

meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the author of the medical report as a witness and examine the witness as if under cross-examination.

(14) *Written reports of expert witnesses.* Written reports of an expert witness prepared with a view toward litigation including but not limited to a diagnostic report of a physician, including inferences and opinions, when on official letterhead, when dated, when including a statement of the experts qualifications, when including a summary of experience as an expert witness in litigation, when including the basic facts, data, and opinions forming the basis of the inferences or opinions, and when including the reasons for or explanation of the inferences or opinions, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the expert as a witness and examine the witness as if under cross-examination.

(15) *Written statements of lay witnesses.* Written statements of a lay witness made under oath or affirmation and subject to the penalty of perjury, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided that:

(i) A copy of the written statement has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse

party with a fair opportunity to prepare to object or meet it, and

(ii) If the declarant is reasonably available as a witness, as determined by the judge, no adverse party has sufficiently in advance of the hearing filed and served upon the noticing party a written demand that the declarant be produced in person to testify at the hearing. An adverse party may call the declarant as a witness and examine the witness as if under cross-examination.

(16) *Deposition testimony.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, provided that a notice of intention to offer the deposition in evidence, together with a copy thereof if not otherwise previously provided, has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. An adverse party may call the deponent as a witness and examine the witness as if under cross-examination.

(b) [Reserved]

§ 18.903 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.

CONTENTS OF WRITINGS, RECORDINGS,
AND PHOTOGRAPHS

§ 18.1001 Definitions.

(a) 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.

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(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, other than with respect of X-ray films, any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, 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 reproduces the original.

(b) [Reserved]

§ 18.1002 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 in these rules, or by rule or regulation prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order, or by Act of Congress.

§ 18.1003 Admissibility of duplicates.

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

§ 18.1004 Admissibility of other evidence of contents.

(a) 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

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(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleading or otherwise, that the contents would be a subject of proof at the hearing, and that party 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.

(b) [Reserved]

§ 18.1005 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 § 18.902 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.

§ 18.1006 Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined at the hearing 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 reasonable time and place. The judge may order that they be produced at the hearing.

§ 18.1007 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 that party's written admission, without accounting for the nonproduction of the original.

§ 18.1008 Functions of the judge.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the