

Trial Rule

Rule 9.2. Pleading and proof of written instruments

(A) When instrument or copy, or an Affidavit of Debt must be filed. When any pleading allowed by these rules is founded on a written instrument, the original, or a copy thereof, must be included in or filed with the pleading. Such instrument, whether copied in the pleadings or not, shall be taken as part of the record. Further,

(1) if the claim:

(a) arises out of written contract, a copy shall be attached; however, the fact that a copy of such contract is not in the custody of the plaintiff shall not bar the filing of the claim; or

(b) is on an account, an Affidavit of Debt, in a form substantially similar to Appendix A-2 shall be attached;

(2) in addition to the requirements set forth above in subsection (1), if the plaintiff is not the original creditor, the plaintiff shall include:

(a) a statement by plaintiff (or plaintiff's counsel, if plaintiff is represented by counsel), that the statute of limitations to bring an action to collect the defendant's debt has not expired; and

(b) an Affidavit of Debt that shall have attached as one or more Exhibits which must include:

(i) a copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no signed writing evidencing the original debt ever existed, then a charge-off statement or monthly statement recording the most recent purchase transaction, payment, or balance transfer shall be attached; and

(ii) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(iii) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to the plaintiff.

~~When any pleading allowed by these rules is founded on an account, an Affidavit of Debt, in a form substantially similar to that which is provided in Appendix A-2 to these rules, shall be attached.~~

(B) Proof of execution of instruments filed with pleadings. When a pleading is founded on a written instrument and the instrument or a copy thereof is included in

or filed with the pleading, execution of such instrument, indorsement, or assignment shall be deemed to be established and the instrument, if otherwise admissible, shall be deemed admitted into evidence in the action without proving its execution unless execution be denied under oath in the responsive pleading or by an affidavit filed therewith. A denial asserting that another person who is not a party did execute the instrument, indorsement, or assignment may be made without such oath or affidavit only if the pleader alleges under oath or in an accompanying affidavit that after the exercise of reasonable diligence he was unable to make such person or his representative (subdivision (H)) a party, the reason therefor, and that he is without information as to such execution.

- (C) Oath or affidavit of denial of execution must be made upon personal knowledge.** An oath or affidavit denying execution as required and made under subdivision (B) of this rule shall be made upon the personal knowledge of the person making it, and, if general in form (Rule 11(B)), shall be deemed to be made upon such personal knowledge.
- (D) Burden of proving execution.** The ultimate burden of proving the execution of a written instrument is upon the party claiming its validity, but execution is presumed. "Presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
- (E) Inspection of the original instrument.** When a copy of a written instrument is filed with or copied in the pleadings under the provisions of this rule, the pleader shall permit inspection of the original unless it is alleged that the original is lost, whether by destruction, theft or otherwise, or unless it is alleged or established that the instrument is in the possession of another person and out of the control of the pleader or that the duty to allow inspection is otherwise excused. The pleader shall allow inspection promptly upon request of a party, and inspection may be ordered by the court upon motion without a hearing at any time. A party failing to comply with such request or such order shall be subject to the provisions of Rule 37(B). This provision shall not diminish a party's rights under Rules 26 through 38.
- (F) Effect of non-compliance--Amendments.** Non-compliance with the provisions of this rule requiring a written instrument or an Affidavit of Debt to be included with the pleading may be raised by the first responsive pleading or prior motion of a party. The court, in its sound discretion, may order compliance, the reasons for non-compliance to be added to the pleadings, or allow the action to continue without further pleading. Amendments to correct the omission of a required written instrument, an assignment or indorsement thereof, the omission of a denial of the execution of a written instrument as permitted or required by this rule, or an Affidavit of Debt shall be governed by Rule 15, except as provided by subdivision (A) of this rule.
- (G) Exceptions--Infants, incompetents, dead and insolvent persons.** The requirement of this rule that execution of a written instrument be denied under oath or otherwise, shall not apply against a party who is not required to file a responsive pleading, or against a party who, at the time the responsive pleading is

due or before the pleadings are closed, is or becomes dead, an infant or adjudicated incompetent or is the representative of such person or of a person who is dead, an infant, an adjudicated incompetent, or in insolvency proceedings. Such parties shall be deemed to have denied execution or admissibility without any responsive pleading or denial. The presumption of execution as provided in subdivision (D) of this rule shall not apply to establish execution of a written instrument by a person who, at the time proof is required, is dead, an infant or adjudicated incompetent.

(H) “Execution” of a written instrument. “Execution” of a written instrument includes the following requirements:

- (1) That a signature was made with express, implied or apparent authority and was not forged;
- (2) That the instrument was properly delivered, including any requisite intent that it be effective;
- (3) That the written terms of the instrument have not been materially altered without the express, implied or apparent authority of the person bound thereon;
- (4) That the person seeking its enforcement is in possession of the instrument when required; and
- (5) That the names or identity of the persons named in the instrument are correct.

(I) “Written instrument”: When pleading is founded thereon--When pleading is not founded thereon term includes documents. When a pleading is founded upon a written instrument, any written indorsement or assignment of rights thereof upon which the pleader’s title depends is included in the term “written instrument.”

...

AFFIDAVIT OF DEBT

Comes now affiant, and states:

...

Plaintiff:

is the original owner of this debt and evidence of the debt, as required in Rules 9.2(A)(1) and (2), is attached as one or more Exhibits to this Affidavit.

OR

has obtained this debt from _____ and the original owner of this debt was _____.

Evidence of the debt, as required in Rule 9.2(A)(2)(b), is attached as one or more Exhibits to this Affidavit.