

**NO MORE THAN AN AFFIDAVIT IS NECESSARY
TO MAKE THE PRIMA FACIE CASE**

No more than an affidavit¹ is necessary to make the prima facie case²³. Allegations in an affidavit in support of a motion (action) must be considered as true in absence of counter-affidavit⁴. "Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading⁵.

The appropriate party to attest to the facts is the plaintiff himself, not the plaintiff's attorney⁶, an attorney's affidavit that is not based upon personal knowledge is without value⁷ and is insufficient as an affidavit⁸.

¹ **AFFIDAVIT** A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 Ill. 442, 48 N.E. 906, 62 Am.St.Rep. 385; Hays v. Loomis, 84 Ill. 18. Shelton v. Berry, 19 Tex. 154, 70 Am.Dec. 326, and In re Breidt, 84 N.J.Eq. 222, 94 A. 214, 216.

² "Indeed, no more than affidavits is necessary to make the prima facie case." [United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982]

³ **Prima Facie Case** A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it.

⁴ "Allegations in affidavit in support of motion must be considered as true in absence of counter-affidavit." [Group v Finletter, 108 F. Supp. 327 Federal case of Group v Finletter, 108 F. Supp. 327]

⁵ "Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately." -- U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

⁶ Leather Facts, Inc. v. Foy, 157 Misc. 2d 35, 595 N.Y.S.2d 874 (City Civ. Ct. 1993).

⁷ Romel v. Reale, 155 A.D.2d 747, 547 N.Y.S.2d 691 (3d Dep't 1989)

⁸ Schwarz v. Smith, 325 S.W.2d 407 (Tex. Civ. App. Waco 1959), writ refused n.r.e., 160 Tex. 280, 329 S.W.2d 83 (1959).