

## **DOCUMENTARY EVIDENCE**

Before documentary evidence may be introduced, certain foundations must be established. You may have the best “proof” in the world, but if it is not admitted evidence, it might as well not exist at all.

Regardless of the type of evidence, whether records, bills, photographs, letters, diagrams, or charts, you must lay the proper foundation before the documents may be introduced as evidence. This article offers some suggestions on how to establish the proper foundation for the admission of different types of evidence.

### **A. Business Records:**

1. You should ask the following questions in order to lay the foundation for business records to be admitted into evidence and considered an exception to the hearsay rule:

- a. Are you familiar with Exhibit “A” (business records) for identification?
- b. Can you identify these records?
- c. Were these documents prepared in the ordinary scope of the business of your company?
- d. Were these documents stored after they were prepared?
- e. Were these documents retrieved from?
- f. Is it a regular part of your business to keep and maintain records of this type?
- g. Are these documents of the type that would be kept under your custody or control?

- h. Move the documents into evidence.
- 2. See Fla. R. Evid. §90.803(6).

B. Tape Recordings:

1. You should ask the following questions in order to lay the foundation for tape recordings to be admitted into evidence:

- a. Have you had the opportunity to hear the voice of Mr. X before?
- b. How many times have you heard his voice?
- c. Tell us how you are familiar with Mr. X's voice?
- d. Have you heard the recording marked as Exhibit "B" for identification?
- e. Do you recognize the voice?
- f. To whom does the voice belong?
- g. Move the recording into evidence.

C. Photographs:

1. You should ask the following questions in order to lay the foundation for photographs to be admitted into evidence:

- a. I am showing you what has been marked as Exhibit "C" for identification. Do you recognize what is shown in this photograph?
- b. Are you familiar with the scene (person, product, etc.) portrayed in this photograph?
- c. How are you familiar with the scene portrayed in the photograph?

d. Does the scene portrayed in the photograph fairly and accurately represent the scene as you remember it on (date in question)?

e. Move the photograph into evidence.

D. Authenticating a Letter:

1. You should ask the following questions in order to authenticate a letter:

a. Are you familiar with the signature of Mr. Smith (person who signed the letter)?

b. How are you familiar with Mr. Smith's signature?

c. Show the witness what has been marked Exhibit "D" for identification.

d. Do you recognize the signature at the bottom of this letter?

e. Whose signature is this?

f. Move the letter into evidence.

E. Diagrams:

1. You should ask the following questions in order to lay the foundation for diagrams to be admitted into evidence:

a. I am showing you what has been marked as Exhibit "E" for identification. Are you familiar with the area located at 16<sup>th</sup> Street and 12<sup>th</sup> Avenue in Dade County, Florida?

b. How are you familiar with this area?

c. Based on your familiarity with the area, can you tell us whether the scene depicted in this diagram fairly and accurately represents the area as you recall it on the date in question?

d. Move the diagram into evidence.

F. Refreshing Recollection:

1. To refresh an individual's memory on a particular matter, you should first establish that the witness does not remember that matter. Then ask the following questions?

a. Did you at some time remember this?

b. Did you at any time prepare a document setting out what happened?

c. Would a review of this document assist you in remembering the matters that we are concerned about today?

d. I am handing you what has been marked Exhibit "F" for identification.

e. Please review it and tell me if it helps you to remember.

f. Does that document refresh your recollection?

g. Do you now have an independent recollection of the facts?

h. Tell us what happened.

G. Authenticating Handwriting in a Document:

1. You should ask the following questions in order to authenticate a handwritten document:

a. Are you familiar with the handwriting of Mr. Smith?

- b. How are you familiar with Mr. Smith's handwriting?
- c. I show you what has been marked Exhibit "G" for identification.
- d. Do you recognize the handwriting in this document?
- e. To whom does it belong?
- f. Move exhibit into evidence.

2. If you are "stuck" in attempting to introduce documentary evidence at trial and do not remember how to do it, just recall the basic steps necessary to establish an evidentiary foundation:

- a. Show that the witness is familiar with the document that you are attempting to admit into evidence.
- b. Have the witness authenticate the document.
- c. Establish that the document is what it purports to be.
- d. Demonstrate the document's relevance to the case.
- e. After you have accomplished the above steps, chances are that you have laid the proper foundation for the exhibit to be admitted into evidence. You should then boldly offer it as your next exhibit in the case.

Many experienced attorneys often stumble at trial when attempting to admit documents into evidence. It is important to review the necessary foundation before starting trial so that your presentation will go smoothly. You may consider putting a copy of this article in your notebook to refresh your recollection as needed.