

A plaintiff sues the defendant for breach of a promise made in a letter allegedly written by the defendant to the plaintiff. The defendant denies writing the letter.

Which of the following would NOT be a sufficient basis for admitting the letter into evidence?

- A. Comparison by the trier of fact of the letter with an admitted signature of the defendant.
- B. Evidence that the letter was written in response to one written by the plaintiff to the defendant.
- C. Opinion testimony of a non-expert witness based upon familiarity acquired to authenticate the signature.
- D. Testimony by the plaintiff that she is familiar with the defendant's signature and recognizes it on the letter.

Explanation:

Authenticating documents

(FRE 901)

Common methods	Stipulation or eyewitness testimony
Ancient documents & data compilation	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
Public records	Record was recorded or filed in public office as authorized by law or in office where that type of item is kept
Reply letter	Document written in response to communication <i>and</i> contents make it unlikely response was written by someone other than recipient of first communication
Handwriting	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
Self-authenticating	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, letters) must be **authenticated** before it can be admitted at trial. This 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 often authenticated through **handwriting verification**, which can be achieved in two ways:

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

Comparison – an expert witness or the trier of fact compares the writing in question (eg, the defendant's alleged letter) with another writing that has been authenticated **(Choice A)**

Therefore, the testimony of a non-expert witness who acquired familiarity with the defendant's handwriting only to authenticate the signature is *not* a sufficient basis for admitting the letter into evidence.

(Choice B) Documentary evidence can be authenticated by evidence that it was written in response to another communication (ie, a reply letter). However, the contents must make it unlikely that the response was written by someone other than the recipient of the first communication.

Educational objective:

Documentary evidence can be authenticated by having a lay witness with personal knowledge of the claimed author's handwriting—not acquired for the current litigation—testify that the document is in the author's handwriting.

References

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

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