

What constitutes a deficient affidavit

In general, a deficient affidavit is one that does not provide any explanation or justification as to why the claim is in excess. These affidavits may describe some or all of the following:

- Refer to the attached time sheet(s) as an explanation, or recite the time sheet in length as a justification (“I spent 2.5 hours doing X, 0.5 doing Y,” and so on)
- Attests that the time was “necessary and reasonable in order to provide meaningful and effective representation in light of the substantial issues” but does not go any further
- State that “several issues” were present and/or “several charges” were involved, but fail to explain these in light of the excess claim

These affidavits are incomplete. They only state what the (approving) Circuit Judge can already tell from either a time sheet or an additional attachment(s). They do not give the Judge the insight that he/she needs to determine if the excess claim is justifiable.

What constitutes an acceptable affidavit

An acceptable affidavit is one that succinctly justifies an excess claim. It should contain statements addressing some or all of the following (depending on the circumstances of the case):

- Description of the nature of the complexity of the case, and problems encountered with them (i.e., voluminous discovery, lengthy proffer sessions with the government, etc.)
- Description of the substantial issue(s) and their complexities
- Explanation of the charge(s), and why they were complex
- Why extra work was needed and performed
- Accessibility of the defendant
- Justification of the excess claim for any other circumstances involved in the work performed

An acceptable affidavit does not necessarily need to consist of several pages, as long as some or all of the above-mentioned issues are addressed. The affidavit should offer sound reasons to support the excess, and not just refer to the completed time sheets and/or state that the claim was necessary “in order to provide meaningful representation.”

In addition, please note:

- Each voucher submitted for approval to the approving Circuit Judge is examined individually and requires its own affidavit - regardless of whether it is an interim claim, part of a package of vouchers from a single attorney, etc.
- Attorneys will be contacted by the Court of Appeals’ Clerk’s Office should an affidavit be deemed deficient. A supplemental affidavit will be requested, and upon receipt, resubmitted to the approving Circuit Judge. This will lengthen the reimbursement process. Thus, adherence to the above guidelines is encouraged.

