

Alabama Rules of Evidence

Article X. Contents of Writings

Rule 1002.

Requirement of original.

To prove the content of a writing, the original writing is required, except as otherwise provided by statute, these rules, or by other rules applicable in the courts of this state.

Advisory Committee's Notes

This rule expresses the traditional best evidence principle. Whenever the offeror is proving the content of a writing, the original is required unless otherwise provided by statute, these rules, or other rules applicable in the courts of this state. This constitutes a rule of preference for the original over secondary evidence as to the contents of the writing. This preference is consistent with preexisting Alabama law. See *Wiggins v. Stapleton Baptist Church*, 282 Ala. 255, 210 So.2d 814 (1968). See also C. Gamble, *McElroy's Alabama Evidence* § 212.01 (4th ed. 1991).

The rule of preference applies only when the nonoriginal evidence is offered to prove the content of the writing. This language reaffirms that traditional authority in Alabama recognizing the admissibility of secondary evidence when the offeror is not seeking to prove the contents of a writing. An event, for example, may be proven by oral testimony even though, for convenience, it has been evidenced by a writing. Illustratively, witnesses may testify to the fact of marriage without first producing or accounting for the nonproduction of the certificate or record of the marriage. *Fuquay v. State*, 217 Ala. 4, 114 So. 898 (1927). One may relate the cost of a building without producing checks and receipts. *Johnson v. Langley*, 495 So.2d 1061 (Ala.1986). This is consistent with that line of decisions permitting a witness, over a best evidence objection, to relate the payment of money without producing the receipt or showing an excuse for not producing it. *Monfee v. Hagan*, 201 Ala. 627, 79 So. 189 (1918). See C. Gamble, *McElroy's Alabama Evidence* § 226.03 (4th ed. 1991).

The Rule 1002 preference for the original is expressly subordinate to other rules and statutes that provide for the admissibility of secondary evidence, such as copies or oral testimony, without the offeror's producing the original or accounting for its nonproduction. See, e.g., Ala.R.Civ.P. 44(a) (dealing with admissibility of copies of public records); Ala. Code 1975, § 35-4-27 (certified copies of probate records as statutory exception to best evidence rule); Ala. Code 1975, § 41-5-21 (certified copy of report by examiner of public accounts).

Rule 1002, although not identical to it, is based on Fed.R.Evid. 1002.