

Rule 901. Requirement of Authentication or Identification

(a) General provisions. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard first-hand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by Legislative Act or by other rules prescribed by the Supreme Court pursuant to statutory authority.

Committee Comment - 1977***Rule 901(a)***

Authentication is simply a more specialized application of the principles of relevancy. Before probative value can be attached to an offer of evidence it must be established that the evidence, be it a chattel, a writing, or a conversation is precisely what the proponent claims it to be. The concept is frequently easy in application but most difficult to define. As a consequence the rule consists of a general statement followed by a number of illustrations setting forth possible applications of the

general rule. The illustrations are not intended to limit the general rule in other areas, but are to serve only as examples of how the rule might be applied.

The general rule treats authentication in terms of a condition precedent to admissibility. To satisfy the condition precedent the proponent must present evidence "sufficient to support a finding" by the trier of fact that the offered evidence is what it is claimed to be. Authentication is governed by Rule 104(b) which leaves the order of proof subject to the discretion of the court. Rule 901 does not distinguish between the authentication of writings and chattels, and applies equally to both.

Rule 901(b)

The illustrations are set out as guidelines to the application of the general rule. Rule 901(a) requires that the evidence be sufficient to support a finding that the matter in question is what it is purported to be. It is possible that a factual situation might fit within the letter of a particular illustration and yet, because of peculiar circumstances, lack the probative value required to satisfy the standard in subdivision (a). Certainly there will be occasions when the authentication requirement is met by methods not suggested in subdivision (b).

Rule 901(b)(1)

Perhaps the most common method of authentication is the use of testimony by a witness with knowledge that the offer of evidence is what it is represented to be. See Rule 602.

Rule 901(b)(2)

*This illustration makes it clear that a lay witness who is familiar with a person's handwriting should be able to give an opinion for authentication purposes. See Rule 701. See also *Johnson v. Burmeister*, 182 Minn. 385, 386-387, 234 N.W. 590-591 (1931). However, the familiarity with the handwriting must not have been acquired for the purposes of the litigation.*

Rule 901(b)(3)

*In addition to the methods suggested in Rule 901(b)(1) and (2), a letter could be authenticated by opinion testimony of a handwriting expert, or through comparison by the trier of fact with authenticated exemplars. The practice of allowing jurors to determine the authenticity of a writing has been approved in Minnesota. *State v. Houston*, 278 Minn. 41, 44, 153 N.W.2d 267, 269 (1967). The rule should not be read as a statement that jurors can authenticate other matters by comparison techniques without the benefit of expert testimony, e.g., ballistics or fingerprints. These questions must be resolved on a case-by-case basis.*

Rule 901(b)(4)

This illustration indicates that an offer of evidence can be authenticated by circumstantial evidence. Typically, letters and telephone conversations are authenticated by the well known "reply doctrine."

Rule 901(b)(5)

*This provision is consistent with Minnesota law. A properly qualified witness may give his opinion as to the identity of a voice whether comparing voices heard first-hand or through a mechanical or electronic transmission or recording. *State ex rel. Trimble v. Hedman*, 291 Minn. 442, 450, 192 N.W.2d 432, 437 (1971). In addition, the Court in *Trimble* makes it clear that voiceprints are admissible at trial at least for the purposes of corroborating or impeaching other voice identifications. *Id.* at 457, 192 N.W.2d at 441. Although the illustration does not directly*

speak to voiceprints, their admission for identification purposes would not be inconsistent with the underlying rationale. See also Rule 901(b)(9).

Rule 901(b)(6)

Telephone conversations can be authenticated by a number of methods, e.g. the reply doctrine, Rule 901(b)(4); or voice recognition, Rule 901(b)(5). If the number was assigned to a person the conversation may be authenticated by introducing evidence that the call was made to the properly assigned number and the person answering the phone identified himself or his identity can be established by other circumstances. If the number was assigned to a business the conversation may be authenticated by introducing evidence that the call was made to the properly assigned number and the conversation related to the type of business reasonably transacted over the telephone.

Rule 901(b)(7)

To authenticate a public or official record, it need only be established that the document is from the custody of the appropriate office. See Rules 902 and 1005 for the introduction of copies of public records. The hearsay aspects of certain public records are addressed in Rule 803 (8), (9), (10), (14), and (15). See generally, Minn. R. Civ. P. 44 and Minnesota Statutes 1974, section 600.13.

Rule 901(b)(8)

The hearsay problems that are associated with the admissibility of ancient documents are covered in Rule 803(16). The authenticity of a document or data compilation can be established by showing that it is at least 20 years old, found in a place where such documents or compilations are normally kept, and in such condition so as not to create suspicion as to its authenticity. The rule is drafted to reflect contemporary methods of data processing, retention, and storage.

Rule 901(b)(9)

The authentication of many different types of scientific testimony is addressed by this illustration. The admissibility of evidence based on X-rays, computer printouts, voiceprints, public opinion polls, etc., all depend upon a showing that the process or system used does produce an accurate result. The degree of accuracy required might vary with the purposes for which the evidence is being offered, the state of the art, and the type of method or process involved.

Rule 901(b)(10)

This illustration is intended to make it clear that Rule 901 does not limit or supersede other forms of authentication. Existing statutes and court rules providing for authentication of certain evidence remain in effect. See e.g., Minn. R. Civ. P. 44, 80 and 30.06. Minnesota Statutes 1974, sections 175.11 and 600.13.