

## NY CLS CPLR R 4536

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*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 45 Evidence (§§ 4501 — 4551)*

### **R 4536. Proof of writing by comparison of handwriting.**

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Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing shall be permitted.

### **History**

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Formerly § 4536, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

### **Notes**

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#### **Prior Law**

Earlier statutes: CPA § 4536; CCP § 961–d.

#### **Advisory Committee Notes**

This rule is the same as former § 332, except for a number of minor language changes.

### **Notes to Decisions**

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#### **I.Under CPLR**

## **1. Generally**

## **II. Under Former Civil Practice Laws**

### **2. Generally**

### **3. Comparison with admitted signature**

### **4. Signature of deceased person**

### **5. Expert testimony**

## **I. Under CPLR**

### **1. Generally**

In prosecution for grand larceny and violation of Social Services Law on ground that defendant had received income from employment during periods he had been receiving public assistance and had not fully reported the income, even though handwriting expert, who testified that endorsements on three of ten public assistance checks were in handwriting of defendant, was unable to give opinion as to endorsements on the other seven checks because they were photostatic copies with a smaller scale, admission of the seven checks in connection with jury's determining whether defendant endorsed them was not improper. *People v Hunter*, 34 N.Y.2d 432, 358 N.Y.S.2d 360, 315 N.E.2d 436, 1974 N.Y. LEXIS 1419 (N.Y. 1974).

In an action for specific performance of a contract to sell real property, the comparison of the signatures on the binder and on the contract is admissible evidence by witnesses called for that purpose. *Vogt v Orlando*, 33 A.D.2d 705, 306 N.Y.S.2d 193, 1969 N.Y. App. Div. LEXIS 2817 (N.Y. App. Div. 2d Dep't 1969).

Trial court did not err in admitting into evidence, in case in which payees' endorsements on check were alleged by the payees to be forged, bank signature card or in allowing testimony by employee of the bank and bank officer, both of whom were experienced in comparing

handwriting, that the signatures on the card and the endorsements on the check were written by the same persons. *In re Estate of Spytko*, 50 A.D.2d 645, 374 N.Y.S.2d 800, 1975 N.Y. App. Div. LEXIS 12469 (N.Y. App. Div. 3d Dep't 1975).

In prison disciplinary proceeding, testimony of handwriting expert was not needed in order to link handwriting evidence to inmate since trier of fact may make comparisons of handwriting samples under CLS CPLR § 4536, and there is no authority which prohibits hearing officer from evaluating handwriting without expert testimony. *Thomas v Coughlin*, 145 A.D.2d 695, 535 N.Y.S.2d 235, 1988 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 3d Dep't 1988).

On motion for summary judgment in action on promissory note, court improperly determined that plaintiff's signature on UCC-3 termination statement was forgery, as handwriting comparison under CLS CPLR § 4536 is not appropriate on summary judgment motion but gives rise to issue of fact. *Dyckman v Barrett*, 187 A.D.2d 553, 590 N.Y.S.2d 224, 1992 N.Y. App. Div. LEXIS 13021 (N.Y. App. Div. 2d Dep't 1992).

Handwriting comparison under CLS CPLR § 4536 is not appropriate on motion for summary judgment; thus, where defendant's affidavit denied having seen guaranty until confronted with it in litigation, and his sister's affidavit admitted that she forged his signature on guaranty, court erred in conclusively determining, based on its own comparison of signatures, that defendant's signature on guaranty was not forged and that he signed guaranty. *Seoulbank, N.Y. Agency v D&J Export & Import Corp.*, 270 A.D.2d 193, 707 N.Y.S.2d 12, 2000 N.Y. App. Div. LEXIS 3329 (N.Y. App. Div. 1st Dep't 2000).

Trial court did not abuse its discretion by permitting the State to provide opinion testimony from a handwriting expert as to whether defendant authored the letters sent from prison because once the trial court determined that the known writings introduced by the State were indeed those of defendant, expert testimony was permissible under N.Y. C.P.L.R. art. 4536. *People v Callicutt*, 101 A.D.3d 1256, 956 N.Y.S.2d 607, 2012 N.Y. App. Div. LEXIS 8575 (N.Y. App. Div. 3d Dep't 2012), app. denied, 20 N.Y.3d 1096, 965 N.Y.S.2d 792, 988 N.E.2d 530, 2013 N.Y.

LEXIS 879 (N.Y. 2013), app. denied, 20 N.Y.3d 1097, 965 N.Y.S.2d 793, 988 N.E.2d 531, 2013 N.Y. LEXIS 957 (N.Y. 2013).

Trial court properly denied and dismissed a candidate's nominating petition for lack of sufficient valid signatures because the court was authorized to make findings with respect to the validity of the signatures on the nominating petition by making its own comparison of those signatures to the signatures on the voter registration rolls, rather than merely comparing the names and addresses on the nominating petition with the names and addresses on the voter registration rolls, the candidate was not entitled to notice of the specific objections that were filed prior to the Election Board's determination and the respondents' answer was sufficiently detailed to apprise the candidate of the allegations made against his nominating petition. *Matter of Trevisani v Karp*, 164 A.D.3d 1586, 83 N.Y.S.3d 777, 2018 N.Y. App. Div. LEXIS 5943 (N.Y. App. Div. 4th Dep't 2018).

Evidence in prosecution of corporate officers for failure to make agreed-to payments to employee benefit fund was sufficient to establish that such payments had in fact not been made during statutory period and that defendants were connected to respective corporations in appropriate capacities. *People v Reilly*, 87 Misc. 2d 164, 384 N.Y.S.2d 950, 1976 N.Y. Misc. LEXIS 2179 (N.Y. City Crim. Ct. 1976), modified, 93 Misc. 2d 61, 403 N.Y.S.2d 400, 1978 N.Y. Misc. LEXIS 2012 (N.Y. App. Term 1978).

The State failed to overcome the presumption in favor of the genuineness of the signatures of the named payee on State issued unemployment checks (Uniform Commercial Code, § 3-307) where the State produced the hearsay testimony of the claims examiner for the State Department of Labor who interviewed the supposed payee, an individual not personally known to her, in connection with a claim of forgery, but failed to produce any of the documents signed by the named payee in the possession of the Department of Labor allegedly forming the basis of her comparison with the signatures on the checks, and, consequently, although the signatures on the checks and the signature on the interview form signed in the presence of the State's witness are different, they bear equal claims to authenticity and, therefore, do not constitute the

required firsthand evidence of forgery necessary to overcome the presumption; comparison of signatures by the court was precluded by the State's failure to produce "any writing proved \* \* \* to be the handwriting of the person claimed to have made the disputed writing" (CPLR 4536); the State did not exercise those opportunities for self-protection available to it by not possessing properly maintained records containing an authentic signature of the named payee with which to prove the forgery. *Freeman Check Cashing, Inc. v State*, 97 Misc. 2d 819, 412 N.Y.S.2d 963, 1979 N.Y. Misc. LEXIS 2006 (N.Y. Ct. Cl. 1979).

Where a bank claimed that the customers did not notify it of an alleged forgery pursuant to N.Y. U.C.C. Law § 4-405(1), (2) and 4-406 and raised a triable issue of fact as to whether the customers' signatures were genuine under N.Y. C.P.L.R. 4536, neither party was entitled to summary judgment in the customer's breach of contract action; a federal tax form, 1099-INT, did not create a duty of inquiry because it was not a statement of account accompanied by items paid in good faith in support of debit entries under N.Y. U.C.C. Law § 4-104(1)(g). *James v Albank*, 307 A.D.2d 1024, 763 N.Y.S.2d 838, 2003 N.Y. App. Div. LEXIS 9035 (N.Y. App. Div. 2d Dep't 2003).

Trial court did not abuse its discretion in precluding the opinion testimony of the buyer's purported handwriting expert, but erred in refusing to admit in evidence, as irrelevant, handwriting exemplars of the buyer's president for the purpose of comparison to his purported signature on the second contract under N.Y. C.P.L.R. 4536 where the only issue at trial was whether the buyer's president executed or authorized the second contract. *Am. Linen Supply Co. v M.W.S. Enters.*, 6 A.D.3d 1079, 776 N.Y.S.2d 387, 2004 N.Y. App. Div. LEXIS 6133 (N.Y. App. Div. 4th Dep't), app. dismissed, 3 N.Y.3d 702, 785 N.Y.S.2d 28, 818 N.E.2d 670, 2004 N.Y. LEXIS 2294 (N.Y. 2004).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

In a negligence action it was not error to exclude from the evidence under this section, an alleged answer of the defendant to a letter of the plaintiff's former attorney, where there was no testimony by the attorney to whom it was addressed nor any concession that he would testify to the effect that the communication in question was the actual one received in answer to his letter to the defendant. *Rathfelder v Flag*, 257 A.D. 71, 12 N.Y.S.2d 136, 1939 N.Y. App. Div. LEXIS 7672 (N.Y. App. Div.), *aff'd*, 282 N.Y. 563, 24 N.E.2d 984, 282 N.Y. (N.Y.S.) 563, 1939 N.Y. LEXIS 1657 (N.Y. 1939).

### **3. Comparison with admitted signature**

On the admission of a written assignment in evidence, valid signatures of the assignors may be compared with the signatures on the assignments. *Gordon v Jacobs*, 248 A.D. 899, 290 N.Y.S. 641, 1936 N.Y. App. Div. LEXIS 8002 (N.Y. App. Div. 1936).

Change of beneficiary by insurance company was self-established under this section by comparison of the handwriting on the indorsements with that on the original policies. *Suta v Zapotochny*, 254 A.D. 172, 4 N.Y.S.2d 217, 1938 N.Y. App. Div. LEXIS 6373 (N.Y. App. Div. 1938).

### **4. Signature of deceased person**

Error to reject evidence of comparison of deceased person's disputed signature with signature card of his bank, in connection with teller's testimony that card could be consulted by the bank if a question arose concerning signature. *Davis v Bickle*, 230 A.D. 580, 245 N.Y.S. 488, 1930 N.Y. App. Div. LEXIS 8683 (N.Y. App. Div. 1930).

On probate of a will, the subscribing witnesses having testified that they had forgotten the occurrence of its execution, it was error to exclude proof of handwriting. *In re Lane's Will*, 234 A.D. 775, 253 N.Y.S. 438, 1931 N.Y. App. Div. LEXIS 10065 (N.Y. App. Div. 1931).

## **5. Expert testimony**

To determine whether signature was forged, specimen signatures of both persons proven by common-law evidence to have been written by them respectively were admissible as standards for comparison by experts, but such experts could not use specimens not proved by common-law evidence but by testimony of experts. *Turnure v Breitung*, 195 A.D. 200, 186 N.Y.S. 620, 1921 N.Y. App. Div. LEXIS 4721 (N.Y. App. Div. 1921), *aff'd*, 233 N.Y. 649, 135 N.E. 955, 233 N.Y. (N.Y.S.) 649, 1922 N.Y. LEXIS 1072 (N.Y. 1922).

Signature on bond held properly proved by expert evidence that it was written by same hand that wrote admitted genuine signature on mortgage. *Rosenberger v Johnson*, 210 A.D. 319, 206 N.Y.S. 286, 1924 N.Y. App. Div. LEXIS 6721 (N.Y. App. Div. 1924).

Experts are supposed to give conclusions, and they are proper to assist the jury. *Davis v Bickle*, 230 A.D. 580, 245 N.Y.S. 488, 1930 N.Y. App. Div. LEXIS 8683 (N.Y. App. Div. 1930).

## **Research References & Practice Aids**

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### **Federal Aspects:**

Authentication and identification of handwriting in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 901(b)(2).

Handwriting as documentary evidence in United States courts, 28 USCS § 1731.

### **Jurisprudences:**

58A NY Jur 2d Evidence and Witnesses §§ 706., 707., 710. .

17 Am Jur Proof of Facts 507., Questioned Handwriting.

24 Am Jur Proof of Facts 3d 667., Identification of Handprinting and Numerals.

25 Am Jur Proof of Facts 3d 637., Illegible Signatures and Writing in Litigation.

## **Law Reviews:**

Evidence symposium. 52 Cornell L.Q. 177.

Civil jury trial: your proof. 42 NYSB J 52.

## **Treatises**

### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4536, Proof of Writing by Comparison of Handwriting.

6 Rohan, New York Civil Practice: EPTL ¶11-2.3.

3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1404.11, 1405.03.

### **Matthew Bender's New York Practice Guide:**

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.08. CHECKLIST: Authenticating ESI.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.09. Authenticating Various Types of ESI.

### **Matthew Bender's New York Evidence:**

6 Bender's New York Evidence § 23A.06. Establishing Will by Proof of Handwriting.

1 Bender's New York Evidence § 115.02. Authentication of Private Writings and Documents.

2 Bender's New York Evidence § 137.07. Use of Expert Testimony: Identification Issues.

## **Annotations:**

Admissibility of evidence as to linguistics or typing style (forensic linguistics) as basis of identification of typist or author. 36 ALR4th 598.



**Texts:**

Jonakait, Baer, Jones, & Imwinkelried, New York Evidentiary Foundations (Michie), Ch 4 .Authentication.

1 New York Trial Guide (Matthew Bender) § 3.32; 2 New York Trial Guide (Matthew Bender) §§ 20.20, 30.12; 4 New York Trial Guide (Matthew Bender) § 60.20.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

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