

DEPOSITION GUIDELINES FOR QUESTIONING THE AFFIANT

Under Oath-what does that mean to the Affiant or Legal Specialist

Ask the Affiant what signing under oath means to her. She just swore under oath to a Court Reporter while holding up her right hand. Midland requires its Legal Specialists also to be a Notary Public. Ask them what swearing under oath means and why they hold their hand up. They have no idea, but it shakes them up from the get-go. Ask who is going to know if they violate the oath and consequences.

Education and Work History

1. Swearing in. Ask about it. What does it mean to her.
2. Full Name. Ask for the ID. Sometimes the name she signs, and her ID are not the same.
3. Education, employment history. Ever a notary.
4. History of other lawsuits she has worked on. Ever been deposed before?
5. How long have you worked at Midland or MCM?
6. Bring out that she does not really work for Midland and it is separate from MCM.
7. Work history. Who is your supervisor at Midland or Midland Credit Management (MCM)? Most of the legal specialists work for MCM and have no clue about Midland other than the name of the Plaintiff in their affidavits.

Affidavit

1. What did the Affiant review before signing? Everything. Who created what was reviewed. You will find out that MCM and Midland create nothing. They view everything the seller or the debt creates.
2. Who wrote or created the Affidavit she signs under oath is true. She does not. When was the Affidavit of Claim created and by whom? When was the information in the Affidavit placed in the Affidavit and by whom. Where did the amount owed come from?
3. When did you sign this Affidavit? Go over dep notice and when she received the notice and her preparation. Have her read the PERJURY in the Affidavit and what it means to her.
4. Go over the procedure in minute detail from start to finish how and when they sign the Affidavits and how many they sign at one time. How does the Affidavit end up on their desk?

5. Is there a quota or an amount you are required to sign a day, a week a month? Is there a certain day when affidavits are signed, like “Wednesday is Affidavit day?”
6. Is there a cardholder contract she views that shows the terms and conditions of adding interest, charges, attorney fees and any interest charged? How do you know the amount owed is the right amount. is the right amount and based upon what? Have you seen something breaking down how much is owed and categorized as interest, fees, principle or costs.
7. You have had time to prepare for today’s dep. Is this a Visa, Discover or Mastercard? They never know and goes directly to Personal Knowledge.

Process of Affidavit Creation and Signing and Oath.

1. Have you ever signed an Affidavit in a different room than the Notary? What is the longest time you have ever gone between your signature and the Notary Signature.
2. What role does the Affiant or Legal Specialist play in obtaining documents to review? Do you rely on computers or do you review the originals?

806 breakdowns to get an admission of that she does not qualify for the exception.

Before sitting down with the deponent, you must know 803(6).

1. At time the originals documents were created, were you aware how they were created or stored.
2. Who stored the records online for you and MCM?
3. What do you know about the person who created the Original records, person that put the records on the computer seen any sworn proof as to their reliability to-look at case.
4. What date was the credit card account opened and with whom. Who is the original creditor and what training have you done with the original creditor. Have you seen anything created by the original creditor regarding the specific debt?
5. Ask her if the Affidavit was created to support the litigation or lawsuit in the case. She will say yes, and this usually kills any 803(6) uses.
6. Who requested that she furnish the Affidavit and why. She will reveal the attorney law firm in your case requests the Affidavit before the lawsuit is created or filed with the court.

What documents were reviewed prior to signing the Affidavit and from what source.

1. How do you receive it, by fax, email, someone bring it to you?
2. When was the date the complaint was signed vs the date the Affidavit was signed.
3. How is Midland a Plaintiff and the debtor a Defendant at the time you signed this under oath when a lawsuit had not been filed.

Bill of Sale or Assignments

1. Does the Bill of Sale and Assignment in this case reflect the exact name and account number of the Debtor in this case or is it just reflecting that a pool of debts was sold to Midland.
2. AT THE TIME SHE SIGNED THE AFFIDAVIT ADMIT there was nothing in the Bill of Sale showing the specific debt or account number of the debtor in the sales documents within the pool of debts.
3. ADMIT: Nothing in the collection lawsuit shows the Specific Debt of the debtor is mention in the lawsuit bill of sale exhibits.
3. Most important. There is no evidence of the necessary linkage between the bulk account sale and the individual account of Mr. Tucker.

Get her to admit that she has no personal knowledge of the Original Creditor's records while they were at the credit card bank.

803(6) docs not created by MCM or Midland. The affiant did not make the statement in the affidavit. It was computer generated on form "AFFRECORD" and merely signed by the affiant. It is this statement, computer generated, which is offered by the Plaintiff to prove the truth of the matter asserted, the definition of hearsay. While Plaintiff may attempt to get the affidavit admitted under 803(6), the affidavit does not attempt to specifically authenticate any documents nor were any documents attached to the affidavit by the affiant. The affiant does not lay a proper foundation as to her qualifications as an "other qualified witness" as is required per DRE 803(6).

Depending on Electronic Records

The Affidavit relies upon her viewing electronic records to sign on to the Affidavit. Get her to admit she the electronic records she reviewed are not attached to her

Affidavit. This is true-Midland believes those records are Trade Secrets and won't allow any viewing or printing. However, the Court can rely on something it can't see for her Affidavit to have credibility. The Affiant does not say what records she has reviewed. Just that they are electronic records she has viewed. There is no evidence of reliability or accuracy for the electronic files she has reviewed and brings forward as evidence. This would be the antithesis of a record of routine business activity.

The Affiant signs off to an Affidavit that state it was based upon her "personal knowledge of those account records maintained" by MCM on Midland's behalf. Because her knowledge of the facts is limited to what she has gleaned from her review of unspecified business records, her affidavit is based entirely upon hearsay. The business records exception Evidence Rule 803(6), does not apply here because Hanke's affidavit does not purport to authenticate any business records, which is the sole function of that exception.

Here is the deal with her lack of authority to sign the Affidavit:

The Affiant claim to be a legal specialist for MCM acting under authority of the Plaintiff or Midland. In effect, she is an officer of Midland and testifying that Midland by the Affiant who has authorized MCM, acting through the Affiant to prepare an Affidavit for Midland. The same person is both authorizing the Affidavit and carrying it out. There should be separate individuals to properly lay a proper foundation. One granting the authority and one laying down the foundation of the business records.

GOING OVER THE AFFIDAVIT PARAGRAPH BY PARAGRAPH:

What is a Plaintiff. When did Midland Funding LLC become the Plaintiff? What was your knowledge of or definition of what a Plaintiff was. A Defendant?

Was Midland Funding a **Plaintiff** in the State of Michigan at that time the Affidavit was signed, yes or no?

Was the debtor a **Defendant** in the State of Michigan at that time the Affidavit was signed, yes or no?

If no then that was not a true statement at the time you signed your name to the statement, yes?

If MIDLAND were not a Plaintiff, who were you referring to when you mentioned the word "Plaintiff" six times in the Affidavit.

Did you know that this Affidavit was going to be attached to a lawsuit?

CREATED FOR LITIGATION

Was the Affidavit created by Midland Funding, MCM or you? Did you have any input into the what was written in this Affidavit.

"I am employed and a Legal Specialist and have access to pertinent account records for Midland Credit Management, Inc. (MCM), servicer of this account on behalf of Plaintiff."

*Legal Specialist MCM and what does that mean.

*What date did MCM become a servicer for Midland regarding the debtor's account? Please state where it shows that in the Affidavit.

**The Affidavit does not describe your duties and responsibilities as a Legal Specialist for MCM in terms of keeping and maintaining records for MCM and Midland right?

"I am a competent person over eighteen years of age, and make the statements herein based upon personal knowledge of those account records maintained on Plaintiff's behalf."

*What records **that you reviewed** are kept on Plaintiff's behalf and what records are kept on MCM's behalf?

Could be a NOT TRUE

"Plaintiff is the current owner of, and/or successor to, the obligation sued upon, and was assigned all the rights, title and interest to Defendant's _____, N.A. account XXXXXXXXXXXXX7736 (hereinafter "the account")."

When you say "account" what are you referencing"

*and/or successor to? Obligation sued upon. At the time, what obligation was sued upon?

Could be a NOT TRUE

*When you signed the Affidavit, how did you know that all the rights, title and interest was assigned to Plaintiff? What SPECIFIC assignment did you see from the Original Creditor Midland with the debtor's name and account number in it. THERE IS NONE.

"I have access to and have reviewed the electronic records pertaining to the account maintained by MCM and am authorized to make this affidavit on Plaintiff's behalf." What Authorizes you to make this Affidavit on Plaintiff's behalf.

You would agree that there is nothing in the Affidavit that provided the basis or any relationship between MCM who you work for and Midland who you don't work for?

What is the relationship between MCM and Credit One, MCM and MHC and MCM and Sherman?

"The electronic records reviewed consist of data acquired from the seller when Plaintiff purchased the account, together with records generated by MCM in connection with servicing the account since the date the account was purchased by Plaintiff."

How do you know the records that you viewed from Midland were only those records they received from a Seller? How do you know Midland had not put in other records with the things they received in the sale? What specifically did you view at that time from Midland?

Who created the Electronic records from Midland. made in an affidavit by a person who can reliably establish the accuracy of the content of such records.

Did you review records created by a person at the Original Creditor or debt seller?

*There is nothing in the affidavit referencing or describing any of these documents attached to the Complaint, Bill of Sale or even describing or referring to any of the documents, is that correct?

*HAVE YOU SEEN AT THE TIME YOU SIGNED THIS AFFIDAVIT any affidavit from any person with knowledge who verifies under oath that there is documentation establishing that the account of the debtor that is the subject of this case was included in the sale of accounts that took place from the original creditor to Midland.

What documents in your affidavit refer to the documents you reviewed from the original creditor? They don't exist.

In the Affidavit you say, "I am familiar with and trained on the manner and method by which MCM creates and maintains its business records pertaining to this account. The records are kept in the regular course of business."

*Do you keep the records for MCM? How do you know how the records are kept and that they are in the regular course of business?

YOU THEN SAY: "It was in the regular course of business for a person with knowledge of the act or event recorded to make a record or data compilation, or for a person with knowledge to transmit information thereof included in such a record."

WHEW, what did you mean by that statement? Etc.

"In the Regular Course of business, the record or compilation is made at or near the time of the act of event."

*What did you mean by that? So, is it a record or compilation at or near the time of the act or event.

It then says, MCM's records show that Defendant(s) owed a balance of \$_____ as of _____.

*What MCM records and not Midland showed this?

COMPUTER RECORDS

Midland affiants and notaries rely upon their Affidavit Management System (AMS) that hold all the Seller's information (docs sent by the seller to Midland) that Midland or MCM states is its own that it created.

What part of the Affidavit was generated by MCM and what part by the Midland?

How would you see what you viewed on the computer to see the electronic files prior to signing the Affidavit?

What supporting documentation or records from the computer screen or electronic records have you attached to the Affidavit. Why not. Where are the records you viewed?

*Did you view the original contract between Tucker and Credit One?

A common defense of Midland to what the Affiant relied upon is summed up by a Midland attorney here:

That being said, the information available to the Affiant when she signed the affidavit at issue has been produced in this case. The information available to her includes the chain of title information and the information in the field data sheet. Again, while the Affiant cannot produce or bring with her "everything she reviewed prior to signing the Affidavit", she will be able to talk about the information she reviewed when she signed the affidavit and that same information has already been produced to you in other formats.

He is referring to the AMS that all affiants view *after they receive the Affidavit* to see if the information in the template Affidavit is correct before they sign off on it.

FIELD DATA REPORT:

****Field Data Report:** It is created by the seller of the debt, not by Midland (803(6)).

View the bottom of any Field Data Report Midland relies upon. It will indicate the real author of the document that Midland claims shows the assignment of the debt. The original creditor of the debt is rarely ever mentioned in the Field Data Report. It is so centric to the seller of the debt and has not connection to Midland that Midland's own employees refer to the document as a Seller Date Report. They know it is not created by Midland or MCM

Good questions or Observations:

**** Are you aware of or have you seen an Affidavit from any person establishing that the specific account of Mr. Tucker is inside the pool of debts sold from the Original Creditor to Midland? They have not.**

There is nothing attached to your Affidavit showing evidence that Mr. Debtor's debt was part of any sale to Midland, yes?

Affiant avows that she works for, and maintains records on behalf of MCM, not Midland. Apart from a reference that MCM is a "servicer" of the account "on behalf of" Midland, the affidavit provides no further information as to the relationship between MCM and Midland, and/or the relationship between MCM and the Original Creditor.

None of [the relevant data] was created or sourced into the computer records while they were maintained by MCM or Midland; all of it would have been created or sourced by the bank.

She cannot establish a foundation for the bank data – she has no personal knowledge- she was not a custodian of the bank's records . . . You have no personal knowledge of the banks records, correct.

Midland's hands do not qualify as business records. . . . Without a witness from the bank with knowledge and probably an expert to walk the court through the steps of culling the necessary data pertaining to the accounts to be transferred from the regular business records of the bank, then getting the data into computer files for transfer . . . and finally in actually getting them transferred and up and running with Midland – the files on the individual accounts, and therefore the documents extracted from them are not admissible.

- 1) Q: Are the affidavits printed and do you grab from printer? Do you personally print? How many do you print at a time?
- 2) Q: How many hours do you spend at your office each day?
- 3) Q: If the forms are basically printed out for you, with all the pertinent information, how much time does that give you for signing forms. Based on what you described as the process, that could be just about your entire day signing affidavits.
- 4) Q: Also, how much time goes by between file reviewing and signing of affidavits. Does she ever sign affidavits in a subsequent day (affidavits that were left over from the previous day?). How in the world does she know what she is attesting to?

BUSINESS RECORDS EXCEPTION

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, **made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity,** and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, **unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.** The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

CREATED FOR LITIGATION TO BE ATTACHED TO A LAWSUIT.