9.08. Self-Authenticating Evidence (CPLR 4532; 4538; 4540; 4540-a; 4542)[1]

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Official Record of Court or Government Office in United States (CPLR 4540).

(a) An official publication, or a copy attested as correct by an officer or a deputy of an officer having legal custody of an official record of the United States or of any state, territory or jurisdiction of the United States, or of any of its courts, legislature, offices, public bodies or boards is prima facie evidence of such record.

(b) Where the copy is attested by an officer of the state, it shall be accompanied by a certificate signed by, or with a facsimile of the signature of, the clerk of a court having legal custody of the record, and, except where the copy is used in the same court or before one of its officers, with the seal of the court affixed; or signed by, or with a facsimile of the signature of, the officer having legal custody of the original, or his deputy or clerk, with his official seal affixed; or signed by, or with a facsimile of the signature of, the presiding officer, secretary or clerk of the public body or board and, except where it is certified by the clerk or secretary of either house of the legislature, with the seal of the body or board affixed. If the certificate is made by a county clerk, the county seal shall be affixed.

(c) Where the copy is attested by an officer of another jurisdiction, it shall be accompanied by a certificate that such officer has legal custody of the record, and that his signature is believed to

be genuine, which certificate shall be made by a judge of a court of record of the district or political subdivision in which the record is kept, with the seal of the court affixed; or by any public officer having a seal of office and having official duties in that district or political subdivision with respect to the subject matter of the record, with the seal of his office affixed.

(2) Foreign Records and Documents (CPLR 4542).

(a) A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position [i] of the attesting person, or [ii] of any foreign official whose certificate of genuineness of signature and official position relates to the attestation, or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(b) A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, admit an attested copy without final certification, or permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(3) Acknowledged Documents (CPLR 4538).

Certification of the acknowledgment or proof of a writing, except a will, in the manner prescribed by law for taking and certifying the acknowledgment or proof of a conveyance of real property within the state is prima facie evidence that it was executed by the person who purported to do so. A conveyance of real property, situated within another state, territory or jurisdiction of the United States, which has been duly authenticated, according to the laws of that state, territory or jurisdiction, so as to be read in evidence in the courts thereof, is admissible in evidence in the state.

(4) Newspapers and Periodicals of General Circulation (CPLR 4532).

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to printed materials purporting to be newspapers or periodicals of general circulation; provided however, nothing herein shall be deemed to preclude or limit the right of a party to challenge the authenticity of such printed material, by extrinsic evidence or otherwise, prior to admission by the court or to raise the issue of authenticity as an issue of fact.

(5) Trade Inscriptions and the Like.

A trademark, trade name, inscription, sign, tag, or label purporting to have been affixed to an item in the course of business and indicating origin, ownership or control of the item is evidence of the origin, ownership or control of the matter.

(6) Materials Authored or Otherwise Created by a Party and Produced by the Party (CPLR 4540-a).

Material produced by a party in response to a demand pursuant to article thirty-one of the Civil Practice Law and Rules for material authored or otherwise created by such party shall be presumed authentic when offered into evidence by an adverse party. Such presumption may be rebutted by a preponderance of evidence proving such material is not authentic, and shall not preclude any other objection to admissibility.

(7) Other Laws of self-authentication.

In addition to the foregoing subdivisions, the consolidated laws and decisional law provide for self-authentication of specific types of evidence. See Guide to New York Evidence article 3 (Prima Facie Evidence) and rule 8.08 (Business Records [CPLR 4518]).

Note

As set forth in this rule, certain documents and writings are "self-authenticating," meaning that their authenticity is established without the need to call a foundation witness. While compliance with a "self-authentication" statute bars a challenge to offered evidence for lack of authenticity, it does not bar a challenge on other grounds, such as to the genuineness of the offered "self-authenticating" document, the admissibility of aspects of its contents, or the weight to be accorded the evidence.

CPLR article 45 is the principal source of important evidentiary rules, including those setting forth methods of authentication of evidence. (*See generally* Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 4532, 4538, 4540, 4540-a, 4542; Robert A. Barker & Vincent C. Alexander, Evidence in New York State and Federal Courts § 9:24 [2d ed].)

Subdivision (1) provides for self-authentication of official publications or copies of public records of New York, other states and the United States. It restates verbatim CPLR 4540, with subdivision (1) (a) restating CPLR 4540 (a), subdivision (1) (b) restating CPLR 4540 (b), and subdivision (1) (c) restating CPLR 4540 (c).

CPLR 4540 (a) addresses when an "official publication" or a "copy attested as correct" of an "official record" of the United States or other non-foreign governmental bodies may constitute prima facie evidence of the record. By the

terms of CPLR 4540 (a), no attestation is required for an "official" document; however, to protect the integrity of an "official" document, a copy of the document is generally preferred. (*See* CPLR 8021 [e] [with exceptions, the statute prohibits the production of a record of a county clerk's office "in the interest of the safety and preservation thereof"]; Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 4540.) A copy of an "official record" requires that it be properly attested to as "correct" by the officer or deputy having legal custody of the document.

CPLR 4540 (b) details the additional requirements necessary to verify the attestation by an officer of the state.

CPLR 4540 (c) governs a copy of a document attested to by an officer of another jurisdiction within the United States. The added requirement of this provision is "obviously highly technical" and the "superfluity of this technicality is recognized in modern developments in the law of evidence." (*People v Parsons*, 84 AD2d 510, 511 [1st Dept 1981], *affd for reasons stated in App Div mem* 55 NY2d 858 [1982].) As a result, the authenticity of a document has been recognized where there was "substantial compliance" with CPLR 4540 (c). (*See Sparaco v Sparaco*, 309 AD2d 1029, 1030 [3d Dept 2003]; *Matter of Thomas v New York State Bd. of Parole*, 208 AD2d 460 [1st Dept 1994]; *Parsons*, 84 AD2d at 511; *cf. People v Wheeler*, 46 AD3d 1082, 1082 [3d Dept 2007] [where a statute authorized the consideration of "reliable hearsay," a document in substantial compliance with CPLR 4540 constituted "reliable hearsay"]; *but see Waingort v Waingort*, 203 AD2d 453 [2d Dept 1994] [final judgment and decree of divorce of another state was not properly authenticated pursuant to CPLR 4540 (c) and motion to vacate its filing was granted, albeit without prejudice to the filing of a properly authenticated copy]; *People v Acebedo*, 156 AD2d 369, 369 [2d Dept 1989] ["sentencing court erred at the second felony offender hearing, when, over the defendant's objection, it admitted into evidence certificates of conviction from Florida which were not accompanied by the certification required by CPLR 4540 (c)"].)

In some instances, judicial notice can be used to establish that a document is authentic. Thus, court and public records may be judicially noticed pursuant to Guide to New York Evidence article 2 (Judicial Notice), thereby making it unnecessary to resort to an authentication method. Additionally, where the original of a public document has attached to it the seal of the State of New York, of other states, or of the United States, or the seal of an officer of the State of New York, of its subdivisions, or of the federal government, the New York courts will take judicial notice of the authenticity of the document. (*See e.g. People v Reese*, 258 NY 89, 98 [1932].)

Subdivision (2) provides for self-authentication of foreign official records. It restates verbatim CPLR 4542.

This rule of self-authentication is subject to an international treaty to which the United States became a party on October 15, 1981 and is entitled: "Convention Abolishing the Requirement of Legalization for Foreign Public Documents" (https://assets.hcch.net/docs/b12ad529-5f75-411b-b523-8eebe86613c0.pdf; 33 UST 883, TIAS No. 10072). "In essence, the convention creates a standard certificate, the 'apostille', which requires only one signature to function as the effective certification of the foreign document sought to be authenticated. This is in marked contrast to the chain method of certification that is presently embodied in the provisions of CPLR 4542, which is based on the premise that it is necessary to insure that the individual who originally certified the document had the authority to do so"; thus, "to the extent that CPLR 4542 is inconsistent with the provisions of the convention, it is . . . inapplicable and its provisions must yield to the convention." (*Matter of McDermott*, 112 Misc 2d 308, 309-310 [Sur Ct, Bronx County 1982]; *see* US Const, art VI, cl 2 ["all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"].) While there are as of August 4, 2022, 122 parties to the convention (https://www.hcch.net/en/instruments/conventions/status-table/?cid=41), CPLR 4542 remains in effect for those foreign countries that are not a party to the convention. (*Matter of Eggers*, 122 Misc 2d 793, 795 [Sur Ct, Nassau County 1984].)

Subdivision (3) restates verbatim CPLR 4538.

The first sentence provides for authentication of a "[c]certification of the acknowledgement or proof of a writing" (except for a will) in the State of New York and adds that the certification is prima facie evidence "that it was executed by the person who purported to do so." (*See* Real Property Law § 309-a ["Uniform forms of certificates of acknowledgment or proof within this state"]; *see also Osborne v Zornberg*, 16 AD3d 643, 644 [2d Dept 2005] ["(A) certificate of acknowledgment should not be overthrown upon evidence of a doubtful character, such as the unsupported testimony of interested witnesses, nor upon a bare preponderance of evidence, but only on proof so clear and convincing as to amount to a moral certainty"], citing *Albany County Sav. Bank v McCarty*, 149 NY 71, 80 [1896].)

The second sentence of CPLR 4538 addresses a "conveyance of real property, situated within another state, territory or jurisdiction of the United States." If that item "has been duly authenticated, according to the laws of that state, territory or jurisdiction, so as to be read in evidence in the courts thereof, [it] is admissible in evidence in the state."

Subdivision (4) restates verbatim CPLR 4532. It provides for self-authentication of newspapers and periodicals of general circulation. The proviso clause states the common rule generally which permits the opposing party to

controvert the claimed authenticity (i.e. the genuineness of the document) "by extrinsic evidence or otherwise" and "to raise the issue of authenticity as an issue of fact."

Subdivision (5) is derived from decisional law which provides that any trade inscriptions and the like on items indicating origin, ownership or control are self-authenticating. (*See e.g. Lindsay v Academy Broadway Corp.*, 198 AD2d 641, 642 [3d Dept 1993] ["Plaintiff did not and does not controvert the fact that each of the tents depicted in the photographs has an attached label(s) identifying its manufacturer and, additionally, with respect to defendant's tent, a sewn-in patch displaying the company logo. These circumstantial facts are sufficient evidence of the photographs' authenticity and therefore they were properly considered"]; *Weiner v Mager & Throne, Inc.*, 167 Misc 338, 340 [Mun Ct, Bronx County 1938] ["This defendant's trade label, affixed to the loaf, is some evidence that it manufactured the bread; and unless rebutted, or at least contested by evidence, gives rise to a reasonable inference that the owner of the trade label manufactured the article to which it was affixed. No one except Mager & Throne, Inc., had the right to use its trade name or label. In the absence of any evidence tending to show that this defendant's trade name or label was being wrongfully used by others, the inference is drawn that the name and label were used by it, and that this defendant was the manufacturer of the bread"].) Statutes also provide self-authentication for specific trade inscriptions. (*See e.g.* General Business Law §§ 276, 277 [a certificate issued by the secretary of state to a person who has filed with the secretary of state a "name, mark or device to indicated ownership of vessels, receptacles or utensils" is "prima facie evidence of the ownership by the person filing hereunder of all vessels, receptacles and utensils upon which such name, mark or device is produced"].)

Subdivision (6) restates verbatim CPLR 4540-a. It is applicable to material produced by a party in the course of pretrial discovery in civil proceedings pursuant to a proper discovery request. Drawing on the concept that authenticity may be established by an admission, this section effectively finds an implied admission when a party in a civil proceeding in response to a discovery demand by an adversary discloses "material authored or otherwise created by such party." That material when offered in evidence by the recipient is "presumed authentic," albeit the presumption is subject to rebuttal. The Advisory Committee on Civil Practice to the Chief Administrative Judge recommended the statute, and the Legislative Memorandum in support of the legislation explained that the statute "creates a rebuttable presumption that accomplishes two goals. First, when the item at issue is one that has already been produced by a party in the course of pretrial disclosure, and such item purportedly was authored or created by that party, the opposing party is thereby relieved of the need, ab initio, to come forward with evidence of its authenticity. Second, the rebuttable nature of the presumption protects the ability of the producing party, if he or she has actual evidence of forgery, fraud, or some other defect in authenticity, to introduce such evidence and prove, by a preponderance, that the item is not authentic. A mere naked 'objection' based on

lack of authenticity, however, will not suffice. Shifting the burden of proof to the producing party makes sense because that party is most likely to have better access to the relevant evidence on the issue of forgery or fraud. Furthermore, the presumption recognized by the statute applies only to the issue of authenticity or genuineness of the item. A party is free to assert any and all other objections that might be pertinent in the case, such as lack of relevance or violation of the best evidence rule." (2018 Rep of Advisory Comm on Civ Prac at 86-87.)

Subdivision (7) references the existence of numerous statutes in the Consolidated Laws that provide for methods of self-authentication of certain types of writings and documents. See Guide to New York Evidence article 3 (Prima Facie Evidence); Guide to New York Evidence rule 8.08 (Business Records [CPLR 4518]); Business Corporation Law § 107 (corporate seal as authenticating execution and authority); CPLR 2105 (certification by attorney); CPLR 3122-a (certification of business records); CPLR 4540 (d) (tariff or classification of Public Service Commission or Commissioner of Transportation); CPLR 4541 (transcript of docket-book of a justice of the peace); Public Health Law § 11 (1) (published health regulations); Tax Law §§ 287, 429, 505, 653 (signature on tax return).

---

[1] In 2022, subdivision (7) was amended to add appropriate cross-references. The Note to subdivision (7) was also amended to delete references to statutes that were subsequently included in a Guide to New York Evidence rule and to add instead the Guide references.