

Alabama Rules of Evidence

Article X. Contents of Writings

Rule 1005.

Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Advisory Committee's Notes

Because of the inconvenience of removing original public records from their respective repositories, Rule 1005 excuses their nonproduction. If the document qualifies as a public record, meaning that it is an official record or a document authorized to be recorded or filed and that it is actually recorded or filed, then its contents may be proven by a copy. Such a copy must be authenticated either by its being certified in compliance with Rule 902 or by the testimony of a witness who has compared it with the original. The rule expressly calls for the admission of data compilations in any form, thus providing the elasticity necessary to embrace computer records.

The present exception recognizes degrees of secondary evidence as to the contents of the original. This means that the offering party who wishes to prove secondary evidence of the document or record's contents must first attempt to obtain a copy that is authenticated either by certification or by the testimony of a witness. Only if such a copy cannot be obtained with reasonable diligence is the offeror authorized to prove the contents by other secondary evidence.

Rule 1005, which is identical to its counterpart under the Federal Rules of Evidence, is consistent with preexisting practice in Alabama. *Zinn v. State*, 527 So.2d 148 (Ala.1988); *Stevenson v. Moody*, 85 Ala. 33, 4 So. 595 (1888). See C. Gamble, *McElroy's Alabama Evidence* § 218.01 (4th ed. 1991). The courts of Alabama long have admitted a copy vouched for by a witness who has compared it with the original and who can testify that it is a correct copy of that original. See *Miller v. Boykin*, 70 Ala. 469 (1881). Customarily, however, the form of the evidence is a certified copy of the public record. *Bentley v. State*, 450 So.2d 197 (Ala.Crim.App.1984); *Lidge v. State*, 419 So.2d 610 (Ala.Crim.App.), cert. denied, 419 So.2d 616 (Ala.1982).