

§ 92.22 “Affidavit” defined.

An affidavit is a written declaration under oath made before some person who has authority to administer oaths, without notice to any adverse party that may exist. One test of the sufficiency of an affidavit is whether it is so clear and certain that it will sustain an indictment for perjury, if found to be false. An affidavit differs from a deposition in that it is taken *ex parte* and without notice, while a deposition is taken after notice has been furnished to the opposite party, who is given an opportunity to cross-examine the witness.

§ 92.23 Taking an affidavit.

The notarizing officer taking an affidavit should:

- (a) Satisfy himself, as far as possible, that his notarial act will be acceptable under the laws of the jurisdiction where the affidavit is to be used (see § 92.5);
- (b) Require the personal appearance of the affiant at the time the affidavit is taken;
- (c) Require satisfactory identification of the affiant; and
- (d) Administer the oath to the affiant before the affiant signs the affidavit.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.24 Usual form of affidavit.

Affidavits are usually drawn by competent attorneys or are set out in established forms. The form and substantive requirements of an affidavit depend principally upon the purpose for which it is made and the statutes of the jurisdiction where it is intended to be used. When a notarizing officer finds it necessary in the discharge of his official duties to prepare an affidavit, or when he assists a private person in preparing an affidavit (see § 92.11(b)), he should, where possible, consult the pertinent statutory provisions.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.25 Title of affidavit.

Generally an affidavit taken for use in a pending cause must be entitled in that cause so that it will show to what proceedings it is intended to apply, and

may support an indictment for perjury in case it proves to be false. If there is no suit pending at the time the affidavit is taken or if the affidavit is not to be used in any cause in court, no title need be given.

§ 92.26 Venue on affidavit.

The venue must always be given and should precede the body of the affidavit. (See § 92.14 regarding venue on notarial certificates generally.)

§ 92.27 Affiant's allegations in affidavit.

(a) *Substance of allegations.* Although a notarizing officer is generally not responsible for the correctness of the form of an affidavit or the manner in which the allegations therein are set forth (see § 92.11(a) regarding the preparation of legal documents by attorneys; § 92.11(b) regarding the preparation of legal documents by notarizing officers; and § 92.24 regarding the form of an affidavit), he may, in appropriate instances, draw the affiant's attention to the following generally accepted criteria as regards the substance of the allegations:

(1) Material facts within the personal knowledge of the affiant should be alleged directly and positively. Facts are not to be inferred where the affiant has it in his power to state them positively and fully.

(2) If the matters stated in the affiant's affidavit rest upon information derived from others rather than on facts within his personal knowledge, he should aver that such matters are true to the best of his knowledge and belief.

(3) If the allegations made on information and belief are material, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be made.

(4) If the conclusions of the affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the authority to whom the affidavit is presented may determine whether the affiant's deductions are well founded.

(b) *Veracity of allegations.* Notarizing officers are not required to examine into the truth of the affiant's allegations or to pass upon any contentious