

## **Alabama Rules of Evidence**

### Article IX. Authentication and Identification

#### **Rule 903.**

##### **Subscribing witness's testimony unnecessary.**

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

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

Historic Alabama practice has embraced a rule of preference that generally calls for the production of attesting witnesses, or an accounting for their unavailability, whenever one is proving the execution of an attested document. See *Snead v. Stephens*, 242 Ala. 76, 5 So.2d 740 (1941). See also C. Gamble, *McElroy's Alabama Evidence* § 233.01(1) (4th ed. 1991); J. Colquitt, *Alabama Law of Evidence* § 9.3 (1990). Over the years, numerous exceptions have been created to this rule of preference, and under them the offering party is free to go directly to alternative proof of authenticity without producing the attesting witness or accounting for that witness's unavailability. See, e.g., Ala. Code 1975, § 12-21-61 (declaring the attesting witness rule inapplicable to ancient writings, official bonds, writings that are only collaterally involved, writings as to which the maker testifies to proper execution, and writings that are self-proving); Ala. Code 1975, § 12-21-60 (permitting the execution of a writing to be proved without producing attesting witnesses if testimony of the maker is offered); Ala.R.Civ.P. 44(1) (containing many of the exceptions to the attesting witness rule embodied in the statutes just listed). Compare Ala.R.Evid. 901(b)(8) (recognizing the self-authentication of ancient documents); Ala.R.Evid. 902 (dealing with the self-authentication of certain public records or documents).

Rule 903 is identical to its federal counterpart and is consistent with the above-listed exceptions; it abandons across-the-board any necessity of producing attesting or subscribing witnesses unless the law governing the validity of the writing requires it. See Fed.R.Evid. 903. One instance under which attesting witnesses will have to be produced or their unavailability accounted for, after adoption of Rule 903, is found in the statutory provision calling for the production of available attesting witnesses to prove the proper execution of a will. Ala. Code 1975, § 43-8-169.

Rule 903 supersedes Ala.R.Civ.P. 44(i) insofar as the latter demands the production of, or an accounting for the unavailability of, subscribing witnesses in instances other than those in which it is required by the law governing the validity of the document in question.