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

(D)	include or attach the curriculum vitae or facts to support section (c)(1)(C)
•	of the counter-affiant, which must include the physical address of the
	counter-affiant.

- (2) Filing and service of counter-affidavit.
 - (A) A copy of the counter-affidavit must be served upon each party to the case and filed with the clerk of the court within 30 days after the date the affidavit is served, or with leave of the court, at any time before the date on which trial testimony is first given.
- (d) This rule does not affect the admissibility of other evidence concerning reasonableness of the amount charged and necessity of services, except that an opponent of an affidavit may not contest reasonableness of the amount charged and necessity of services unless the opponent:
 - (1) files a counter-affidavit; or
 - (2) has specifically disclosed a testifying expert as to the specific issue in question who has given deposition testimony on the matter or for whom a report has been provided to each party to the case which includes the information required by (c)(1) (B-D).
 - (e) In the event an affidavit and/or counter-affidavit is filed within the time period permitted in this rule, but at a time that would not otherwise reasonably permit discovery of an affiant or counter-affiant, then only in that event, the party adversely affected may nevertheless take and use the deposition of, and/or subpoena for trial, the affiant or counter-affiant.
- (f) By motion or objection of a party or on its own motion the trial court shall strike any portion of an affidavit or counter-affidavit that attempts to include language of causation, liability, or otherwise makes assertion beyond the scope of this rule prior to its submission to the fact finder. An objection to strike a part of an affidavit concerning reasonableness of the amount charged and necessity of services does not affect the admissibility of the remainder of the affidavit.
- (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

	No	
John Doe	· §	IN THE

(Name of Plaintiff)		§	COU	JRT IN AND FO		
v. John Roe		§ § §	-		JNTY, TEXAS	
(Name of Defendant)		§				
Before me, the who, being by me duly	undersigned authority, sworn, deposed as follo	personally appows:	peared	(NAME OF A	FFIANT)	,
My name and pof sound mind and capa and correct.	physical address are able of making this affic	(NAME AND davit which is l	PHYSIC pased upo	AL ADDRESS Con my personal kn	OF AFFIANT). I owledge and is to	am rue
On(DATE) An itemized statement A and contains	, I provided a service of the service and the c pages.	ce to <u>(NAME (</u> charge for the	OF PERS service is	ON WHO RECE attached to this	IVED SERVICE Affidavit as Exhi	<u>) </u> . ibit
PROVIDER) (later provider. These record Provider, and it was the of the Service Provider the record or to transmorar the time or reason of the original.	on who provided the referred to as the "Servinds are kept by the Serving regular course of busing, with knowledge of the hit information thereof tably soon thereafter. The	ice Provider"). ice Provider in ness of the Serv act, event, con to be included the records attach	Attache the regulation the regulation, op in such reched here	d hereto are recor lar course of bus der for an employ sinion, or diagnos ecord; and the rec to are the origina	ds from the Serviness of the Service or representatis, recorded to make ord was made at lor exact duplication.	rice rice tive ake t or ates
The service I pat the time and place the	provided was necessary hat the service was prov	and the amour vided.	nt that I cl	narged for the ser	vice was reasona	.ble
		Af	fiant			
SWORN TO A	AND SUBSCRIBED be	efore me on the	e d	ay of	, 20	
My commission expire	es: -			ic - State of Texa		-
(2)	An affidavit concern services by the perso and the charge made	n who is in cl	narge of r	ecords showing t	he service provi	ded
	AFFIDAVIT BY	Y CUSTODIA	N OF RE	CORDS		
	No.					
John Doe (Name of Plaintiff) v.		§ § §	CO —	THECO	DR UNTY, TEXAS	

John Roe (Name of Defendant)	§ §		
Before me, the who, being by me duly	undersigned authority, personally sworn, deposed as follows:	y appeared <u>(NAME OF AFFIANT)</u>	
I am of sound r knowledge and is true a		ng this affidavit which is based upon m	y personal
pages of record pages of the Service of the act, event, conditation thereof to be included thereafter. The records	ARE PROVIDER) (later referred ds from the Service provider. The regular course of business of the Provider for an employee or representation, opinion, or diagnosis, record in such record; and the record was attached hereto are the original of the record of the record was attached by the record of the record o	person(s) who provided the service Of the as the "Service Provider"). Attached these said pages of records are lessentative of the Service Provider, and it was the regular esentative of the Service Provider, with reded to make the record or to transmit it was made at or near the time or reason or exact duplicates of the original.	I hereto are kept by the r course of knowledge nformation nably soon
		Affiant	
SWORN TO A	AND SUBSCRIBED before me or	on the day of, 20)
My commission expire	28: -	Notary Public - State of Texas Printed Name of Notary:	
(3)	A counter-affidavit to rebut rea necessity of service(s) by a com if it substantially follows the fo	easonableness of the amount of charges inpetent person (provided by this Rule) in bllowing form:	s made and s sufficien
	COUNTER-AF	FFIDAVIT	
John Doe (Name of Plaintiff) v. John Roe (Name of Defendant	No	IN THECOUNTY, '	ΓEXAS

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

My name is(NAME OF COUNTER-A making this affidavit which is based upon my personal kn copy of my curriculum vitae is attached as Exhibit A when the copy of my curriculum vitae is a	FFIANT). I am of sound mind and capable of nowledge and is true and correct. A true and correct hich contains my address and telephone number.
AFFIDAVIT BEING CONTROVERTED) pertain SERVICE) which were attached to the Service Provide experience, training, education, and other expertise to the affidavit because services rendered and/or the reasonableness of the amount of the control of the specific as to which amounts charged were not reasonable.)	der's affidavit. I am qualified by knowledge, skill, estify in opposition to the matters contained in the . I specifically take exception to the necessity of
charged were reasonable at the time and place that the s	service was provided.
	Counter-Affiant
SWORN TO AND SUBSCRIBED before me on the	day of, 20
My commission expires:	Notary Public - State of Texas Printed Name of Notary:

Comment: This rule is a change in the law. See CPRC 18.001 and 18.002. Under this rule each affidavit, whether controverted or not, is sufficient to raise an issue of fact on the reasonableness of amounts charged and the necessity of the services which are the subject of the affidavit. If an affidavit is controverted by a counter-affidavit, the parties may present additional evidence on the controverted subject, as may be permitted by the Court and in compliance with the scheduling order, if any.

This rule only addresses reasonableness of amounts charged and the necessity of services; it does not address other issues. If brought to the Court's attention, it should strike any portion of an affidavit or counteraffidavit that is beyond the scope of this rule.

In the counter-affidavit, that affiant should briefly state in the blank after the word "because" why the affiant is qualified; e.g., "I am a medical doctor who performs similar services to which I have taken exception."