

## CHAPTER 52 - DOCUMENTARY AND OTHER PHYSICAL EVIDENCE

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## AUTHENTICATION AND IDENTIFICATION

### **SECTION 52.015 Authentication or identification required.**

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

2. The provisions of [SECTION 52.025](#) to [52.105](#), inclusive, are illustrative and not restrictive examples of authentication or identification which conform to the requirements of this section.

3. Every authentication or identification is rebuttable by evidence or other showing sufficient to support a contrary finding.

**SECTION 52.025 Testimony of witness with knowledge.** The testimony of a witness is sufficient for authentication or identification if he has personal knowledge that a matter is what it is claimed to be.

**SECTION 52.035 Handwriting: Nonexpert opinion.** Nonexpert opinion as to the genuineness of handwriting is sufficient for authentication or identification if it is based upon familiarity not acquired for purposes of the litigation.

**SECTION 52.045 Handwriting: Comparison by trier or expert witness.** Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated is sufficient for authentication.

**SECTION 52.055 Handwriting: Distinctive characteristics.** Appearance, contents, substance, internal patterns or other distinctive characteristics are sufficient for authentication when taken in conjunction with circumstances.

**SECTION 52.065 Identification by voice.** A voice, whether heard firsthand or through mechanical or electronic transmission or recording, is sufficiently identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

**SECTION 52.075 Telephone calls.** A telephone conversation is sufficiently authenticated by evidence that a call was made to the number supplied by the telephone company for the person in question if:

1. The call was to a place of business and the conversation related to business reasonably transacted over the telephone; or
2. Circumstances, including self-identification, show the person answering to be the one called.

**SECTION 52.085 Public records and reports.** Evidence that:

1. A writing authorized by law to be recorded or filed and in fact recorded or filed in a tribal court; or
2. A purported public record, report, statement or data compilation, in any form,  
→ is from the tribal court where items of this nature are kept is sufficient to authenticate the writing, record, report, statement or compilation.

**SECTION 52.095 Ancient documents; compilations of data.** Evidence that a document or data compilation, in any form:

1. Is in such condition as to create no suspicion concerning its authenticity;
2. Was in a place where it, if authentic, would likely be; and
3. Is at least 20 years old at the time it is offered, is sufficient to authenticate the document or compilation.

**SECTION 52.105 Process or system.** Evidence describing a process or system used to produce a result and showing that the result is accurate is sufficient to authenticate the result.

#### **PRESUMPTIONS OF AUTHENTICITY**

**SECTION 52.115 Foreign public documents.**

1. 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 is presumed to be authentic if it is 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.

2. A final certification may be made by a secretary of embassy or legation, consul 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.

3. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of an official document the court may, for good cause shown, order that it be treated as presumptively authentic without final certification or permit it to be evidenced by an attested summary with or without final certification.

**SECTION 52.125 Certified copies of public records.**

1. 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, is presumed to be authentic if it is certified as correct by the custodian or other person authorized to make the certification.

2. As used in subsection 1, the term “official record” shall include but not be limited to fingerprint classification cards kept by law enforcement agencies of the Federal Government, the State of Nevada or any other state.

**SECTION 52.135 Official publications.** Books, pamphlets or other publications purporting to be issued by public authority are presumed to be authentic.

**SECTION 52.145 Newspapers; periodicals.** Printed materials purporting to be newspapers or periodicals are presumed to be authentic.

**SECTION 52.155 Trade inscriptions, signs, tags and labels.** Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin are presumed to be authentic.

**SECTION 52.165 Acknowledged documents.** Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic.

**SECTION 52.175 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**

**SECTION 52.185 Definitions.** As used in [SECTION 52.185](#) to [52.295](#), inclusive, unless the context otherwise requires, the words defined in [SECTION 52.195](#) to [52.225](#), inclusive, have the meanings ascribed to them in [SECTION 52.195](#) to [52.225](#), inclusive.

**SECTION 52.195 “Duplicate” defined.** “Duplicate” means a counterpart produced:

1. By the same impression as the original;
2. From the same matrix;
3. By means of photography, including enlargements and miniatures;
4. By mechanical or electronic rerecording, including a counterpart produced by an optical imaging system;
5. By chemical reproduction; or
6. By other equivalent technique designed to ensure an accurate reproduction of the original.

**SECTION 52.205 “Original” defined.**

1. 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.
2. An “original” of a photograph includes the negative or any print therefrom.
3. If data are stored in a computer or similar device, any printout or other output readable by sight, shown accurately to reflect the data, is an “original.”

**SECTION 52.215 “Photographs” defined.** “Photographs” include still photographs, X rays and motion pictures.

**SECTION 52.225 “Writings” and “recordings” defined.** “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.

**SECTION 52.235 Original required.** To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this title.

**SECTION 52.245 Admissibility of duplicates.**

1. In addition to the situations governed by subsection 2, a duplicate is admissible to the same extent as an original unless:

- (a) A genuine question is raised as to the authenticity of the original; or
- (b) In the circumstances it would be unfair to admit the duplicate in lieu of the original.

2. Except as otherwise provided in [SECTION 52.247](#), a duplicate is admissible to the same extent as an original if the person or office having custody of the original was authorized to destroy the original after preparing a duplicate, and in fact did so.

**SECTION 52.247 Admissibility of rerecorded, copied or reproduced records; certain records of governmental agency deemed public records.**

1. Unless held in a fiduciary or custodial capacity or unless specifically prohibited by a federal or state statute or regulation, by a local ordinance or by an order or judgment of a court of competent jurisdiction, if any business or governmental agency has, in the regular course of its business:

(a) Produced, kept or maintained any document, memorandum, writing, entry, print or other record of any act, transaction, occurrence or event relating to the conduct of its business; and

(b) Caused any of those records to be rerecorded, copied or reproduced by any photographic, photostatic or other process which ensures an accurate reproduction or creates a reliable medium for reproducing the original of any of those records,

↳ the business or governmental agency may, in the regular course of its business, destroy any of those records.

2. Any rerecorded, copied or reproduced record specified in subsection 1 is admissible to the same extent as an original, regardless of whether the original is available for inspection or has been lost or destroyed, if the rerecorded, copied or reproduced record is sufficiently authenticated.

3. An enlargement or facsimile of a rerecorded, copied or reproduced record specified in subsection 2 is admissible to the same extent as an original if:

- (a) The record has not been lost or destroyed; and
- (b) It is available for inspection by the court.

↳ The introduction of an enlargement or facsimile of a record pursuant to the provisions of this subsection does not prohibit the admission of the original of that record.

4. If a governmental agency destroys any of its records and causes those records to be recorded, copied or reproduced pursuant to subsection 1:

(a) The recorded, copied or reproduced record shall be deemed a public record for the purposes of [chapter 239](#) of the Nevada Revised Statutes; and

(b) The governmental agency shall render such assistance as is necessary to allow any member of the public access to the recorded, copied or reproduced record if the record is not otherwise declared by law to be confidential.

5. As used in this section, “business” means any proprietorship, including any member of a profession licensed pursuant to title 54 of the Nevada Revised Statutes, corporation, partnership, association, trust, unincorporated organization or other enterprise doing business in this State.

**SECTION 52.252 Admissibility of copy or transcript of recordings of telephone calls made through system providing telephone number to be used in emergency.** The content of recordings of telephone calls made through a system established to provide a telephone number to be used in an emergency, if otherwise admissible, may be proved by a copy or transcript of the recording which is authenticated by a custodian of the records of the system in a signed affidavit. The custodian must verify in the affidavit that the copy or transcript is a true and complete reproduction of the original recording and that the original recording was made at the time of the telephone call and in the course of a regularly conducted activity.



activity at least 10 days before the records are to be introduced at a hearing, unless the court shortens this time for good cause shown.

5. If during a trial or a proceeding for discovery, the authenticity of a record of a regularly conducted activity is reasonably questioned or if an interpretation of handwriting is in question, the court may order the personal attendance of the custodian of the record or other qualified person and may order that the original records be produced.

6. For the purposes of this section:

(a) "Custodian of the records" means an employee or agent of an employer who has the care, custody and control of the records of the regularly conducted activity of the employer.

(b) "Employer" means:

(1) The State of Nevada, any state agency, county, city, town, school district or other unit of tribal government;

(2) Any public or quasi-public corporation; or

(3) Any other person, firm, corporation, partnership or association.

(c) "Records" means memoranda, reports, records or compilations of data in any form which are kept in the course of an activity which is regularly conducted by an employer.

#### **SECTION 52.265 Public records.**

1. Except as otherwise provided in [SECTION 52.247](#), 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 by the custodian or other person authorized to make the certification or testified to be correct by a witness who has compared it with the original.

2. 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.

#### **SECTION 52.275 Summaries.**

1. 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.

2. The originals shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that the originals be produced in court.

**SECTION 52.285 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.

#### **SECTION 52.295 Functions of judge and jury.**

1. Except as otherwise provided in subsection 2, when the admissibility of other evidence of contents under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the judge to determine.

2. When an issue is raised:

(a) Whether the asserted writing ever existed;

(b) Whether another writing, recording or photograph produced at the trial is the original; or

(c) Whether other evidence of contents correctly reflects the contents,

↳ the issue is for the trier of fact to determine as in the case of other issues of fact.

### **EXECUTION OF WRITINGS**

#### **SECTION 52.305 Marks instead of signatures; witnesses.**

1. The signature of a party, when required to a written instrument, is equally valid if the party cannot write, if:

(a) The person makes his mark;

(b) The name of the person making the mark is written near it; and

- (c) The mark is witnessed by a person who writes his own name as a witness.
2. In order that a signature by mark may be acknowledged or may serve as the signature to any sworn statement, it must be witnessed by two persons who must subscribe their own names as witnesses thereto.

**SECTION 52.315 Seal unnecessary.** The word “seal,” and the initial letters “L.S.,” and other words, letters or characters of like import, opposite the name of the signer of any instrument in writing, are unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument does not impair the validity of such instrument.

## MEDICAL RECORDS

**SECTION 52.320 Definitions.** As used in [SECTION 52.320](#) to [52.375](#), inclusive, unless the context otherwise requires:

1. “Custodian of medical records” means a chiropractor, physician, registered physical therapist or licensed nurse who prepares and maintains medical records, or any employee or agent of such a person or a facility for convalescent care, medical laboratory or hospital who has care, custody and control of medical records for such a person or institution.
2. “Medical records” includes bills, ledgers, statements and other accounts which show the cost of medical services or care provided to a patient.

**SECTION 52.325 Subpoenaed records: Delivery of authenticated copy by custodian; order for return of record; form of affidavit of authentication.**

1. A custodian of medical records sufficiently complies with a subpoena calling for the production of medical records in his custody if he delivers, at or before the time set for the return of the subpoena, either personally or by mail, to the clerk of the court issuing the subpoena a true and exact photographic, electrostatic or other acceptable copy of the original record authenticated as provided in this section. This section does not apply to X-ray films or to any other portion of a medical record which is not susceptible to photostatic reproduction.
2. The copy must be authenticated by an affidavit signed by the custodian of the medical records verifying that it is a true and complete reproduction of the original medical record and that the original record was made at or near the time of the act, event, condition, opinion or diagnosis by or from information transmitted by a person with knowledge in the course of a regularly conducted activity.
3. If the court quashes or suppresses a subpoena for medical records, it may order the subpoenaed record to be returned to the submitting custodian.
4. The affidavit required by subsection 2 must be substantially in the form prescribed in subsection 3 of [SECTION 52.260](#).

**SECTION 52.335 Copies delivered to clerk of court: Custody; maintenance; return.**

1. Except as provided in [SECTION 52.365](#), the copy of a medical record delivered pursuant to [SECTION 52.325](#) shall be kept in the custody of the clerk of the court issuing the subpoena, in a sealed container supplied by the custodian of the medical record. This container shall be clearly marked to identify the contents, the name of the patient, the title and number of the court case, and shall not be opened except pursuant to the direction of the court during the trial of the case, for the purpose of discovery as provided in [SECTION 52.365](#), or upon special order of the court.
2. The contents of the record shall be preserved and maintained as a cohesive unit and shall not be separated except upon the order of the court. Forty days after any final order dismissing or otherwise terminating any case in which medical records have been subpoenaed, if no appeal is taken, the records shall be returned intact and in complete form to the submitting custodian. If an appeal is taken, the records shall be returned 40 days after any final order terminating the appeal. This return shall be accomplished through the use of a self-addressed, stamped envelope which shall be contained within the package prepared and sent to the court by the submitting custodian. The envelope or container in which the record is delivered to the court shall be clearly marked to identify its contents and to direct that it shall be returned to the submitting custodian if developments occur which eliminate the necessity of opening the envelope.

**SECTION 52.345 Notice of delivery to clerk of court.** The custodian of the medical record which has been subpoenaed shall promptly notify the attorney for the party who caused the subpoena to be issued that the documents involved have been delivered to the court. For purposes of this notice it is sufficient for the custodian to deliver to such attorney a copy of the certificate verifying the contents and authenticity of the medical record so supplied.

**SECTION 52.355 Order for production of original documents; appearance by custodian.**

1. If during a trial or discovery proceeding the authenticity of the record or a question of interpretation of handwriting is involved, the court may order the original documents produced.

2. If the personal attendance of a custodian of the medical records is required, the subpoena shall clearly state such demand.

3. If a custodian will personally appear, the original medical records shall be produced.

**SECTION 52.365 Use of copies in discovery proceedings.**

1. If the contents of a medical record which has been delivered pursuant to [SECTION 52.325](#) are the object of a discovery proceeding by any party to the action, counsel may stipulate for, or in the absence of stipulation the court may order:

(a) The delivery of the record to the officer before whom a deposition is to be taken; or

(b) The copying of all or part of the record and the delivery of the copies so made to the party or parties requesting them.

2. If the record is delivered for the purpose of a deposition it shall be returned to the clerk immediately upon completion of the deposition, and in either case mentioned in subsection 1 it shall upon completion of the discovery proceeding be resealed by the clerk.

**SECTION 52.375 Fees for subpoenas; admissibility of medical records.** [SECTION 52.320](#) to [52.365](#), inclusive, do not affect:

1. Subpoena fee requirements provided by statute or rule of court.

2. The admissibility of the contents of a medical record.

**DISPOSAL OF PHYSICAL EVIDENCE BEFORE CRIMINAL TRIAL**

**SECTION 52.385 Property evidencing crime: Return to person entitled to possession; admissibility of photographs in lieu of property; disposal of property not returned.**

1. At any time after property of any person other than the one accused of the crime of which the property is evidence comes into the custody of a peace officer or law enforcement agency, the rightful owner of the property or a person entitled to possession of the property may request the tribal prosecuting attorney to return the property to him. Upon receipt of such a request, the tribal prosecuting attorney may, before the property is released, require the peace officer or law enforcement agency to take photographs of the property. Except as otherwise provided in subsection 3, the peace officer or law enforcement agency shall return the property to the person submitting the request within a reasonable time after the receipt of the request, but in no event later than 180 days after the receipt of the request.

2. In the absence of such a request, the tribal prosecuting attorney may authorize the peace officer or law enforcement agency that has custody of the property to return the property to its owner or a person who is entitled to possession of the property.

3. If the tribal prosecuting attorney to whom a request for the release of property is made determines that the property is required for use as evidence in a criminal proceeding, he may deny the request for the release of the property.

4. Photographs of property returned pursuant to the provisions of this section are admissible in evidence in lieu of the property in any criminal or civil proceeding if they are identified and authenticated in the proceeding by:

- (a) The rightful owner of the property or person entitled to possession of the property to whom the property was released;
  - (b) The peace officer or representative of the law enforcement agency who released the property; or
  - (c) A credible witness who has personal knowledge of the property,
- ↳ in accordance with the provisions of [SECTION 52.185](#) to [52.295](#), inclusive.

5. Any property subject to the provisions of this section which is not returned under the provisions of this section must be disposed of as provided in [SECTION 179.125](#) to [179.165](#), of the Nevada Revised Statutes, inclusive.

**SECTION 52.395 Controlled substances, dangerous drugs and immediate precursors: Procedure for destruction of unnecessary quantity seized as evidence; disposal of hazardous waste.** Except as otherwise provided in [SECTION 453A.400](#):

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the tribal prosecuting attorney, petition the tribal court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the tribal court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The tribal prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the tribal court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the tribal court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The tribal court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The tribal court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in [SECTION 454.201](#) of the Nevada Revised Statutes.

(b) "Hazardous waste" has the meaning ascribed to it in [SECTION 459.430](#) of the Nevada Revised Statutes.

(c) "Immediate precursor" has the meaning ascribed to it in [SECTION 453.086](#).

## MISCELLANEOUS EVIDENCE

**SECTION 52.500 Evidence describing measurements of hazardous waste or hazardous material.**

1. Photographs, samples and writings describing the measurements, including actual net weight or estimated net weight, of hazardous waste or a hazardous material are admissible in evidence in lieu of the waste or material in any criminal or civil proceeding if they are authenticated.

2. As used in this section:

(a) "Hazardous material" has the meaning ascribed to it in [SECTION 459.7024](#) of the Nevada Revised Statutes.

(b) "Hazardous waste" has the meaning ascribed to it in [SECTION 459.430](#) of the Nevada Revised Statutes.