

A defendant was tried on multiple counts of bank fraud for a scheme in which he allegedly made withdrawals from the bank accounts of others by using false identification cards and forging signatures on checks. A codefendant, who had assisted the defendant in 5 of the 75 transactions for which the defendant was being tried, testified that he was present and saw the defendant endorse 5 of the checks.

Thereafter, the prosecutor moved for admission of all 75 checks that the defendant had allegedly endorsed, arguing that a comparison by the jury of the signatures on the checks identified by the codefendant with those on the other 70 checks would demonstrate that they were all signed by the defendant.

Should the court permit the proposed comparison of the handwriting specimens by the jury?

- A. No, because such a comparison may be done only by an expert.
- B. No, because such a comparison may be done only by an expert or by a non-expert who can testify to the genuineness of the handwriting.
- C. Yes, because the jurors are allowed to determine the genuineness of handwriting specimens based on comparison with authenticated specimens.
- D. Yes, but only if the court first makes a preliminary finding of authenticity as to the other 70 checks.

## Explanation:

### Authenticating documents

(FRE 901)

<b>Common methods</b>	Stipulation or eyewitness testimony
<b>Ancient documents &amp; data compilation</b>	At least 20 years old when offered condition creates no suspicion about authenticity <i>and</i> was in place where authentic document would likely be
<b>Public records</b>	Record was recorded or filed in public office as authorized by law or in office where that type of item is kept
<b>Reply letter</b>	Document written in response to communication <i>and</i> contents make it unlikely response was written by someone other than recipient of first communication
<b>Handwriting</b>	Comparison – expert witness or trier of fact compares authenticated against disputed handwriting (or fingerprints, hair, cloth fibers) <i>or</i> Non-expert opinion – witness with personal knowledge of authentic handwriting not acquired for litigation gives opinion on disputed handwriting
<b>Self-authenticating</b>	Public documents with official's signature & authorized by official or seal Certified copies of public records & records of regularly conducted activities Newspapers, periodicals & official publications Documents with trade inscription Acknowledged documents Commercial papers, including signature & related documents

**FRE** = Federal Rule of Evidence.

**Documentary evidence** (eg, letter, writing) must be **authenticated** before it can be admitted at trial. Authentication requires the proponent to produce sufficient evidence to support a finding that the thing is what the proponent claims it to be. Documentary evidence is commonly authenticated by stipulation, eyewitness testimony, or **handwriting verification**. There are **two methods** of verifying handwriting:

**Non-expert opinion** – a lay witness with personal knowledge of the claimed author's handwriting (not acquired for the current litigation) testifies as to whether a document is in the author's handwriting

**Comparison** – an expert witness or the trier of fact compares the writing in question with another writing that has been authenticated

Here, the first 5 checks were authenticated through the codefendant's lay testimony that he personally saw the defendant endorse them (non-expert-opinion method). This means that the *jurors*, as the triers of fact, can now determine the genuineness of the 70 remaining checks by comparing them with the 5 authenticated checks (comparison method) **(Choices A & B)**. The court should therefore permit the proposed comparison.

**(Choice D)** If some evidence is found to be genuine (ie, authenticated), the judge need not make a preliminary finding of authenticity as to the remainder. Instead, the jury or expert witness can make the determination.

**Educational objective:**

Documentary evidence can be authenticated by two methods of handwriting verification: (1) a lay witness with personal knowledge of the claimed author's handwriting testifies about it or (2) an expert witness or the trier of fact compares the writing in question with another authenticated writing.

**References**

Fed. R. Evid. 901 (authenticating/identifying evidence).

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