

Proper Signature for an Affidavit

I just received an affidavit from an opposing party with no notarial certificate and "/s/" on the signature line. I did some research and it appears this new statute (see below) allows for not having a notary. Am I reading that right? It seems like a very odd law. Even if you can sign without a notary, "/s/" seems inappropriate for an affidavit. The statute says it must be "subscribed" but there is no clear definition on whether subscribed means an actual signature. I think the lack of a signature casts some doubt as to whether it was actually reviewed and/or signed by the named affiant (who is in Ohio and the case is in Idaho), but I would love some case law to guide the court.

I.C. Â§* 9-1406. Certification or declaration under penalty of perjury*
Currentness<https://a.next.westlaw.com/Document/ND5B82DD0C43E11E2B23AD1DFB178C299/View/FullText.html?navigationPath=%2FFoldering%2Fv3%2Fballardlawidaho7%2Fhistory%2Fitems%2FdocumentNavigation%2F2df16ab2-a804-409a-aa98-7172ab57448f%2FjpH2MERJhzo9ARNzGqaMxr7XMUJBY8cDIItG1NpQfVFZqb6sP%60tbIhxvXbH1WOcw1YEEYuiHjWe7P4%60D64mEJVkLgVeNCfVJJ&listSource=Foldering&list=historyDocuments&rank=27&sessionScopeId=f353ee832906b7fc8ea347c5577ff531&originationContext=MyResearchHistoryAll&transitionType=MyResearchHistoryItem&contextData=%28oc.Category%29&VR=3.0&RS=cblt1.0#co_anchor_I4B18C9A0DEEC11E29C9FDB56B7242E1C>

(1) Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to a law of this state, any matter is required or permitted to be supported, evidenced, established or proved by the sworn statement, declaration, verification, certificate, oath, affirmation or affidavit, in writing, of the person making the same, other than a deposition, an oath of office or an oath required to be taken before a specified official other than a notary public, such matter may with like force and effect be supported, evidenced, established or proven by the unsworn certification or declaration, in writing, which is subscribed by such person and is in substantially the following form:

â€œI certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.â€

.....
.....

(Date)
(Signature)

There is a federal analog to this statute which I have made use of on many occasions, but I have never seen or used a "/s/" instead of a signature.

Jon van Horne

What does your state law or court rules say as to whether or not an affidavit must be notarized?

That is the real question

And I personally don't think you can make a declaration without actually signing the document. How do you prove that the person who allegedly made the declaration actually SAW the darned thing. i think the rule there is very clear that there must be a signature of the person and not an /s/

unless they are claiming they can't sign their name and it's there mark, but that would need to be witnessed.

I would look at your rules for that type of signature (a mark). There are reasons why it needs to be witnessed and it is all about proving the identity of the person making the statement. If the person can sign a document and doesn't, then you have absolutely NO WAY to prove they were the one signing the document or making the declaration.

Erin M. Schmidt, Ohio

I can't address either states laws, but I will say that Florida, under some circumstances, allows signatures under "penalty of perjury" without notarization. Having said that, when people submit such documents to court, most of my judges go "uh, no, Nix Nix" and require actual notarization.

As to the lack of actual signature, I dont' think it's been 'subscribed' or at least I'd argue that.

Ronald Jones, Florida

There are affidavits which by definition are sworn statements. There are certifications which by definition are not. The statute you posted demonstrates that. Our state rule does as well. Our rule is below. If yours is the same, the signature would have to be a facsimile signature and the attorney would have to attest that the affiant acknowledged that it is genuine.

1:4-4. Affidavits

(a) Form. Every affidavit shall run in the first person and be divided into numbered paragraphs as in pleadings. The caption shall include a designation of the particular proceeding the affidavit supports or opposes and the original date, if any, fixed for hearing. Ex parte affidavits may be taken outside the State by a person authorized to take depositions under R. 4:12-2 and R. 4:12-3.

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(b) Certification in Lieu of Oath. In lieu of the affidavit, oath or verification required by these rules, the affiant may submit the following certification which shall be dated and immediately precede the affiant's signature: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

(c) Facsimile Signature. If the affiant is not available to sign an affidavit or certification, it may be filed with a facsimile of the original signature provided the attorney offering the document certifies that the affiant acknowledged the genuineness of the signature and that the document or a copy with an original signature affixed will be filed if requested by the court or a party.

Donna R. Ireland, Paralegal

Well actually. . . might this be acceptable under the Uniform Electronic Transactions Act (adopted in Idaho and most other states)?

<http://www.legislature.idaho.gov/idstat/Title28/T28CH50SECT28-50-107.htm>

TITLE 28

COMMERCIAL TRANSACTIONS

CHAPTER 50

UNIFORM ELECTRONIC TRANSACTIONS ACT

28-50-107. Legal recognition of electronic records, electronic signatures and electronic contracts -- Electronic transmittal in lieu of certified mail. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

(e) If a law requires any notice or other record to be sent by certified mail, the record may, with the express consent of the recipient, be transmitted electronically.

Tony LaCroix, Missouri

In pre-electronic and pre-photocopy days, a "/s/" on the signature line indicated a conformed copy, i.e., that an original had been signed, and this is a copy so indicating. It had nothing to do with whether or not it was notarized or certified. Those require other additional language.

Miriam N. Jacobson, Pennsylvania

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Use of declarations is common in this state, except where statute requires a notary, as on deeds. When declarations first became common here, everybody latched on to the language about "...under penalty of perjury...", but the declaration statute also required that the date and place of signing be included with the signature. It was common for the first few years for documents to be excluded or disregarded on objection because no place (city and state) of signing was included. The /s/ has a long history of indicating that this is a copy and a signed original exists.

Rebecca K. Wiess, Washington

Let's separate the two issues:

A decades-old section in 28 U.S.C. permits anyone to use a document signed under penalty of perjury in place of an affidavit in federal courts. CA and many other states have similar provisions. All the statutes I have seen have specific formal requirements, similar to the ID statute you quote. So, this isn't an odd statute.

Using "/s/" or "s/Name" is a way of indicating on a "conformed copy" that the original document was signed by the named individual. This very old practice arose long before photocopies were ubiquitous and inexpensive. Federal and many states' e-filing procedures have revived the practice. The question is whether your state's procedural rules permit service of a conformed copy rather than a photocopy or duplicate original.

Steven Finell, California

No doubt, use of "/s/" previously meant it was a conformed copy. But in many jurisdictions it is an actual signature now. Federal court ECF filings accept it as a signature, as do states adopting similar e-filing systems. And the Uniform Electronic Transfers Act would seem to give approval to it as a signature, not an indication of a conformed copy:

"'Electronic signature' means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

Tony LaCroix

I had not heard of "/s/" being used to show it was a conformed copy, but since this was an older attorney I pulled the court file and the original had a signature. Thanks for all the responses.

Ryan Ballard, Idaho
