

TENTATIVE DRAFT #1
ARTICLE X
FOR DISCUSSION ONLY

REVISION OF UNIFORM RULES OF EVIDENCE ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

FEBRUARY 20-22, 1998

REVISION OF UNIFORM RULES OF EVIDENCE ACT

With Comments

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Rule 1001. [Definitions].

(1) **Record.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(1)(2)~~ **Writings and recordings.** "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, ~~magnetic impulse~~, mechanical or electronic recording, ~~or other form of data compilation~~ or other technology in perceivable form.

~~(2)(3)~~ **Photographs.** "Photographs" are forms of a record which include still photographs, X-ray films, video tapes, and motion pictures.

(4) Images. "Images" are forms of a record which include digitized copies or images of information.

~~(3)~~**(5) Original.** An "original" of a record, writing₂ or recording is the record, writing₂ or recording itself₂ or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, including by stored images, any printout of a record or other perceivable output readable by sight, shown to reflect the data accurately, is an "original."

1 ~~(4)(6)~~ **Duplicate.** A "duplicate" is a counterpart reproduced by any
2 technique that reproduces the original in perceivable form or that is produced by the same
3 impression as the original, or from the same matrix, or by means of photography,
4 including enlargements and miniatures, or by mechanical or electronic re-recording, or by
5 chemical reproduction, or by other equivalent techniques which accurately reproduces the
6 original.

7 **Reporter's Note**

8 The proposed amendments to Uniform Rule 1001, as well as the
9 amendments to the following Uniform Rules 1002 through 1008 in Article X, define and
10 embellish on the term "record" which has been substituted for the word "writing"
11 appearing throughout the existing Articles I through IX of the Uniform Rules of Evidence
12 of 1974, As Amended. Although both the Federal Rules and the Uniform Rules of
13 Evidence presently include specific reference, when appropriate, to "data compilations"
14 to accommodate the admissibility of records stored electronically, many business and
15 governmental records do not now consist solely of data compilations. Rather, in today's
16 technological environment, records are kept in a variety of mediums other than in just
17 data compilations. "Records" may include items created, or originated, on a computer,
18 such as through word processing or spreadsheet programs; records sent and received
19 through electronic communications, such as electronic mail; data stored through scanning
20 or image processing of paper originals; and information compiled into data bases. One,
21 or all, of these processes may be involved in ordinary and customary business and
22 governmental record-keeping. Modern technology thus dictates that any of the foregoing
23 records should be admissible when they are relevant providing reasonable thresholds of
24 evidentiary reliability are satisfied. The amendments to the Uniform Rules in Articles I
25 through IX, as well as in Article X, are intended to accommodate these innovations in
26 record keeping, as well as to continue to accommodate more traditional forms of record
27 keeping, such as writings, recordings and photographs. See, in this connection, Fry,
28 Patricia Brumfield, X Marks the Spot: New Technologies Compel New Concepts for
29 Commercial Law, 26 Loyola of Los Angeles L. Rev. 607 (1993).

30
31 The proposed amendments to Rules 1001 through 1008 are based in part
32 on recommendations of Commissioner Patricia Brumfield Fry of North Dakota, the Task
33 Force on Electronic Evidence, Subcommittee on Electronic Commerce, Committee on
34 Law of Commerce in Cyberspace, Section on Business Law of the American Bar
35 Association and the definition of "record" derived from ' 5-102(a)(14) of the Uniform
36 Commercial Code. The proposed amendments thus carry forward established policy of
37 the Conference to accommodate the use of electronic evidence in business and

1 governmental transactions. See also, in this connection, the Memorandum of the
2 Reporter to the Evidence Subcommittee, Admissibility of Evidence of Electronically
3 Based Communications and Transactions Under the Uniform Rules (April 17, 1995) and
4 the Memorandum of Patricia Brumfield Fry to the Reporter, Evidence Rules and Record
5 (April 11, 1995).

1 **Rule 1002. [Requirement of Original].**

2

3 To prove the content of a record, writing, recording, or photograph, the original

4 record, writing, recording, or photograph is required, except as otherwise provided in

5 these rules or by [rules adopted by the Supreme Court of this State or by] statute.

6

7 **Reporter's Note**

8 The amendments to Rule 1002 are proposed to incorporate the term "record" as

9 defined in the proposed amendments to Rule 1001.

1 **Rule 1003. [Admissibility of Duplicates].**

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

5 **Reporter's Note**

6 There are no proposals at the present time for amending Rule 1003.

1 **Rule 1004. [Admissibility of Other Evidence of Contents].**

2 The original is not required, and other evidence of the contents of a record,
3 writing, recording, or photograph is admissible if:

4 **(1) Originals lost or destroyed.** All originals are lost or have been
5 destroyed, unless the proponent lost or destroyed them in bad faith;

6 **(2) Original not obtainable.** No original can be obtained by any
7 available judicial process or procedure;

8 **(3) Original in possession of opponent.** At a time when an original
9 was under the control of the party against whom offered, he was put on notice, by the
10 pleadings or otherwise, that the contents would be a subject of proof at the hearing; and
11 he does not produce the original at the hearing; or

12 **(4) Collateral matters.** The record, writing, recording, or photograph
13 is not closely related to a controlling issue.

14 **Reporter's Note**

15 The amendments to Rule 1004 are proposed to incorporate the term "record" as
16 defined in the proposed amendments to Rule 1001.

1 **Rule 1005. [Public Records].**

2 The contents of an official record, or of a private record ~~document~~ authorized to
3 be recorded or filed in the public records and actually recorded or filed, ~~including data~~
4 ~~compilations in any form~~, if otherwise admissible, may be proved by a copy in
5 perceivable form, certified as correct in accordance with Rule 902 or testified to be
6 correct by a witness who has compared it with the original. If a copy in perceivable form
7 complying with the foregoing cannot be obtained by the exercise of reasonable diligence,
8 other evidence of the contents may be admitted.

9 **Reporter's Note**

10 The amendments to Rule 1005 are proposed to incorporate the term "record" as
11 defined in the proposed amendments to Rule 1001.

1 **Rule 1006. [Summaries].**

2 The contents of voluminous records, writings, recordings, or photographs which
3 cannot conveniently be examined in court may be presented in the form of a chart,
4 summary, ~~or~~ calculation, or other perceivable presentation. The originals, or duplicates,
5 shall be made available for examination or copying, or both, by other parties at a
6 reasonable time and place. The court may order that they be produced in court.

7 **Reporter's Note**

8 The amendments to Rule 1006 are proposed to incorporate the term "record" as
9 defined in the proposed amendments to Rule 1001.

1 **Rule 1007. [Testimony or recorded ~~Written~~ Admission of Party].**

2 Contents of records, writings, recordings, or photographs may be proved by the
3 testimony or deposition of the party against whom offered or by ~~his~~ that party's written
4 admission, without accounting for the nonproduction of the original.

5 **Reporter's Note**

6 This proposal for amending Rule 1007 eliminates the gender-specific language in
7 Rule 1007. This change is technical and no change in substance is intended.

8
9 In addition, amendments to Rule 1007 are proposed to incorporate the term
10 "record" as defined in the proposed amendments to Rule 1001.

1 **Rule 1008. [Functions of Court and Jury].**

2 Whenever the admissibility of other evidence of contents of records, writings,
3 recordings, or photographs under these rules depends upon the fulfillment of a condition
4 of fact, the question whether the condition has been fulfilled is ordinarily for the court to
5 determine in accordance with the provisions of Rule 104. However, when an issue is
6 raised whether (1) the asserted record or writing ever existed, or (2) another record,
7 writing, recording, or photograph produced at the trial is the original, or (3) other
8 evidence of contents correctly reflects the contents, the issue is for the trier of fact to
9 determine as in the case of other issues of fact.

10 **Reporter's Note**

11 The amendments to Rule 1008 are proposed to incorporate the term "record" as
12 defined in the proposed amendments to Rule 1001.