Alabama Rules of Evidence

Article X. Contents of Writings

Rule 1001.

Definitions.

For purposes of this article the following definitions are applicable:

(1) WRITINGS. "Writings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, or other form of data compilation.

(2) ORIGINAL. An "original" of a writing is the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. 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."

(3) DUPLICATE. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, or by equivalent technique which accurately reproduces the original.

Advisory Committee's Notes

Paragraph (1). Writings. Alabama's best evidence rule continues applicable to writings only. Adoption of this rule is a rejection of the corresponding federal rule, which expands the best evidence principle to cover recordings and photographs. See Fed.R.Evid. 1001(1). Chattels generally remain outside the scope of the best evidence principle. See *Jones v. Pizza Boy, Oxford, Inc*., 387 So.2d 819 (Ala.1980). Tape recordings, for example, present no best evidence issue. *O'Daniel v. O'Daniel*, 515 So.2d 1248 (Ala.Civ.App.), rev'd, 515 So.2d 1250 (Ala.1987) (holding re-recording of taped conversation admissible without accounting for unavailability of the original tape). See C. Gamble, McElroy's Alabama Evidence § 212.01 (4th ed. 1991).

Nothing in paragraph (1) generally negates those preexisting Alabama decisions declaring the best evidence requirements inapplicable to chattels carrying inscriptions. See, e.g., *Benjamin v. State*, 12 Ala.App. 148, 67 So. 792 (1915) (best evidence rule inapplicable to inscriptions on a parcel, words written on a valise, and labels attached to jugs or decanters and indicating their contents). Paragraph (1) is broad enough, however, to permit future courts to declare the best evidence rule applicable to an inscribed chattel when, among other things, its communicative nature predominates, its terms are crucial to the dispute, its message is complex, there would be difficulty in a witness's correctly relating the message, and the size of the chattel would not make its production difficult. Even if an inscribed chattel were held to be

within the best evidence requirements, it could yet be admissible as within some exception to the best evidence rule. See, e.g., Ala.R.Evid. 1004(4) (no obligation to produce the original or establish its unavailability, as a prerequisite to introducing oral testimony regarding the contents of a writing, if the writing involves a collateral matter – i.e., one that is not closely related to a controlling issue).

Use of the words "data compilation" makes it clear that the best evidence rule is expanded by Rule 1001 to include computerized records. Compare Ala.R.Evid. 803(6) (bringing computer records within the business records exception to the hearsay rule); Ala.R.Evid. 901(b)(7) (data compilations as constituting business records for purposes of authentication).

Paragraph (2). Original. Multiple copies of a writing constitute originals if they were intended equally to evidence the transaction by the person executing it. Common law decisions referred to such documents as "duplicate originals." See C. Gamble, McElroy's Alabama Evidence § 225.01(2) (4th ed. 1991). As under preexisting Alabama law, the "original" may include a carbon copy of a document executed in duplicate. See, e.g., *Tolbert v. State*, 450 So.2d 805 (Ala.Crim.App.1984); *Campbell Motor Co. v. Brewer*, 212 Ala. 50, 101 So. 748 (1924). The status of original is likewise conferred upon any computer printout. See Fed.R.Evid. 1001(3) advisory committee's note.

Paragraph (3). Duplicate. Copies produced by methods possessing considerable accuracy, and virtually eliminating the possibility of error, are accorded most of the best evidence dispensation historically reserved for originals. See *United States v. Skillman*, 922 F.2d 1370, 1375 (9th Cir.1990), cert. dismissed, 502 U.S. 922 (1991) (holding that a "Xerox" copy qualifies as a duplicate under Fed.R.Evid. 1001(4)); *United States v. Gipson*, 609 F.2d 893 (8th Cir.1979) (recognizing that photocopies constitute duplicates); Ala.R.Evid. 1004. These are not "duplicate originals," as that term was known to the common law and as is set forth in Rule 1001(2), because generally they will not have been intended to have equal effect with the original in evidencing the transaction or, as set forth in Rule 1001(2), will not have been "intended to have the same effect by a person executing or issuing it." A copy subsequently made, whether by typewriting or by hand, would not qualify under paragraph (3) as a duplicate.