

Proposed Amendments to Rule 44

Rule 44 is amended as follows:

Rule 44. Proof of **Proving an** Official Record

~~(a) Authentication.~~ **(a) Means of Proving.**

(1) ~~Domestic.~~ **An Record. Each of the following evidences an** official record ~~--or an entry in it--that is otherwise admissible and is~~ kept within the United States, ~~or any state, district, or commonwealth, or within a~~ **any** territory subject to the administrative or judicial jurisdiction of the United States, ~~or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by:~~

(A) an official publication of the record; or

(B) a copy attested by the officer ~~having the~~ **with** legal custody of the record, ~~---or by the officer's deputy,---~~ and accompanied by a ~~certificate that such~~ **the** officer has the custody. The certificate ~~may~~ **must** be made **under seal:**

(i) by a judge of a court of record ~~of~~ **in** the district or political subdivision ~~in which~~ **where** the record is kept, ~~authenticated by the seal of the court,;~~ or may be made

(ii) by any public officer ~~having~~ **with** a seal of office and ~~having~~ **with** official duties in the district or political subdivision ~~in which~~ **where** the record is kept, ~~authenticated by the seal of the officer's office.~~

(2) ~~Foreign.~~ **Record.**

(A) In General. Each of the following evidences a foreign official record,~~---~~or an entry therein,~~when~~**in it--that is otherwise** admissible for any purpose,~~may be evidenced by:~~

(i) an official publication thereof; ~~or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position~~ (i) of the attesting person, or (ii) **of the record; or**

(ii) the record--or a copy--that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of **a United States** embassy or legation,~~---~~; **by a** consul general, vice consul, or consular agent of the United States;~~;~~ or **by** a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) Other Means of Proof. If all parties have had a reasonable opportunity ~~has been given to all parties to investigate the~~ **a foreign**

record's authenticity and accuracy ~~of the documents~~, the court may, for good cause shown, **either:**

(i) admit an attested copy without final certification; or

(ii) permit the ~~foreign official record~~ to be evidenced by an attested summary with or without a final certification. ~~The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.~~

(b) Lack of a Record. A written statement that after diligent search **of designated records revealed** no record or entry of a specified tenor is found to exist in the records designated by **admissible as evidence that the records contain no such record or entry. For domestic records,** the statement, **must be** authenticated as provided in subdivision **under Rule 44(a)(1)** of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry. **For foreign records, the statement must comply with (a)(2)(C)(ii).**

(c) Other Proof. This rule does not prevent the proof of **A party may prove an** official records ~~or of an~~ entry or lack of **an** entry therein ~~in it~~ by any other method authorized by law.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; _____, **2009, eff. _____, 2010.**)

Advisory Committee Note

The language of Rule 44 has been amended as part of the general restyling of these 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.