

#### **RULE 904. AFFIDAVIT CONCERNING COST AND NECESSITY OF SERVICES**

(a) This rule applies to civil actions only, but not to an action on a sworn account.

(b) An affidavit that the amount a service provider charged for a service was reasonable at the time and place that the service was provided and that the service was necessary under the circumstances for which the service was performed is admissible in evidence and is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable and that the service was necessary.

(1) An affidavit must:

- (A) be taken before an officer with authority to administer oaths;
- (B) be made by the person who provided the service or the person in charge of records showing the service provided and charge made;
- (C) include an itemized statement that clearly identifies the date and description of the service and charge; and
- (D) contain the physical address of the affiant who is the provider who rendered the service.

(2) Filing and service of affidavit.

- (A) A copy of the affidavit must be served upon each party to the case and the affidavit must be filed with the clerk of the court at least 60 days before the date on which evidence is first presented at the trial of the case.

(3) A person actually providing the service who signs the affidavit must be timely disclosed in response to proper discovery request.

(c) A counter-affidavit stating that the amount a person charged for a service was not reasonable at the time and place that the service was provided or that the service was not necessary under the circumstances for which the service was performed is admissible in evidence and is sufficient evidence to support a finding of fact by judge or jury that the amount charged was not reasonable or that the service was not necessary. A counter-affidavit may not assert that an affiant, who is a custodian of records, testifying under section (b) is not qualified by knowledge, skill, experience, training, education, or other expertise to attest to the matters set forth in an affidavit.

(1) A counter-affidavit must:

- (A) be taken before an officer with authority to administer oaths;
- (B) specifically set forth the factual basis for controverting any of the contested matters contained in the affidavit;
- (C) 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; and

- (g) This rule supersedes any Rule of Evidence, Rule of Procedure, Statute (including TEX. CIV. PRAC. & REM. CODE 18.001 *et seq.*), or Code that is inconsistent with this Rule. *See* TEX. GOV. CODE, §22.004.

## (h) PROPOSED FORMS OF AFFIDAVIT

- (1) An affidavit concerning reasonableness of the amount charged and necessity of services of the person who provided the service is sufficient if it substantially follows the following form:

### ***AFFIDAVIT OF SERVICE PROVIDER***

John Doe No. \_\_\_\_\_ IN THE \_\_\_\_\_  
§

(Name of Plaintiff) § COURT IN AND FOR  
v. § \_\_\_\_\_ COUNTY, TEXAS  
John Roe §  
(Name of Defendant) §

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

My name and physical address are (NAME AND PHYSICAL ADDRESS OF AFFIANT). I am of sound mind and capable of making this affidavit which is based upon my personal knowledge and is true and correct.

On (DATE), I provided a service to (NAME OF PERSON WHO RECEIVED SERVICE). An itemized statement of the service and the charge for the service is attached to this Affidavit as Exhibit A and contains \_\_\_\_\_ pages.

I am the person who provided the service for (NAME OF BILLING HEALTH CARE PROVIDER) (later referred to as the "Service Provider"). Attached hereto are records from the Service provider. These records are kept by the Service Provider in the regular course of business of the Service Provider, and it was the regular course of business of the Service Provider for an employee or representative of the Service Provider, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

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

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public - State of Texas

Printed Name of Notary: \_\_\_\_\_

- (2) An affidavit concerning reasonableness of the amount charged and necessity of services by the person who is in charge of records showing the service provided and the charge made is sufficient if it substantially follows the following form:

***AFFIDAVIT BY CUSTODIAN OF RECORDS***

No. \_\_\_\_\_  
John Doe §  
(Name of Plaintiff) § IN THE \_\_\_\_\_  
v. § COURT IN AND FOR  
§ \_\_\_\_\_ COUNTY, TEXAS

John Roe  
(Name of Defendant)

§  
§

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

I am of sound mind and legally capable of making this affidavit which is based upon my personal  
knowledge and is true and correct.

I am the person in charge of records for the person(s) who provided the service (NAME OF BILLING HEALTH CARE PROVIDER) (later referred to as the "Service Provider"). Attached hereto are \_\_\_\_\_ pages of records from the Service provider. These said \_\_\_\_\_ pages of records are kept by the Service Provider in the regular course of business of the Service Provider, and it was the regular course of business of the Service Provider for an employee or representative of the Service Provider, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

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

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public - State of Texas

Printed Name of Notary: \_\_\_\_\_

- (3) A counter-affidavit to rebut reasonableness of the amount of charges made and necessity of service(s) by a competent person (provided by this Rule) is sufficient if it substantially follows the following form:

**COUNTER-AFFIDAVIT**

John Doe	No. _____	§	IN THE _____
(Name of Plaintiff)		§	COURT IN AND FOR
v.		§	_____ COUNTY, TEXAS
John Roe		§	
(Name of Defendant)		§	

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

