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Authentication

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AUTHENTICATION

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Ohio Rule 901 governs authentication, including the authentication of documents, the identification of real evidence, and the verification of a speaker's voice. The authentication requirement imposes on the offering party the burden of proving that an item of evidence is genuine — that it is what it purports to be. Typically, this rule requires the proponent to use a sponsoring witness to identify documents and real evidence. A select category of documents, however, is self-authenticating under Rule 902.

In making authentication a prerequisite to admissibility, Rule 901 is consistent with prior Ohio law. *See* Steinle v. Cincinnati, 142 Ohio St. 550, 53 N.E.2d 800 (1944) (document inadmissible due to lack of authentication); Gutman v. Industrial Comm., 71 Ohio App. 383, 385, 50 N.E.2d 187, 188 (1942) ("When an object, article, machine, machine part, tool, weapon or similar concrete thing is to be used in evidence to prove a fact with which it is related as of a previous time or event, it is not competent evidence unless it is first shown to be substantially in the condition as of the time or event to which it is claimed to be related.").

Because of the availability of pretrial discovery procedures, authentication is rarely a significant problem in civil cases. For example, Ohio Civ. R. 36(A) provides for requests for admissions as to the genuineness of documents. In addition, pretrial conferences under Civ. R. 16 are designed, in part, to obtain "admissions into evidence of documents and other exhibits which will avoid unnecessary proof." In criminal cases, however, the authentication rule still plays a critical role.

TRIAL COURT'S FUNCTION

Rule 901(A) is the general provision governing authentication. It reads:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims.

The rule represents a special application of Rule 104(B) on conditional relevancy. The trial court does not decide whether evidence is authentic by a preponderance of evidence, the typical standard for admissibility issues. Rather, the court decides only whether sufficient evidence has been introduced to support a finding of authenticity — a prima facie standard. If sufficient evidence has been adduced to support a finding of authenticity, the evidence is admitted, and the jury decides whether the evidence is authentic. Of course, the opposing party may introduce evidence to dispute authenticity.

Rule 901(B) presents examples of traditional methods of authentication. These examples are merely illustrative; the list is not exhaustive.

OTHER EVIDENCE RULES

Rule 901 governs only authentication. A document properly authenticated under Rule 901 may nevertheless be inadmissible because it fails to satisfy the requirements of the hearsay rule (Rule 802), or the best evidence rule (Rule 1002), or because its probative value is substantially outweighed by its prejudicial effect (Rule 403(A)).

REAL EVIDENCE: CHAIN OF CUSTODY

Real evidence — tangible evidence historically connected to a case — may be identified in either of two ways. First, real evidence may be identified by means of a "chain of custody." Second, real evidence may be identified by establishing characteristics that make the item "readily identifiable." *See* McCormick, *Evidence* 667-68 (3d ed. 1984); Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 Am. Crim. L. Rev. 527 (1983).

If an item of evidence is readily identifiable, there is usually no need to establish a chain of custody. In State v. Wilkins, 64 Ohio St.2d 382, 415 N.E.2d 303 (1980), the Ohio Supreme Court wrote: "A strict chain of custody is not always required in order for physical evidence to be admissible. . . In order to establish sufficient relevance of clothing to the crime the offeror of the evidence must show that there is identity between the clothing and the crime, that the clothing is in substantially the same condition as it was at the time of the crime, and that it is probative of an element of the crime." *Id.* at 389, 415 N.E.2d at 308. In State v. Conley, 32 Ohio App.2d 54, 288 N.E.2d 296 (1971), the court commented: "If an exhibit is directly identified by a witness as the object which is involved in

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the case, then that direct identification is sufficient. Such is the case with many objects which have special identifying characteristics, such as a number or mark, or made to have such identifying characteristics by special marks." *Id.* at 59, 288 N.E.2d at 300.

Numerous examples of authenticating readily identifiable objects are found in the cases. All these examples involve objects whose characteristics somehow make them unique. For example, any item imprinted with a serial number, such as a weapon, may be identified by that number. Jackson v. State, 241 Ark. 850, 854, 410 S.W.2d 766, 769 (1967). Second, an object that is inscribed with the initials or markings of a police officer or other person may be readily identifiable. United States v. Madril, 445 F.2d 827, 828 (9th Cir. 1971)(pistol), *vacated on other grounds*, 404 U.S. 1010 (1972). Third, an object may possess distinctive natural characteristics which may make it identifiable. United States v. Briddle, 443 F.2d 443, 448-49 (8th Cir.), *cert. denied*, 404 U.S. 942 (1971).

See also State v. Kehn, 50 Ohio St.2d 11, 16, 361 N.E.2d 1330, 1333-34 (1977), *cert. denied*, 434 U.S. 858 (1977) (address book admitted); Avon Lake v. Anderson, 10 Ohio App.3d 297, 298, 462 N.E.2d 188, 189 (1983) (officer identified his initials on items); Gutman v. Industrial Comm., 71 Ohio App. 383, 385-86, 50 N.E.2d 187, 188 (1942) (steering wheel excluded due to lack of identification).

Chain of Custody

Real evidence may be identified by means of a chain of custody; that is, the testimony of witnesses who have had custody of the evidence from the time of seizure until the time of trial. This means of identification is simply a category of Rule 901(B)(1) — authentication by testimony. *See* McCormick, *Evidence* 668 (3d ed. 1984); Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 Am. Crim. L. Rev. 527 (1983). A chain of custody is required only if the item is not readily identifiable or is susceptible to alteration or contamination.

In State v. Moore, 47 Ohio App.2d 181, 353 N.E.2d 866 (1973), the court commented:

> The burden of establishing a chain of evidence to identify the specimens or exhibits is upon the state. . . . However, the burden is not an absolute one. Where there is no evidence indicating confusion with the identity of the specimen or of the possibility of tampering with it, then the testimony of the expert should be admitted. . . . The practicalities of proof do not require the state to negate all possibilities of substitution or tampering. The state need only establish that it is reasonably certain that substitutions, alternation or tampering did not occur. *Id.* at 183, 353 N.E.2d at 870.

See also State v. Blevins, 36 Ohio App.3d 147, 521 N.E.2d 1105 (1987); State v. Reese, 56 Ohio App.2d 278, 382 N.E.2d 1193 (1978); State v. Conley, 32 Ohio App.2d 54, 288 N.E.2d 296 (1971); Columbus v. Marks, 118 Ohio App. 359, 194 N.E.2d 791 (1963); State v. Myers, 82 Ohio Abs. 216, 164 N.E.2d 585 (App. 1959).

DOCUMENTARY EVIDENCE

Most documents are not self-authenticating. Therefore, an authenticating witness must be called to identify the document. Rule 901(B) provides numerous illustrations.

Testimony of Witness with Knowledge

Rule 901(B)(1) provides that the testimony of a witness with knowledge is sufficient to authenticate an item of evidence. The Advisory Committee's Note to Federal Rule 901 contains the following comment: "Example (1) contemplates a broad spectrum ranging from testimony of a witness who was present at the signing of a document to testimony establishing narcotics as taken from an accused and accounting for custody through the period until trial, including laboratory analysis." *See* St. Paul Fire & Marine Insurance Co. v. Ohio Fast Freight, 8 Ohio App.3d 155, 158, 456 N.E.2d 551, 559 (1982) ("The common manner of identifying a document is through testimony of a witness with knowledge").

Nonexpert Opinion of Handwriting

Rule 901(B)(2) provides that nonexpert opinion testimony as to the genuineness of handwriting is sufficient to authenticate a document. The offering party must establish that the witness is sufficiently familiar with the handwriting of the purported author to offer a valid opinion as to the authenticity of the document in question. *See* McCormick, *Evidence* § 221 (3d ed. 1984); 3 Wigmore, *Evidence* §§ 693-708 (Chadbourn rev. 1970); 7 *Id.* § 1996 (Chadbourn rev. 1978). According to the rule, familiarity with the handwriting of another acquired "for purposes of the litigation" may not be the basis of authentication.

The Advisory Committee's Note to Federal Rule 901 comments: "Example (2) states conventional doctrine as to lay identification of handwriting, which recognizes that a sufficient familiarity with the handwriting of another person may be acquired by seeing him write, by exchanging correspondence, or by other means, to afford a basis for identifying it on subsequent occasions."

The rule is consistent with prior Ohio law. *See* Holtz v. Dick, 42 Ohio St. 23 (1884); Hess v. State, 5 Ohio 5 (1831). *See also* Bell v. Brewster, 44 Ohio St. 690, 696, 10 N.E. 679, 683 (1887); Railroad Co. v. Schultz, 43 Ohio St. 270, 281, 1 N.E. 324, 331 (1885); Hicks v. Person, 19 Ohio 426, 441 (1850).

Comparison by Trier or Expert Witness

Rule 901(B)(3) provides that an item of evidence may be authenticated by comparison with specimens by the trier of fact or by an expert witness. *See also* Rule 702 (qualifications of expert witnesses). The rule is not limited to comparisons of handwriting; it encompasses comparisons of other types of evidence, such as bullets, blood specimens, and fingerprints. *E.g.*, State v. Bayless, 48 Ohio St.2d 73, 357 N.E.2d 1035, *cert. denied*, 438 U.S. 911 (1978) (bullet comparison); Burchett v. State, 35 Ohio App. 463, 172 N.E. 555 (1930) (bullet comparison). *See generally* Giannelli & Imwinkelried, *Scientific Evidence* ch. 14 (1986).

The Ohio cases have recognized the admissibility of expert testimony on handwriting comparisons. *See* Bell v. Brewster, 44 Ohio St. 690, 10 N.E. 679 (1887); Koons v. State, 36 Ohio St. 195 (1880); Bragg v. Colwell, 19 Ohio St. 407 (1869); Calkins v. State, 14 Ohio St. 222 (1863); Hicks v. Person, 19 Ohio 426 (1850). *See also* Giannelli & Imwinkelried, *Scientific Evidence* ch. 21 (1986); McCormick, *Evidence* § 205 (3d ed. 1984); 7 Wigmore, *Evidence* §2008-2015 (Chadbourne rev. 1978).

A recent review of handwriting comparison raises some interesting questions. A review of five handwriting comparison proficiency tests showed that at best "[d]ocument examiners were correct 57% of the time and incorrect 43% of the time." Risinger, Denbeaux & Saks, *Exorcism of Ignorance as a Proxy For Rational Knowledge: The Lessons of Handwriting Identification "Expertise,"* 137 U. Pa. L. Rev. 731, 748 (1989).

The handwriting exemplars (specimens) that are used for comparative purposes must themselves be authenticated. In other words, the rule raises a "double authentication" problem; the known exemplars must be authenticated before the item of evidence (the questioned document) is compared. The common law tradition placed the responsibility for determining the authenticity of exemplars upon the trial court. *See* Pavey v. Pavey, 30 Ohio St. 600, 603 (1876) (beyond reasonable doubt); Bragg v. Colwell, 19 Ohio St. 407 (1869). Rule 901 changes this approach, treating authentication of exemplars the same as authentication of the questioned document. The trial court decides only whether there is sufficient evidence to support a finding of authenticity of the exemplars. The jury then decides whether the exemplars are, in fact, authentic. The Advisory Committee's Note to Federal Rule 901 comments:

> While explainable as a measure of prudence in the process of breaking with precedent in the handwriting situation, the reservation to the judge of the question of the genuineness of exemplars and the imposition of an unusually high standard of persuasion are at variance with the general treatment of relevancy which depends upon fulfillment of a condition of fact. Rule 104(b). No similar attitude is found in other comparison situations, e.g., ballistics comparison by jury. . . and no reason appears for its continued existence in handwriting cases. Consequently example (3) sets no higher standard for handwriting specimens and treats all comparison situations alike, to be governed by Rule 104(b).

Constitutional challenges to the obtaining of handwriting exemplars from criminal defendants have been raised. Compelling an accused to provide handwriting exemplars does not violate the privilege against self-incrimination. *See* United States v. Mara, 410 U.S. 19 (1973); Gilbert v. California, 388 U.S. 263 (1967). Exemplars which are the product of an illegal arrest or seizure, however, may be suppressed. *See* Davis v. Mississippi, 394 U.S. 721 (1969).

Distinctive Characteristics

Rule 901(B)(4) provides that "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances" is sufficient authentication of an item of evidence. The Advisory Committee's Note to Federal Rule 901 states:

> The characteristics of the offered item itself, considered in the light of circumstances, afford authentication techniques in great variety. Thus a document or telephone conversation may be shown to be emanated from a particular person by virtue of its disclosing knowledge of facts known peculiarly to him; . . . similarly, a letter may be authenticated by content and circumstances indicating it was in reply to a duly authenticated one. . . Language patterns may indicate authenticity or its opposite. . .

See McCormick, *Evidence* § 225 (3d ed. 1984) (reply letters and telegrams); 7 Wigmore, *Evidence* § 2148-2157 (Chadbourn rev. 1978).

Public Records and Reports

Rule 901(B)(7) provides that 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" is sufficient authentication of such record or report. "Public records are regularly authenticated by proof of custody, without more. . . The example extends the principle to include data stored in computers and similar methods. . ." Advisory Committee's Note, Fed. R. Evid. 901. *See also* McCormick, *Evidence* § 224 (3d ed. 1984); 7 Wigmore, *Evidence* § 2158, 2159 (Chadbourn rev. 1978).

This rule deals with only one method of authenticating public records. Many public records are self-authenticating under Rule 902. In addition, Rule 901(B)(10) provides that any method of authentication recognized by statute or rule may be used. Authentication of public records is addressed by a number of such provisions. *See also* Rule 803(8) to (10) (hearsay exceptions for public records); Rule 1005 (best evidence exception for public records).

Ancient Documents

Rule 901(B)(8) provides a method for authenticating ancient documents, including data compilations. *See* Matuszewski v. Pancoast, 38 Ohio App.3d 74, 526 N.E.2d 80 (1987); Romohr v. Frank, 20 Ohio Misc.2d 4, 485 N.E.2d 841 (C.P. 1984). Under that provision an ancient document is authenticated by evidence showing the document "(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 twenty years or more at the time it is offered."

Rule 901 governs only the authentication aspects of ancient documents; Rule 803(16) covers the hearsay aspects. The latter rule recognizes a hearsay exception for "[s]tatements in a document in existence twenty years or more the authenticity of which is established." The rule follows Federal Rule 803(16) in reducing the common law time period from thirty to twenty years. Data compilations as well as written documents are covered by the rule.

The ancient documents rule originated not as an exception to the hearsay rule but as a rule of authentication. A number of jurisdictions, however, recognized a hearsay exception for ancient documents. *See* McCormick, *Evidence* § 323 (3d ed. 1984). The rationale underlying the exception is that the "danger of mistake is minimized by authentication requirements, and age affords assurance that the writing antedates the present controversy." Advisory Committee's Note, Fed. R. Evid. 803.

The prior Ohio cases had recognized the ancient documents rule as both a hearsay exception and a method of authentication. *See* Broadsword v. Kauer, 161 Ohio St. 524, 120 N.E.2d 111 (1954) (method of authenticating wills, bonds, deeds, receipts, letters, and entries); Wright

v. Hull, 83 Ohio St. 385, 94 N.E. 813 (1911); Bell v. Brewster, 44 Ohio St. 690, 10 N.E. 679 (1887); Burgan v. Siegman, 9 Ohio App. 84 (1917) (plats); Trustees of German Township v. Farmers & Citizens Savings Bank Co., 66 Ohio Abs. 332, 113 N.E.2d 409 (C.P. 1953) (newspaper notices), *aff'd*, 96 Ohio App. 483, 115 N.E.2d 690 (1953).

Process or System

Rule 901(B)(9) provides that evidence "describing a process or system used to produce a result and showing that the process or system produces an accurate result" is sufficient to authenticate evidence derived from such a process or system. The Advisory Committee's Note to Federal Rule 901 comments:

> Example (9) is designed for situations in which the accuracy of a result is dependent upon a process or system which produces it. X rays afford a familiar instance. Among more recent developments is the computer. . . Example (9) does not, of course, foreclose taking judicial notice of the accuracy of the process or system.

If the process or system is not an appropriate subject of judicial notice, expert testimony is often required to establish the accuracy of the process. *See generally* Rule 201 (judicial notice); Rule 702 (expert testimony).

A leading case on the admissibility of computer evidence is Transport Indemnity Co. v. Seib, 178 Neb. 253, 132 N.W.2d 871 (1965). *See also* Freed, *Computer Print-Outs as Evidence*, 16 Am. Jur. Proof of Facts 273 (1967); Roberts, *A Practioner's Primer on Computer-Generated Evidence,* 41 U. Chi. L. Rev. 254 (1974); 5 Weinstein & Berger, *Weinstein's Evidence* § 901(b)(9)[02] (1989).

See also State v. James, 41 Ohio App.2d 248, 325 N.E.2d 267 (1974) (sound recordings); In re Estate of Roth, 84 Ohio Abs. 345, 170 N.E.2d 313 (Prob. 1960) (sound recordings); United States v. Taylor, 530 F.2d 639, 641-42 (5th Cir. 1976), *cert. denied*, 429 U.S. 845 (1976) (surveillance camera photographs); 3 Wigmore, *Evidence* § 795 (Chadbourn rev. 1970) (X-rays).

Methods Provided by Statute or Rule

Rule 901(B)(10) provides that "[a]ny method of authentication or identification provided by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio or by other rules prescribed by the Supreme Court" may be used to authenticate an item of evidence.

A number of court rules deal with authentication. Ohio Civ. R. 44 provides for the authentication of domestic and foreign official records. Crim. R. 27 provides: "The proof of official records provisions of Civil Rule 44. . . apply in criminal cases." The authentication of official records is also subject to the self-authentication provisions of Rule 902.

A number of statutes also deal with authentication. *E.g.*, R.C. 2317.40 (authentication of business records); R.C. 2317.422 (authentication of hospital records). *See* Wood v. Elzoheary, 11 Ohio App.3d 27, 462 N.E.2d 1243 (1983) (properly certified hospital bills are self-authenticating records under R.C. 2317.422).

IDENTIFICATION OF A SPEAKER

Voice Identification

Rule 901(b)(5) provides for the identification of a person's voice, "whether heard firsthand 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." The Advisory Committee's Note to Federal Rule 901 states: "Since aural voice identification is not a subject of expert testimony, the requisite familiarity may be acquired either before or after the particular speaking which is the subject of the identification, in this respect resembling visual identification of a person rather than identification of handwriting."

The rule is consistent with prior Ohio law. *See* Bedford Heights v. Tallarico, 25 Ohio St.2d 211, 267 N.E.2d 802 (1971) (sufficiency of voice identification in criminal cases); State v. Williams, 64 Ohio App.2d 271, 413 N.E.2d 1212 (1979). *See also* State v. Dick, 27 Ohio St.2d 162, 167, 271 N.E.2d 797 (1971) (voice identification procedure challenged); In re Estate of Roth, 84 Ohio Abs. 345, 170 N.E.2d 313 (Prob. 1960) (sound recording of voice authenticated); 1 Wigmore, Evidence § 660, 669 (Chadbourn rev. 1979); 7 *Id.* § 2155 (Chadbourn rev. 1978).

Rule 901(B)(5) applies only to aural voice identification. The use of voiceprints for the purpose of identification involves a comparison and is therefore subject to Rule 901(B)(3) and is discussed below.

Telephone Conversations

Rule 901(B)(6) provides for the authentication of telephone conversations. Evidence that a telephone call was made to a number which was assigned at the time by the telephone company to a particular person or business is sufficient evidence of authentication "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."

The rule applies only to the authentication of telephone calls made *by* the witness *to* the person or number in question (outgoing calls). *See* State v. Vrona, 47 Ohio App.3d 145, 547 N.E.2d 1189 (1988); Travelers Insurance Co. v. Automobile Trader, Inc., 3 Ohio App.3d 270, 444 N.E.2d 1033 (1981). Incoming as well as outgoing calls may be authenticated by identification of the speaker's voice under Rule 901(B)(5), by the content of the conversation, or by the reply technique, Rule 901(B)(4).

The Advisory Committee's Note to Federal Rule 901 reads:

> The cases are in agreement that a mere assertion of his identity by a person talking on the telephone is not sufficient evidence of the authenticity of the conversation and that additional evidence need not fall in any set pattern. Thus the content of his statements or the reply technique, under Example (4), *supra*, or voice identification under Example (5), may furnish the necessary foundation. Outgoing calls made by the witness involve additional factors bearing upon authenticity. The calling of a number assigned by the telephone company reasonably supports the assumption that the

listing is correct and that the number is the one reached. If the number is that of a place of business, the mass of authority allows an ensuing conversation if it relates to business reasonably transacted over the telephone, on the theory that the maintenance of the telephone connection is an invitation to do business without further identification . . . Otherwise, some additional circumstance of identification of the speaker is required. The authorities divide on the question whether the self-identifying statement of the person answering suffices. Example (6) answers in the affirmative on the assumption that usual conduct respecting telephone calls furnish adequate assurances of regularity, bearing in mind that the entire matter is open to exploration before the trier of fact . . .

The rule is consistent with prior Ohio law. *See* State v. Williams, 64 Ohio App.2d 271, 413 N.E.2d 1212 (1979); Farris v. Columbus, 85 Ohio App. 385, 85 N.E.2d 605 (1948); Leonard v. Mowbray, 21 Ohio App. 268, 153 N.E. 197 (1926). *See also* Bedford Heights v. Tallarico, 25 Ohio St.2d 211, 267 N.E.2d 802 (1971); McCormick, *Evidence* § 226 (3d ed. 1984); 7 Wigmore, *Evidence* § 2155 (Chadbourn rev. 1978).

Voiceprint Evidence

The question of whether voiceprint (sound spectrometry) evidence is admissible has divided the courts. *See* Annot., 97 A.L.R.3d 294 (1980). In State v. Olderman, 44 Ohio App.2d 130, 336 N.E.2d 442 (1975), the court upheld the admissibility of voiceprint evidence, holding that the technique had been generally accepted by the scientific community. In State v. Williams, 4 Ohio St.3d 53, 446 N.E.2d 444 (1983), the Ohio Supreme Court upheld the admissibility of voiceprint evidence. Unfortunately, the Court apparently did not consider the National Academy of Sciences publication, *On the Theory and Practice of Voice Indentification* (1979), which raised serious doubts about the validity of voiceprint evidence. *See* Symposium on Science and the Rules of Evidence, 99 F.R.D. 187, 207-08 (1983).

See generally Giannelli & Imwinkelried, *Scientific Evidence* ch. 10 (1986); Tosi, *Voice Identification, Theory and Legal Applications* (1979).

SELF-AUTHENTICATION

Rule 902 provides for the self-authentication of certain types of documents. These documents are presumed to be genuine and therefore require no extrinsic evidence of authenticity. The opposing party, of course, may introduce evidence attacking the authenticity of these documents. *See* Advisory Committee's note, Fed. R. Evid. 902 ("In no instance is the opposite party foreclosed from disputing authenticity.").

Rule 902 governs only authentication. An authentic document may be inadmissable nevertheless because it fails to satisfy the requirements of the hearsay rule (Rule 802), or the best evidence rule (Rule 1002), or because its probative value is substantially outweighed by its prejudicial effect (Rule 403(A)).

Domestic Public Documents Under Seal

Rule 902(1) provides that a document bearing (1) the seal of a governmental entity or agency and (2) a signature purporting to be an attestation or execution is self-authenticating. The rule applies to both federal and state documents. Several other evidence rules give special treatment to public records. Rules 803(8) to (10) (hearsay exceptions for public records); Rule 1005 (best evidence rule exception for public records).

Statutes which govern the use of seal-bearing documents as evidence include:

R.C. 1125.19 (records of superintendent of banks bearing seal admissible); R.C. 2967.06 (copy of warrant of pardon and commutation bearing seal admissible); R.C. 3901.06 (instruments of superintendent of insurance bearing seal admissible); R.C. 4507.25 (records of registrar of motor vehicles bearing seal admissible).

Domestic Public Documents Not Under Seal

Rule 902(2) provides that domestic public documents without a seal are self-authenticating if accompanied by a certificate of authentication (1) which is signed under seal by a public officer having a seal and (2) which certifies that the signer of the document has the official capacity claimed and that the signature is genuine. The Advisory Committee's Note to Federal Rule 902 states: "While statutes are found which raise a presumption of genuineness of purported official signatures in the absence of an official seal, . . . the greater ease of effecting a forgery under these circumstances is apparent. Hence this paragraph of the rule calls for authentication by an officer who has a seal."

Foreign Public Documents

Rule 902(3) provides that a foreign public document is self-authenticating if (1) it is purported to have been executed or attested by a person, in his official capacity, authorized by the laws of a foreign country to make the execution or attestation, and (2) it is accompanied by a final certificate of authentication. A final certification may be made by U.S. diplomatic personnel serving in the foreign country or by diplomatic personnel of the foreign country assigned or accredited to the United States. The rule allows the court to waive the final certification requirement where all the parties have had a reasonable opportunity to investigate the authenticity of the foreign document and good cause is shown.

See generally Matuszewki v. Pancoast, 38 Ohio App.3d 74, 526 N.E.2d 80 (1987); Nikolm v. Mandich, 3 Ohio App.3d 232, 444 N.E.2d 1039 (1981); 7 Wigmore, *Evidence* § 2163 (Chadbourn rev. 1978).

Certified Copies of Public Records

Rule 902(4) provides that copies of official records, official reports, and recorded documents are self-authenticating if (1) certified as correct by the custodian or other authorized person, and (2) accompanied by a certificate of authentication complying with Rules 902(1), (2), or (3), or complying with the law of any jurisdiction, or complying with a rule prescribed by the Supreme Court of Ohio.

The Advisory Committee's Note to Federal Rule 902 comments:

The common law and innumerable statutes have recognized the procedure of authenticating copies of public records by certificate. The certificate qualifies

as a public document, receivable as authentic when in conformity with paragraph (1), (2), or (3). Rule 44(a) of the Rules of Civil Procedure and Rule 27 of the Rules of Criminal Procedure have provided authentication procedures of this nature for both domestic and foreign public records. It will be observed that the certification procedure here provided extends only to public records, reports, and recorded documents, all including data compilations, and does not apply to public documents generally. Hence documents provable when presented in original form under paragraphs (1), (2), or (3) may not be provable by certified copy under paragraph (4).

See also State v. Walker, 53 Ohio St.2d 192, 374 N.E.2d 132 (1978) (certified copy of police log book admitted); Price v. Price, 4 Ohio App.3d 217, 219, 447 N.E.2d 769 (1982) (certified copy of divorce decree).

Official Publications

Rule 902(5) provides that "[b]ooks, pamphlets, or other publications purporting to be issued by public authority" are self-authenticating. The Advisory Committee's Note to Federal Rule 902 reads: "Dispensing with preliminary proof of the genuineness of purportedly official publications, most commonly encountered in connection with statutes, court reports, rules, and regulations, has been greatly enlarged by statutes and decisions. 5 Wigmore § 1684. Paragraph (5), it will be noted, does not confer admissibility upon all official publication; it merely provides a means whereby their authenticity may be taken as established for purposes of admissibility. Rule 44(a) of the Rules of Civil Procedure has been to the same effect."

Newspapers and Periodicals

Rule 902(6) provides that "[p]rinted materials purporting to be newspapers or periodicals, including notices and advertisements contained therein" are self-authenticating. The phrase "including notices and advertisements contained therein" does not appear in Federal Rule 902(6). The Advisory Committee's Note to Federal Rule 902 comments: "The likelihood of forgery of newspapers or periodicals is slight indeed. Hence no danger is apparent in receiving them. Establishing the authenticity of the publication may, of course, leave still open questions of authority and responsibility for items therein contained." *See also* State v. Greer, 39 Ohio St.3d 236, 530 N.E.2d 382 (1988) (TV Guide); 7 Wigmore, *Evidence* § 2150 (Chadbourn rev. 1978).

The rule deals only with authentication. A newspaper account may be inadmissible because of some other evidentiary rule. *E.g.*, Cleveland v. Division 268, Amalgamated Assn. of Street Electric Railway & Motor Coach Employees, 84 Ohio App. 43, 81 N.E.2d 310 (1948) (newspaper account hearsay).

Trade Inscriptions

Rule 902(7) provides that "[i]nscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin" are self-authenticating.

See also Cincinnati Transit, Inc. v. Tapley, 28 Ohio App.2d 26, 273 N.E.2d 906 (1971) (markings on side of truck prima facie evidence of control); 1 Wigmore, *Evidence* § 150a (rev. 1940); 7 *Id.* § 2152 (Chadbourn rev. 1978).

Acknowledged Documents

Rule 902(8) provides that documents "accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments" are self-authenticating.

See also Gambrinus Stock Co. v. Weber, 41 Ohio St. 689 (1885) (certificate of notary public prima facie verification of chattel mortgage); 7 Wigmore, *Evidence* § 2165 (Chadbourn rev.1978).

Commercial Paper and Related Documents

Rule 902(9) provides that "[c]ommercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law" are self-authenticating. The rule is based on the authentication provisions of the Uniform Commercial Code (§ 1-202, 3-307, 3-510), which have been adopted in Ohio.

Presumptions Created by Law

Rule 902(10) provides that "[a]ny signature, document, or other matter declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie genuine or authentic" is self-authenticating. *See generally* 7 Wigmore, *Evidence* § 2162 (Chadbourne rev. 1978).

The rule is not limited to Ohio statutes; it applies as well to federal statutes and to the statutes of other states. *E.g.*, 10 U.S.C § 936(d) (signature of certain military officers prima facie evidence of authenticity); 15 U.S.C § 6064 (signature on tax return prima facie genuine). Ohio statutes include: R.C. 313.10 (records of coroner admissable); R.C. 2925.51 (laboratory reports in controlled substance prosecutions prima facie evidence).