

Mississippi State Laws on Optical Images

Rule 101. Scope

These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provision of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the source of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations of vital statistics, in any form, if the report thereof was made to a public officer pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more, the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits. Treatises used in direct examination must be disclosed to opposing party without charge pursuant to discovery.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness. if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet his intention to offer the statement and the particulars of it. including the name and address of the declarant.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness. if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 901. Requirement of Authentication or Identification

(a) General provision. 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:

(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 twenty 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) Other methods. Any method of authentication or identification provided by the Mississippi Supreme Court or by the Constitution of Mississippi.

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or of the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, counsel general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

(8) Acknowledged documents. 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.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of Mississippi to be presumptively or prima facie genuine or authentic.
Rule 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, 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.

(2) Photographs. "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. An "original" of a writing or recording is the writing or recording itself 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, any printout or other output readable by sign, shown to reflect the data accurately, is an "original."

(4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction or by other equivalent techniques which accurately reproduce the original.

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by law.

Rule 1003. Admissibility of Duplicates

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

Rule 1004. Admissibility of Other Evidence of Contents

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

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

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

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

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

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries

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

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Rule 1101. Applicability of Rules

(a) Courts and proceedings. Except as otherwise provided by subdivision (b), these rules apply to all actions and proceedings in the courts of the State of Mississippi.

(b) Rules inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition~ probable cause hearings in criminal cases and youth court cases; sentencing; disposition hearings; granting or revoking probation; issuance of warrants for arrest criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt proceedings. Contempt proceedings in which the court may act summarily.

Rule 1102. Title

These rules shall be known as the Mississippi Rules of Evidence and may be cited as M.R.E., e.g., M.R.E. 501.

Rule 1103. Repeal

All evidentiary rules, whether provided by statute, court decision or court rule, which are inconsistent with the Mississippi Rules of Evidence are hereby repealed.

Uniform Photographic Copies of Business and Public Records as Evidence Act (UPA)

§ 13-1-151. Reproduction of business records; disposal of originals

Any business may cause any or all records kept by such business in the regular course of its operation to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such business may thereafter dispose of the original record, provided that every original record pertaining to any claim, tax or report due the State of Mississippi or any of its agencies shall be preserved for five (5) years from the thirty-first day of December of the year in which

such claim arose, or such tax or report was due.

§ 41-9-77. Reproduction of hospital records

Any hospital may, in its discretion, cause any hospital record or part thereof to be reproduced on film or in any other acceptable form of medium, as determined by the licensing agency, which shall include, but not be limited to, microfilming, photographing, photostating or storage on optical disks. After the records have been reproduced, the hospital may retire the original documents so reproduced. Any such reproduction or copy of an original hospital record or part thereof shall be deemed to be the original hospital record or part thereof for all purposes, shall be subject to retention and retirement as provided in §§ 4 1-9-69 to 4 1-9-73, and shall be admissible as evidence in all courts or administrative agencies to the same extent as the original would be or would have been admissible. A facsimile, exemplification or copy of such reproduction or copy shall be deemed to be a transcript, exemplification or copy of the original hospital record or part thereof. However, no state hospital, shall undertake such reproduction or destruction of records except as provided in § 25-59-I et seq. No other public hospital shall undertake such reproduction unless the expense thereof has been provided for in the annual budget. or an amendment thereof, approved for such public hospital.

§ 41-9-79. Disposition of hospital records on closing of hospital

If any hospital shall be finally closed, its hospital records may be delivered and turned over to any other hospital or hospitals in the vicinity willing to accept and retain the same as provided for in § 41-9-69. If there be no such other hospital, the closing hospital shall deliver its hospital records, in good order and properly indexed for convenient reference, to the licensing agency, which shall store, retain, retire and provide access to the information therein in the same manner as is provided for by hospitals. In its discretion, the licensing agency may also exercise like authority, and to the same effect, with respect to reproduction of such hospital records as is

conferred on state hospitals by § 41-9-77.

§ 41-9-81. Business records of hospitals

The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, shall have the power and authority, in its discretion, to retire and destroy any of the following business records of the hospital at any time three (3) years after the respective dates that the same are prepared, made, received, executed, acted on or otherwise completed: intrahospital requisitions; inventory records of expendable supplies; temporary records pertaining to patients' charges; department reports; paid invoices; purchase orders; and similar documents of temporary use and value. In addition to the foregoing, whenever any business records which are required by law to be preserved and retained for indefinite periods, or which are necessary or desirable on the basis of sound business practices to be preserved or retained, shall have been so retained and preserved for a period of six (6) years. the commissioners or board of trustees of any such hospital shall have the power and authorirx, in its discretion, to retire and destroy the same. However, nothing contained herein shall authorize the retirement, destruction or disposal of any business records containing or consisting of minutes or minute books; bylaws or rules and regulations; general ledgers; disbursement registers or journals, cash receipts registers, maintenance and investment accounts: inventory records; ledger cards, sheets or other records of unpaid accounts receivable; other evidence of unpaid indebtedness; budgets; audit reports; licenses or permits: abstracts or certificates of title; geological reports; engineering or architectural plans, specifications or drawings; or any other business records which are otherwise required by law, order or decree of any court of competent jurisdiction, applicable rules and regulations or sound business practices to be retained permanently or for longer periods than six (6) years.

Except as otherwise provided by law, order or decree of any court of competent jurisdiction, or applicable rules and regulations. any privately owned and operated hospital may retire any business records at such times as in its judgment may conform to sound business practices and the reasonable accommodation of other interested parties

Any hospital may, in its discretion, and at any time, cause any part of its business records to be reproduced in like manner and with like effect as provided in § 4 1-9-77 with respect to hospital records. However, this shall not be construed to permit the destruction, retirement or earlier retirement of any business record which is otherwise prohibited or deferred by this section.

§ 41-9-103. Furnishing copies of records in compliance with subpoenas

Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any hospital duly licensed under the laws of this state in an action or proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, on or before the time specified in the subpoena duces tecum, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

§ 81-5-7. Preservation of old records

(1) (a) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its daily statements of condition, its general journal, its investment ledger, its copies of bank examination reports, and all ledger sheets showing unpaid balances in favor of depositors.

(b) The state comptroller of banks shall from time to time prescribe by order and so notify each bank, a classified list of such other records which shall be preserved and the length of time therefore. Prior to issuing any such regulation, the comptroller shall consider

(i) Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable.

(ii) State and federal statutes of limitation applicable to such actions or proceedings.

(iii) The availability of information contained in bank records from other sources.

(iv) Such other matters as the comptroller shall deem pertinent in order that his regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.

(c) Any state bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

(d) Any state bank may cause any or all records at any time in its custody to be reproduced by, the microphotographic process and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(e) To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in this state.

(2) No liability shall accrue against any bank destroying any records held for the period of time as provided in paragraph I hereof and in any cause or proceeding in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be sufficient reason for the failure to produce them.

§ 81-12-111. Records; reproduction by photostatic, photographic or microfilming process

Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction

reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

§ 9-1-51. Definitions

For purposes of §§ 9-1-51 through 9-1-57, the following terms shall have the meanings ascribed herein unless the context shall otherwise require:

- (a) "Court" shall mean the Supreme Court, Court of Appeals, circuit courts, chancery courts, county courts, youth courts, family courts, justice courts, and the municipal courts of this state.
- (b) "Clerk" shall mean the clerks of any court.
- (c) "Judge" shall mean the senior judge of any court.
- (d) "Documents" shall mean and include, but not be limited to, all contents in the file or record of any case or matter docketed by the court, administrative orders, court minutes, court dockets and ledgers, and other documents, instruments or papers required by law to be filed with the court.
- (e) "Electronic filing of documents" shall mean the transmission of data to a clerk of any court or state agency by the communication of information which is originally displayed in written form and thereafter converted to digital electronic signals, transformed by computer and stored by the clerk either on microfilm, magnetic tape, optical disks or any other medium.
- (f) "Electronic storage of documents" shall mean the storage, retention and reproduction of documents using microfilm, microfiche, data processing, computers or other electronic process which correctly and legibly stores and reproduces or which forms a medium for storage, copying or reproducing documents.
- (g) "Filing system" or "storage system" shall mean the system used by a court for the electronic filing or storage of documents.

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