

Citations Regarding Notarizing an Affidavit

1. Where an affidavit is called for, an acknowledgement will not suffice." (*Pina v. Simon-Pina* 544 So. 2d 1161)
2. Archie's [**3] motion merely contains a certificate by a notary public that "the foregoing instrument was acknowledged before me this 22nd day of March, 1994, by Antonio Archie, who is personally known to his attorney and who did take an oath." An "acknowledgement," even under oath, is nothing more than a confirmation by Archie that the signature is genuine. It is not equivalent to swearing under oath that the facts alleged are true and correct." (*Archie v. State* 660 So. 2d 348)
3. The notary public may not take an acknowledgment of execution in lieu of an oath, if an oath is required. (*Florida Statute F.S. 117.03, Administration of Oaths*)
4. An affidavit without a notary's seal is not properly notarized and therefore, is defective. *Venable v. State*, 113 S.W.3d 797, 800 (Tex. App.- Beaumont 2003, pet. ref'd)
5. A valid affidavit must include "a certificate by a competent officer that the writing was sworn to by the person who signed it," known as a jurat. *Acme Brick v. Temple Associates, Inc.*, 816 S.W. 2d 440, 441 (Tex. App - Waco 1991, writ denied)
6. A document bearing a simple "acknowledgment" is not an affidavit. An acknowledgment is merely an admission that the parties signed the document in question, and does not prove the document contains true and correct *Id.* factual statements. *Perkins v. Crittendon*, 462 S.W. 2d at 567-568.
7. A document bearing a notary's attestation that "certifies" that the person who signed the document stated that it is true and correct is defective because it lacks the requisite swearing or affirmation. *State v. LeBlanc, Inc.*, 399 S.W. 2d 919, 922 (Tex. Civ. App. - Houston 1966, no writ)
8. Notary failed to verify identity and failed to place expert witness under oath for a jurat on an affidavit of merit for a medical malpractice lawsuit. Affidavit was rejected by Court of Appeals as being defective and not considered an affidavit at all because it contained a false jurat and was not properly notarized. *Glancy v Steinberg*, 2003 WL 21465239 N.W.2d-MI

Colorado law:

9. Colorado Supreme Court ruled that a petition that was circulated for signatures was invalid because it contained a defective affidavit, lacking the required wording that the circulator has "read and understands the laws governing the circulation of petitions". *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994)
10. **CRS 12-55-110 (1)** Every notary public is empowered to:
 - (a) Take acknowledgments and other unsworn statements
 - (d) Take depositions, affidavits, verifications, and other sworn testimony or statements.
11. **CRS 12-55-119** If an oath or affirmation is administered by a notary in writing, a jurat certificate must be used, stating that the statements were made before the notary, under oath or affirmation.
12. **CRS 12-55-207** An acknowledgement certificate indicates that the signer appeared before the notary, acknowledged their signature, and executed the instrument for the purposes therein stated. (No sworn statement is made before the notary.)
13. **CRS 18-8-503.** Perjury in the second degree.
 - (1) A person commits perjury in the second degree if, other than in an official proceeding, with an intent to mislead a public servant in the performance of his duty, he makes a materially false statement, which he does not believe to be true, under an oath required or authorized by law.
 - (2) Perjury in the second degree is a class 1 misdemeanor.
14. To make a valid oath, for the falsity of which perjury will lie, there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act by which the affiant consciously takes upon himself the obligation of an oath. *Rogers v. People*, 161 Colo. 317, 422 P.2d 377 (1966).

15. No presumption of oath-taking is held to apply where the notary's testimony was equivocal on the issue of whether the oath was taken. **Rogers v. People**, 161 Colo. 317, 422 P.2d 377 (1966). [perjury conviction overturned where notary probably did not administer oath]

16. **Colorado Notary Law Monograph**, Michael L. Shea, JD, pg. 10, **Notarial Duties**: Based on **Rogers v. People (1966)**, the Colorado Supreme Court expects a notary to administer an oath or affirmation where the principal "swears" to the truthfulness of the statement.

17. **Colorado Notary Handbook, Definitions: Affidavit**- A written declaration made under oath or affirmation before a notary public or other authorized officer, in which the signer swears or affirms that the statements or declarations in the document are true.

18. **Colorado Notary Law Primer**, 3rd ed., National Notary Association

pg. 29, **Depositions and Affidavits**: An affidavit is a signed statement made under oath or affirmation by a person called an affiant, and it is used for a variety of purposes, both in and out of court. For both a deposition and an affidavit, the Notary must administer an oath or affirmation and complete some form of jurat, which the Notary signs and seals.

pg. 30, In an affidavit, the Notary's certificate typically sandwiches the affiant's signed statement, with the venue and affiant's name at the top of the document and the jurat wording at the end. The Notary is responsible for the venue, affiant's name, and any notarial text at the beginning and end of the affidavit. The affiant is responsible for the signed statement in the middle.

pg. 30, Depositions and affidavits require jurat certificates.

pg. 31, A jurat requires the principal to take an oath or affirmation.

19. **Black's Law Dictionary: 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 an officer having authority to administer such oath.

20. **Merriam-Webster Dictionary: Affidavit**- a sworn statement in writing made especially under oath or on affirmation before an authorized magistrate or officer. Origin: Medieval Latin, he has made an oath, from affidare.

[End of Citations Regarding Notarizing an Affidavit]