

IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 14-003

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF EVIDENCE 902

ORDERED that:

1. In accordance with § 22.109 of the Government Code, Rule 902 of the Texas Rules of Evidence is amended.
2. This order contains the final version of the rule. The amended rule applies to cases filed on or after September 1, 2014.
3. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: August 19, 2014.

Sharon Keller

Sharon Keller, Presiding Judge

Michael Keasler

Michael Keasler, Judge

Lawrence E. Meyers

Lawrence E. Meyers, Judge

Barbara Hervey

Barbara Hervey, Judge

Tom Price

Tom Price, Judge

Cathy Cochran

Cathy Cochran, Judge

Paul Womack

Paul Womack, Judge

Elsa Alcala

Elsa Alcala, Judge

Cheryl Johnson

Cheryl Johnson, Judge

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9174

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF EVIDENCE 902

ORDERED that:

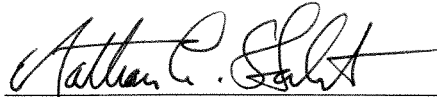
1. In accordance with the Act of May 17, 2013, 83rd Leg., R.S., ch. 560, § 3, 2013 Tex. Gen. Laws 1509, 1510 (SB 679), Rule 902 of the Texas Rules of Evidence is amended as follows.

2. By order dated April 14, 2014, in Misc. Docket No. 14-9080, the Court approved amendments to Rule 902 and invited public comment. After receiving public comments, the Court made revisions to the rule. This order incorporates those revisions and contains the final version of the rule. The amended rule applies to cases filed on or after September 1, 2014.

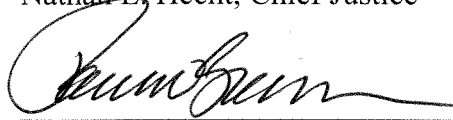
3. The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

Dated: August 19, 2014.



Nathan L. Hecht, Chief Justice



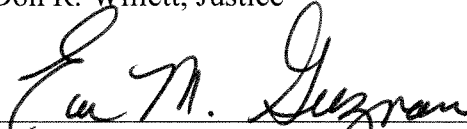
Paul W. Green, Justice



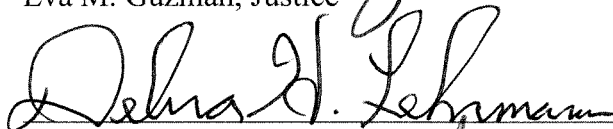
Phil Johnson, Justice



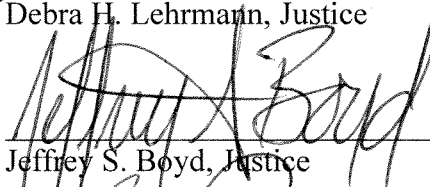
Don R. Willett, Justice



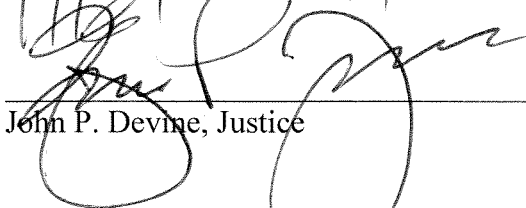
Eva M. Guzman, Justice



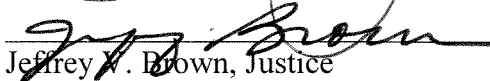
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey W. Brown, Justice

Rule 902, Texas Rules of Evidence, is amended to read as follows:

RULE 902. SELF-AUTHENTICATION

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

...

(10) *Business Records Accompanied by Affidavit.* The original or a copy of a record that meets the requirements of Rule 803(6) or (7), if the record is accompanied by an affidavit that complies with subparagraph (B) of this rule and any other requirements of law, and the record and affidavit are served in accordance with subparagraph (A). For good cause shown, the court may order that a business record be treated as presumptively authentic even if the proponent fails to comply with subparagraph (A).

(A) *Service Requirement.* The proponent of a record must serve the record and the accompanying affidavit on each other party to the case at least 14 days before trial. The record and affidavit may be served by any method permitted by Rule of Civil Procedure 21a.

(B) *Form of Affidavit.* An affidavit is sufficient if it includes the following language, but this form is not exclusive:

1. I am the custodian of records [*or I am an employee or owner*] of _____ and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.
2. Attached are ____ pages of records. These are the original records or exact duplicates of the original records.
3. The records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth. [*or It is the regular practice of _____ to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the record.*]
4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. [*or It is the regular practice of _____ for this type of record to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them.*]

5. The records were kept in the course of regularly conducted business activity. [*or* It is the regular practice of _____ to keep this type of record in the course of regularly conducted business activity.]

6. It is the regular practice of the business activity to make the records.

(11) *Presumptions Under Statutes or Other Rules. . . .*

. . .

Comment to 2014 Change: At the direction of the Legislature, the requirement that records be filed with the court before trial has been removed. *See* Act of May 17, 2013, 83rd Leg., R.S., ch. 560, § 3, 2013 Tex. Gen. Laws 1509, 1510 (SB 679). The word “affidavit” in this rule includes an unsworn declaration made under penalty of perjury. TEX. CIV. PRAC. & REM. CODE § 132.001. The reference to “any other requirements of law” incorporates the requirements of Sections 18.001 and 18.002 of the Civil Practice and Remedies Code for affidavits offered as prima facie proof of the cost or necessity of services or medical expenses. The form medical expenses affidavit that was added to this rule in 2013 has been removed as unnecessary. It can now be found in Section 18.002(b-1) of the Civil Practice and Remedies Code.