

WSR 26-02-014
 RULES OF COURT
 STATE SUPREME COURT
 [November 6, 2025]

IN THE MATTER OF THE) ORDER
 SUGGESTED AMENDMENTS TO ER) NO. 25700-A-1667
 904—ADMISSIBILITY OF)
 DOCUMENTS)

The Superior Court Judges' Association, having recommended the suggested amendments to ER 904—Admissibility of Documents, and the Court having approved the suggested amendments for publication;
 Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2026.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar, and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2026. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of November, 2025.

For the Court

Johnson, J.

ACTING CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to WASHINGTON STATE EVIDENCE RULE 904

A. Name of Proponent:

Washington Superior Court Judges' Association (SCJA)

B. Spokesperson:

Judge Michael R. Scott, SCJA President Elect

C. Purpose:

Evidence Rule 904 provides that in a civil case certain documents "shall be deemed admissible unless objection is made under section (c)." Among the documents listed in the rule are healthcare bills; reports made for purpose of treatment; health care provider charts and records; bills and estimates for property damage; weather reports; traffic signal reports; and photographs, drawings, maps, and blueprints. ER 904 (a) (1-5). The rule also includes what is sometimes referred to as a "catch-all" provision—it applies to other documents relating to a material fact and having "equivalent circumstantial guaranties of trustworthiness." ER 906 (a) (6). Documents offered by notice under ER 904 are "deemed authentic and admissible without testimony or further identification, unless objection is served within 14 days of the date of notice, pursuant to ER 904(c)."

The promise of ER 904 is to "expedite the admission of documentary evidence." *Hendrickson v. King County*, 101 Wn. App. 258, 268, 2 P.3d 1006 (2000) (citing *Miller v. Arctic Alaska Fisheries Corp.*, 133 Wn.2d 250, 944 P.2d 1005 (1997)). ER 904 "seems to be intended to only cover routine documentary evidence like hospital records and photographs." *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 904-05, 151 P.3d 219 (2007).

Despite that apparent intent, the use of ER 904 has substantially expanded since the rule was first adopted in 1992. It has become common for trial lawyers to include hundreds and sometimes thousands of documents in their ER 904 notices. Most of the documents in many ER 904 notices are ostensibly offered under the "catch-all" provision. The objective behind such expansive use of the rule is dubious—it is a litigation form of a "shock and awe" tactic. Many documents offered in voluminous ER 904 notices lack "equivalent circumstantial guarantees of trustworthiness" as required by the rule. Overly expansive use of ER 904 (a) (6) does not expedite anything if the notice serves only to draw a multitude of objections.¹

¹ This explanation of ER 904 is drawn from Judge Mike Scott, *Civil Trial Tip of the Month*, American Board of Trial Advocates, Washington Chapter Newsletter (May 2022).

To address this improper and often abusive use of ER 904, the SCJA recommends amending the rule. The proposed amendment eliminates the catch-all provision in favor of additional categories of evidence subject to the rule. Except as described in the next paragraph, the categories track ER 803(a), i.e., records "not excluded by the hearsay rule, even though the declarant is available as a witness".

Business records (ER 803 (a) (6)) and public records (ER 803 (a) (8)) are not included as proposed ER 904 categories. Unlike the other ER 803(a) records, courts must evaluate business and public records on a record-by-record basis to determine admissibility. See *In re Welfare of M.R.*, 518 P.3d 214, 221 (Wash. Oct. 13, 2022) ("To qualify under [the business records] exception, a record must satisfy five elements, 'each designed to insure the reliability of the evidence.'"); *In re Det. of Coe*, 175 Wn.2d 482, 505, 286 P.3d 29 (2012) ("Similar to the business record exception, the [public record] exception applies to objective records that are not based on judgment or discretion."). Authenticity of business records and public records (a subset of the admissibility addressed in ER 904) can instead be established via the civil rules. See CR 36(a) ("A party may serve upon any other party a written request for admission ... of the truth of any matters ... including the genuineness of any documents described in the request.").

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

No.

F. Supporting Materials:

Not Applicable.

ER 904

ADMISSIBILITY OF DOCUMENTS

(a) Certain Documents Admissible. In a civil case, any of the following documents proposed as exhibits in accordance with section (b) of this rule shall be deemed admissible unless objection is made under section (c) of this rule:

(1) A bill, report made for the purpose of treatment, chart, record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead;

(2) A bill for drugs, medical appliances or other related expenses on a letterhead or billhead;

(3) A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward a copy to the adverse party with a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part and attach a copy of the receipted bill showing the items of repair and amounts paid;

(4) A weather or traffic signal report, or standard United States government table;

(5) A photograph, x-ray, drawing, map, blueprint or similar documentary evidence;

(6) ~~A document not specifically covered by any of the foregoing provisions but relating to a material fact and having equivalent circumstantial guaranties of trustworthiness, the admission of which would serve the interests of justice. A record of vital statistic as described by ER 803 (a) (9);~~

(7) A record of a religious organization as described by ER 803 (a) (11);

(8) A certificate as described by ER 803 (a) (12);

(9) A family record as described by ER 803 (a) (13);

(10) A record of a document affecting an interest in property as described by ER 803 (a) (14);

(11) A market report or other document as described by ER 803 (a) (17);

(12) A judgment as described by ER 803 (a) (22) or (23).

(b) Notice. Any party intending to offer a document under this rule must serve on all parties a notice, no less than 30 days before trial, stating that the documents are being offered under Evidence Rule 904 and shall be deemed authentic and admissible without testimony or further identification, unless objection is served within 14 days of the date of notice, pursuant to ER 904(c). The notice shall be accompanied by (1) numbered copies of the documents and (2) an index, which shall be organized by document number and which shall contain, for each document, a brief description of the document, identification of the applicable ER 904(a) category, and along with the name, address and telephone number of the document's author or maker. The notice and index shall be filed with the court. Copies of documents that accompany the notice shall not be filed with the court

(c) Objection to Authenticity or Admissibility. Within 14 days of notice, any other party may serve on all parties a written objection to any document offered under section (b), identifying each document to which objection is made by number and brief description.

(1) If an objection is made to a document on the basis of authentication, and if the court finds that the objection was made without reasonable basis, the offering party shall be entitled to an award of expenses and reasonable attorney fees incurred as a result of the required proof of authentication as to each such document determined to be authentic and offered as an exhibit at the time of trial.

(2) If an objection is made to a document on the basis of admissibility, the grounds for the objection shall be specifically set forth, except objection on the grounds of relevancy need not be made

until trial. If the court finds that the objection was made without reasonable basis and the document is admitted as an exhibit at trial, the court may award the offering party any expenses incurred and reasonable attorney fees.

(d) Effect of Rule. This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of fact's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties.

[Adopted effective September 18, 1992; Amended effective October 29, 1993; January 27, 1998.]

Comment 904

[Deleted effective September 1, 2006.]