

Affidavit Properties

The fourth Commercial Maxim states a fundamental aspect of commercial law: "Truth is expressed by means of an affidavit." Since each individual experiences whatever he does from his own particular perspective in time and space, and through his unique nature and machinery of consciousness, all truth is subjective.¹ Truth, like beauty, is in the eye of the beholder.

Inasmuch as everyone has free will and is the irreducible unit of experience, choice, responsibility, and self-government, only each particular man or woman can speak his/her own truth and has the right and obligation to do so. No one is obligated, nor qualified, to express the truth of another, as per the famous line in Tennyson's book, *The Courtship of Miles Standish*: "Why don't you speak for yourself, John."

Dispute resolution ("law") requires a universally accepted means for someone to assert his subjective truth in a manner that all understand is intended to be uttered without equivocation, concealment, deception, or insincerity. An *affidavit*, especially an affidavit "sworn true, correct, and complete," has evolved over time to be the accepted process by which someone expresses his truth in the most solemn, absolute, ceremonial means possible, past which nothing exists. An affidavit, as a solemn and sworn statement of truth, automatically renders the affiant the subject of charges of perjury if any portion of his affidavit is false.

Black's Law Dictionary, Fifth Edition, defines *affidavit* and *oath* as follows:

"*Affidavit*. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." pp. 28-29.

"*Oath*. Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly.... An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. A solemn appeal to the Supreme Being in attestation of the truth of some statement. An external pledge or asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false...." p. 555.

In order to be characterized as an affidavit, a document must contain the characteristics and properties itemized below. To wit, an affidavit:

1. States facts ("truth") only on the basis of firsthand, personal knowledge, not conjecture, theory, or hearsay. The facts stated must express direct knowledge of the affiant (not "information and belief," which is hearsay).

¹ If someone expresses his subjective truth and others verify the same truth in their own subjective terms, said "truth" is labeled as "objective fact," i.e. the abstract map is acknowledged by others as accurately representing the territory.

2. Cannot be argumentative.
3. Must not draw conclusions of law.
4. Can be executed and served at any time without notice to the adverse party. Because an affidavit is not subject to cross-examination, it is an *ex parte*² proceeding.
5. Must be certified (witnessed) by an officer of the state authorized to administer oaths, usually a notary public.³ If it is not so sworn it will not be considered as being an affidavit.
6. Constitutes one of three kinds of testimony, the other two being *deposition* and *direct oral examination*, and stands as uncontroverted evidence if not timely rebutted point-for-point by proper counteraffidavit executed by the adverse party.
7. Must be executed by being sworn true, correct, and complete, i.e. under oath, defining the degree and nature of the commercial liability being staked by the affiant for the veracity, accuracy, relevance, and verifiability of everything stated in the affidavit.
8. Can be invalidated or nullified only by being rebutted point-for-point by counteraffidavit sworn true, correct, and complete.
9. Stands as the truth concerning each point that is not rebutted by counteraffidavit as above; the entire affidavit stands as the truth in the matter if not answered at all.
10. Stands in full as the judgment (application) of the law if completely unrebutted by counteraffidavit as above; invokes execution of the law concerning the points in the affidavit that are not expressly rebutted in a counteraffidavit.

Without a “competent witness,” i.e. testimony, no court has any power to act. Judgments may be made solely on evidence, but all evidence requires that a competent witness attest its validity, i.e. verify the evidence submitted. Without a competent witness, a judgment is void.

In court, the adverse party has the right to cross-examine. When testimony is issued via affidavit, the adverse party has the right (and obligation, if he/she desires not to have the affiant’s affidavit stand as the truth and judgment of the law) to respond to the affidavit point-for-point via counteraffidavit sworn true, correct, and complete.

Regardless of the form in which testimony is introduced into proceedings and disputes, once a “competent witness” has submitted testimony (by any means, including affidavit), the adverse party must:

1. Disprove stated facts or prove alternative facts;

² *Ex parte*: One side only; by or for one party; done for, in behalf of, or on the application of, one party only. Black’s Law Dictionary, First Edition.

³ Certification of an affidavit, i.e. “third-party witness,” has been universally necessary from inception, probably for thousands of years. The process began with someone who personally knew the affiant signing, and certified that the name was truly that of the affiant and not an imposter. Such measure was taken to prevent fraud and forgery in the event that someone other than the one whose name was being signed was actually signing the affidavit.

2. Prove application of law re stated facts or alternative facts.

In the event that the adverse party fails to comply with the above two (2) essentials, the “testimony” of the “competent witness” is established as uncontroverted⁴ evidence.

For the most part (almost always), attorneys (including government attorneys), are not “competent witnesses” because (1) they do not have firsthand knowledge of facts, and (2) they do not submit whatever they have to say under oath, i.e. “the truth, the whole truth, and nothing but the truth” (e.g. via affidavit sworn true, correct, and complete). Attorneys act under authority of the “system,” not under their own unlimited liability, and only relate second-hand information, i.e. what is related to them by others. Legally, therefore, what an attorney states is *hearsay*. It is not the result of direct experience and cannot be attested on the basis of direct, personal knowledge.

As well as meeting criteria stated above, an affidavit should, ideally:

1. Have all paragraphs numbered, for the purpose of, *inter alia*,⁵ identifying particular points/passages for future reference should rebuttal be attempted.
2. Contain as many points as possible—*without violating any of the above-stated criteria*—of the seven points of a seven-point instrument (see **seven-point instruments** in Glossary); the more points, the more formidable.
3. Have a unique form number at the bottom, different from that of any other affidavit, for unambiguous future reference and enhanced admissibility as evidence.
4. Be a plain statement of facts, written in clean, clear, matter-of-fact, minimalist style: “Just the facts, ma’am.”
5. Be written in the present tense.
6. Avoid use of pronouns and the words, “to” (infinitive form is least-ambiguous use) and “or,” which are ambiguous. The less ambiguity, the less need for a third party, such as a judge, to intervene in the matter to “interpret” the text.
7. Contain as few adjectives and adverbs as possible, since such color matters and try to tell people what to think. Often the more nakedly words and terms are expressed, the more definitive and ironclad they are.
8. Be signed in red ink, *signifying blood*. Signing in red ink acts as a signal that you, as the affiant, are stating your truth in the capacity of a sentient, living being with unlimited liability, and not a corporately colored, artificial entity (TRADE NAME) operating in limited liability.
9. Have as much documentation, i.e. exhibits, attachments, and documentary evidence, supporting the assertions made in the affidavit, as possible. Obviously, the more incontrovertible the substantiation, the better.

⁴ Uncontroverted: Not denied; not contradicted.

⁵ *Inter alia*: Lat.: among other things... Barron’s Law Dictionary, Third Edition.