



IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9080

ORDER ADOPTING AMENDMENTS TO TEXAS RULE OF EVIDENCE 902

ORDERED that:

1. In accordance with the Act of May 25, 2013, 83rd Leg., R.S., ch. 560 (SB 679), and pursuant to section 22.004 of the Texas Government Code, Rule 902 of the Texas Rules of Evidence is amended as follows, effective September 1, 2014.

2. The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

3. These amendments may be changed in response to comments received by July 1, 2014. Any interested party may submit written comments to Rules Attorney Martha Newton at rulescomments@txcourts.gov

Dated: April 14, 2014

Nathan L. Hecht, Chief Justice
 Paul W. Green, Justice
 Phil Johnson, Justice
 Don R. Willett, Justice
 Eva M. Guzman, Justice
 Debra H. Lehrmann, Justice
 Jeffrey S. Boyd, Justice
 John P. Devine, Justice
 Jeffrey V. Brown, Justice

Rule 902, Texas Rules of Evidence, is amended to read as follows:

RULE 902. SELF-AUTHENTICATION

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

...

(10) Business Records Accompanied by Affidavit. The original or a copy of a record that meets the requirements of Rule 803(6) or (7), if the record is accompanied by an affidavit that complies with subparagraph (B) of this rule and any other requirements of law, and the

record and affidavit are served in accordance with subparagraph (A). For good cause shown, the court may order that a business record be treated as presumptively authentic even if the proponent fails to comply with subparagraph (A).

(A) Service Requirement. The proponent of a record must serve the record and the accompanying affidavit on each other party to the case at least 30 days before the day on which evidence is first presented at the trial of the case.

(B) Form of Affidavit. An affidavit is sufficient if it includes the following language, but this form is not exclusive:

- 1. I am the custodian of records of _____ [or] I am an employee or owner of _____ and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.
- 2. Attached are _____ pages of records. These are the original records or the exact duplicates of original records.
- 3. Based on the regular practices of _____, the records were:
 - a. made at or near the time of each act, event, condition, opinion, or diagnosis set forth in the records;
 - b. made by, or from information transmitted by, persons with knowledge of the matters set forth; and
 - c. kept in the course of regularly conducted business activity.
- 4. It was the regular practice of the business activity to make the records.

(11) Presumptions Under Statutes or Other Rules. . . .

...

Comment to 2014 Change: The word "affidavit" in this rule includes an unsworn declaration made under penalty of perjury. TEX. CIV. PRAC. & REM. CODE § 132.001. A record and affidavit may be served electronically, including by email. TEX. R. CIV. P. 21a. The reference to "any other requirements of law" incorporates the requirements of Sections 18.001 and 18.002 of the Civil Practice and Remedies Code for affidavits offered as prima facie proof of the cost or necessity of services or medical expenses. **TBJ**