

Alabama Rules of Evidence

Article X. Contents of Writings

Rule 1007.

Testimony or written admission of party.

Contents of writings may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Advisory Committee's Notes

No accounting for the nonproduction of an original writing is necessary, as is customarily required by the best evidence principle, if the content of the original is proven by the testimony, deposition, or written admission of the party against whom the writing is offered. The admission, in order to satisfy the best evidence preference for the original, must be in writing or have been made in the course of the party's giving testimony. Oral admissions, if not made while the admitting party is giving testimony, do not satisfy the rule's requirement that the original's nonproduction be accounted for as a condition precedent to the admissibility of secondary evidence of its contents.

The preexisting Alabama law in this area is not the model of clarity. See C. Gamble, *McElroy's Alabama Evidence* §§ 227.01, 227.02 (4th ed. 1991). Like Rule 1007, however, historic Alabama practice has recognized that a party's testimony, admitting the contents of an original, opens the door to secondary evidence of those contents, without an accounting for the nonproduction of the original. *Donahay v. State*, 287 Ala. 716, 255 So.2d 599 (1971); *Kessler v. Peck*, 266 Ala. 669, 98 So.2d 606 (1957).

Rule 1007 affirms that pre-rules authority in Alabama which declares that an oral, nontestimonial, admission disclosing a writing's content is not admissible without an accounting for the nonproduction of the original. *Ware v. Roberson*, 18 Ala. 105 (1850); *Morgan v. Patrick*, 7 Ala.185 (1844). Contra *Sally v. Capps*, 1 Ala. 121 (1840). At the same time, however, it abrogates any preexisting Alabama authority holding that a party's written admission of the contents of an original does not dispense with the necessity of proof as to the nonproduction of the original. *Shorter v. Urquhart*, 28 Ala. 360 (1856); *Ware v. Roberson*, 18 Ala. 105 (1850).