

CHAPTER 18

CPRC

© 2015 This paper and/or presentation provides information on general legal issues. It is not intended to provide advice on any specific legal matter or factual situation, and should not be construed as defining Cooper and Scully, P.C.'s position in a particular situation. Each case must be evaluated on its own facts. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act on this information without receiving professional legal counsel.

(b) Unless a controverting affidavit is served as provided by this section, an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary.

(c) The affidavit must:

...

(2) be made by:

(A) the person who provided the service; or

(B) the person in charge of records showing the service provided and charge made; and

(3) include an itemized statement of the service and charge.

(e) A party intending to controvert a claim reflected by the affidavit must serve a copy of the counteraffidavit on each other party or the party's attorney of record:

(1) not later than:

(A) 30 days after the day the party receives a copy of the affidavit; and

(B) at least 14 days before the day on which evidence is first presented at the trial of the case; or

(2) with leave of the court, at any time before the commencement of evidence at trial.

(f) The counteraffidavit must give reasonable notice of the basis on which the party serving it intends at trial to controvert the claim reflected by the initial affidavit and must be taken before a person authorized to administer oaths. The counteraffidavit must be made by a person who is qualified, by knowledge, skill, experience, training, education, or other expertise, to testify in contravention of all or part of any of the matters contained in the initial affidavit.

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____ (NAME OF AFFIANT), who, being by me duly sworn, deposed as follows:

...

The attached records are kept by me in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by _____ (PERSON WHO PROVIDED THE SERVICE) or an employee or representative of _____ (PERSON WHO PROVIDED THE SERVICE) who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original.

The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.