RULE 44. PROOF OF OFFICIAL RECORD

(a) Authentication.

(1) *Domestic.* An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by a person purporting to be the officer having the legal custody of the record, or the officer's deputy. If the official record is kept without the state, the copy shall be accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by that seal.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of

a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or entry or lack of entry therein by any other method authorized by law.

Advisory Committee's Notes
1993

Rule 44(a) is amended to adopt a 1991 amendment of Federal Rule 44(a) for the purpose of maintaining Maine's authentication provisions in conformity with the federal rule. Variations between the basic Maine and federal provisions to take account of Maine practice are retained. *See* M.R. Civ. P. 44 Reporter's Notes and explanation of 1966 amendment, 1 Field, McKusick and Wroth *Maine Civil Practice* 606 (2d ed. 1970).

The reasons for the amendment are those given in the federal Advisory Committee Note:

The amendment to paragraph (a)(1) strikes the references to specific territories, two of which are no longer subject to the jurisdiction of the United States, and adds a generic term to describe governments having a relationship with the United States such that their official records should be treated as domestic records.

The amendment to paragraph (a)(2) adds a sentence to dispense with the final certification by diplomatic officers when the United States and the foreign country where the record is located are parties to a treaty or convention that abolishes or displaces the requirement. In that event the treaty or convention is to be followed. This changes the former procedure for authenticating foreign official records only with respect to records from countries that are parties to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Moreover, it does not affect the former practice of attesting the records, but only changes the method of certifying the attestation.

The Hague Public Documents Convention provides that the requirement of a final certification is abolished and replaced with a model *apostille*, which is to be issued by officials of the country where the records are located. *See* Hague public Documents Convention, Arts. 2-4. The *apostille* certifies the signature, official

position, and seal of the attesting officer. The authority who issues the *apostille* must maintain a register or card index showing the serial number of the *apostille* and other relevant information recorded on it. A foreign court can then check the serial number and information on the *apostille* with the issuing authority in order to guard against the use of fraudulent *apostilles*. This system provides a reliable method for maintain the integrity of the authentication process, and the *apostille* can be accorded greater weight than the normal authentication procedure because foreign officials are more likely to know the precise capacity under their law of the attesting officer than would an American official . . . .

Explanation of Amendment
November 1, 1966

This amendment was taken from a 1966 amendment to F.R. 44. It provides a new procedure with respect to proof of foreign official records. It was developed collaboratively by the Commission and Advisory Committee on International Rules of Judicial Procedure and the Federal Advisory Committee on Civil Rules. For the proof of domestic official records the basic provisions of M.R.C.P. 44 remain unchanged. While a double certificate is required for domestic records kept outside Maine, a single certificate suffices to prove records kept within the state. See Reporter's Notes to Rule 44 above.

Reporter's Notes
December 1, 1959

This rule is a departure from both Federal Rule 44 and the existing Maine statute. In fact, R.S.1954, Chap. 113, Secs. 149-151,* enacted in 1939, is a verbatim copy of Federal Rule 44. Both require in effect a "double certificate" for the proof of official records whether from an office within the state or outside. This rule in effect eliminates the "double certificate" for proof of an official record kept within the state, while preserving it for out-of-state records. More than 10 years ago New Jersey did away with the double certificate for in-state records. This seems particularly desirable for Maine, where because of its small population and the availability of information in the Maine Register and elsewhere, it is generally known who the keepers of official records are. The result should be

* [Field, McKusick & Wroth noted: "Became 16 M.R.S.A. §§ 460-462, subsequently repealed by 1965 Laws, c. 356, § 65." 1 Field, McKusick & Wroth, *Maine Civil Practice* at 606 (2d ed. 1970.]

merely to eliminate time-consuming nuisance in making proof. It is, of course, always open to the adverse party to impeach the authenticity of the record.

A 1959 amendment to the statute makes it conform to the rule. It is preserved in statute form because of its applicability to criminal cases.

RULE 44A. DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice in that party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Maine Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Advisory Committee's Note
February 2, 1976

Rule 44A simply changes "Rule 43" to "the Maine Rules of Evidence." Since the purpose of the provision is to free the judge, in determining foreign law, from any restrictions imposed by evidence rules a general reference to the Evidence Rules is appropriate.

Explanation of Amendment
November 1, 1966

This rule, new to Maine, was taken from F.R. 44.1, added in 1966. It was designed to furnish a uniform and effective procedure for raising and determining an issue concerning the law of a foreign country. It requires a party who intends to raise a question of foreign law to give reasonable written notice in his pleadings or otherwise. It broadens the methods for ascertainment of foreign law by allowing the court to consider any relevant material, including testimony, whether or not admissible under ordinary rules of evidence. The last sentence in the rule is but a restatement of existing Maine law by reason of Maine's adoption of the Uniform Judicial Notice of Foreign Law Act. 16 M.R.S.A. § 406. F.R. 44.1 was developed collaboratively by the Commission and Advisory Committee on International Rules of Judicial Procedure, the Columbia Law School Project on International Procedure, and the Federal Advisory Committee on Civil Rules.