

## **SWEARING AFFIDAVITS AND TAKING STATUTORY DECLARATIONS**

### **Swearing Affidavits**

[Refer High Court Rules (Second Schedule to Judicature Act 1908) and Rule 4.6 Rules of Conduct and Client Care.

*The person making an affidavit can either **affirm** or **swear** an oath on the Bible or Koran that the contents of the affidavit are true. You must not administer an affidavit in respect of a contentious matter or proceeding in which you are involved. If, for good reason, you suspect an affidavit to be false, you should decline to take it. If you do not know the person you should ask for evidence of identity (with photograph) eg driver's licence, passport etc.*

*If the deponent is blind, illiterate or the affidavit is not written in English you will need to refer to the Judicature Act for guidance.*

1. Ask whether the person (the deponent) is swearing or affirming the affidavit. If they are swearing their affidavit they must do so on the Bible or the Koran.
2. Have the deponent sign the "jurat" (the signature clause at the end) if they have not already done so, and initial each preceding page of the affidavit (except the cover sheet).
3. If the deponent is **swearing** the affidavit, check that:
  - the affidavit starts "I, [name] of [place], SWEAR ..."
  - the jurat states "Sworn at [place] this [day]...etc"
  - any exhibit notes refer to "...the affidavit of [name] sworn at [place]..."

Then ask the deponent:

#### **Do you swear by Almighty God:**

- **that this is your full name?** *[point to the name on the front page]*
  - **that this is your true usual signature?** *[point to the signature]*
  - **that you have read and understood the contents of this document?**
  - **that the contents of this document are true and correct to the best of your knowledge and belief?**
  - **and that the exhibits attached are those referred to?**
4. If the deponent is **affirming** the affidavit, check that:
    - the affidavit starts "I, [name] of [place], solemnly and sincerely AFFIRM..."
    - the jurat states "Affirmed at [place] this [day] etc"
    - any exhibit notes refer to "...the affidavit of [name] affirmed at [place]..."

Then ask the deponent:

#### **Do you solemnly and sincerely affirm:**

- **that this is your full name?** *[point to the name on the front page]*
  - **that this is your true usual signature?** *[point to the signature]*
  - **that you have read and understood the contents of this document?**
  - **that the contents of this document are true and correct to the best of your knowledge and belief?**
  - **and that the exhibits attached are those referred to?**
5. If all questions are answered in the affirmative, you then:
    - sign the affidavit below the deponent's signature
    - print or stamp your full name and "Solicitor of the High Court of New Zealand"
    - initial each preceding page except the cover sheet
    - date the affidavit
    - check, sign and date all exhibit notes (if exhibit notes are stickers, sign partly on exhibit)
    - print or stamp your full name and "Solicitor of the High Court of New Zealand" on each exhibit note or exhibit
    - initial any interlineation, alteration or erasure in the body of the affidavit.

## Taking Statutory Declarations

[Refer ss.3, 8, 15 and schedule 1, Oaths and Declarations Act 1957, and Rule 4.6, Rules of Conduct and Client Care]

*The person making the declaration is required to sign the document. It is in order if they have done so before bringing the document to you, but preferable that they do so in your presence after making their declaration. You must not administer an oath or take a declaration in respect of a contentious matter or proceeding in which you are involved.*

1. When administering an oath or taking a declaration you must, while the person is present:
  - make sure that the person is who he or she says (it's a good idea to ask for evidence of identity (with photograph) eg driver's licence, passport etc)
  - ascertain that the deponent/declarant knows what is being declared or sworn
  - check with the person the exhibits noted in the document.

If, for good reason, you suspect that a declaration is false or being signed under duress, you should decline to take it.

2. Ensure the document has the following wording as required by the Oaths & Declarations Act:

**I, [A. B.] of [place of abode and occupation] solemnly and sincerely  
declare that [facts of declaration]  
And I make this solemn declaration conscientiously believing the  
same to be true and by virtue of the Oaths and Declarations Act 1957.**

**Declared at** \_\_\_\_\_ **this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20..** \_\_\_\_\_  
[signature A. B.]  
[your signature and designation]

3. Check the document to ensure that blanks are completed and all alterations are initialled.

4. Then ask the person the following:

**Do you solemnly and sincerely declare that you are the person referred to in this  
declaration and that the contents of this document are true and correct?**

and receive an affirmative response.

5. Have the person sign the document (if they have not already done so). If they have already signed it, ask the following:

**Do you declare that the signature on this declaration is yours?**

6. You then sign the document, indicating that you have administered the declaration in compliance with the Act. Print or stamp your full name and designation "solicitor" as well.
7. Note that some documents (particularly for use in overseas jurisdictions) need to be "notarised" which means they need to be witnessed by a Notary Public rather than simply a solicitor. Notaries Public are listed in the Yellow Pages.