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“Tip of the Month”

The Affidavit

An affidavit is a sworn statement given by a witness in writing under oath. It is usually formatted in numbered paragraphs of one or two sentences each. The affidavit will list only facts known to the witness and does not usually include opinions.

The witness will sign the affidavit in the presence of a notary public or justice of the peace. The oath recites that the facts set forth above are true to the best of the witness’s knowledge and belief.

Affidavits are often used to support pleadings such as motions or objections in court cases. They cannot be used to replace witness testimony because affidavits are technically hearsay. Hearsay is an out-of-court statement offered in evidence for the truth of the matter asserted in the statement. Affidavits cannot be cross-examined to test their accuracy.

Affidavits are necessarily out-of-court statements since they are prepared in advance of the hearing or trial. Even though the witness swore under oath that it was all true, the affidavit is still hearsay, which is usually considered inadmissible evidence for trial purposes.

However, the affidavit can still come in handy at a pre-trial hearing on a motion. Many motion hearings do not include actual witness testimony. There is not enough time. The judge wants the lawyers to give “offers of proof” of what the witnesses would say if they testified. The witnesses should be sitting in the back of the courtroom during offers of proof, just in case the judge wants cross-examination.

An affidavit can be a more complete expression of the witnesses’ statements than the lawyer would give in an offer of proof. The judge rarely makes a ruling on the motion from the bench in open court. The judge will “take the matter under advisement” and issue the ruling later in a written order sent out to the parties.

While the judge is pondering the arguments on the motion to make the order, the judge can look at the witnesses’ affidavits filed with the pleadings. Since all the statements in the affidavit are concise and factual and sworn under oath, they can be very persuasive witness expressions in support of the legal arguments.

In many cases, pleadings are not considered persuasive if they are not supported by sworn affidavits. The affidavits become part of the court record that can also be very helpful if an appeal is filed and a higher court has to consider the lower court’s ruling on the motion.

If you need help with a court matter, whether or not it involves an affidavit, please do not hesitate to give us a call at 668-1971 or contact us by e-mail at *mailbox @ biz-patlaw.com*. We are here to help.

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