

1983 WL 181724 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 24, 1983

*1 The Honorable Raymond C. Eubanks, Jr.

Judge

Probate Court

Spartanburg County Courthouse

Spartanburg, South Carolina 29301

Dear Ray:

You have asked for advice concerning the acceptance of carbon copies of checks, proffered as evidence supportive of expenditures by a fiduciary in a final accounting procedure. The facts as I understand them are as follows:

A fiduciary, who maintains a checking account in a particular banking institution is provided a receipt system which involves the creation of a carbon copy of each check written, this copy is created at the time the check is actually written and is maintained in the personal checking records of the payer. The carbon copy of the check, together with the bank statement issued by the bank, which reflects the corresponding check number and amount, serves as the payer's receipt. The bank in question microfilms the original cancelled check and does not as matter of course return the cancelled check to the payer.

As you noted in your letter, in the past, the procedure of the Probate Court of Spartanburg County has been to accept only the original cancelled check, or an original receipt, as evidence that a bill indicated in the final accounting has been duly paid. My contact with various Probate Courts throughout the State confirms that this is the ordinary and customary practice. This practice is supported in the case of [French v. Way](#), 93 S.C. 522, 526, wherein the Court noted that an ' . . . executor or administrator must discharge himself by proper vouchers, or by evidence showing the lawful expenditure of the funds that come into his hands . . . ' See also, Karesh [Will and Trusts](#) at 117 (1977).

In addition, requiring the original cancelled check or receipt is consistent with the 'best evidence rule', and with assuring the highest level of reliability of the proffered evidence. Ordinarily, the 'best evidence rule' would prohibit the introduction of a carbon copy. [Shirer v. O.W.S. & Associates](#), 253 S.C. 232, 169 S.E.2d 621. Further, the rules of evidence, including the 'best evidence rule', are apparently applicable to probate proceedings for final accountings as a judicial hearing is contemplated. See, [Brock v. Kirpatrick](#), 72 S.C. 491, 494, 495.

However, § 19-5-610, [South Carolina Code of Laws](#), 1976, as amended, by Act No. 552 of 1978, modifies the 'best evidence rule' in certain 'business situations' and provides, *inter alia* the following:

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or a combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original . . . Such reproduction, when satisfactorily identified is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not . . . [emphasis added]

*2 While presumably a carbon copy of a check would fall within the phrase 'other process which accurately reproduces or forms a durable medium for so reproducing the original', it is inferable from the specific language limiting the applicability

of this section that a fiduciary's check book records are not regularly kept records of any 'business, institution, member of a profession or calling . . .'. However, the Federal Business Records Act [28 U.S.C. § 1732(a)] which similarly defines the term 'business', has been construed as allowing the introduction of a person's individual check book records. See, [Anno. 8 A.L.R. Fed. 919](#). In the absence of controlling decisions within this jurisdiction construing § 19-5-610 or § 19-5-510, it may be anticipated that § 19-5-610 will be construed in a manner similar to the Federal Act. This is particularly true, since the goal of each provision is to allow some flexibility, while permitting introduction only of evidence with a high degree of reliability.

Thus, it would appear that the carbon copy of the original check, together with the original corresponding bank statement, is reliable and the introduction of it would be within the Court's discretion. Nonetheless, I would advise that in the event the original cancelled check or a microfilm duplication of the original cancelled check is obtainable from the bank, this evidentiary production would be more reliable and should be preferred by the Probate Court.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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