

Affidavits



What You Need To Know

To Tell the Truth

That's what affidavits are for.

To tell the truth.

Affidavits must be signed by the person claiming the facts therein are true. This person is called the "affiant" (pronounced "aff - fee' - uhnt").

Affidavits must also be signed by an official duly authorized by law to administer oaths and take acknowledgments.

All affidavits are signed under oath ... else they are not affidavits.

To be truly effective and serve the purpose for which affidavits are intended to be used, the affiant must voluntarily subject himself or herself to criminal penalties for perjury, contempt of court, and a possibly long time locked securely behind steel bars *if his or her affidavit contains statements of fact that are not strictly true!*

Affidavits are used in thousands of ways.

But!

- They are *not* pleadings.
- They are *not* motions.
- They are *not* legal arguments.

They are, however, *extremely powerful when used properly!*

They are *excellent* tools to "beef up" your pleadings, motions, petitions, demands, memoranda, and other documents you may file alleging facts.

And they have a marvelous ability to *encourage* bad people to do what you want them to do ... *if you use them properly*.

To use them *properly*, however, you need to know the "essential elements" that make an affidavit an affidavit.

If you mistakenly use them *improperly*, they can get you in a horrible mess of extremely unpleasant trouble!

And, of course, an affidavit is no guarantee that facts it alleges are true. Anyone can sign an affidavit stating the moon is made of green cheese, when we all know the moon is made of yellow cheddar! Right?

Beware of false affidavits and be prepared to bring liars to justice!

Uses for Affidavits

There's really only one use for an affidavit: to state facts under penalties of perjury by swearing they are true.

Circumstances where you might want to state facts and swear they are true can be almost anything when telling the truth about something or someone is important to your cause!

For example, when you file pleadings (complaints, answers, affirmative defenses, or replies to affirmative defenses) you allege certain facts. When those facts are *sworn to*, instead of merely stated as so, they carry quite a bit more weight with judges and other officials. They also tend to make your opponents think twice before disagreeing with you or challenging what you say.

Here's an affidavit used to verify the facts alleged in a complaint (the initial pleading in a lawsuit).

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____ /

VERIFICATION OF COMPLAINT

STATE OF FLORIDA
COUNTY OF SUNSHINE

BEFORE ME personally appeared Peter Plaintiff who, being by me first duly sworn and identified in accordance with Florida law, deposes and states under penalties of perjury:

1. My name is Peter Plaintiff, Plaintiff herein.
2. I have read and understood the attached foregoing complaint filed herein, and each fact alleged therein is true and correct of my own personal firsthand knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

Peter Plaintiff, Affiant

SWORN TO and subscribed before me this ___ day of _____ 2012.

Notary Public

My commission expires:

[Certificate of Service]

This form would be signed in the presence of a Notary (or other duly authorized official) and attached to the complaint at the time of filing. A copy would be served on the defendant(s) along with the clerk's summons.

That "FURTHER THE AFFIANT SAYETH NAUGHT" is not required. It does impress certain kinds of politically sensitive people who are easily impressed by such displays of legal verbosity, but it isn't necessary.

Nor is using an affidavit to verify all your papers necessary. A complaint is still a complaint, with or without a verifying affidavit, and it does what complaints must do, whether verified or not. But, when a complaint (or other paper in which you allege ultimate facts that are likely to be contested) is verified with an affidavit like this example, the impact is substantial and well worth the extra effort.

Use a verifying affidavit whenever facts are critical to getting what you want.

What Affidavits Can Say

An affidavit can "say" anything you want it to say.

But, whatever your affidavit says, it had better be true if you don't want to pay a big fine and spend days, months, or maybe even years in prison.

Any "fact" you personally *know* to be true from your own firsthand experience can be alleged in an affidavit.

If you need to allege a fact that is likely to be a controversial issue in your case, *swear to it with an affidavit.*

If you anticipate your opponent will challenge you on a particular fact or set of facts, *state those facts in an affidavit.*

Here's a form for simply alleging facts under oath without regard to verifying pleadings, motions, etc.

AFFIDAVIT

UNDER PENALTIES OF PERJURY the undersigned affiant states:

My name is Felix Frankfurter.

I was associate Justice of the United States Supreme Court from 1939 through 1962.

I was nominated to serve on the Court by Franklin Delano Roosevelt.

I served as advisor to the President during World War II.

FURTHER THE AFFIANT SAYETH NAUGHT.

Felix Frankfurter, Affiant

STATE OF MICHIGAN
COUNTY OF SAGINAW

BEFORE ME this 1st day of April 1955 personally appeared Felix Frankfurter who, being by me first duly sworn and identified in accordance with Michigan law, affirmed the foregoing in my presence.

Notary Public

My commission expires:

Notice that this basic affidavit begins with the words, "UNDER PENALTIES OF PERJURY the undersigned ...".

These words are essential to be included. Without them the affidavit lacks the impact of voluntarily exposing the affiant to criminal penalties for false statements.

Notice also that Justice Frankfurter "affirmed" the facts alleged in his affidavit. He did not "swear", nor is it necessary to "swear". An affirmation is sufficient, since the first words of the affidavit expose him to severe consequences if what he alleges is later proven to be false ... whether affirmed, sworn, stated, claimed, or otherwise.

What Affidavits Should *Not* Say

Affidavits should not make legal arguments. That's what pleadings, motions, memoranda, and other legal documents are for.

Affidavits should not cite controlling appellate court opinions, statutes, or other "law". That's not what affidavits are for.

Affidavits should *never ask questions!* Affidavits are declaratory statements. They say. They do not inquire.

It is redundant to title an affidavit "Affidavit of Facts" or "Affidavit of Truth", etc. All affidavits are statements of facts alleged to be true.

The single word "Affidavit" tells us all we need to know.

Proper Affidavit Format

There technically is no "proper affidavit format" as long as all the essential elements (there we go again with essential elements) are present.

To have maximum possible impact, facts should be stated, averred, sworn to, attested, certified, said, maintained, professed, avowed, or otherwise declared "under penalties of perjury".

The affidavit must be signed by the affiant.

A "copy" is *not* an affidavit. A copy is a copy, nothing more. It may be "evidence" that an affidavit exists "out there" somewhere, but it is *not* an affidavit. The original may have been destroyed. A copy does not impose criminal penalties if the facts alleged are untrue. Copies of affidavits are evidence only.

The affidavit must be attested by a Notary or other officer duly authorized to take oaths, acknowledgements, attestations, etc. Court clerks usually have this authorization. So do judges currently serving on the court. (Retired judges do not.)

Magic Language

There is no "magic language" other than stated above.

You should avoid everything that even remotely sounds like "magic language".

Do not use fancy legal terminology.

Use no words whatsoever that you've not first confirmed to mean *precisely* what you intend them to mean by referring to a dictionary published by a reputable company such as Webster, Oxford, or other company generally regarded as an acceptable authority on the meaning of words. Do not guess what words mean.

Do not misspell anything. Use your dictionary if in doubt.

If you write documents using a computer (or similar device) print those documents before filing. Read them over carefully with a red pencil. Make notes. Go back again and again to the computer, if necessary, to perfect the document *before filing it*.

Remember, if facts alleged in your affidavit can be interpreted more than one way, you can be sure your opponent will give you a hard time about it if you give him or her room by being sloppy.

Say things the way you would say them to a friend. Use simple everyday language that you've checked with your dictionary to confirm *precise* meanings.

The Jurat

You will see this term used (and frequently misused) on the internet. It is simply that part of your affidavit that shows the affidavit's who, what, when, and where.

The "who" is the person before whom you present your affidavit to be certified, i.e., a Notary or other person authorized to administer oaths and certify documents.

The "what" is the statement by the Notary that the affiant was properly identified and sworn or affirmed.

The "when" is the date (sometimes even exact time, if time is critical) when the affiant signed the affidavit in the presence of the Notary or other authorized officer.

The "where" is usually the state and county where the affidavit is signed and attested. (It might also be the name of the court, e.g., Sixth Judicial Circuit Court in and for Cornfield County, Iowa.)

That's all a jurat is.

Using the term "jurat" may impress your friends, but it adds nothing to your affidavit and helps you not at all.

Who Can Administer the Oath

As stated above, Notaries are authorized to administer oaths and take attestations in all states.

Any judge duly and presently appointed to the bench in a court having jurisdiction over your case has authority to witness and attest to your affidavit. A retired judge does not, unless he or she is also a Notary.

In some jurisdictions, the Clerk of Court may do this.

Your next door neighbor cannot.

Alternatives

There are no alternatives.

Only an affidavit is an affidavit.

Remember: "A thing similar is never exactly the same."

As stated above, unless your affidavit contains all the essential elements (those essential elements pop up throughout this course for a reason) it is *not an affidavit*.

A document may look like an affidavit.

It may have "legal sounding" terminology.

It might have "AFFIDAVIT" written at the top of the page and fool your best friend.

But no document is an affidavit *without the essential elements that make it so*.

Legal Effect

The "legal effect" of an affidavit goes no farther than binding the affiant to unpleasant consequences of he or she lies under oath.

As stated at the beginning of this class, affidavits are not pleadings, motions, memoranda, notices, claims, complaints, demands, nor any of the other types of documents that have certain purposes.

An affidavit is simply a statement made under oath that exposes the affiant to punishment if he or she lies.

It may have an "effect" on ugly, perverse people who don't want you to make a public point of their bad acts by stating how they violated the law in a way that injured you or others.

People who abuse the law or misuse authority tend to get uncomfortable and anxiously disturbed when you risk perjury penalties by "calling them down" for their unlawful behavior *and doing it under oath*.

Here's another example for illustration purposes.



AFFIDAVIT

UNDER PENALTIES OF PERJURY the undersigned affiant states:

My name is Will Fixyou, pinch hitter for the St. Louis Cardinals baseball team.

On the 11th of July 2021 at Wrigley Field in the city of Chicago, Illinois I was struck in the head by a baseball thrown by Wilson Contreras, catcher for the Chicago Cubs.

I was standing at home plate at the time, bat in hand, minding my own business when I was brutally struck.

Contreras had just caught a sneaky slider then, standing erect from his normal catcher's crouch and facing me with what I considered an evil-minded countenance, Contreras yelled, "I hate all you Missouri batters!"

He then threw the baseball *directly at my head*, instead of tossing it back to the pitcher as required by National League Rules.

I had only one ball and two strikes against me at the time and was legally entitled to another pitch and swing of the bat before retiring from the plate.

I was denied my legal right as a direct and proximate result of Contreras' using a baseball contrary to its duly authorized purpose.

Contreras' intentional and unlawful act violated National League Rules that regulate game time behavior of all National League catchers.

The forceful impact of that hard baseball striking my sensitive head caused me to fall to the ground violently, soiling my lovely uniform and causing me to suffer extreme public embarrassment as other members of the Chicago team, on the field and in the dugout, doubled up with outrageous and unwarranted laughter.

Seeing me helplessly confused and struggling desperately to regain my famous bow-legged batter's stance, Contreras retrieved the baseball from the ground next to my head, examined it with a look of disgust then, with a sly satisfied smirk on his face, tossed it to a fellow Cubs player in the dugout.

Contreras' illegal, unwarranted, and intentionally injurious act so angered the attending crowd of Cardinals fans that the game was postponed, disrupting what might otherwise have been a lovely summer's afternoon for all concerned.

FURTHER THE AFFIANT SAYETH NAUGHT.

Will Fixyou, Affiant

STATE OF ILLINOIS
COUNTY OF COOK

BEFORE ME this 1st day of August 2021 personally appeared Will Fixyou who, unknown to most baseball fans but being by me first duly sworn and identified in accordance with Illinois law, attested to the foregoing in my presence.

Notary Public

My commission expires:

You will modify this example, of course, to suit whatever similar circumstances your case may require.

Indeed, when anyone causes you injury by breaking the law or acting outside their lawful authority, a carefully-worded affidavit can sometimes encourage *other people* (perhaps the Sheriff, a United States Marshal, or even a newspaper reporter) to take notice and cause the bad actor to regret his or her penchant for living "outside the law".

Hold that thought. It's golden!

Conclusion

Affidavits take many forms, but when the dust settles they are only statements of fact made under oath ... nothing more.

If you wish to bring fire down on someone who deserves a bit of scorching, file a complaint, have them served with a summons, and verify your complaint with an affidavit.

If someone nasty tries to bring fire down on *you*, file an answer with affirmative defenses (and possibly a counter-claim, cross-claim, third party complaint, and demand for jury trial) and swear to the facts with an affidavit.

If you wish to get your Sheriff or a United States Marshal (or newspaper reporter) to take an interest in some unlawful behavior that's irritating you or perhaps causing you pain, suffering, distress, disappointment, upset, damage to property, financial stress, upset stomach, or other untoward unpleasantness, send them an affidavit (an original, not a copy) by certified mail and request their assistance.

After all, as Red Green of Possum Lodge fame reminds us, "We're all in this together."

You'd be surprised how many good people out there with power to make your life better just need to be properly told what bad folks are doing before they step up to the plate and give you the relief our laws call for, the relief you deserve.

Affidavits can be fun!

Use them as the tools they are designed to be, not as a substitute for proper pleadings, service of process, legal argument, or any of the other things you are learning in this course about How to Win in Court.

As my Daddy taught me when I was a boy, "Screwdrivers are *not* chisels, and vice-versa."

Wise people use the proper tool to do a proper job.

Use affidavits to tell the truth!