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Major Changes Yet Some Things Stay the Same: A Follow Up on the Three "Musts" for a Competent Affidavit or Declaration in Light of Florida's Newly Amended Summary Judgment Rule

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We previously wrote here about the three "musts" for an affidavit or declaration in Florida: it must be based on personal knowledge, it must contain facts as would be admissible in evidence, and it must demonstrate the affiant's competency to testify to the matters stated. Since that time, the Florida Supreme Court has enacted major changes to Florida's summary judgment rule to bring it in line with the prevailing federal standard. Among the many significant changes, litigants in Florida can now use affidavits ***or*** declarations in support of their motions for summary judgment. The question, then, is whether the implementation of the amended rule changes the "musts" for a competent affidavit or declaration. The short answer is no. Federal law interpreting Rule 56, which will now be persuasive in Florida, is generally on par with, if not more strict than, Florida law on the requirements for an affidavit or declaration. For example, in *James v. City of Montgomery*, the Eleventh Circuit affirmed the grant of summary judgment to a defendant where the trial court had properly disregarded statements made in a plaintiff's declaration because they were not based on specific facts. As with Florida law, affidavits or declarations submitted in support of a Rule 56 summary judgment motion must be based on personal knowledge, show that the affiant or declarant is competent to testify, and set out facts that would be admissible under the Federal Rules of Evidence. Unfortunately for the plaintiff in *James*, the trial court found, and the appellate court agreed, that the statements in her

affidavit were conclusory in nature and thus had no probative value.

Tips

- The best practice, regardless of your jurisdiction, is that affidavits or declarations be made with personal knowledge, addressing admissible facts, by a competent affiant.
- There is no shortcut for establishing the necessary facts on summary judgment. Finding the right affiant up front will save time, energy, and resources in the long run.

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