

1 **NRCP 44 – Proposed**
2 **(Adopt federal rule)**

3 **Rule 44. Proving an Official Record**

4 **(a) Means of Proving.**

5 (1) **Domestic Record.** Each of the following evidences an official
6 record—or an entry in it—that is otherwise admissible and is kept within the United
7 States, any state, district, or commonwealth, or any territory subject to the
8 administrative or judicial jurisdiction of the United States:

9 (A) an official publication of the record; or

10 (B) a copy attested by the officer with legal custody of the record—
11 or by the officer’s deputy—and accompanied by a certificate that the officer has
12 custody. The certificate must be made under seal:

13 (i) by a judge of a court of record in the district or political
14 subdivision where the record is kept; or

15 (ii) by any public officer with a seal of office and with official
16 duties in the district or political subdivision where the record is kept.

17 **(2) Foreign Record.**

18 (A) **In General.** Each of the following evidences a foreign official
19 record—or an entry in it—that is otherwise admissible:

20 (i) an official publication of the record; or

21 (ii) the record—or a copy—that is attested by an authorized
22 person and is accompanied either by a final certification of genuineness or by a
23 certification under a treaty or convention to which the United States and the country
24 where the record is located are parties.

1 **(B) Final Certification of Genuineness.** A final certification
2 must certify the genuineness of the signature and official position of the attester or
3 of any foreign official whose certificate of genuineness relates to the attestation or is
4 in a chain of certificates of genuineness relating to the attestation. A final
5 certification may be made by a secretary of a United States embassy or legation; by
6 a consul general, vice consul, or consular agent of the United States; or by a
7 diplomatic or consular official of the foreign country assigned or accredited to the
8 United States.

9 **(C) Other Means of Proof.** If all parties have had a reasonable
10 opportunity to investigate a foreign record's authenticity and accuracy, the court
11 may, for good cause, either:

- 12 (i) admit an attested copy without final certification; or
- 13 (ii) permit the record to be evidenced by an attested
14 summary with or without a final certification.

15 **(b) Lack of a Record.** A written statement that a diligent search of
16 designated records revealed no record or entry of a specified tenor is admissible as
17 evidence that the records contain no such record or entry. For domestic records, the
18 statement must be authenticated under Rule 44(a)(1). For foreign records, the
19 statement must comply with [Rule 44\(a\)\(2\)\(C\)\(ii\)](#).

20 **(c) Other Proof.** A party may prove an official record—or an entry or lack of
21 an entry in it—by any other method authorized by law.