



STATUTORY INSTRUMENTS.

S.I. No. 127 of 2021

RULES OF THE SUPERIOR COURTS (AFFIDAVITS) 2021

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, the Interpretation Act 2005, section 24 and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 23 day of September 2020.

Frank Clarke (Chairperson)

George Birmingham

Mary Irvine

Elizabeth Dunne

John A. Edwards

Brian R. Murray

Deirdre Murphy

Richard Humphreys

Gráinne Larkin

Stuart Gilhooly

Liam Kennedy

James Finn

Mary Cummins

John Mahon

I concur in the making of the following Rules of Court.

Dated this 10th day of March, 2021.

HELEN MCENTEE

Minister for Justice

S.I. No. 127 of 2021

RULES OF THE SUPERIOR COURTS (AFFIDAVITS) 2021

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Affidavits) 2021, shall come into operation on the 31st day of March 2021.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2021.

2. The Rules of the Superior Courts are amended by the substitution for Order 40 of the following Order:

“I. General

1. Upon any petition, motion, or other application, evidence may be given by affidavit, but the Court may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.
2. Save as otherwise provided by these Rules, all affidavits shall be filed in the Central Office. Affidavits used in proceedings to make a minor a ward of Court shall be filed in the Office of Wards of Court. Affidavits used in matters of bankruptcy, arrangement, or insolvency where an order of adjudication or, as the case may be, a winding up order, has been made or in any other case in which an account or inquiry has been directed to be taken by the Examiner and a notice to proceed has issued in accordance with Order 55, rule 11, shall be filed in the Examiner’s Office. Affidavits used in non-contentious probate matters shall be filed in the Probate Office.
3. (a) In cases in which an original affidavit is allowed to be used it shall, at the time when it is used, be delivered to and left with the proper officer who shall send it to be filed.
 (b) A copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly attested.
 (c) A photostatic copy of an original affidavit which has been filed may be used, if certified by the solicitor who has filed the same to be a true copy thereof and that the original thereof has been filed.
4. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court.
5. Except by leave of the Court no order made ex parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for and [was] produced or filed at the time of making the application.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th March, 2021.*

II. Form and manner of taking of Affidavits.

6. In this Order, “officer” other than when referring to the proper officer of the court means the person taking the affidavit.
7. Every affidavit shall be entitled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant, respectively, and that there are other plaintiffs or defendants as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the Legal Costs Adjudicator.
8. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall not be allowed.
9.
 - (1) An affidavit taken in the State shall be sworn before a judge, commissioner to administer oaths, solicitor entitled to exercise the powers of a commissioner for oaths or other officer of the court empowered to administer oaths.
 - (2) An affidavit may be sworn by the deponent-
 - (a) in the physical presence of the officer before whom it is to be sworn or
 - (b) where, for reasons stated briefly in the affidavit, it is not practicable for the deponent to attend in the physical presence of such officer, by video conference with the participation of the deponent and the officer, subject to and in accordance with sub-rule (3).
 - (3) Where an affidavit is sworn in the manner referred to in sub-rule (2)(b), the following conditions shall be complied with -
 - (a) the officer shall be provided in advance or at the videoconference with a copy (which may be in electronic form) of the affidavit, copies of any exhibits referred to in it and, in a case where paragraph (c) of rule 19(1) applies, a certified copy of the relevant document intended to be used to verify the deponent’s identity;
 - (b) the officer shall be satisfied that the videoconference facility enables the deponent to see and hear the officer and to be seen and heard by the officer;
 - (c) in a case to which paragraph (b) of rule 19(1) applies, the officer shall ensure that the requirement in the paragraph concerned for identification of the deponent has been met before the affidavit is sworn;

- (d) the officer shall satisfy himself that the appropriate sacred text for taking the oath is available to the deponent;
 - (e) during the videoconference and within sight and hearing of the officer, the deponent shall produce the original of any relevant document intended to be used to verify the deponent's identity; shall identify each page of the affidavit and any and every exhibit referred to in it, shall sign or mark any and every exhibit, and shall sign and swear the affidavit;
 - (f) the sworn affidavit and any and every exhibit referred to in it shall immediately following the videoconference be sent to the officer, for attestation by the officer;
 - (g) the officer shall before attesting the affidavit and signing or marking any and every exhibit referred to in it, satisfy himself that the document (and each and any exhibit) is the same as that which had been identified to him during the videoconference and, where relevant, sign and append to the affidavit the certified copy of the relevant document used to verify the deponent's identity, and
 - (h) notwithstanding rule 6, the jurat of the affidavit shall indicate the date on which the affidavit was made by the deponent, the place at which the officer was when taking the affidavit and the fact that the affidavit was sworn using a videoconference.
- (4) In sub-rule (3) and in rule 19, "videoconference" includes any connection of two or more persons at different locations by means of information and communications technology or combination of such technologies which enables persons remote from one another both to see and hear and to be seen and be heard by one another in real time.
10. (1) Every person empowered by law to administer an oath shall express the date on which and the place where he takes any affidavit.
- (2) Every person empowered by law to administer an oath shall express the date on which and the place where and, where necessary in the circumstances, the time when, he takes the acknowledgement of any deed, or recognisance, otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court.
- (3) Every such person shall express the date on which, the time when, and the place where, he does any other act incident to his office.
11. All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court, or the Court of Appeal or the Supreme Court, and also acknowledgements required for the purpose of enrolling any deed in the said Courts, may be taken in any foreign country or place before any Irish diplomatic or consular representative or agent exercising his functions in that country or place or, when there is no such representative or agent or no such representative or agent conveniently near to the deponent in such country

or place, before any notary public lawfully authorised to administer oaths in that country or place, or where such country or place is a part of the Commonwealth of Nations or a British possession, before any judge, court, notary public or person authorised to administer oaths in such part or possession; and the Judges and officers of the High Court, and of the Court of Appeal and of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such diplomatic or consular representative or agent, judge, court, notary public or other person attached, appended or subscribed to any such examination, affidavit, declaration, affirmation, attestation of honour, or acknowledgement, or to any other deed or document.

12. Every affidavit shall be drawn up in the first person and shall be divided into paragraphs and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject matter. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.
13. (1) Every affidavit shall state the description, trade, profession or employment of the deponent and:
 - (i) the deponent's place of business, trade, profession or employment, or
 - (ii) the true place of abode of the deponent.
14. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named deponents".
15. There shall be on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court shall otherwise direct.
16. The Court may order to be struck out from any affidavit any matter which is scandalous and may order the costs of any application to strike out such matter to be paid as between solicitor and client.
17. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the Court be filed, read, or made use of in any matter pending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person taking the affidavit, nor, in the case of an erasure, unless the

words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the person taking it.

18. (1) Subject to rule 19, where an intending deponent is not capable of making an affidavit in one of the official languages of the State, he or she shall make an affidavit in another language which he understands (in this rule and rules 19 and 20 referred to as a “foreign language affidavit”).
 - (2) A foreign language affidavit shall be translated into one of the official languages of the State by a translator who is suitably qualified for the purpose.
 - (3) Where a foreign language affidavit is to be filed or lodged in court, an affidavit of the translator shall (as the case may be) be filed or lodged at the same time in which:
 - (i) the translator sets out his qualifications as a translator,
 - (ii) a copy of the foreign language affidavit and the original translation referred to in sub-rule (2) are exhibited, and
 - (iii) the translator confirms that the translation is accurate.
 - (4) The original translation referred to in sub-rule (2) shall in addition be filed or lodged with the affidavit of the translator referred to in sub-rule (3).
19. (1) A person taking an affidavit shall certify in the jurat of every affidavit taken by him:
 - (a) that he personally knows the deponent, or
 - (b) that the deponent has been identified to him by some person personally known to him and named in the jurat who certifies his personal knowledge of the deponent, or
 - (c) that the identity of the deponent has been established by him by reference to a relevant document containing a photograph of the deponent before the affidavit was taken,
 and in a case to which paragraph (c) applies shall give particulars of the relevant document concerned.
- (2) A person taking an affidavit shall, where it appears to him that the affidavit is to be sworn by any person who appears to be illiterate or blind:
 - (a) ensure that the affidavit is read in his presence to the deponent and that the deponent has fully understood it,
 - (b) in any case where the deponent appears not to be capable of understanding one of the official languages of the State, ensure that the affidavit is made as a foreign language affidavit in accordance with rule 18 and is read to the deponent by a suitably qualified

interpreter in the presence of the person taking the affidavit, and that the deponent has fully understood it, and

- (c) certify in the jurat that the affidavit was read in his presence to the deponent (in a case to which paragraph (b) refers, by a suitably qualified interpreter), that the deponent fully understood it and that the deponent made his signature or mark in his presence.

(3) Where a foreign language affidavit is to be filed or lodged in court in a case to which paragraph (b) of sub-rule (2) refers, in addition to the translator's affidavit referred to in rule 18(3) an affidavit of the interpreter shall (as the case may be) be filed or lodged at the same time in which the interpreter sets out his qualifications as an interpreter, exhibits a copy of the foreign language affidavit and confirms that he read accurately to the deponent the contents of the foreign language affidavit, provided that where the translator and interpreter are one and the same person, a single affidavit may be sworn by that person for the purposes of rule 18(3) and this sub-rule.

(4) In this rule "relevant document" has the same meaning as in section 2 of the Statutory Declarations Act 1938.

(5) Notwithstanding sub-rule (2), where an affidavit to which paragraph (a) or (b) of sub-rule (2) applies is intended to be made by videoconference in accordance with rule 9(3), the affidavit concerned may be read to the deponent by videoconference during the videoconference at which the affidavit concerned is sworn.

20. (1) No foreign language affidavit shall be used in evidence in the absence of the affidavit referred to in rule 18(3).
 - (2) No affidavit referred to in rule 19(2) shall be used in evidence in the absence of the certificate referred to in paragraph (c) of rule 19(2) and (where applicable) in default of filing of the interpreter's affidavit referred to in rule 14(3), unless the Court is otherwise satisfied that the affidavit was read over to and fully understood by the deponent.
21. Rules 18 and 20 shall be without prejudice to section 20(3) of the European Arrest Warrant Act 2003.
22. The Court may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.
23. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor or before the party himself.

24. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner.

III. Particular types of affidavit

25. Every affidavit of service shall state when, where, and how, and by whom, such service was effected and in the case of delivery to any person, shall state that the deponent was at the time of such delivery acquainted with the appearance of such person or by what means the person was identified to the deponent.
26. Where an injunction or order not to leave the jurisdiction has been granted or made, the party applying for such injunction or order shall furnish copies of the affidavits grounding the same to any party affected thereby upon demand and payment therefor at the rate specified in Order 117.
27. The consent of a trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor or the applicant's solicitor.

IV. Affidavits and evidence before the Master or the Examiner

28. The party intending to use any affidavit in support of any application made before the Master or before the Examiner shall give notice to the other parties concerned of his intention in that behalf.
29. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Master or the Examiner.
30. Every alteration in an account verified by affidavit to be used before the Master or before the Examiner shall be marked with the initials of the person before whom the affidavit is sworn, and such alterations shall not be made by erasure.
31. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

32. Every certificate on an exhibit referred to in an affidavit signed by the person before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

V. Trial on affidavit

33. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or after an order has been made for such purpose, or within such time as the parties may agree upon, or the Court may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.
34. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the Court may allow, shall file his affidavits, and deliver to the plaintiff or his solicitor a list thereof.
35. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.
36. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. The notice shall be in the Form No 21 in Appendix C.
37. The party to whom such notice as is mentioned in rule 36, is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.
38. When the evidence under this Order is taken by affidavit, the notice of trial shall be given at the same time after the expiry of the time limited by rule 34 as is by these Rules provided after the close of the pleadings;

provided that other affidavits may be used if all the parties interested consent thereto, or the Court so orders.

39. Save where otherwise provided this Order applies to affidavits whether sworn within or outside the State.”

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Rules amend Order 40 of the Rules of the Superior Courts to provide for remote swearing of affidavits and the use of a business address by a deponent where appropriate.

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