

Make sure your documents are recorded by the book

Recently, in my private law practice, I had occasion to record a publisher's affidavit document that arrived in a format which I have not seen in some time. And it caused me to think again that perhaps it is time for a quick refresher course for those of you who deal with such documents on a daily basis. Or a weekly basis ... Or a semi-weekly basis ...

The statute relating to requirements for a document to be recorded has only been changed a few times since the current "version" of the Missouri Statutes was adopted in 1939. Changes were made in the 1950s, and in the early 1980s. Then in 2001, major changes were made. At that point in time, much about newspapers was computerized and electronic versions of papers were very common. So, since that date, some of you have updated the way publishers' affidavits are done. Those of you who haven't done so might take a look at your process because it's definitely time for a change.

First, let's recognize that a publisher's affidavit is not an affidavit that swears that what you affix to the affidavit is the "official" copy of what ran in your paper. What you swear to in that affidavit is that the copy affixed is a "true and accurate copy" of what ran. You are verifying that the copy you provide accurately reproduces what ran, how often it ran, and on what dates.

Section 59.310 in the Missouri Statutes sets out the rules for what can be recorded. It specifically provides that an attachment cannot be "stapled or otherwise affixed" to any page. This is where I want to start ... If you are cutting and pasting a copy of a legal notice ad to the affidavit, you may well be jeopardizing its ability to get recorded.

In the "olden days," I think attorneys likely removed such attachments and just pasted them onto another piece of paper to send to the Recorder. But instead of that, let's be very "high-tech"

about this. You can copy your ad electronically and you can insert it either on the page you are putting your affidavit on and wrap the affidavit around it, or if necessary because it is large, you can include it within the affidavit as a separate page within the document so it's included in your "sworn statement."

It becomes much more professional and certainly more readable than a clipping from newsprint when done in that format.

Also be aware that Recorders cannot record any document containing a font-type smaller than 8-point font. If something is printed in that size font for some reason, the Recorder must also record "an exact typewritten copy" of the small-font material to be recorded contemporaneously as additional pages in the document.

If you sign the affidavit, that same statute requires that your name be typed, printed or stamped underneath the signature. The stamp or inked seal cannot cover or otherwise interfere with the document's contents.

Margins on any document to be recorded must be 3 inches on the top and 3/4 of an inch on all sides (another good reason not to cut and paste a copy of an ad onto an affidavit where it extends beyond the margin of the page).

In general, only legal notices related to land are going to have to be recorded. But with court pleadings now online, and available via Case.net,

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affidavits for court purposes (such as published notices to parties involved in lawsuits) should also be formatted to fit this 8.5 by 11 inch format in order to make filing such documents easier for your clients.

As noted earlier, the key to this is remembering that you are simply swearing in these affidavits that the sample you are electronically attaching is a true and accurate copy of something that

ran in your newspaper on a certain date or for a certain period of time.

And one final thought — if you had reason to do an affidavit related to an ad that ran long ago, there is no need to have archived copies of the paper from which to clip a copy of the ad. You are fine to simply scan/copy the ad, turn it into a PDF or .jpg and affix it to your affidavit. Archival copies of issues may have some significance in terms of what you sell if the paper is sold, but they are not required to be maintained so you can clip those copies for attachments to affidavits.

Needless to say, the big issue underlying all of this is the need to maintain your electronic records in an up-to-date, accessible format. But that's a discussion for some other day!



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