

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 94- 8

August 10, 1994

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Telephone Affidavits

Witness affidavits have long been considered "the cornerstone of the investigation" in unfair labor practice cases and substantial Agency resources are expended securing them. Affidavits enable us to know exactly what each witness recalls and give us a permanent record of the testimony we rely upon in making our case decisions. Affidavits remain essential to deciding cases properly, to settling cases appropriately and to winning our cases at trial.

Traditionally, affidavits have been obtained in face-to-face meetings, where the Board agent interviews the witness, prepares an affidavit and has the witness read and execute the document under oath. While effective, this method is labor intensive, utilizing substantial Board agent time in conducting the investigation and in traveling to distant witnesses. In view of the current budget constraints placed upon this Agency, we have reexamined our policy with respect to telephone affidavits.

Accordingly, although face-to-face interviews remain the preferred method for obtaining an affidavit, we have decided to expand the areas in which telephone affidavits are permitted. Our current policy has been to permit telephone affidavits in two situations: where an analysis of the charge and initial conversation with the charging party indicate a clear no-merit charge (see Memorandum 81-56 dated November 25, 1981) and where such analysis reveals that the charge is deferrable under the Collyer/Dubo guidelines (see Memorandum OM 86-67 dated June 23, 1986). Pursuant to the new policy, the use of telephone affidavits is also permitted in the following situations:

1. Cases that are essentially resolved by the examination of documents (e.g., nonpayment into trust funds) or cases for deferrable charges.

no-solicitation rule; unlawful handbook provision).

2. Cases where the facts are undisputed.
3. Witnesses who are located far from the Regional Office or are otherwise difficult to meet face to face.
4. Corroborating witnesses.
5. Supplemental statements from witnesses who have already provided an affidavit in a face-to-face interview.
6. Any other circumstance in which the Regional Director concludes that the investigation can be conducted efficiently and effectively by telephone without unduly sacrificing quality.

There are various situations, however, where the use of telephone affidavits must be avoided. These include the following:

1. Evidence to be adduced is complex or closely guarded.
2. Witness' credibility is questionable.
3. Witness' ability to read or understand the affidavit is questionable.
4. Witness is hostile or reluctant, or there is otherwise reason to believe he or she may not return the affidavit or be fully cooperative and candid over the telephone.
5. Any other circumstance in which a face-to-face interview is the only way to get an acceptable affidavit and/or the telephone investigation will not result in any significant savings in time or travel cost.

A combination of telephone and face-to-face contacts could also be utilized in some circumstances. Thus, an agent could interview a witness by telephone, prepare an affidavit in the office and then meet briefly with the witness at a later time to have the statement corrected and checked.

when there is reason to believe that the witness may not return the affidavit.

Please note that a telephone "affidavit" can be taken without the affiant either being sworn in by the Board agent or executing the document in the presence of a notary. It is provided in 28 U.S.C. Section 1746 that an unsworn statement will have the same effect as a sworn affidavit if the statement provides as follows: I state under penalty of perjury that the foregoing is true and correct. Of course, the statement must be both signed and dated.

By adopting the above guidelines, it must be emphasized that there is no intent to reduce our reliance upon affidavits. Telephone interviews documented only by the Board agent's notes are of minimal value. Unless the witness reads the statement and confirms its accuracy by executing the document under penalty of perjury, there is no statement which can be appropriately relied upon in making casehandling decisions.

As we embark upon this expanded use of telephone affidavits, it must be recognized that we are engaging in a major change in our method of operation. Therefore, careful monitoring and oversight by Regional management regarding the propriety, as well as the substance, of telephone affidavits is essential.

It is important that we be alert to any adverse impact which may occur because of this change in affidavit taking and be aware of the steps which can be taken to avoid such an impact. Therefore, during the initial stage of this new approach to investigation, please keep your Assistant General Counsel advised of any problems encountered as a result of the use of telephone affidavits and any technique, if there are any, which can be used to overcome the problem.

Any questions concerning this matter should be addressed to your Assistant General Counsel.

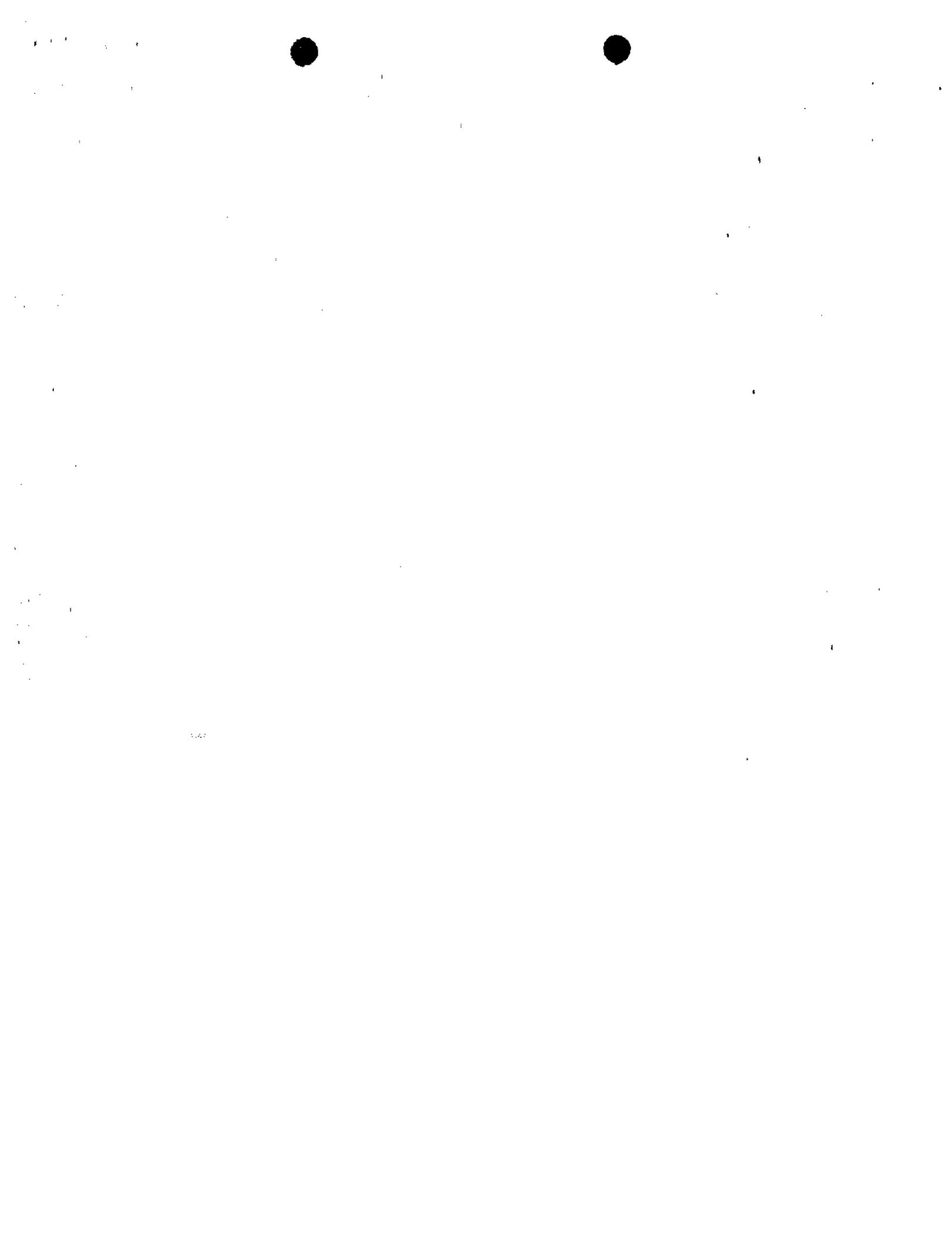
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F. F.

Attachment

cc: NLRBU

MEMORANDUM GC 94-8



**§ 1745. Copies of foreign patent documents**

Copies of the specifications and drawings of foreign letters patent, or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office, certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face.

(June 25, 1948, c. 646, 62 Stat. 948, § 1746; renumbered § 1745 and amended May 24, 1949, c. 139, § 92(d), (e), 63 Stat. 103; Oct. 3, 1964, Pub.L. 88-619, § 7(a), 78 Stat. 996.)

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports**  
1948 Acts. Based on Title 28, U.S.C., 1940 ed., § 674 (R.S. § 893).

Changes were made in phraseology. 80th Congress House Report No. 308.

1949 Acts. Senate Report No. 303 and House Report No. 352, see 1949 U.S. Code Cong. Service, p. 1248.

1964 Acts. Senate Report No. 1580, see 1964 U.S. Code Cong. and Adm. News, p. 3782.

**Amendments**

1964 Amendments. Pub.L. 88-619, among other changes, inserted "or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign

patent offices belonging to the United States Patent Office" in the text, and substituted "documents" for "specifications and drawings" in the catchline.

1949 Amendments. Act May 24, 1949, § 92(d), repealed former section 1745, relating to printed copies of patent specifications and drawings, and by section 92(e) of Act May 24, 1949, renumbered former section 1746 to be section 1745.

**Change of Name**

Patent Office redesignated Patent and Trademark Office by section 3 of Pub.L. 93-596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

**CROSS REFERENCES**

Proof of official records, see Fed. Rules Civ. Proc., rule 44, 28 USCA.  
Proof of official records, see Fed. Rules Crim. Proc., rule 27, 18 USCA.

**LIBRARY REFERENCES****American Digest System**

Conclusiveness and effect of admission of foreign records into evidence, see Evidence ¶383(5).

**Encyclopedias**

Conclusiveness and effect of admission of foreign records into evidence, see C.J.S. Evidence § 763 et seq.

**WESTLAW ELECTRONIC RESEARCH**

Evidence cases: 157k[add key number].  
See, also, WESTLAW guide following the Explanation pages of this volume.

**§ 1746. Unsworn declarations under penalty of perjury**

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter

is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "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)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(Added Pub.L. 94-550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

#### HISTORICAL AND STATUTORY NOTES

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| <b>Revision Notes and Legislative Reports</b>   | <b>Prior Provisions</b>   |
| 1976 Acts. House Report No. 94-1616, see 1976 U.S. Code Cong. and Adm. News, p. 5644. | A prior section 1746 was renumbered section 1745 of this title by Act May 24, 1949. |

#### CROSS REFERENCES

False declarations before grand jury or court, see 18 USCA § 1623.  
 Penalty for false declarations in—  
   Applications for visas, permits, or other documents required for entry into the United States, see 18 USCA § 1546.  
   Title 11 cases, see 18 USCA § 152.  
 Perjury generally, see 18 USCA § 1621.  
 Unsworn declarations in particular proceedings—  
   Examination of books and accounts of lessees of unallotted mineral lands within Indian reservations, see 25 USCA § 399.  
   Immigration and Naturalization Service, taking of evidence, see 8 USCA § 1357.  
   Uniform Code of Military Justice, judicial proceedings, see 10 USCA § 931.

#### LIBRARY REFERENCES

##### American Digest System

Admissibility of private writings, memoranda, or statements in general, see Evidence ¶350 et seq., 355 et seq.

##### Encyclopedias

Admissibility of private writings, memoranda, or statements in general, see C.J.S. Evidence §§ 676 et seq., 696 et seq.