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FAMILY LAW NEWS

Issue 4, 2018 | Volume 40, No. 4

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An Evidence Code Primer for Family Law Attorneys Part III: Documentary Evidence

Hon. William J. Howatt, Jr. (Retired) & Stephen D. Hamilton

Hon. William J. Howatt was appointed to the El Cajon Municipal Court in 1979 by Governor Edmund G. Brown, Jr. and to the San Diego Superior Court in 1987 by Governor George Deukmejian. In the Superior Court he served as Presiding Judge of the entire Court in 1996 and 1997, on the Appellate Division of the Superior Court, and culminated his career on the bench as Supervising Judge of the Family Law Division. His legal career included over ten years as a Deputy District Attorney for the County of San Diego, including felony trials, the Fraud Division and the Appellate Division. Judge Howatt frequently lectures on Evidence law and has designed a special three-evening Evidence program for family law attorneys. He retired from the Bench in December of 2006. Since retiring, he does arbitrations and mediations with JAMS in San Diego and acts as a privately compensated temporary judge.

Stephen D. Hamilton has been an attorney for 22 years, with a practice devoted almost exclusively to family law for 20 of those years. He has been a Certified Specialist in Family Law since 2004. He is currently a member of the California Family Law Executive Committee, for which he is the Legislation Chair. He is a member of ACFLS and serves on the ACFLS Outreach and Amicus Committees. He is also chairperson of the San Luis Obispo County Family Law Section.

"The eyes are more exact witnesses than the ears."
- Heraclitus

Some of the most persuasive and reliable, if properly authenticated, evidence in a family law matter is documentary evidence. Whether it is a photograph of a party's injuries following a domestic violence incident, a school attendance log showing a child consistently being late for school during one party's custodial time or that bank record showing the withdrawal of money from a joint account after separation, documentary evidence almost always carries greater weight than the testimony of a party. A document will not change its testimony as a witness can unexpectedly do. For that reason, understanding how to overcome evidentiary objections to documents should be party of your basic skill set as a family law litigator. This article will address how to properly admit documentary evidence, starting with a discussion of the applicable terminology.

Terminology Regarding Documentary Evidence

Documentary evidence is usually a writing or other document. However, the statutory definition is much broader than just printed documents:

> "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.[1]

This definition therefore covers electronically stored information, photographs, audio and video recordings.

Other statutory definitions pertaining to documentary and tangible evidence include:

- ELECTRONIC: "means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities."[2]
- ELECTRONICALLY STORED INFORMATION: "means information that is stored in an electronic medium."[3]
- JUDICIAL NOTICE: Sometimes referred to as "judicial evidence". The acknowledgement by the court of a generally accepted or undisputed fact or

the existence of a document. The introduction of evidence through judicial notice is strictly limited in scope by statute.[4]

- PAROLE EVIDENCE RULE: This rule prohibits the introduction of oral or written evidence that is outside the four corners of a written agreement that seeks to modify or explain the contents of the writing by interpreting the intent of the parties to the agreement.[5]
- TANGIBLE EVIDENCE: Real or physical evidence. A real or physical object that can be held or touched and by its appearance, texture, feel, weight, and/or size it can be readily identified and recognized for what it is.
- TAINTED EVIDENCE: Evidence that has been obtained by illegal or improper means and which is, for that reason, subject to exclusion as inadmissible. For example, evidence in a family law action that has been obtained through eavesdropping.[6]

The First Step: Establishing Authenticity

You cannot introduce evidence without authenticating it.[7] You must prove to your judicial officer the evidence is what it purports to be. In other words, is the writing genuine? To authenticate a writing, you need to either introduce "evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is…"[8] or establish "such facts by any other means provided by law.[9] Further, before a writing or secondary evidence of a writing is received into evidence, you first need to authenticate the writing.[10]

Authentication is not necessarily exhaustive in presentation, nor need it be elaborate. Simply present the court with a prima facie case the item is what it claims to be. The court is only required to find that prima facie evidence exists to support the proposition that the evidence is genuine, and the trier of fact determines the "weight" or "probative value" of the evidence once admitted.

The foundational fact or preliminary fact determination is made under Evidence Code section 403 in a hearing conducted under Evidence Code section 402. At that hearing, the court is responsible only for finding sufficient evidence to support prima facie evidence of authenticity.

For example, what if Wife (Lizzie) has been verbally and physically abusive to your client, her husband (Andrew)? Following one incident, she wrote an incriminating note apologizing for the attack and the injuries to Andrew. Under this hypothetical, the document is relevant as it would establish Andrew has been the victim of domestic abuse during the marriage. Such evidence must be considered by the Court under Family Code section 4320(i) as a factor to consider in addressing spousal support at trial. So how do you get the note into evidence? Professor Imwinkelried has published *California Evidentiary Foundations* with full suggested foundational questions and is an excellent reference should you need it.

Of note is the fact you did not need a handwriting expert to successfully introduce the exhibit. That is because a lay witness is allowed to identify the handwriting of another if the witness has personal knowledge of the author's handwriting.[11]

Electronic evidence can be more complicated to authenticate, but that does not lessen your obligation to make sure such evidence is introduced given the relatively low threshold of establishing a prima facia case of the authenticity of the ESI: "Ironically, however, counsel often fail to meet even this minimal showing of authentication when attempting to introduce ESI, which underscores the need to pay careful attention to this requirement. Indeed, the inability to get evidence admitted because of a failure to authenticate it almost always is a self-inflicted injury which can be avoided by thoughtful advance preparation."[12]

The California Evidence Code includes other specific provisions and guidance for authenticating writings without relying on the person who prepared or signed the document:

Section 1413: A witness to the execution of a writing can authenticate.

Section 1414: A party admits to the authenticity of the writing.

Section 1415: Evidence of the genuineness of the handwriting,

Section 1416: Testimony from a non-expert who is familiar with the handwriting of the purported author.

Section 1417: Handwriting comparison by the trier of fact.

Section 1418: Handwriting expert identification.

Section 1420: Authentication by evidence of a response.

Section 1421: Authentication by content.

Authentication as a response occurs when a letter is received, for example, in response to a letter or other

communication sent by the recipient of the response. Content can also be used to authenticate where the writing refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing. Authentication by admission can occur through a formal "Request for Admission" discovery request, or through a party's admission of authenticity in a declaration or testimony. For example, when a witness testifies they wrote a text message but really did not mean what they wrote. The probative value of the explanation is for the trier of fact to determine.

Original Documents

Original evidence "means the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. An 'original' of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'"[13] In contrast, a duplicate is "a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original."[14] However, note that these definitions were adopted in 1977, and based on changes in technology in the intervening 40 years, you should be able to argue for liberal interpretation of these statutory definitions. Section 2 states that the provisions of the Evidence Code are to be "liberally construed with a view to effecting its objects and promoting justice."

What happens if you have a writing that you contend is genuine and authentic, but appears to have been altered after execution? Clients regularly produce original, authentic documents that contained their handwritten comments or notations. In that circumstance, the party who is producing a writing must "account for the alteration or appearance thereof."[15] This can include testimony the alteration or modification was made by another, without the party's concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument.

What if the alteration is editing of an electronic recording (audio or video) for time or clarity considerations? The burden is on the proponent to explain the alteration before it can be admitted or utilized in the hearing or trial. In that situation, you should be able to represent to your judicial officer that the editing did not change the material content, meaning or language of the recording. Further, you must give opposing counsel an opportunity to view or listen to the original recording and compare it to the edited version. A good practice is to provide the recordings, original and edited, to opposing counsel before your hearing or trial and elicit a stipulation for the admissibility of the edited recording in advance. It is also good practice to have a transcript prepared to go along with the video or recording.

A Few Words About E-Mail

There is no more fascinating and frustrating aspect to family law hearings and trial than the ubiquitous electronic mail (e-mail) between spouses. Frequently, it is offered without any effort at authentication, and even more frequently, it is admitted without objections. Judges are regularly tasked in this fashion with reading pointless bickering, innuendo, and prevarications. The only value to most e-mail communications is that it frequently demonstrates the true, unvarnished character of the author.

For these reasons, a vast majority of e-mail should be objected to as too confusing and time consuming under Evidence Code section 352. That said, e-mail is some of the most persuasive and powerful evidence you can introduce to impeach an opposing party literally with their own words.

So how can you introduce such evidence in an effective manner?

- First authenticate the e-mail in question.
- This includes demonstrating the email is an original writing under Evidence Code section 255.
- Prepare a trial exhibit version that highlights the salient parts of any e-mail you want the judicial officer to consider. Using a program such as Adobe Acrobat makes this task easy. Just make sure the original, unaltered version is shared with the opposing party in advance (unless your e-mail exhibit is for impeachment).

By limiting and highlighting the most important e-mail portions of any email exchange, you can not only overcome an Evidence Code section 352 objection, you are visually reinforcing and supporting the contention you are trying to assert through introduction of the e-mail. For instance, if you are alleging Father is a "gate-keeper" who puts up unreasonable barriers to Mother's custodial

time with their child, highlighting and admitting the email passage

"…and I will never believe you are capable of properly caring for my child…"

should effectively communicate that point to your judicial officer.

The following suggestions for authentication of ESI is adapted from material found in *Arkfeld on Electronic Discovery and Evidence*, Third Edition:

Authentication can occur through direct or circumstantial evidence. Circumstantial evidence can include email content, substance, recognizable patterns of speech or composition identifiable to the purported author. The sender's email address or hash tag can also be used to authenticate an email. Further, details known only to the author/sender or identification markers such as nicknames or screen names can be sufficient to authenticate the email. Expert testimony can also be used to authenticate an email.

Note that an allegation an email was manufactured or hacked is not a bar to authentication. "We recognize, of course, that hacking may occur and that documents and other material on the internet may not be what they seem. But the proponent's threshold authentication burden for admissibility is not to establish validity or negate falsity in a categorical fashion, but rather to make a showing on which the trier of fact reasonably could conclude the proffered writing is authentic."[16] That conflicting inferences can be drawn from the document affects the weight to be given to the evidence, but not its admissibility.[17]

The Hearsay Rule as it Applies to Documents

Under the hearsay rule, "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated" is inadmissible.[18] The rule applies to written expressions and "nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression."[19]

Whenever dealing with the "Hearsay Rule" it is critical to determine whether or not the proffer of evidence is hearsay. Is the evidence an out of court statement offered to prove the truth of the matter contained within the statement? It must be relevant. It must be a statement[20] (section 225) made by a "person." A photograph is not hearsay as it is not a statement made by a person, it is the product of a machine.[21] "Only a person can make a statement, not a machine."[22] If a writing is offered only to show that a statement was made or communicated and not for the truth of the content of the statement then there is no hearsay by definition. This is often referred to as the "Operative Facts Doctrine."

The Business Records Exception

The present Business Records Exception to the Hearsay Rule developed over time from the Shop Book Rule of Common Law, which recognized the importance of regular bookkeeping to the commercial trade. That importance led to the recognition that the vast majority of the day to day bookkeeping entries were trustworthy representations of the business activity that they were accurately recorded. Traditionally, however, the person who made the entry was required to be present to describe how the entry was made, when it was made, from what information or person the information was obtained, and that the information obtained from the source was a reliable and trustworthy source.

The business records exception is broadly applied and "includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not."[23] The business records exception provides that a document is not inadmissible under the hearsay rule if it was "made as a record of an act, condition, or event … in the regular course of a business."[24] The writing must have been made at or about the time of the act, condition or event recorded in the document.[25] Further, a custodian of the record or other qualified witness must testify as to the factors necessary to establish the trustworthiness of the document: identity of the document, mode of preparation, sources of information relied upon and method and time of the documents preparation.[26]

A corollary to the business records exception is that the absence of a business record can be "offered to prove the nonoccurrence of the act or event, or the nonexistence of the condition" if certain conditions are met.[27] You must establish that it was the regular course of business to record all such acts, conditions, or events, to preserve such records and that the source of the information, method and time of preparation of the records are trustworthy.[28] If you can establish those facts, then the absence of a business record can be used to provide the act, condition or event did not occur. For example, a receipt book which does not disclose the existence of a receipt for a particular transaction is admissible as evidence that no such receipt was issued, and the custodian may be permitted to testify that the book does not contain such a receipt.[29]

Note the proponent of the evidence must always be able to defend the propriety of the proffered evidence. For example, a trial court refused to admit a hotel register that had mutilated and missing pages and where the proponent failed to introduce evidence as to the mode and manner of the preparation of the records or that the records were kept in the regular course of the business.[30] "The chief foundation of the special reliability of business records is the requirement that they must be based upon the first-hand observation of someone whose job it is to know the facts recorded. . . . But if the evidence in the particular case discloses that the record was not based upon the report of an informant having the business duty to observe and report, then the record is not admissible under this exception, to show the truth of the matter reported to the recorder.'"[31]

Electronic Records and the Business Records Exception

What if records are maintained electronically? Chief Magistrate Judge Grimm has suggested that more may be required.[32] To ensure admissibility, it would be good practice to be prepared to demonstrate that the computer was in good working order, well maintained, and operating within the specifications of the machine at the time the records were produced.[33]

The issue of the foundational requirements for electronic records was addressed in *In re Vee Hinhee,* 336 B.R. 437 (2005), United States Bankruptcy Appellate Panel of the Ninth Circuit, which held "that the court was within its rights to insist, even in the absence of an objection, that all elements of a proper evidentiary foundation be correctly established."[34] At issue was the admission of credit card records of American Express seeking the collection of $21,098.00 and $25,485.92 on sub accounts. The court refused to admit the records from American Express because it concluded that there was not a proper evidentiary foundation presented by American Express. The declaration in support of the admission of the evidence did not state the qualifications of the declarant to testify as to foundational elements and there was no evidence to support a finding that the accuracy of the computer in the retention and retrieval of the information was sufficient to meet the trustworthy requirements.

The focus in admission of electronic business records is not on the creation of the record but should be on the circumstances of the preservation of the information pending retrieval to demonstrate that the proffered evidence is what was originally created. "The primary authenticity issue in the context of business records is on what has, or may have, happened to the record in the interval between it was placed in the files and the time of trial. In other words, the record being proffered must be shown to continue to be an accurate representation of the record that originally was created."[35]

The court in *Vinhnee* then recited an 11-step foundation for electronic records developed by Professor Edward Imwinkelreid and discussed in his treatise on Evidentiary Foundations:

1. The business uses a computer.
2. The computer is reliable.
3. The business has developed a procedure for inserting data into the computer.
4. The procedure has built-in safeguards to ensure accuracy and identify errors.
5. The business keeps the computer in a good state of repair.
6. The witness had the computer readout certain data.
7. The witness used the proper procedures to obtain the readout.
8. The computer was in working order at the time the witness obtained the readout.
9. The witness recognizes the exhibit as the readout.
10. The witness explains how he or she recognizes the readout.
11. If the readout contains strange symbols or terms, the witness explains the meaning of the symbols or terms for the trier of fact.[36]

The authors have been unable to find a published California state court decision which specifically adopts the 11-step Imwinkelried foundational test for electronic evidence. Since these requirements are in addition to the foundational requirements under Evidence Code sections 1271 and 1272, a judicial officer may not require you to follow the 11 steps. What is important to recognize is the scientific approach to the reliability of the computer storage and maintenance of the integrity of the data. The ultimate consideration is the presence or absence of basic information that would provide a reasonable assurance that the record reproduced from the electronic media is identical to the record that was originally stored.

Introducing Business Records Through Custodian of Records Declaration

In *Conservatorship of S.A.,* 25 Cal.App.5th 438 (2018), the court allowed an expert witness to offer an opinion based on the contents of medical records even though the authors of the records were not present to testify. This decision results from provision in the Evidence Code that business records may be admitted without live testimony.[37] "The affidavit is admissible as evidence of the matters stated therein pursuant to section 1561 and the matter so stated are presumed true."[38] Further, multiple affidavits can be used when more than one person has knowledge of the facts required in a custodian of records affidavit, These rules apply "in any proceeding in which testimony can be compelled."[39]

The decision in *Conservatorship of S.A* highlights an efficient and effective way to introduce business records without requiring the appearance of the records custodian at a hearing or trial. So long as the accompanying custodian of records declaration satisfies the requirements of Code of Civil Procedure section 1561, the records can be introduced without live testimony. The affidavit in this case authenticates the records, and under *Conservatorship of S.A* and the cited provisions of the evidence code, satisfies the requirements of the business records exception to the hearsay rule.

Before a proceeding, counsel should ensure the affidavit of the custodian or other qualified witness complies with the Code of Civil Procedure and contain the following elements:

- The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.
- The copy is a true copy of all the records described in the subpoena.
- The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event; and,
- Identification of the specific records produced.[40]

In the case of computer records, incorporating the other elements of the 11-step Imwinkelried foundational test would be prudent.

To ensure the custodian of records declaration satisfies all the elements required for admission of the business records, a prudent practice would be for counsel to prepare the declaration and submit it to the custodian for signature. The affidavit or declaration is the most critical part of this procedure because it identifies the records and simultaneously authenticates the records.

However, a summary of an inadmissible hearsay statement, such as an exit interview in an employment case, cannot be made admissible merely because the records in which the statement is contained is a valid business record under Evidence Code section 1271.[41] Further, the declaration must meet all of the statutory requirements. Even though a custodian of records in response to a subpoena complied with the procedural requirements of the Code of Civil Procedure, the documents related to testing conducted by a business were properly excluded if there is no evidence as to how the records of testing were prepared, what sources of information the testing was based on or that the sources were in fact trustworthy.[42]

The Doctrine of Completeness: Evidence Code Section 356

The clear purpose of this doctrine is to protect against half-truths and any distortions of fact that may occur by presentation of only a portion of an act, condition, event, declaration, conversation or writing. Only the parts relevant to the portion previously admitted as evidence are admissible under this doctrine. This doctrine is predicated upon the equitable concept that when a party has elected to introduce a part of a conversation, that party should be precluded from objecting to other parts of the conversation so as to explain or give context to that portion that was initially offered.

Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence.[43] Evidence Code section 356 operates as an exception to the hearsay rule so that a previously admitted statement can be put in context. However, application of this section is subject to the Court's discretion as well as Evidence Code section 352 objections.

Secondary Evidence Rule

As of 1998, California has abolished the "Best Evidence Rule." However, family law litigators will still occasionally hear that objection made incorrectly.

In its place, California adopted the "Secondary Evidence Rule."[44] The general purpose of this rule is to set forth a policy and procedure for the admission of otherwise admissible evidence where the original is no longer available. Under this rule, "[t]he content of a writing may be proved by otherwise admissible secondary evidence."[45] Secondary evidence could include a copy of the original document. The phrase "otherwise admissible" refers to evidence that is relevant.[46] When dealing with business records, these words might also be interpreted as referring to the business records exception foundational requirements discussed above.

Secondary evidence of a writing shall be excluded if the court determines:

- A genuine dispute exists concerning material terms of the writing and justice requires the exclusion; or,
- Admission of the secondary evidence would be unfair.[47]

All secondary evidence still requires authentication under Evidence Code section 1401.[48] Further, the "Secondary Evidence Rule" does not allow for admission of oral testimony to prove the content of a writing if the testimony is inadmissible under Evidence Code section 1523.[49]

The prohibition against admitting oral testimony of the contents of a writing does have several notable exceptions when the proponent does not have a copy of the writing and one of the following circumstances exist:

- The writing was lost or destroyed not due to the fraudulent intent of the proponent;[50]
- The writing was not reasonably procurable by the proponent;[51]
- "The writing is not closely related to the controlling issues and it would be inexpedient to require its production";[52] or,
- The "writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time" and the evidence to be gleaned from the documents is the "general result of the whole."[53]

Secondary Evidence of Electronically Stored Information

Evidence Code section 1552 provides that printouts of computer information or programs are "presumed to be an accurate representation of the computer information or computer program that it purports to represent." A similar rule exists regarding printouts of images stored digitally or on video.[54]

By statute, these presumptions affect the burden of proof. If the opponent to the evidence "introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable," the burden shifts to the proponent to establish, by a preponderance of evidence, the printed representation accurately represents the existence and content of the computer information or computer program that it purports to represent.[55]

How do you satisfy the requirements of sections 1552 or 1553 to admit your printouts of electronically stored information? First, properly mark the records for identification. Then establish they are business records. Follow up with witness testimony which explains the actions and commands necessary to create the records, including the program used and the reliability of the program. Ideally, you should try to deal with the admissibility of the records with opposing counsel by way of a pre-trial conference or with the court through a motion in limine. This will avoid the problems that will occur when you learn during the middle of trial that printouts of your client's computer-generated financial records are not going to be admitted due to a foundational issue.

Using Documents to Refresh a Witnesses Recollection

If your witness cannot recall some detail or important fact, what do you do? Refresh their recollection with a document. A witness, either prior to or during testimony, can refresh their recollection with a writing. However if a witnesses recollection is refreshed by reviewing a document, that writing "must be produced at the hearing at the request of an adverse party…."[56] The opposing party may then elect to inspect the document, cross examine the witness about the document or introduce pertinent portions of the document into evidence.[57]

An exception to the rule requiring production of a document used to refresh a witness's recollection is made when the document is "not in the possession or control of the witness or the party who produced" the testimony and was not reasonably obtainable by that party through "use of the court's process or other available means."[58] If that exception does not apply, and the writing is not produced, "the testimony of the witness concerning such matter shall be stricken."[59] Importantly, the use of the term "shall" makes such a ruling mandatory.[60] In that

circumstance, explicitly and clearly state for the record that which you request be stricken.[61]

Conclusion, by Stephen D. Hamilton

As our series on Evidence for Family Law concludes, I want to express my deep gratitude to Judge Howatt for agreeing to co-author this series with me. I had seen the slides from his excellent presentation on evidence in family law, which led to an idea to write a multi-article series for FLN. I reached out to him as a total stranger, but with an introduction from our mutual friend and now former Family Law News Editor Dawn Gray. His willingness to let me convert his prior work into a co-authored series of articles has given me an opportunity for which I will always be grateful.

But as this series concludes, we are not done with the Evidence Code yet. I would like to encourage readers to sign up for our webinar on December 13, 2018, hosted by the Family Law Section. During the webinar, we will be discussing cross-examination tips and tactics, *voir dire* of expert witnesses, objecting to evidence and how to apply several new cases to overcome *People v. Sanchez* objections to vocational evaluations and real estate appraisals.

Endnotes

1 Cal. Evid. Code § 250.

2 Cal. Code Civ. Proc. § 2016.020(d).

3 Cal. Code Civ. Proc. § 2016.020(e).

4 Cal. Evid. Code §§ 450, *et seq*.

5 Cal. Code Civ. Proc. §§ 1856-1866.

6 Cal. Fam. Code § 2022.

7 Cal. Evid. Code § 1401(a).

8 Cal. Evid. Code § 1400(a).

9 Cal. Evid. Code § 1400(b).

10 Cal. Evid. Code § 1401.

11 Cal. Evid. Code § 1416.

12 Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 542 (D. Md. 2007).

13 Cal. Evid. Code § 255.

14 Cal. Evid. Code § 260.

15 Cal. Evid. Code § 1402.

16 People v. Valdez, 201 Cal. App. 4th 1429, 1436-1437 (2011).

17 Valdez, 201 Cal.App.4th at 1435.

18 Cal. Evid. Code § 1200.

19 Cal. Evid. Code § 250.

20 Cal. Evid. Code § 225.

21 People v. Goldsmith, 59 Cal. 4th 258 (2014).

22 People v. Leon, 61 Cal. 4th 569 (2015).

23 Cal. Evid. Code § 1270.

24 Cal. Evid. Code § 1271(a).

25 Cal. Evid. Code § 1271(b).

26 Cal. Evid. Code §§ 1271(c) and (d).

27 Cal. Evid. Code § 1272.

28 Cal. Evid. Code §§ 1272(a) and (b).

29 People v. Torres, 201 Cal. App. 2d 290, 296-297 (1962).

30 People v. Grayson, 172 Cal. App. 2d 372, 379-380 (1959).

31 MacLean v. City and County of San Francisco, 151 Cal. App. 2d 133, 143 (1957) (citing to McCormick on Evidence, p. 602, ¶ 286). *See also Comments to Section 1271*, Cal. Law Rev. Comm'n Reports.

32 Lorraine, 241 F.R.D. at 543.

33 Lorraine, 241 F.R.D. at 558.

34 *In re* Vinhnee, 336 B.R. at 440 (2005).

35 Vinhnee, 336 B.R. at 444.

36 Edward J. Imwinkelried, *Evidentiary Foundations,* ¶ 4.03[2] (5th ed. 2002).

37 Cal. Evid. Code § 1562.

38 Cal. Evid. Code § 1562.

39 Cal. Evid. Code § 1566.

40 Cal. Code Civ. Proc. § 1561.

41 Zanone v. City of Whittier, 162 Cal. App. 4th 174, 192 (2008).

42 Taggart v. Super Seer Corporation, 33 Cal. App. 4th 1697 (1995).

43 Cal. Evid. Code § 356.

44 Cal. Evid. Code § 1521(d).

45 Cal. Evid. Code § 1521.

46 Cal. Evid. Code §§ 210, 350 & 351.

47 Cal. Evid. Code §§ 1271(a) & (2).

48 Cal. Evid. Code § 1521(c).

49 Cal. Evid. Code § 1521(b).

50 Cal. Evid. Code § 1523(b).

51 Cal. Evid. Code § 1523(c)(1).

52 Cal. Evid. Code § 1523(c)(2).

53 Cal. Evid. Code § 1523(d).

54 Cal. Evid. Code § 1553.

55 Cal. Evid. Code § 1552(a).

56 Cal. Evid. Code § 771(a).

57 Cal. Evid. Code § 771(b).

58 Cal. Evid. Code § 771(c).

59 Cal. Evid. Code § 771(a).

60 Cal. Evid. Code § 11.

61 Cal. Evid. Code § 353.