Alabama Rules of Evidence

Article IX. Authentication and Identification

Rule 902.

Self-authentication.

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 (1) hereof, 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 (A) of the executing or attesting person, or (B) 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 an 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 applicable statute or other rule of court.

(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) SELF-AUTHENTICATION UNDER STATUTES AND RULES OF COURT. Any signature, document, or other matter declared by any statute, state or federal, or any rule promulgated by the Alabama Supreme Court to be presumptively or prima facie genuine or authentic.

(11) CERTIFIED DOMESTIC RECORDS OF REGULARLY CONDUCTED ACTIVITY. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit or sworn testimony of its custodian or other qualified person, certifying that the record:

(A) 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;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this section must provide written notice of that intention to all adverse parties and must make the record and certification available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) CERTIFIED FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY. The original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record:

(A) 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;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

[Amended 8-15-2013, eff. 10-1-2013.]

Advisory Committee's Notes

Rule 901 sets out the foundations that must be established, through extrinsic proof, to authenticate or identify evidence. Some items of evidence, however, are self-authenticating, meaning that no extrinsic proof is necessary to authenticate or identify them. A self-authenticating document is said to be genuine on its face. Instances of such self-authentication have been developed historically by case law, statute, and rule of court. Rule 902 undertakes to collect and incorporate these instances, with some incidental expansion. See Fed.R.Evid. 902 advisory committee's note.

Satisfaction of any self-authentication method contained in Rule 902 does not guarantee genuineness. Consequently, nothing in Rule 902 is intended to preclude the offering party's opponent from disputing authenticity. Any document or record offered under Rule 902 must satisfy other evidentiary concerns, such as the hearsay rule and the best evidence rule. See, e.g., Ala.R.Evid. 803(8) (public records exception to the hearsay rule); Ala.R.Evid. 1005 (public records exception to the best evidence rule).

Paragraph (1). Domestic public documents under seal. This rule provides self-authentication for any domestic public document that bears a seal purporting to be that of the United States, any state or other domestic political entity or any subdivision thereof (as well as any territory or insular possession of the United States, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands), including any subdivision, department, officer, or agency thereof. In addition to the required governmental seal, such a self-authenticating document must carry a signature purporting to be an attestation or execution.

The nearest comparable provision under preexisting Alabama law is found in Rule 44(a)(1) of the Alabama Rules of Civil Procedure. It and this Rule 902 use identical language to describe the political entities whose official records are accorded self-authenticating status. Beyond the use of this common language, however, the two rules diverge. Ala.R.Civ.P. 44(a)(1) grants self-authentication to an official record in the form of an "official publication."

See *Winegardner v. Burns*, 361 So.2d 1054 (Ala.1978) (weather reports published by the Department of Commerce). Rule 902(1), on the other hand, accords such status to any public document bearing a seal and a signature purporting to be an attestation or execution. Additionally, Rule 44(a)(1) is broader, in that it applies to copies of such public records if the copies are properly attested or certified; Rule 902(1) applies only to originals. Rule 902(1) leaves self-authentication of copies of public records to be treated under Rule 902(4), other rules of court, or statutes.

Paragraph (2). Domestic public documents not under seal. Paragraph (1) establishes self-authentication for domestic public documents that are both under seal and signed. Paragraph (2) provides a means of self-authentication for domestic public documents that possess the signature of an officer or employee but carry no seal. Self-authentication for such unsealed documents arises when another officer, who has both a seal and official duties within the same political subdivision as the officer who signed but affixed no seal, certifies under seal that the signer possessed the official capacity and that the signature is genuine.

Alabama has no comparable preexisting rule. It should be noted, of course, that "official publications" of the documents referred to in paragraph (2), as well as copies of those documents, could be admissible if the offeror complies with Rule 44(a)(1), Ala.R.Civ.P. Copies could likewise be considered as authentic if they meet the requirements of Ala.R.Evid. 902(4) or other court rule or statute.

Paragraph (3). Foreign public documents. No extrinsic evidence is required to authenticate a foreign public document if it: (1) purports to have been executed or attested by a foreign official with authority to make the execution or attestation and (2) is accompanied by a final certification. The accompanying final certification must be made by a diplomatic or consular officer of the United States or such an officer of a foreign country who is "assigned or accredited to the United States."

An alternative form of final certification for foreign public documents is provided in those instances where no direct certification has been made by the appropriate diplomatic or consular official. This would arise primarily when a chain of certificates has been attached but only the last certificate is executed by an official qualified under the rule. Suppose, for example, that A purposes to execute or attest a qualifying foreign public document. B, who is not a United States diplomatic or consular official and who is not a diplomatic or consular official assigned or accredited to the United States, certifies the genuineness of A's signature and A's official position. Subsequently, C – who is a qualified official – is unable to certify as to A but does certify that B's signature is genuine and that B's official capacity is as purported. Such a chain of certificates would constitute final certification under Rule 902(3)(B).

Paragraph (3) ends with two alternative and overriding exceptions to the final certification requirement. These exceptions are activated whenever (1) all parties have been given reasonable opportunity to investigate the authenticity and accuracy of the documents and (2) good cause is shown by the party seeking to be relieved of the customarily required final certification. When these two requirements are met, the court may take either of two actions. First, it may treat the document as presumptively authentic, without final certification. Alternatively, it may admit attested summaries of such records, with or without final certification.

This paragraph (3) principle of self-authentication for foreign documents is similar to that of Rule 44(a)(2) of the Alabama Rules of Civil Procedure, and the language of the two is nearly identical. Rule 902(3), however, is broader than Rule 44(a)(2) in that it applies to public documents, rather than being limited to public records. See Fed.R.Evid. 902(3) advisory committee's note.

Paragraph (4). Certified copies of public records. This paragraph recognizes the most common form of self-authentication – i.e., self-authentication of certified copies of public records and reports. Additionally, however, it extends to certified copies of public documents that are authorized by law to be recorded or filed and that have in fact been recorded or filed in a public office. This paragraph does not apply to unrecorded public documents. See Fed.R.Evid. 904(4) advisory committee's note.

Such a copy of a record, report, or officially filed or recorded document is deemed authentic only if it is accompanied by a certification made by the custodian or other person authorized to make the certification. The certificate must comply with Rule 902(1), (2) or (3) or with any statute or other rule of court. See Ala.R.Civ.P. 44(e). The prerequisites of the required certificate depend upon the type of document in question. A foreign document's accompanying certification, for example, would be satisfactory if made in compliance with Ala.R.Evid. 902(3). A proper certification of a domestic public document would exist if, in compliance with Rule 902(1), the document bears a seal and a signature purporting to be an attestation or execution. If the document is signed, but not under seal, then its authenticity as a domestic public document could be satisfied by compliance with Rule 902(2).

Paragraph (5). Official publications. This paragraph dispenses with the need for preliminary proof of authenticity in regard to purportedly official publications. No proof is required that such publications were, in fact, issued by a public authority; rather, it suffices that the publication purports to have been so issued. While this paragraph is not so limited, its customary application is to statutes, court reports, and rules and regulations. See Fed.R.Evid. 902(5) advisory committee's note. Admission of such official publications is consistent with preexisting Alabama practice, although paragraph (5) expands that preexisting practice. See, e.g., Ala.R.Civ.P. 44(a)(1) (granting self-authentication to an "official publication" of any domestic public record); Ala.R.Civ.P. 44(a)(2) (similar concept affording self-authentication to "official publication" of a foreign record).

Paragraph (6). Newspapers and periodicals. According self-authentication to printed materials purporting to be newspapers or periodicals is based upon the belief that the likelihood of forgery of such materials is slight. See Fed.R.Evid. 902(6) advisory committee's note.

Accepting such materials as authentic, under this paragraph, does not necessarily answer other evidentiary concerns, such as materiality, relevancy, hearsay, etc. Likewise, accepting the authenticity of a newspaper or periodical does not resolve the issues of authority and responsibility for items contained therein. See Fed.R.Evid. 902(6) advisory committee's note; *Liberty Lobby, Inc. v. Anderson*, 562 F.Supp. 201, 203 (D.D.C.1983), aff'd in part, rev'd in part, 746 F.2d 1563 (D.C.Cir.1984), vacated, 477 U.S. 242 (1986).

No corresponding principle exists under prior Alabama law. It should be noted, however, that Alabama has long provided statutory self-authentication status for published prices current

and commercial lists when they are offered to prove the value of any article of merchandise. See Ala. Code 1975, § 12-21-113.

Paragraph (7). Trade inscriptions and the like. Preliminary proof of genuineness is not required in regard to inscriptions, signs, tags, or labels when they (1) purport to have been affixed in the course of business and (2) indicate ownership, control, or origin. A very good statement of the reliability grounds underlying this form of self-authentication is found in the advisory committee's note to Fed.R.Evid. 902(7): "The risk of forgery is minimal. Trademark infringement involves serious penalties. Great efforts are devoted to inducing the public to buy in reliance on brand names, and substantial protection is given them."

Paragraph (7) is consistent with preexisting Alabama practice, which has exempted inscriptions on chattels from the rigors of the best evidence rule. See *Benjamin v. State*, 12 Ala. App. 148, 67 So. 792 (1915); C. Gamble, McElroy's Alabama Evidence § 212.03 (4th ed. 1991). Additionally, admission of such evidence is consistent with those Alabama decisions holding that a price tag is admissible as evidence going to prove the value of stolen property. See, e.g., *DeBruce v. State*, 461 So.2d 889 (Ala.Crim.App.1984); C. Gamble, McElroy's Alabama Evidence § 259.03 (4th ed. 1991). Paragraph (7) is likewise within the spirit of those decisions admitting evidence, in criminal prosecutions, of labels on bottles to prove the nature of the contents. See, e.g., *Woods v. State*, 247 Ala. 155, 22 So.2d 901 (1945); *Kilpatrick v. State*, 38 Ala.App. 256, 81 So.2d 926 (1955); C. Gamble, McElroy's Alabama Evidence § 190.09 (4th ed. 1991). Last, the committee notes that the principle of paragraph (7) has been applied in decisions admitting containers with inscriptions to prove a person's knowledge of the contents of the container. See, e.g., *Chisolm v. State*, 204 Ala. 69, 85 So. 462 (1920). See also C. Gamble, McElroy's Alabama Evidence § 64.01 (4th ed. 1991).

Paragraph (8). Acknowledged documents. Acknowledged title documents have long been given the status of self-authenticating. See, e.g., Ala. Code 1975, §§ 12-21-61 (exempting proponent of duty to produce attesting witnesses if the writing is self-proving); 35-4-27 (self-proving status recognized for acknowledged deeds, powers of attorney, other instruments of conveyance, affidavits, and contracts); 35-4-65 (deeds and other conveyances of property). See also C. Gamble, McElroy's Alabama Evidence § 233.01(4)(b) (4th ed. 1991). Paragraph (8) extends that self-proving status to all other acknowledged documents that are accompanied by a properly executed certificate or acknowledgment given by a notary public or other legally authorized officer. This expansion of the former practice is based upon the theory that, if self-authentication is accorded documents as important as those affecting titles, it should not be denied to other properly acknowledged documents. See Fed.R.Evid. 902(8) advisory committee's note.

Paragraph (9). Commercial paper and related documents. The purpose of paragraph (9) is to embrace those principles of preexisting general commercial law that grant self-authentication status to commercial paper, signatures thereon, and documents relating thereto. This self-proving status arises only as provided under general commercial law. Alabama's general commercial law in this regard is found largely, particularly as related to commercial paper, in the Uniform Commercial Code. The U.C.C.'s self-authentication provisions are thus incorporated into paragraph (9). See, e.g., Ala. Code 1975, §§ 7-1-202 (providing prima facie authenticity for documents issued by a third party to a contract – e.g., a bill of lading, a policy or certificate of insurance, an official weigher's or inspector's certificate, a consular invoice, or any other document authorized or required by contract); 7-3-307

(authenticity of signatures on negotiable instruments are taken as admitted unless denied in the pleadings); 7-3-510 (documents indicating that payment was refused – such as drawee's stamp of nonpayment, a certificate of protest, or bank records reflecting dishonor – granted self-authentication in drawer or payee's lawsuit based on dishonor); 7-8-105 (signature on negotiable instrument presumed genuine). Compare C. Gamble, McElroy's Alabama Evidence §§ 267.01, 268.01, 268.02, 268.07, 268.08, 269.01, 269.03, 322.02(3) (4th ed. 1991).

Paragraph (10). Self-authentication under statutes and rules of court. This paragraph (10) recognizes the continued viability of preexisting and future rules of self-authentication found in both statutes and rules of court under which signatures, documents, and other matters are declared to be presumptively or prima facie genuine or authentic. See, e.g., Ala.R.Civ.P. 44(a)(1) (self-authentication of official publications); Ala.R.Civ.P. 44(a)(2) (self-authentication of foreign, public documents); Ala. Code 1975, §§ 12-21-90 (authorized notice from armed forces declared prima facie evidence of service person's death), 12-21-92 (secretary of state's publication of foreign interest rates received as presumptive evidence of such interest rates), 12-21-97 (ineffective, pre-1879 land patents prima facie evidence of sale or transfer and payment of the purchase money), 12-21-99 (sheriff's deed prima facie evidence of recitals therein), 12-21-101 (religious registers of marriage, birth, and death constitute presumptive evidence of the facts stated therein). See also Ala.R.Civ.P. 44(g) (disinterested party's historical work, book of science or art, or published map or chart granted prima facie status as evidence of general notoriety and interest); 26 U.S.C. § 6064 (1988) (signature on tax return prima facie genuine).

Advisory Committee's Notes to Adoption of
Rule 902(11) and (12) Effective October 1, 2013

Sections (11) and (12) have been added to Rule 902 to keep this rule consistent with Fed. R. Evid. 902, which was amended in 2000. The amendment adds two new sections to the rule on self-authentication. It sets forth a procedure by which parties can authenticate certain records of regularly conducted activity other than through the testimony of a foundation witness. See Ala. R. Evid. 803(6) (as amended effective October 1, 2013).

The intent behind the addition of Rule 902(11) and (12) is to provide an alternative means of authenticating records of regularly conducted activity. The amendment is not intended to give these records *carte blanche* admissibility. With the adoption of Rule 902(11) and (12), the amendment to Rule 803(6), and previously existing Rule 1001(2) and (3), the proponent of the evidence may now overcome authentication, hearsay, and best-evidence-rule objections with a properly certified copy of a record of regularly conducted activity, but all other valid objections remain. Thus, even if the proponent of the evidence satisfies the requirements of these sections, the evidence may still be excluded under applicable general rules of evidence. See 2 C. Gamble & R. Goodwin, *McElroy's Alabama Evidence* § 319.01(4) (6th ed. 2009) ("The fact that an offered item of evidence is properly authenticated does not grant it *carte blanche* admissibility. Other evidentiary objections may be lodged against its admission.").

The notice requirements in Rule 902(11) and (12) are intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration.

Note from reporter of decisions: The order amending Rule 404(a), Rule 405(a), Rule 407, Rule 408, Rule 412, Rule 510, Rule 608(b), Rule 703, Rule 801(d), Rule 803(6), Rule 804(b), and Rule 1103, Ala. R. Evid., and adopting Rule 902(11) and (12), Ala. R. Evid., and the Advisory Committee's Notes to the amendment or adoption of these rules, effective October 1, 2013, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.