

M.R.E. 1004(b)

(b) *Original not obtainable.* an original cannot be obtained by any available judicial process;

(c) *Original in possession of opponent.* the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) *Collateral matters.* the writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of public records to prove content

The proponent may use a copy to prove the content of an official record – or of a document that was recorded or filed in a public office as authorized by law – if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Mil. R. Evid. 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Rule 1006. Summaries to prove content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. The military judge may order the proponent to produce them in court.

Rule 1007. Testimony or statement of a party to prove content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the military judge and the members

Ordinarily, the military judge determines whether the proponent has fulfilled the factual conditions for

admitting other evidence of the content of a writing, recording, or photograph under Mil. R. Evid. 1004 or 1005. When a court-martial is composed of a military judge and members, the members determine – in accordance with Mil. R. Evid. 104(b) – any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

SECTION XI

MISCELLANEOUS RULES

Rule 1101. Applicability of these rules

(a) *In General.* Except as otherwise provided in this Manual, these rules apply generally to all courts-martial, including summary courts-martial, Article 39(a) sessions, limited factfinding proceedings ordered on review, proceedings in revision, and contempt proceedings other than contempt proceedings in which the judge may act summarily.

(b) *Rules Relaxed.* The application of these rules may be relaxed in presentencing proceedings as provided under R.C.M. 1001 and otherwise as provided in this Manual.

(c) *Rules on Privilege.* The rules on privilege apply at all stages of a case or proceeding.

(d) *Exceptions.* These rules – except for Mil. R. Evid. 412 and those on privilege – do not apply to the following:

(1) the military judge’s determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) preliminary hearings under Article 32;

(3) proceedings for vacation of suspension of sentence under Article 72; and

(4) miscellaneous actions and proceedings related to search authorizations, pretrial restraint, pretrial confinement, or other proceedings authorized under the Uniform Code of Military Justice or this Manual that are not listed in subdivision (a).

Rule 1102. Amendments

(a) *General Rule.* Amendments to the Federal Rules of Evidence – other than Articles III and V – will