

PAST RECOLLECTIONS RECORDED

See FRE 803(5)/MD Rule 5-803/VA Rule 2:803(5).

The rule supplies the necessary foundation.

The witness at once had knowledge.

It was accurate at the time.

When it was fresh in the witness' mind they, or someone, at their direction, prepared a record of the information.

The record was accurate when made.

Without referencing the record, they are unable to testify completely and accurately.

The record can then be read into evidence, but is NOT admitted as an exhibit unless offered by the opponent on cross-examination.

RECORDS OF REGULARLY CONDUCTED ACTIVITY (business records)

See FRE 803(6)/MD Rule 5-803(6)/VA Rule 2:803(6).

The rule supplies the elements of the foundation.

The memorandum or record must be kept in the regular course of business for that business.
[It's about something this business regularly does.]

It must be a regular practice of the business to make this type of record. *[It is normal for them to make this record.]*

It was made near in time to the event it records.

It was made by, or from information transmitted by a person with knowledge.

The method or circumstances of preparation do not indicate lack of trustworthiness.

PHOTO(S)

May I have this marked as [Claimant's/Plaintiff's] Exhibit ___ for identification.

Let the record reflect I am showing Exhibit ___ for identification to opposing counsel.

Or in the alternative, if your exhibits have been pre-marked:

I turn the Court's attention to Exhibit ___ for identification.

May I approach?

I am showing you what has been marked as [Claimant's/Plaintiff's] Exhibit ___ for identification.
Do you recognize it?

What is it?

How do you recognize it?

Is it a **fair and accurate representation** of . . . on the day in question?
. . . at the time of the incident?
. . . as s/he/it appeared on [date]?
. . . the scene as you saw it that day?
. . . etc.

[If it differs, for example, a picture of a house taken on a snowy day and the event happened in the summer:

How is it different from what you observed that day?

Then your opponent may raise an objection, and the question is whether the difference affects admissibility or weight.]

I now move for the admission of Exhibit ___ for identification as Exhibit ___.

Once admitted:

May I publish Exhibit ___ to the jury?

Continue examination of the witness with questions relevant to what is depicted in the photo.

DOCUMENT

May I have this marked as [Claimant's/Plaintiff's] Exhibit ___ for identification.

Let the record reflect I am showing Exhibit ___ for identification to opposing counsel.

Or in the alternative, if your exhibits have been pre-marked:

I turn the Court's attention to Exhibit ___ for identification.

May I approach?

I am showing you what has been marked as [Claimant's/Plaintiff's] Exhibit ___ for identification.
Do you recognize it?

What is it?

How do you recognize it?

Is it in **substantially the same condition as the day** . . . you last saw it?
. . . you prepared it?
. . . you received it?
. . . etc.

[If its condition has changed:

How has it changed?

Then your opponent may raise an objection, and the question is whether the difference affects admissibility or weight.]

I now move for the admission of Exhibit ___ for identification as Exhibit ___.

Once admitted:

May I publish Exhibit ___ to the jury?

Continue examination of the witness with questions relevant to the document.

PRESENT MEMORY REFRESHED

When witness answers, "I don't remember."

[You should always make it part of your witness preparation that if a witness is unsure, they should never guess or make up an answer, they should say "I don't remember." Then you can help them this way.]

Is there something that would refresh your memory?

OR

Would looking at _____ refresh your memory?

May I approach?

[At this point, opponent may want to see what you are using to refresh. Per FRE 612, they are entitled to inspect it and cross examine on it, through you may be able to hold them off on seeing it until cross exam with a good argument to the judge.]

I will ask you to **read this silently to yourself**, and look up when you are done.

Let the record reflect that I am **retrieving the item** from the witness.

Is your memory now refreshed?

[Ask the question again.]