



**United States Bankruptcy Court**  
Middle District of Florida  
Sam M. Gibbons United States Courthouse  
801 North Florida Avenue  
Tampa, Florida 33602

**MEMORANDUM**

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To: Attorneys practicing in the Middle District of Florida, Tampa Division

From: Catherine Peek McEwen, United States Bankruptcy Judge

Subject: Unsworn declarations under penalty of perjury

Date: September 23, 2018

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Practitioners and their staff may, in lieu of filing notarized affidavits, file declarations under penalty of perjury pursuant to 28 U.S.C. § 1746. The statute provides that the declaration should contain the following language:

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)

The statute provides in pertinent part that the language will be given the same force and effect as a sworn affidavit given under the penalty of perjury. The Court will accept only this form as a substitute for an affidavit.

However, as with an affidavit, the declarant must have *personal knowledge* of the matter as to which he or she is swearing or personal knowledge of a record qualifying under Rule 803(6), Federal Rules of Evidence, as an exception to the ban against hearsay evidence. Note that a client's business record concerning a default on an adequate protection order does not qualify as a business record under Rule 803(6) of an affiant lawyer whose firm represents the client. Similarly, a client's affidavit of telephonic notice of a default given by the client's lawyer is not sufficient; the client has no personal knowledge of the notice (unless the client is present with the lawyer and participated in the phone call).

The Florida state court equivalent of 28 U.S.C. § 1746 is found at section 92.525(2), Florida Statutes, for papers filed with the state court.