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**From:** [\(SUP\) Clerk of Court Office](#)  
**To:** [Miller, Penny](#)  
**Subject:** FW: Comment to Proposed Amendment to N.D. R. Evid. 902  
**Date:** Wednesday, September 05, 2018 9:40:43 AM

FILED  
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CLERK OF SUPREME COURT  
SEPTEMBER 5, 2018  
STATE OF NORTH DAKOTA

## Heather Keller

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**From:** Jackson J. Lofgren <jlofgren@suhrandlofgren.com>  
**Sent:** Wednesday, September 5, 2018 9:39 AM  
**To:** (SUP) Clerk of Court Office <SupClerkofCourt@ndcourts.gov>  
**Subject:** Comment to Proposed Amendment to N.D. R. Evid. 902

Ms. Miller,

I would like to briefly comment on the proposed amendments to Rule 902 of the North Dakota Rules of Evidence. The Joint Procedure Committee has suggested adding two new subsections relating to electronic evidence. It appears these suggested changes are based on 2017 amendments to Federal Rule of Evidence 902. I am opposed to the suggested changes.

Textually, the newly proposed subsections are so oddly worded it is difficult to understand what they allow or exclude. After referring to the commentary to F. R. Evid. 902 I am concerned the amendments would open the floodgates and allow virtually any document, report, or other piece of information stored in an electronic format to become self-authenticating.

The comments to the Federal rule acknowledge any challenge to evidence offered under these new subsections could require retaining forensic technical experts. Individuals with this type of training are not readily available in North Dakota. Any party without significant financial resources would be unable to offer any meaningful challenge to evidence proffered under the proposed changes. I am therefore against them.

Thank You,

Jackson J. Lofgren  
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