

ARTICLE X. CONTENTS OF WRITINGS,
RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.

(b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A “photograph” means a photographic image or its equivalent stored in any form.

(d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout—or other output readable by sight—if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

(e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1945; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

In an earlier day, when discovery and other related procedures were strictly limited, the misleading named “best evidence rule” afforded substantial guarantees against inaccuracies and fraud by its insistence upon production of original documents. The great enlargement of the scope of discovery and related procedures in recent times has measurably reduced the need for the rule. Nevertheless important areas of usefulness persist: discovery of documents outside the jurisdiction may require substantial outlay of time and money; the unanticipated document may not practically be discoverable; criminal cases have built-in limitations on discovery. Cleary and Strong, *The Best Evidence Rule: An Evaluation in Context*, 51 Iowa L.Rev. 825 (1966).

Paragraph (1). Traditionally the rule requiring the original centered upon accumulations of data and expressions affecting legal relations set forth in words and figures. This meant that the rule was one essentially related to writings. Present day techniques have expanded methods of storing data, yet the essential form which the information ultimately assumes for usable purposes is words and figures. Hence the considerations underlying the rule dictate its expansion to include computers, photographic systems, and other modern developments.

Paragraph (3). In most instances, what is an original will be self-evident and further refinement will be unnecessary. However, in some instances particularized definition is required. A carbon copy of a contract executed in duplicate becomes an original, as does a sales ticket carbon copy given to a customer. While strictly speaking the original of a photograph might be thought to be only the negative, practicality and common usage require that any print from the negative be regarded as an original. Similarly, practicality and usage confer the status of original upon any computer printout. *Transport Indemnity Co. v. Seib*, 178 Neb. 253, 132 N.W.2d 871 (1965).

Paragraph (4). The definition describes “copies” produced by methods possessing an accuracy which virtually eliminates the possibility of error. Copies thus produced are given the status of originals in large measure by Rule 1003, *infra*. Copies subsequently produced manually, whether handwritten or typed, are not

within the definition. It should be noted that what is an original for some purposes may be a duplicate for others. Thus a bank’s microfilm record of checks cleared is the original as a record. However, a print offered as a copy of a check whose contents are in controversy is a duplicate. This result is substantially consistent with 28 U.S.C. §1732(b). Compare 26 U.S.C. §7513(c), giving full status as originals to photographic reproductions of tax returns and other documents, made by authority of the Secretary of the Treasury, and 44 U.S.C. §399(a), giving original status to photographic copies in the National Archives.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE
REPORT NO. 93-650

The Committee amended this Rule expressly to include “video tapes” in the definition of “photographs.”

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 1001 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1946; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The rule is the familiar one requiring production of the original of a document to prove its contents, expanded to include writings, recordings, and photographs, as defined in Rule 1001(1) and (2), *supra*.

Application of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered. McCormick §198; 4 Wigmore §1245. Nor does the rule apply to testimony that books or records have been examined and found not to contain any reference to a designated matter.

The assumption should not be made that the rule will come into operation on every occasion when use is made of a photograph in evidence. On the contrary, the rule will seldom apply to ordinary photographs. In most instances a party *wishes* to introduce the item and the question raised is the propriety of receiving it in evidence. Cases in which an offer is made of the testimony of a witness as to what he saw in a photograph or motion picture, without producing the same, are most unusual. The usual course is for a witness on the stand to identify the photograph or motion picture as a correct representation of events which he saw or of a scene with which he is familiar. In fact he adopts the picture as his testimony, or, in common parlance, uses the picture to illustrate his testimony. Under these circumstances, no effort is made to prove the contents of the picture, and the rule is inapplicable. *Paradis, The Celluloid Witness*, 37 U.Colo.L. Rev. 235, 249-251 (1965).

On occasion, however, situations arise in which contents are sought to be proved. Copyright, defamation, and invasion of privacy by photograph or motion picture falls in this category. Similarly as to situations in which the picture is offered as having independent probative value, e.g. automatic photograph of bank robber.