

**First Supplement to Memorandum 2000-53****Evidence Code Changes Required By Electronic Communications  
(Comments of Prof. Mendez)**

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Prof. Miguel Mendez (Stanford Law School) has reviewed Judge Harvey's study regarding revision of the Evidence Code to accommodate electronic communications. He found the study informative and he agrees with Judge Harvey's conclusions.

Prof. Mendez also comments that Judge Harvey

frequently cites section 255 which defines computer printouts as originals. As he emphasizes, this provision makes satisfaction of the Secondary Evidence Rule easy since the new rule still allows proof by an "original" of the writing.

I too cite section 255 in my book. However, I focus also on section 1552 which was added when the Best Evidence Rule was repealed. The Secondary Evidence Rule does not eliminate the requirement of authentication. The proponent must still produce some evidence showing that the secondary evidence offered is an accurate reproduction of the original. Section 1552 eases this task by creating a presumption that a computer printout is an accurate representation of the information contained in the computer.

I think I would make this point clearer and emphasize that offering a computer printout with evidence that it is an accurate representation of the original ... "satisfies" the Secondary Evidence Rule on account of section 255 and "replaces" the requirements of authentication in the sense that it excuses the proponent from having to offer any evidence that the printout is an accurate copy of the original, unless the opponent introduces some evidence that the printout is inaccurate or otherwise unreliable.

(Email messages from M. Mendez to N. Sterling (July 14, 2000).)

Respectfully submitted,

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