

# The Three “Musts” for a Competent Affidavit or Declaration

APPELLATE & TRIAL SUPPORT | LITIGATION AND TRIALS | FEBRUARY 6, 2020



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Florida’s Second District Court of Appeal recently issued a decision that serves as a reminder not to take for granted a proposition that most practicing attorneys regularly encounter: a motion for summary judgment must be supported by competent evidence, and an affidavit that does little more than mimic the motion for summary judgment will not suffice.

In *Rodriguez v. Avatar Property & Casualty Insurance Co.*, a plaintiff sued her insurer, alleging that it had breached her homeowners insurance contract by denying coverage for water damage. The trial court granted the insurer’s two separate motions for summary judgment, relying primarily on an affidavit from the insurer’s “duly authorized corporate representative.”

The Second District reversed, concluding that the 37-page affidavit lacked sufficient information to demonstrate that the affiant possessed the competency or personal knowledge to testify on those matters, which ranged from contract interpretation to trade specialties of plumbing and contracting. The affidavit failed to identify her title or corporate duties, did not state that it was made on personal knowledge, and did not set forth her relevant skill set or experience. Instead, it restated “almost verbatim” the motions for summary judgment. Because the affidavit was the pivotal evidence upon which the summary judgment was based, these insufficiencies proved fatal.

The court reminded litigants that supporting affidavits must comply with three “musts” — they must be based on personal knowledge, they must contain facts as would be admissible in evidence, and they must demonstrate the affiant’s competency to testify to the matters stated. And, just as at trial, a factual predicate for the affiant’s testimony is required.

## **Tips:**

- 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.
- The Second District’s cautionary warning translates to proceedings across jurisdictions, including in federal court, where the rules likewise require that affidavits or declarations be made with personal knowledge, addressing admissible facts, by a competent affiant.