

## **Alabama Rules of Evidence**

### Article X. Contents of Writings

#### **Rule 1003.**

##### **Admissibility of duplicates.**

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

##### **Advisory Committee's Notes**

The term "duplicate" is defined in Rule 1001(3) as including "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." Rule 1003 exempts duplicates from the best evidence rule of preference for originals. A duplicate is thus admissible, without accounting for the original or establishing its unavailability, unless there exists either a genuine issue as to the authenticity of the original or the circumstances would make it unfair to admit the duplicate in lieu of the original.

This treatment of duplicates is contrary to traditional Alabama practice. Photocopies, for example, generally have not been exempt from a best evidence objection. See *Kessler v. Peck*, 266 Ala. 669, 98 So.2d 606 (1957). See also C. Gamble, *McElroy's Alabama Evidence* § 225.01(4) (4th ed. 1991); J. Colquitt, *Alabama Law of Evidence* § 10.3 (1990). Duplicates may be admissible without regard to the best evidence preference for originals; however, they could also be admissible under some other theory, such as constituting a duplicate original. See Ala.R.Evid. 1001(2) (setting forth a definition of "original" that includes copies that were intended to have the same effect as the original). Compare *Tolbert v. State*, 450 So.2d 805 (Ala.Crim.App.1984). Duplicates, in the form of photocopies, have received special statutory exemption from the hearsay rule under Alabama law. See *McClain v. State*, 473 So.2d 612 (Ala.Crim.App.1985); Ala. Code 1975, § 12-21-44 (photocopies of business records); Ala. Code 1975, § 5-4A-1 (microphotographic reproductions of bank records). See also Ala.R.Evid. 1002.

This special treatment afforded duplicates is inapplicable if a genuine question is raised as to the authenticity of the original. See *Myrick v. United States*, 332 F.2d 279 (5th Cir.1963), cert. denied, 377 U.S. 952 (1964) (no error in admitting photostatic copies of checks instead of original microfilm in absence of suggestion to trial judge that photostatic copies were incorrect). Additionally, the duplicate is not admissible under Rule 1003 without the offeror's producing or accounting for the nonproduction of the original, if the circumstances would make it unfair to admit the duplicate in lieu of the original. Such circumstances would be presented when only a portion of the original is reproduced and fairness dictates that the remainder be made available to the opposing party for cross-examination. See *United States v. Alexander*, 326 F.2d 736 (4th Cir.1964); Fed.R.Evid. 1003 advisory committee's note.