

A plaintiff, after his multi-story building collapsed, sued his insurance company for the proceeds owed under the insurance policy. The plaintiff alleges that lightning struck a structural support beam and caused the building to collapse. The insurance company contends that the collapse was a result of the plaintiff overloading the support beam by installing a gym on the top floor of the building.

At trial, the plaintiff produced an incident report that identified charring on the support beam. To explain the charring, the insurance company seeks to introduce an affidavit given by a journalist over 40 years ago. The affidavit describes a fire that occurred in the building at that time, while the building was still under construction. The insurance company called the editor of the local newspaper, who testified that the journalist's affidavit was kept in the article archives and is in the same condition as the articles it was stored with. The editor further testified that the newspaper has always archived articles and supporting documents as soon as the article is published.

If the insurance company offers the journalist's affidavit into evidence, is it likely to be admitted?

- A. No, because the affidavit contains hearsay not within any exception.
- B. No, because the affidavit is not based on the editor's personal knowledge.
- C. Yes, because the editor testified as to the authenticity of the affidavit.
- D. Yes, because the editor's testimony established the chain of custody for the affidavit.

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, like other tangible evidence, must be authenticated before it can be admitted into evidence. This is commonly done by stipulation or eyewitness testimony. However, an "**ancient document**" or data compilation can also be **authenticated** by showing that it:

is at least **20 years old** at the time it is offered

is in a **condition** that creates **no suspicion** about its authenticity *and*
was found in a place **where it would likely be** if it were authentic.

Here, the journalist's affidavit is over 40 years old. The editor testified that it is in the same condition as the articles it was stored with and was kept in the newspaper's archives where similar documents are stored. Since this testimony shows that there is no suspicion about the affidavit's authenticity, it was properly authenticated. As a result, it is admissible unless another exclusionary rule applies.

One such rule is the rule against hearsay, which generally bars the admission of out-of-court statements (eg, those in the affidavit) offered to prove the truth of the matter asserted therein (eg, that the building previously caught fire). However, statements in ancient documents prepared before January 1, 1998 are excepted from this rule, so the affidavit will likely be admitted **(Choice A)**.

(Choice B) The rule for authenticating ancient documents was created to address problems caused when firsthand witnesses die, recollections fade, or alternative evidence is lost with the passage of time. As a result, ancient documents need not be authenticated by someone with personal knowledge of its creation.

(Choice D) [Chain of custody](#) must be used to authenticate physical evidence—as opposed to documentary evidence—that could easily be tampered with or is not readily identifiable (eg, gun, knife, blood sample).

Educational objective:

An ancient document can be authenticated by showing that the document (1) is at least 20 years old when offered, (2) is in a condition that creates no suspicion about its authenticity, and (3) was found in a place where it would likely be if it were authentic.

References

Fed. R. Evid. 901 (authenticating ancient documents).

Fed. R. Evid. 803(16) (hearsay exception for statements in ancient documents).