
BUSINESS RECORDS §90.803(6)

HOW TO OFFER A BUSINESS RECORD INTO EVIDENCE

1. What is your occupation?
2. Does your job involve working with records of your organization or agency?
3. Have the Exhibit Marked
4. Show the exhibit to opposing counsel
5. Ask permission to approach the witness
6. Show exhibit to witness
7. Establish Foundation

FOUNDATION ELEMENTSⁱ

It is necessary to call a witness that can show that each of the foundation requirements is present nor is it necessary to have person who actually made entry.

- The report was prepared by a person with a business relationship with the company (not necessarily an employee)
- The informant (the source of the report) had a business duty to report the information
- The written report was prepared “at or near the time” with the facts or events
- It was a routine practice of the business to prepare such reports
- The report was reduced to written form
- The report was made in the regular course of business

SAMPLE QUESTIONS:

- I am handing you what has been marked guardian ad litem exhibit 1.
 - Can you identify it?
 - What kind of record is it?
 - Is this report stored at your organization or agency?
 - Where is it stored?
 - Would this report be prepared by an agent of your organization or agency?
 - Does that agent have a duty to prepare this report?
 - Would that agent have personal knowledge of the information contained in the report?
 - Would this report have been prepared “at or near the time” of the event described in the report?
 - Is the making of the report a regular practice of your organization or agency?
 - Would the report have been “kept in the course of a regularly conducted business activity.”
8. Offer the exhibit into evidence
 9. Have exhibit marked in evidence
 10. Have witness mark/explain exhibit

11. Ask permission to show or read exhibit
12. Show or read exhibit

POSSIBLE OBJECTIONS – YOU CAN OBJECT TO PORTIONS OF THE RECORD

- Improper foundation
- Relevance
- Lack of trustworthiness: § 90.803(6) when the sources of information or other circumstances show lack of trustworthiness” business records are not admissible i.e. made in preparation for litigation
- Double hearsay: Qualifying the business record only eliminates the first level of hearsay (not needing to have the person that made the record on the stand). It does not eliminate the double hearsay of statements made by not employees of the business. For example, if a parent says something during a visitation that is reported in the visitation record. You can object to the parent’s statement as hearsay unless another hearsay exception applies.
- Response: “This statement is admissible as a business record pursuant to Florida Statutes § 90.803(6). I have shown through the testimony of (the witness) who is a custodian of the record or person who has knowledge of the record keeping system, that the statement is contained in a
 - Memorandum, report, record, or data compilation,
 - recording acts, events, conditions, opinions, or diagnoses, made at or near the time the acts or events took place,
 - by or from information transmitted by one with personal knowledge of the act or event,
 - where such record is kept in the course of a regularly conducted business activity, and
 - it was the regular practice of the business to make such a record.”ⁱⁱ

ⁱ Edward J. Imwinkelried, *Evidentiary Foundations* (2nd ed. 1989) p. 262-263

ⁱⁱ Anthony Bocchino and David Sonenshein, *Federal Rules of Evidence with Objections*, 6th ed.(NITA 2003)74