

Authenticating Evidence

Any evidence you want to admit during trial must be authenticated unless it falls into the category of self-authenticating evidence. Authentication means to prove or verify if a thing is real.

[Federal Rule of Evidence 902](#) defines categories of evidence that are considered "self-authenticating." This means the Court assumes they are real. They do not need any extra proof to be admitted into evidence at a hearing or trial.

Under Federal Rule of Evidence 902, these are self-authenticating:

- Domestic Public Documents Under Seal
- Domestic Public Documents Not Under Seal
- Foreign Public Documents
- Certified Copies of Public Records
- Official Publications
- Newspapers and Periodicals
- Trade Inscriptions and the Like
- Acknowledged Documents
- Commercial Paper and Related Documents
- Presumptions Under a Federal Statute
- Certified Domestic Records of a Regularly Conducted Activity
- Certified Foreign Records of a Regularly Conducted Activity
- Certified Records Generated by an Electronic Process or System
- Certified Data Copied from an Electronic Device, Storage Medium, or File

While these types of evidence are considered self-authenticating, their admissibility can still be challenged based on relevancy.

Unless the evidence you want to present is considered self-authenticating under Rule 902 of the Federal Rules of Evidence, it will have to be authenticated.

Federal Rule of Evidence 901 provides these ways to authenticate evidence:

1. Testimony of a Witness with Knowledge. This can be testimony from the custodian of records at a business or government agency.

2. Nonexpert Opinion About Handwriting. This is testimony from someone who is not an expert. This person testifying should know the person's handwriting because of their familiarity with the signature. This familiarity cannot be acquired for the current litigation. This means that the witness cannot study the handwriting just to testify about its authenticity during litigation. People who could be familiar with the handwriting of others include delivery people, merchants, and bank tellers.

3. Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the judge or jury.

4. Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

5. Opinion About a Voice. An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

6. Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

- A particular person, if circumstances, including self-identification, show that the person answering was the one called; or
- A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

7. Evidence About Public Records. Evidence that:

- A document was recorded or filed in a public office as authorized by law; or
- A purported public record or statement is from the office where items of this kind are kept.

8. Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

- Is in a condition that creates no suspicion about its authenticity
- Was in a place where, if authentic, it would likely be; and
- Is at least 20 years old when offered.

9. Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

10. Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

[**Federal Rules of Evidence 803\(6\)**](#) allows some evidence to be authenticated by certification of the records custodian. The records custodian does not have to testify in court as to the authenticity of the document if they have notarized certification. To authenticate the records, you would provide/hand in an affidavit for the records custodian's signature when you ask for your medical records. Call your medical provider's business office to find out who to ask and whether there is a form you should use to ask for your medical records. An example of an affidavit and request form is included in the end materials of this handbook.

Let's imagine you do not have full control of your limbs and make involuntary movements. If this is relevant to your case, you can use the medical evidence that you cannot control your limb movements. To use it, you would file/turn in an affidavit from your doctor's office that the records are a business record. Medical records fall under Rule 803 of the Federal Rules of Evidence, which explains the exceptions to the Hearsay Rule that apply at trial even if the person who made the statement is available to testify.

If your evidence does not fall under the self-authenticating rule or you cannot authenticate it by affidavit or certificate, you will have to call a witness to give testimony that the document or thing you are asking to be admitted into evidence is what you claim it is.

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