference to a designated matter.

The assumption should not be made that the rule will come into operation on every occasion when use is made of a photograph in evidence. On the contrary, the rule will seldom apply to ordinary photographs. In most instances a party *wishes* to introduce the item and the question raised is the propriety of receiving it in evidence. Cases in which an offer is made of the testimony of a witness as to what he saw in a photograph or motion picture, without producing the same, are most unusual. The usual course is for a witness on the stand to identify the photograph or motion picture as a correct representation of events which he saw or of a scene with which he is familiar. In fact he adopts the picture as his testimony, or, in common parlance, uses the picture to illustrate his testimony. Under these circumstances, no effort is made to prove the contents of the picture, and the rule is inapplicable. *Paradis, The Celluloid Witness*, 37 U.Colo.L. Rev. 235, 249-251 (1965).

On occasion, however, situations arise in which contents are sought to be proved. Copyright, defamation, and invasion of privacy by photograph or motion picture falls in this category. Similarly as to situations in which the picture is offered as having independent probative value, e.g. automatic photograph of bank robber. See *People v. Doggett*, 83 Cal.App.2d 405, 188 P.2d 792 (1948) photograph of defendants engaged in indecent act; *Mouser and Philbin, Photographic Evidence—Is There a Recognized Basis for Admissibility?* 8 *Hastings L.J.* 310 (1957). The most commonly encountered of this latter group is of course, the X-ray, with substantial authority calling for production of the original. *Daniels v. Iowa City*, 191 Iowa 811, 183 N.W. 415 (1921); *Cellamare v. Third Acc. Transit Corp.*, 273 App.Div. 260, 77 N.Y.S.2d 91 (1948); *Patrick & Tilman v. Matkin*, 154 Okl. 232, 7 P.2d 414 (1932); *Mendoza v. Rivera*, 78 P.R.R. 569 (1955)

It should be noted, however, that Rule 703, *supra*, allows an expert to give an opinion based on matters not

in evidence, and the present rule must be read as being limited accordingly in its application. Hospital records which may be admitted as business records under Rule 803(6) commonly contain reports interpreting X-rays by the staff radiologist, who qualifies as an expert, and these reports need not be excluded from the records by the instant rule.

The reference to Acts of Congress is made in view of such statutory provisions as 26 U.S.C. §7513, photographic reproductions of tax returns and documents, made by authority of the Secretary of the Treasury, treated as originals, and 44 U.S.C. §399(a), photographic copies in National Archives treated as originals.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 1002 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1946; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

When the only concern is with getting the words or other contents before the court with accuracy and precision, then a counterpart serves equally as well as the original, if the counterpart is the product of a method which insures accuracy and genuineness. By definition in Rule 1001(4), *supra*, a “duplicate” possesses this character.

Therefore, if no genuine issue exists as to authenticity and no other reason exists for requiring the original, a duplicate is admissible under the rule. This position finds support in the decisions, *Myrick v. United States*, 332 F.2d 279 (5th Cir. 1964), no error in admitting photostatic copies of checks instead of original microfilm in absence of suggestion to trial judge that photostats were incorrect; *Johns v. United States*, 323 F.2d 421 (5th Cir. 1963), not error to admit concededly accurate tape recording made from original wire recording; *Sauget v. Johnston*, 315 F.2d 816 (9th Cir. 1963), not error to admit copy of agreement when opponent had original and did not on appeal claim any discrepancy. Other reasons for requiring the original may be present when only a part of the original is reproduced and the remainder is needed for cross-examination or may disclose matters qualifying the part offered or otherwise useful to the opposing party. *United States v. Alexander*, 326 F.2d 736 (4th Cir. 1964). And see *Toho Bussan Kaisha, Ltd. v. American President Lines, Ltd.*, 265 F.2d 418, 76 A.L.R.2d 1344 (2d Cir. 1959).

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The Committee approved this Rule in the form submitted by the Court, with the expectation that the courts would be liberal in deciding that a “genuine question is raised as to the authenticity of the original.”

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 1003 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.