



MINISTRY OF
JUSTICE
Tabu o te Ture

New Zealand Government



Justices of the Peace

MINISTERIAL DUTIES

I would like to acknowledge the significant role in the justice system and the enormous amount of voluntary work Justices of the Peace have performed over the past 200 years – and continue to perform. This represents a remarkable service to New Zealanders.

Justices of the Peace in New Zealand have not only a significant history, but also a vibrant future.

In accordance with section 3(2) of the Justices of the Peace Act 1957, I have much pleasure in approving the Justices of the Peace Ministerial Duties Manual.

A handwritten signature in black ink, reading "Andrew Bridgman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrew Bridgman

SECRETARY FOR JUSTICE AND CHIEF EXECUTIVE
JUNE 2015

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1. Introduction

1.1 History

The role of Justice of the Peace is an ancient and honourable one. It began as an English institution almost 800 years ago with the appointment of the King's Conservators, also known as Wardens, or Keepers of the Peace.

Then, in 1361, during the reign of Edward III, a statute gave appointees the power to try felonies, and people in the role acquired the more honourable title of 'Justices'.

The Justices of the Peace Act 1361 provided, amongst other things: 'That in every county of England there shall be assigned for the keeping of the peace, one lord and with him three or four of the most worthy of the county, with some learned in the law, and they shall have the power to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take and chastise them according to their Trespass or Offence.'

The Act therefore envisaged that peace should be kept and justice administered in each county by a group having a noble as a leader, assisted by 'some learned in the law'.

The duties of the early Justices were many and onerous, and included supervising the accuracy of weights and measures, seizing wine being sold for excessive prices, and assisting those whose homes had burned. Justices had great authority over the lives and liberties of those brought before them.

The first appointment of a Justice of the Peace for New Zealand was in November 1814 when Governor Macquarie of New South Wales appointed the missionary Thomas Kendall as a Justice '... in the Bay of Islands in New Zealand and throughout the islands of New Zealand and those immediately contiguous thereto'.

In 1840, after New Zealand had become a British colony, the first regular appointments of Justices were made. The Royal Charter of 1840, which constituted New Zealand as a separate colony, required the Government to include three senior Justices of the Peace in the Legislative Council. It is said that in the early days of colonisation Justices of the Peace were considered to be in some measure the representatives of the settlers, and indeed, in a number of districts, Justices identified themselves with the popular agitation for self-government.

These conditions have long passed, and the functions of modern Justices in New Zealand are now much more limited. Notwithstanding the more restricted powers, it remains true that Justices of the Peace are citizens with special duties and powers. It is important for Justices to remember that their office is an ancient and honourable one, and in accepting and holding office, Justices should constantly remind themselves of the following:

- Although there is a certain status which is in itself honourable, the position is not an 'honour' but one involving serious duties and responsibilities.
- When exercising some of the powers conferred by the appointment, Justices may affect the fundamental freedoms and rights of a citizen.
- It is the duty of Justices to be thoroughly familiar with the limits of their powers and with the proper manner of exercising the associated responsibilities. Justices have an important role in the preservation of the rule of law in New Zealand.

- In keeping with the status accorded to them, Justices should seek to uphold the law at all times, not only in the office of Justice of the Peace but also in their private and working lives.

The solemn and dignified words forming part of the judicial oath, which all Justices swear or affirm upon appointment (see paragraph 1.3), should be kept firmly in mind:

“I will do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will.”

1.2 Best Practice Manual

The Best Practice Manual for Justices of the Peace supports the legislative requirements of the Justices of the Peace Act 1957 and contains national standards and best practice for appointment, complaints, and retirement of JPs.

The Best Practice Manual is available on the Royal Federation website.

1.3 Oaths of office

Justices have no authority to act until they have taken oaths required by the Oaths and Declarations Act 1957. The oaths must be taken before a District Court judge, and this usually takes place in court. There are two oaths prescribed in the Act:¹ the oath of allegiance and the judicial oath.

The prescribed form (wording) of the oath of allegiance is:

“I _____ swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law. So help me God.”

The oath of allegiance may also be spoken in Māori²:

‘Ko ahau, ko _____ e oati ana ka noho pūmau taku pono ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke, e ai ki te ture. Ko te Atua nei hoki taku pou.’

The prescribed form (wording) of the judicial oath is:

“I _____ swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law in the office of Justice of the Peace; and I will do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will. So help me God.”

The judicial oath is not prescribed in Māori.

An appointee who does not want to take an oath is entitled to make an affirmation instead³. Making an affirmation has the same legal effect as taking an oath. The same basic form of wording is used, but the word ‘swear’ is deleted and the words ‘solemnly, sincerely, and truly declare and affirm’ are substituted.

1 s22(1) Oaths and Declarations Act 1957

2 Oaths and Declarations (Māori Language) Regulations 2004

3 s4 Oaths and Declarations Act 1957

1.4 Status and identification

Having taken the judicial oath, a Justice of the Peace becomes a ‘judicial officer’. Other judicial officers who take the oath include the Chief Justice, all judges, community magistrates, coroners, sheriffs and disputes tribunal referees.⁴

This status may be understood as a ‘mantle’ that has been laid permanently upon the Justice (subject to resignation, or removal from office) and is thus different from employment or other official roles which cease at the end of employment or tenure, such as nurse or mayor (see paragraph 1.6).

1.4.1 WARRANT CARD

Every newly-appointed Justice of the Peace is issued with a card, which is commonly known as a warrant card.

The only purpose of the card is to confirm the Justice’s appointment.

Justices must not produce their card if questioned by police or other enforcement officers. To do so is unethical and may invite a complaint or censure.

1.4.2 JP NUMBER

When a person is nominated as a JP an administrative number is generated by Ministry of Justice. The JP number is not an official identification number. As a judicial officer, no such identification is required. However, it is best practice to write your JP number when signing as a JP (see paragraph 4.10).

1.5 Tenure

A Justice holds appointment for life, or until resignation or retirement by notice in writing to the Secretary for Justice or removal from office by the Governor-General.⁵

The Governor-General may remove any person from the office of Justice of the Peace on the recommendation of the Minister of Justice by publishing a notice in the New Zealand Gazette. Grounds for removal include misconduct, conviction for an offence punishable by imprisonment, and bankruptcy.⁶

A Justice of the Peace who has completed at least ten years of active service and wishes to relinquish the office may apply in writing to the Secretary for Justice for the status of JP (retired).⁷

4 Schedule 2 Oaths and Declarations Act 1957

5 s3A Justices of the Peace Act 1957

6 s5 Justices of the Peace Act 1957

7 s3C Justices of the Peace Act 1957

1.6 Ex officio Justices

A chairperson of a regional council, or a mayor of a territorial authority is a Justice of the Peace during the time that he or she holds the office of chairperson or mayor.⁸ This role is known as an 'ex officio Justice'. It is recommended that ex officio Justices attend training provided by the local Justices of the Peace Association prior to being sworn in as mayor or chairperson. They must also take the oaths of office as a Justice of the Peace.

Upon relinquishing office, if an ex officio Justice wishes to be appointed as a Justice in his or her own right, the full nomination, training and assessment procedure outlined in the Best Practice Manual must be followed.

1.7 Functions and powers

The activities of Justices of the Peace are usually classified in two ways:

1. **Ministerial duties.** These comprise the main tasks of all Justices and include:

- Administering statutory declarations.
- Administering affidavits.
- Witnessing signatures.
- Certifying copies.

This manual covers only ministerial duties.

2. **Judicial duties.** These involve presiding in a District Court. Judicial duties are dealt with in separate training resources.

This manual does not cover judicial duties.

The statutory powers and functions of Justices are set out in of the Justices of the Peace Act 1957 as follows:

4 Functions and powers of Justices

The functions and powers of Justices shall be -

(a) To take oaths and declarations under the provisions of the Oaths and Declarations Act 1957 or by any other enactment:

(b) To carry out such functions and exercise such powers as are conferred on Justices by the Criminal Procedure Act 2011 or by any other enactment.

Justices of the Peace carry out some tasks not **as** a Justice of the Peace (ie authorised by statute) but **because** the person is a Justice of the Peace (ie authorised by the government department, institution or agency wanting the task carried out). This includes witnessing signatures and certifying copies as true copies. Some other tasks in this category are outlined in chapter 10.

8 s 41(4) Local Government Act 2002 and s2 Justices of the Peace Act 1957

2. Life as a Justice of the Peace

2.1 Introduction

Life as a Justice of the Peace is one of community service. A Justice should always endeavour to act for every client to the very best of his or her ability and knowledge.

2.2 Definitions

JP Association, Association: Local Justices of the Peace Association (see paragraph 2.3).

JP, Justice: Justice of the Peace

JQ: Justices' Quarterly. This is the official Journal of Royal Federation.

Ministerial: any task carried out by a JP that is not a judicial task. Also used to describe a JP who is carrying out ministerial tasks.

Royal Federation, RF, RFNZJA: Royal Federation of New Zealand Justices' Associations (Inc). This is the national body of JP Associations (see paragraph 2.4).

2.3 JP Associations

New Zealand is divided into 29 separately constituted Justices of the Peace Associations:



Ashburton	Nelson Tasman
Auckland	North Otago
Bay of Plenty	Northland
Canterbury	Otago
Central Districts	Rotorua and Districts
Eastern Bay of Plenty	South Canterbury
Far North	South Otago
Franklin and Districts	South Taranaki
Gisborne	Southland
Gore	Taranaki
Hauraki	Waikato
Hawkes Bay	Wairarapa
Hutt Valley and Districts	Wanganui
Marlborough	Wellington
	West Coast

Each Association has its own constitution and policies. All Justices should belong to their local Association. The advantages of membership include:

- Participation in the ongoing education sessions which each Association organises for its members.
- Support in resolving any problems or queries that arise when carrying out ministerial duties.
- Interaction with fellow Justices at meetings, social occasions, presentations and visits.
- Receipt of the New Zealand Justices' Quarterly.

2.4 Royal Federation of NZ Justices' Associations (Inc).

Royal Federation is the national body consisting of the 29 Justices' Associations which meet in conference once a year. Royal Federation enables all Justices throughout New Zealand to make representations and to speak with a single voice.

2.5 Policy

All Associations and their members are bound by Royal Federation policy, and Associations' policies must accord with those of Royal Federation.

The constitution and policies are available on the Royal Federation website.

2.6 Websites

Royal Federation has a website which contains resources, information and news for all Justices of the Peace and should be referred to regularly. Once logged in, Justices can update their own contact details which show when members of the public use the 'find a JP' function.

justiceofthepeace.org.nz

Some Associations also have their own websites and others have their own 'sub-hosted' webpage accessed through the Royal Federation website. Check with your local Association Registrar.

2.7 Ongoing Education

Although the core tasks of a JP are relatively straightforward, it is important that Justices keep up to date. There are often procedural and technological changes to be aware of, as well as new questions and concerns brought about by various client requests and circumstances.

All of these form the basis of the ongoing education sessions offered regularly by Associations. It is an expectation of the code of conduct that Justices will attend education session, and Justices are encouraged to attend as often as possible in order to learn as well as to contribute their own knowledge and experiences.

2.8 Justices' Quarterly education pages

Every issue of the Justices' Quarterly contains four pages of educational articles and other material. These should be placed together in a folder for ease of reference. Justices may contribute questions and topics of interest by contacting Royal Federation.

2.9 Codes of ethics and conduct

The office of Justice of the Peace for New Zealand has powers and responsibilities that involve dealing with the private affairs and rights of individuals from all ethnicities and backgrounds. The role demands sensitivity, precise, careful work and the maintenance of high ethical standards in both private and professional life. The codes of ethics and conduct on the following pages were approved by Conference in 2011 and apply to all Justices at all times.

CODE OF ETHICS

Justices of the Peace shall:

1. carry out their statutory, judicial and ministerial duties in a proper manner and administer the law in so far as they are authorised and called upon to do so, without fear or favour, affection or ill will, in accordance with their Judicial Oath and in the most conscientious manner possible
2. maintain the integrity and dignity of the office through ethical conduct, good example, high standards of Citizenship, and by not acting in a manner which is unlawful or likely to bring disrepute to the office of Justice of the Peace
3. preserve their Warrant, displaying it only when necessary to establish their bona fides in the performance of their duties as a Justice of the Peace
4. acknowledge that their authority to act is only as prescribed by law, and that the office confers no other authority, responsibility, or benefit
5. not claim by virtue of their office of Justice of the Peace any privilege or licence to avoid legal responsibilities
6. remain true to the Oaths of the Office taken on appointment as a Justice of the Peace
7. refrain from giving legal advice in their capacity as a Justice of the Peace.

CODE OF CONDUCT

Justices of the Peace shall:

1. abide by the constitution and the policies of the Royal Federation of New Zealand Justices' Associations and of the Association to which each Justice belongs
2. maintain a working knowledge of the duties, responsibilities and obligations of a Justice of the Peace by regularly participating in ongoing education provided by their Associations or Royal Federation
3. willingly and courteously manage the duties required at any reasonable time of the day and night
4. use the office of Justice of the Peace for the purpose of ministerial or judicial duties and not to enhance their personal status
5. in the carrying out of duties of a Justice of the Peace disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias, and refrain from participating in such circumstances
6. maintain a record of activities, provided the information stored is not used in any manner contrary to the Privacy Act
7. ensure that their availability as a Justice of the Peace is appropriately publicised
8. not benefit, in cash or kind, for any service as a Justice of the Peace except as may be specifically permitted or authorised by law
9. cease to act as a Justice of the Peace once they have resigned, been removed or retired from office.

Any breaches of either the Code of Ethics or the Code of Conduct shall be dealt with according to the Royal Federation Policy for Complaints and Discipline, and, where circumstances dictate, in accordance with the provisions of the Justices of Peace Act 1957 section 5 (i).

Associations affiliated to the Royal Federation of New Zealand Justices' Associations (Inc), shall, as a condition of such affiliation, endeavour to ensure their members' compliance with this Code, and shall suitably amend their Constitutions to make compliance with these Codes a condition of an individual Justice's membership of his or her Association.

2.10 **Use of letters 'JP'**

When signing as a Justice of the Peace, the letters 'JP' (or words 'Justice of the Peace') should be written after your signature.

The use of the letters 'JP' after your name on private notepaper, in personal correspondence and in connection with social functions is acceptable provided they are not being used, or appearing to be used, for advancing trade, professional or business interests. The letters should never be used in such a way as to appear to enhance the status of the JP relative to other people, or to imply superiority in any way.

The letters should be inserted after any New Zealand or Royal Honours, but preceding academic, professional and other qualifications, eg Jane Smith, MNZM, JP, B.Com.

It is improper for the letters to appear on cheques or driver licences, and the status of an officer of a local authority who is a JP should not be referred to on its official notepaper.

In relation to candidacy in parliamentary or local body elections, the mention of the fact that a person is a Justice is permitted in biographical material, but the letters 'JP' must not be placed after the candidate's name on public notices and hoardings. Any Justice standing for such elections should ensure that his or her agents are aware of this restriction.

3. Engaging with clients

3.1 **Availability**

Most Justice of the Peace work is carried out at the Justice's home or workplace. Members of the public contact a local JP seeking an appointment. Point 3 of the Code of Conduct requires Justices to 'willingly and courteously manage the duties required at any reasonable time of the day and night'. However, this does not mean that Justices must be available all the time, as this would clearly not be possible. The key point of the phrase is 'reasonable'.

If a Justice is available at the time a prospective client requests, the appointment should be made. It is not acceptable to refuse clients for no reason.

However, if a prospective client suggests an inconvenient time, it is reasonable to offer another time, and if a mutually acceptable time cannot be arranged, you should suggest that the person approaches a different Justice and direct the client to 'find a JP' on the Royal Federation website.

It is convenient to note your general availability on 'find a JP' on the Royal Federation website, using the 'my account' area once you have logged in. This way, members of the public may know in advance the likelihood that you will be able to assist them at a certain time of day. You can also note other languages you are able to speak. Some Justices include their cellphone number. Examples: 'available 6-9pm weekdays', 'please text first', 'Fluent in Tongan'.

3.2 **Arranging an appointment**

When a client makes contact requesting an appointment, it is helpful to discuss the following points:

- The exact time and place of the appointment.
- How to get there and how to recognise the correct home.
- What the access to your home is like, eg stairs, steep driveway.
- What type of document the client wishes to bring. This can prevent time wasted, if the task is one a JP does not have authority to do.
- Request that the client does not sign anything before coming to the appointment.

3.3 **Service desks**

Many JP Associations operate service desks at a local libraries, courts or other community venues. This is a popular and convenient way for members of the public to access JP services and for JPs to serve the public.

Service desks often provide Justices with a wider range of tasks than they receive at home, which increases knowledge and confidence. There is a range of support available to Justices at service desks including ongoing mentoring and provision of stationery.

Working at a service desk requires Justices to demonstrate excellent administrative and time-management skills, as well as tact and patience.

Sometimes there are additional pressures, for example if many clients arrive during their lunch hour. It's important to work steadily but carefully.

A Justice who is interested in working at a service desk or starting up a service desk should contact his or her Association Registrar.

Justices who join a service desk roster are still expected to receive clients at home (see paragraph 3.1).

3.4 **Relatives and friends**

Justices should not witness a signature, take an affidavit or declaration, or certify a copy for any member of their own family. Although there is no legislative barrier to this, it is always preferable if the task is done by another Justice, because acting for a family member may be seen to have compromised the neutrality of the transaction. Even a certified copy signed by a JP who is related to the presenter may imply to some agencies an improper lack of neutrality. In the same way, it is generally preferable for a Justice not to undertake any task for a close friend.

A Justice must never administer any document which will be used for any transaction in which that Justice's own pecuniary or other interests are involved.

3.5 Privacy and safety

3.5.1 PRIVACY AND SAFETY OF THE CLIENT

Justices must never disclose clients' names or discuss details of their transactions with anyone else, however minor the task.

The following suggestions also help to ensure the privacy and safety of clients –

- at home:
 - Greet the client at the door personally (not another family member) and identify yourself.
 - Escort the client to a suitably quiet and private place in the house.
 - Alert the client to anything unusual or risky in the home such as steps and floor mats.
- at a service desk:
 - Speak clearly, but reasonably quietly.
 - Do not say personal details such as IRD or bank account numbers aloud.

3.5.2 PRIVACY AND SAFETY OF THE JUSTICE

To ensure their own privacy and safety, Justices should –

- at home:
 - Be sensible and cautious about making appointments if home alone.
 - Keep private areas such bedrooms and bathrooms closed.
 - Ensure no private papers or webpages are visible.
 - Stay with clients all the time they are in the home.
 - If a client needs to use the bathroom show the client there rather than describe how to get there, and unobtrusively ensure the client comes straight back to the appointed place.
 - Not mention any private or personal details in conversation, beyond the weather and other general topics.
- at a service desk:
 - Keep personal belongings to a minimum and placed out of sight.
 - If possible have personal belongings locked away somewhere at the venue.
 - Ideally, roster two Justices to the desk all the time.
 - If alone at the Service Desk, remain in view of employees at the venue.

3.6 Jurisdiction

Before undertaking any task Justices must always make sure that a Justice of the Peace has legal or other authority to act and is the correct person to administer the document. This is known as jurisdiction.

Justices always have jurisdiction to take statutory declarations and affidavits originating in New Zealand. Otherwise, authority to act is conferred by the government department, institution or other agency at which the form or document originated or is to be sent. Justices are nearly always acceptable witnesses for New Zealand documents, but it is wise to check.

Often it is stated on the form or in accompanying notes that a Justice may act. If it is not stated, or the form is unusual or originates overseas, discuss with the client whether or not a Justice is the correct person to act. Forms and applications may be declined if signed by the wrong person.

Although it is ultimately the client's responsibility to find out who should administer their document, as a courtesy to the client you can check the agency's website if possible. As a last resort, telephone the agency if it is convenient to do so.

See also paragraphs 4.18 and 7.11

3.6.1 NOTARY PUBLIC

A notary public is a lawyer authorised by the Archbishop of Canterbury in England to officially witness signatures on legal documents, take sworn statements, administer oaths and certify the authenticity of legal documents, usually for use overseas. A notary public uses a seal to verify his or her presence at the time the documents were signed. The document is said to have been 'notarised'. Notaries Public charge for their services.

Although the tasks of a notary are similar to those of a Justice, some countries do not recognise the authority of a Justice of the Peace and so require documents to be notarised instead. If a client presents a document which states that it must be administered by a notary public, it should not be assumed that a JP will also be acceptable. The client should find out specifically from the agency or institution where the document will be sent whether or not a JP may act.

For more information see:

notarypublic.org.nz

3.7 When in doubt

There is an old adage among Justices: 'If in doubt, don't act'. This applies when there is **genuine** doubt about the **legality or propriety** of the document or task requested.

If you doubt that you have the authority to do the task, remember that your basic statutory authority is to take affidavits and statutory declarations under the Oaths and Declarations Act 1957. Authority to do other tasks such as certifying a copy comes from the institution or agency seeking to receive the certified copy so if in doubt it may be helpful to check with that institution.

'If in doubt, don't act' does **not** apply to whether or not the Justice **knows** how to do a task. It is incumbent upon Justices to maintain their knowledge and keep up to date, and to provide service or a pragmatic option wherever possible.

Justices can approach their Association education officer at any time for guidance, and should attend the education sessions that are offered by Associations.

It is unethical to arbitrarily decline to act, and neglecting or refusing to perform the functions of a Justice may be grounds for removal or suspension from office.⁹

3.8 Keeping a record

Justices of the Peace are not required by law to keep records of their ministerial duties but the practice is contained in point 6 of the code of conduct and is thus best practice.

Keep a notebook or diary and record an entry for all transactions containing the date and time, nature of the transaction and where it took place (eg home or work), and sometimes the client's name. Associations ensure that documents administered at service desks are also recorded.

Examples:

12 June 16	5.10 pm	K Smith	5 x cert copies/passport	Home
13.6.16	9 am		Dissolution application	Work

From time to time a particular transaction is queried by an agency, lawyer or even police. No matter how few or how many clients a Justice sees, it is not sufficient to rely on memory alone. A short record as above is enough to be sure that a transaction did or did not take place.

PRIVACY ACT 1993

When keeping a record of a client's name, a Justice is technically an 'agency' which has 'collected information' about that person, under the Privacy Act 1993. That person is therefore entitled to apply to see the information about him or her that is held by the Justice.¹⁰

In the rare event that an application is made to a Justice, the information to be provided is limited to the particular entry pertaining to the client.

⁹ s5(1)(b)(ii) Justices of the Peace Act 1957

¹⁰ Part 5 Privacy Act 1993

3.9 **Gifts and payment**

A Justice must never seek or accept gifts or payment in return for services undertaken as a JP. Any implication that service will be given in exchange for goods or money is highly unethical.

Sometimes clients leave items anonymously in the letterbox or on the doorstep after an appointment. In that case, there is a pragmatic and ethical decision to be made, according to the nature of the item. Money or items of a valuable nature should be donated or given away. Perishable or food items may be shared or consumed. If you do not know whether to use or consume an item, it can be helpful to discuss the situation with someone else within your Association.

Some clients have a strong sense of obligation to pay for or thank someone for services. It is important to explain as clearly but firmly as possible that this is not necessary and cannot be accepted. If necessary, to avoid offence, it may help to suggest the client makes a donation to charity instead.

3.10 **Finding legislation**

Several Acts are mentioned throughout this manual. If you are interested to read them, official versions of all New Zealand legislation may be found online at:

legislation.govt.nz

4. Dealing with documents

4.1 Introduction

Although there are some forms that are commonly presented to Justices and become familiar there are many hundreds of forms and documents in the administrative sphere, and no Justice can be familiar with all of them. Therefore, to minimise the risk of mistakes occurring, Justices must maintain a consistent method of dealing with all documents.

Before dealing with any document:

- Make sure a Justice of the Peace has jurisdiction to administer the document (see paragraph 3.6).
- Clarify with the client what the document is for.
- Determine what action is being asked of you, and of the client.

The core responsibilities of a Justice are:

- To be reasonably satisfied as to the identity of the signatory.
- To ensure that the signatory signs in the Justice's presence or acknowledges that the signature on the document is his or her own.
- To ensure that the swearing, affirming or declaring, witnessing and signing are all correctly completed.

Links to and information about some of the most common documents presented to Justices can be found on the Royal Federation website. As well as knowing how to administer forms correctly, the key skills of a Justice are pragmatic, flexible thinking, and common sense. Various situations may arise in which actions need to be taken that are slightly different from those described in this manual. A sensible approach should be taken as to the difference between those actions which are statutorily or legally prescribed, and those which may be actioned a little differently where circumstances dictate.

Examples:

1. The client says her sister will bring the affidavit to you as she herself is unavailable.
 - This is **not** possible as a person **must** swear or affirm their affidavit personally before the Justice (see paragraph 8.4).
 - However, could the client come at a different time? Could the client approach another more conveniently located Justice? Making these suggestions is more courteous than simply cancelling the appointment.
2. The Justice knows that both the client and the Justice should initial in the margin opposite where an alteration has been made. (See paragraph 4.11). However, on this document there is no margin at all. The document has somehow been printed with close wording from edge to edge of the paper.
 - Initial the alteration as near as possible to the alteration itself, perhaps above or below it.
 - If there is no room at all, make a note at the end of the document stating that the alteration: 'at line 'x' on page 'y' was made before the document was signed,' then initial that statement.

It is not possible for this manual to cover every situation which may arise. Justices need to maintain an open mind for all eventualities; and wherever possible, provide their clients with either useful service or further information.

4.2 Definitions

Attestation clause: the part at the end of a document where it is stated who signed it, who witnessed it and the date it was executed.

Execution: the completion of the signing, witnessing or other requirements to make a document legally valid.

Jurat: a statement at the end of an affidavit stating when, where and before whom it was sworn.

Mark: the writing a signatory makes on a document. This is usually in the form of a signature eg a stylised name, but it may also be a mark such as an 'x'.

Signatory: a person who signs a document.

Signature: a person's mark on a document which indicates his or her intention to be bound by its contents.¹¹

4.3 Identifying clients

When a document is to be signed, a Justice must take steps to be adequately satisfied that the signatory is the person named in the document. (However, this should be differentiated from actually verifying the person's legal identity– that is a complex legal task and must be undertaken by government agencies themselves.)

If the signatory is described in the document as 'Joe Rawiri Bloggs, of Wellington, Jeweller' the Justice should ask the signatory questions along these lines:

- What is your full name?
- What is your address?
- What is your occupation?

When answering, because the person is speaking to a judicial officer, a person who makes a false statement could be liable in certain circumstances for perjury which carries a punishment of up to 7 years' imprisonment.¹² Forging a document is also an offence liable to 10 years' imprisonment.¹³

However, the fact that a person spoke to a judicial officer is not enough to satisfy most agencies. It has become common practice for Justices to ask to see a form of photo identification. Indeed some agencies specifically state that their forms may not be executed without the witness having seen a form of photo identification.

Therefore, although it is not strictly speaking a legal requirement, it is best practice to see a form of photo identification such as a driver licence, passport, or 18+ card before witnessing a document. Photo identification is generally considered to be valid for this purpose for 2 years after its expiry date for its original purpose.

If a person does not have a written form of identification it is best to have the person make a statutory declaration as to their name, date and place of birth, or other details. This will usually satisfy the agency.

¹¹ P. Spiller (ed), Butterworths New Zealand Law Dictionary 5th Edition.

¹² s109 Crimes Act 1961

¹³ s256 Crimes Act 1961

It is not acceptable to refuse to administer a person's document because they do not have a form of photo identification. The onus on the Justice is to be reasonably satisfied as to the person's identity, and this is fulfilled when the Justice asks questions of the person, or the person makes a statutory declaration (as above).

4.3.1 SIGNING PHOTOS OF CLIENTS

Sometimes agencies require photos to be signed on the back by someone who has met the person in the photo.

To link the person to their name, the Justice should see a form of photo identification before signing the photo, or ask the person questions along the lines stated in paragraph 4.3 above.

4.4 Use a pen

Ballpoint or ink pens must be used on all documents.

Pencils and erasable pens should never be used for signing or witnessing a document.

While a pencil is usually clearly recognisable, an erasable pen may not be so apparent. Therefore it is always preferable for the Justice to provide a pen, rather than use one provided by the client.

4.5 Dates

All documents must be dated, and you must also write the date after you sign.

Never pre-date or post-date a document or your signature.

Set out the date so that it is completely clear and cannot be amended in any way.

Examples: 01/01/16
1st January 2016

4.6 Sign and print your name

Many people believe their own signature is legible, but those who read it may not agree. It is therefore best practice to:

- Sign and print (or stamp) your name clearly underneath or beside your signature
- Write or stamp 'JP' or 'Justice of the Peace' after or below your signature (if it is not already stated on the form)
- Write your JP number.

It is acceptable to use a stamp with your details on it after signing.

Agencies are now far more vigilant than in earlier times and many, especially financial institutions and banks, take the time to confirm that a person who has signed as a JP is in fact a JP. If your name is written clearly this check can be carried out quickly and easily.

4.7 Sundays and holidays

All documents may be administered on Sundays and public holidays.

If a request for an appointment on a Sunday or holiday is made and a Justice is available and finds it reasonable to accept, that is fine. However, Justices are not obliged to accept all requests for client appointments (see paragraph 3.1).

4.8 Consistent practice

Your practice should be exactly the same for each type of document every time you administer it. This ensures you do not miss out any vital steps in the administration of a particular type of document.

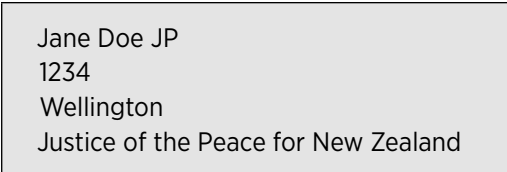
On the rare occasions when a question arises, having consistent practice also allows a Justice to give evidence of that consistent practice even without recollection of a specific transaction. (For example, a JP can truthfully state that she always signs and prints her name so a document that contains just a version of her signature must not have been completed by her even though she can't remember whether or not she administered that particular document).

4.9 Using stamps

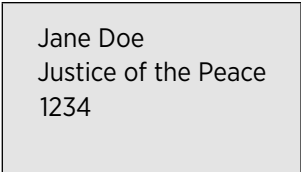
4.9.1 JP STAMPS

Most Justices find it convenient to use a stamp with their details on it after signing. Justices are given this stamp upon appointment, but must pay for their own subsequent stamps.

Examples:

A rectangular stamp box containing the text: Jane Doe JP, 1234, Wellington, Justice of the Peace for New Zealand.

Jane Doe JP
1234
Wellington
Justice of the Peace for New Zealand

A rectangular stamp box containing the text: Jane Doe, Justice of the Peace, 1234.

Jane Doe
Justice of the Peace
1234

The JP stamp is not a legal requirement and does not indicate the actual status of the Justice; handwriting is equally valid. However some agencies have formed a view that the stamp is legally required and will not accept documents without it. This is one reason it is good practice to always use it.

4.9.2 OTHER STAMPS

Stamps with other wording on them, such as wording for certified copies and exhibit notes may be purchased by Justices, and may contain wording as shown in other chapters of this manual.

4.10 **Using your JP number**

It is helpful to memorise your JP number (see paragraph 1.4.2).

It is best practice to add your JP number as well as the letters 'JP' after signing. Although this is not compulsory, some agencies believe a JP's signature is not valid without it and will not accept documents without a JP number.

4.11 **Alterations**

Always glance through every document for alterations. Any mistake or alteration should be corrected by having the client draw a line through the incorrect word and write the correct word above it. The signatory and the Justice must both initial in the margin of the document opposite the alteration. Full signatures are not required.

The importance of acknowledging alterations is to record that they were made before and not after the signatory signed the document.

4.12 **Multiple pages**

If the pages of a document are not already numbered, the Justice should write '1 of 2', 'Page 1 of 3' or similar on each page, corresponding to the number of pages.

If a document has numerous un-numbered pages it may be acceptable to the agency for the Justice to write a cover page stating the number of pages and attach it securely to the whole document. This method does not create as much security for the agency as to the fact that the pages presented to them are the same ones as were presented to the Justice. Discuss this option with your client. It may be acceptable depending on the requirements of the particular agency.

4.13 Initialling

When an agency or court receives a document, it needs to be sure that it has received the entire actual document that was seen and administered by the Justice of the Peace and that nothing has been changed or replaced by the applicant in the interim.

Therefore most documents must be initialled at the bottom right-hand corner of every page by both the JP and the signatory. It is not necessary to date the initials but some Justices make a practice of it.

Initialling every page is compulsory for affidavits, and should be completed on statutory declarations as well.

Type of document	JP Initials bottom of every page (except signing page)	Client Initials bottom of every page (except signing page)	Date beside initials
Affidavit	Must Rule 9.76(4)(b) Sch 1 Judicature Act 1908 (High Court Rules) and r 158(4)(b) Family Courts Rules 2002 and r 9.66 (4)(b) District Courts Rules 2014	Must Rule 9.76(4)(a) Sch 1 Judicature Act 1908 (High Court Rules) and r 158(4)(a) Family Courts rules 2002 and r 9.66 (4)(b) District Courts Rules 2014	Not needed (but ok to do if you wish)
Statutory Declaration	Should (although it is not a statutory requirement).	Should (although it is not a statutory requirement).	Not needed (but ok to do if you wish)
Form or application	Not needed (but ok to do if you wish)	Not needed (but ok to do if you wish)	Not needed (but ok to do if you wish)

4.14 **Blank sections**

A form or application is sometimes rejected by an institution or agency if a section is left blank, causing inconvenience to the signatory.

If you notice that a section of a form or document has not been filled out or there is a particularly large gap, bring it to the client's attention and have him or her complete it with the letters N/A or with a line drawn through the blank area.

Never complete any part of a document on behalf the signatory.

4.15 **Content of documents**

Although a Justice must always glance through documents for alterations, blanks, gaps and page numbering, it is not the responsibility of the Justice to read any document i.e. to find out its meaning or understand its contents. Indeed, some signatories may wish the contents of the document to remain private.

There is one very important exception to this rule; when there is a visually impaired, ill or illiterate signatory (see paragraph 4.16).

It is also not usually the Justice's responsibility to be satisfied that the signatory understands the contents of the document. However, sometimes an agency requests that the Justice ticks a box or makes a statement that the signatory 'appeared' to understand it. If the person is generally able to discuss their document and the signing of it, it is acceptable to do so. (See paragraph 4.17.1)



4.16 Visually impaired, ill or illiterate clients

A client who is unable to see, read or sign his or her own document for any reason is in a vulnerable position. The Justice must read the document aloud to the signatory before seeing the signatory make his or her mark. A signature does not need to be legible or in any particular form.

If the client is visually impaired or cannot hold the pen, the Justice should offer to guide the client's hand to the correct place on the paper or assist by supporting the elbow or wrist. It is also important to ensure there is another person present to witness the signing so that there can be no misunderstanding about the intention of the Justice in guiding the signatory's hand.

Usually the solicitor preparing the document is aware of the disability and writes the witnessing or attestation clause in the document so as to set out the circumstances of the signatory. If this has not been done, the Justice should write a note on the document explaining the circumstances of the signing.

Example:

Signed:	
	
Murray May	
Witnessed by Jane Doe JP in the presence of Mrs Julie Smith.	
I certify the signatory made his mark after having the entire document read to him and that he appeared to understand its contents. I held his hand with the pen to the paper, as he is unable to see the print clearly.	
	
J Doe JP 1234 Jane Doe Wellington	Jules Smith Mrs Julie Smith HealthCare Assistant. Wellington

4.17 Client competence

4.17.1 'APPEARS TO BE OF SOUND MIND'

From time to time Justices will be presented with a form which requires them to tick a box or make a statement to the effect that the signatory 'appears to be of sound mind'.

It is important to note that the assessment being asked is not that of a medical professional. It is a lay-person's assessment and the key word is 'appears'.

If the Justice is satisfied that the person has spoken and behaved in a generally calm, rational manner throughout their interaction, the box may be ticked accordingly. If a Justice wants to ask some questions of the signatory they should be along very general lines such as:

- What is the day, date and year?
- What are some current news events?
- Who is the current Prime Minister?

If the client does not appear to you to be of sound mind, or does not appear to understand the purpose of the document or task, you may need to request of the person that they return to you with a support person.

4.17.2 LANGUAGE AND CULTURE

English is a complex language which is difficult to learn as a second or subsequent language. A client who speaks English as another language may have difficulty understanding forms, documents and signing requirements to a greater or lesser degree.

If a client cannot understand any English, or only the most basic phrases, it is generally not possible to continue without someone else there who can translate. For an affidavit or statutory declaration the person must understand the meaning of the question you ask, and must answer in English.

To facilitate communication it may be helpful to:

- Speak more slowly than usual.
- Choose plain-usage words rather than legal jargon, or slang. For example say 'How are you?', rather than 'how's it going'?

There are some aspects of New Zealand life that may need to be explained to some clients if they express confusion.

Examples:

- A JP must not accept payment or gifts in exchange for services.
- It is very important to tell the actual and whole truth to institutions, government and other official agencies.

Justices are entitled to expect respect from clients who visit their homes. It is quite acceptable to explain any personal or cultural aspects of your home such as taking shoes off before coming inside.

For more information see:

ethniccommunities.govt.nz

4.17.3 CHILDREN

It is relatively rare for children to need Justice of the Peace services, but if they do they are normally accompanied by a parent or other person. It is acceptable to administer their documents as usual.

4.18 Documents in languages other than English

Justices should not agree to administer any document that is entirely in a language other than English, unless the Justice is personally fluent in that language or it is accompanied by an official independent translation or translation by the issuing agency (not a translation by the client). To do so places the Justice in a vulnerable position as to what has actually been signed.

A client with a document in another language should be referred to the appropriate embassy or consulate office, or referred to Department of Internal Affairs:

dia.govt.nz/Translation-Service

A statutory declaration in another language may be taken if certain parts are in English (see paragraph 7.11).

5. Certifying copies

5.1 Introduction

Certifying that a document is a true copy of an original is an administrative task that is not covered by legislation. It is not a task of a Justice of the Peace under the Justices of the Peace Act 1957 and is not provided for in any other legislation. No-one holds authority to certify documents by reason of their title, role or status.

The authority to verify that a document is a true copy of an original is conferred by government and other agencies on individuals or groups whom they trust. This is entirely their own prerogative; however Justices of the Peace are frequently listed and are well known as a trusted group. This has become one of the most common tasks that Justices of the Peace are asked to do. (Despite this you should always check with your client that a Justice of the Peace is listed as an acceptable certifier by the originating agency of the document, if a list is provided).

Because a representative of an agency cannot see the client's document or other information in person, the agency simply asks you to look at the document or other information and certify to them that the copy is a true copy.

In the past, nearly all copies were black and white photocopies of certificates or similar. Older-style certificates and degrees were printed on heavy, embossed paper and were frequently signed in person. It was fairly easy to tell the original and the copy apart. Modern documents are often not personally signed, or embossed, and with modern photocopying and printing it can be hard to tell which is the original and which is the copy. Justices of the Peace are also now more frequently asked to certify that a typed or printed copy or transcript of the words on a cellphone or computer screen is a 'true copy' of what was on the screen.

There are, therefore, several different phrases you may need to write on the copy, depending on circumstances. There is no prescribed wording that must be used.

NOTE: A Justice of the Peace **is not** a document examiner. In the vast majority of cases the original you are presented with seems like an original (to you, a layperson) and is a genuine original. When certifying a copy, a Justice is certifying that the **copy** was a true **copy**, but is **not verifying the original**. Check the original to the best of your ability.

5.2 Definitions

Original: the version of some information that originated at an agency, institution or other official body or business, and was made, printed, issued, emailed by that agency or is accessible securely at that agency's website.

Verify: to confirm or find out the truth of something.

Certify: to attest to the truth of a fact by a written statement.

Mark: the writing a signatory makes on a document. This is usually in the form of a signature, eg a stylised name, but it may also be a mark such as an 'x'.

Signatory: a person who signs a document.

Signature: a person's mark on a document which indicates his or her intention to be bound by its contents¹⁴.

5.3 Identifying the client when certifying copies

5.3.1 Ordinary copies: Identification **not** required

When certifying a copy of a general document it is the document and the copy that are the purpose of the task, not the client. Therefore it is not necessary for the person to be the owner of the document or named in the document. For example a parent could bring her son's certificates with copies of them to be certified. The JP does not need to meet the son.

5.3.2 Copies for banks and financial institutions: Identification **required**

A copy which will be sent to a bank or financial institution has particular requirements for certification. Banks and financial institutions require the Justice to see the person named in the document and to state that the document 'represents the named individual'.

Therefore the person named in the document must be present before the Justice in order for the copies to be certified.

14 P. Spiller (ed), Butterworths New Zealand Law Dictionary 5th Edition.

5.4 Certifying ordinary copies

5.4.1 STANDARD METHOD FOR CERTIFYING ORDINARY COPIES

1. Always sight the original document.
2. Satisfy yourself that the copy is a true copy.
3. Write the wording on the copy. Never write anything on the original. (For wording, see below.)
4. Some JPs have a stamp made with their preferred standard wording on it.
5. Place the wording very near or just touching the print of the copy. (Do not place your writing so far from the print of the copy that it may be cut off and used on another document).
6. Sign, then write your name, 'JP' and the date. Most JPs also add their JP number, though this is not a legal requirement.
7. If the copy is to be sent overseas and the client is sure a New Zealand JP is acceptable to the overseas originating agency as a certifier, write 'Justice of the Peace for New Zealand' after your signature. Another option is to use a stamp with 'JP for New Zealand' or 'JP for NZ' on it.
8. Some agencies provide a 'form guide' or similar document outlining how a form must be filled in or how attached documents such as copies must be made. In some cases the form guide specifies wording that must be used or the copy will be rejected. Check with your client whether such a guide was provided with their document and whether it specifies wording.
9. Copies of Department of Internal Affairs documents such as marriage/civil union certificates and birth certificates may be certified using the standard wording. (It is no longer the case that these copies have to be endorsed with particular wording).

5.4.2 STANDARD WORDING FOR ORDINARY COPIES

The standard wording to write on an ordinary copy is:

Certified true copy of document presented to me as an original

Other standard wording that may be used is:

Certified original sighted, and that this is a true copy of that original

or

Certified true copy, original sighted

or

words to the same effect

5.5 Certifying copies for banks and financial institutions

5.5.1 STANDARD METHOD FOR COPIES FOR BANKS AND FINANCIAL INSTITUTIONS

1. Always sight the original document.
2. Satisfy yourself that the copy is a true copy.
3. Satisfy yourself that the person before you is the same person as in the photo on the document.
4. Write the wording on the copy. Never write anything on the original. (For wording, see below. Some JPs have a stamp with their preferred standard wording on it.)
5. Place the wording very near or just touching the print of the copy. (Do not place your writing so far from the print of the copy that it may be cut off and used on another document).
6. Sign, then print your name, 'JP', your JP number, and the date.

5.5.2 STANDARD WORDING FOR COPIES FOR BANKS AND FINANCIAL INSTITUTIONS

The Justice must meet the individual named on the original document. The standard wording to write on the copy is:

Certified true copy of _____ that represents the named individual _____

Examples:

Certified true copy of *driver licence* that represents the named individual
Ms Jo Ripeka Bloggs.

Certified true copy of *18+ card* that represents the named individual
Joe Rawiri Bloggs.

5.6 Unusual documents

You may be presented with a document in a language other than English or another language you know, or which contains graphics, fingerprints, or other unusual features.

Compare as many features of the original and the copy as you can until you are sure the copy is a true copy. Where possible, it may help to hold both items to the light (one behind the other) to compare their features. Some Justices of the Peace make the photocopy themselves, if possible.

Then certify as usual.

5.7 Transcripts of text messages

If a client brings a written, typed or printed transcript of the words of a cellphone text message you need to sight the actual message on the screen of the cellphone.

Make sure you see the whole message on the screen. Read the 'receipt' information at the end of the message if it is there. This usually includes the sender's name (as inserted by the owner of the cellphone), sender's phone number, time and date of text message, and sometimes the 'message centre' information from the cellphone service provider.

Write on the copy:

Certified this is a true transcript of the words of a text message sent from phone number _____ on (date) _____ received at ____am/pm which I sighted on a cellphone on (date). (You may put as many details as are available)

or

Words to the same effect

5.8 Items printed from websites and email attachments

If a client brings a transcript or printout from a website or email attachment you need to see the original website or email on a computer. Some JPs use their own computers to do this, others do not. You are under no obligation to let a client use your computer. Some clients bring their own laptop or other mobile web-enabled device. Have the client give you the address of the website and open the site yourself. Then they may log in (privately) if necessary. Then compare the screen with the printed version they have brought you.

Write on the printout:

I certify this is a true transcript printed without alteration from the website www._____ which I saw today.

or

I certify I saw the original version of this document attached to an email and that this printed copy is a true reproduction.

or

Words to the same effect

Do not let the client simply open their computer and show you a screen that they tell you is a website – a simple document can be made to look like a website page. Open the website yourself using the internet browser.

If the client has logged on to a website on your computer using their personal password, ensure the client logs off to protect the privacy of their personal information.

5.9 No computer available – or other unusual circumstances

Sometimes circumstances mean that you feel you cannot carry out the task of certifying a copy. It may be necessary to offer to help the client to find another JP.

However, one solution is to **take a statutory declaration from the client instead**. This shifts the onus of the truth of the copy to the client. Any wording can be used that explains the origin of the copy. As with all statutory declarations, attach the copy and complete an exhibit note on it (see paragraph 7.8). Discuss with the client the likelihood of this being an acceptable alternative as some agencies may not accept a statutory declaration.

Examples of statutory declaration you could take from the client are:

I (name) of (place of abode and occupation) solemnly and sincerely declare that:

“The document annexed to this declaration and marked ‘__’ has been downloaded and printed/copied without alteration from _____website/my cell phone.”
(or other appropriate wording)

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Or

I (name) of (place of abode and occupation) solemnly and sincerely declare that:

“The document annexed to this declaration and marked ‘__’ is a true copy of a letter I received in the post from my bank on xx/xx/xxxx

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

5.10 Copies for apostille certificates

An apostille certificate is a state-to-state authentication of government-issued documents, such as birth and death certificates. The Department of Internal Affairs certifies to another country that a document is genuine.

Although most documents submitted for apostilles must be original there are a few documents of which certified copies are accepted.

However, these copies **must** be certified by the original issuing office or notarised by a notary public. A Justice of the Peace **cannot** certify copies of documents to be submitted for an apostille certificate.

Refer your client to the Department of Internal Affairs for specific advice.

For more information see:

dia.govt.nz/apostille

6. Witnessing

6.1 Introduction

Witnessing is when a person watches someone else sign or make their mark on a document and then attests to the genuineness of that signature by adding his or her own signature.

Justices are recognised as responsible individuals who will ensure that the document is signed by the person named in the document. For example, under the Land Transfer Act 1952 a Justice is specifically named as one of the few categories of people authorised to act as a witness to land transfer documents. Most other government and private agencies and institutions also accept a Justice as a witness to the execution of documents for their purposes. However it is still always important to check that Justice of the Peace is an acceptable witness.

6.2 Definitions

Attestation clause: the part at the end of the document where the witness certifies to its genuineness.

Execute/execution: to complete the requirements for signing a document to make it valid.

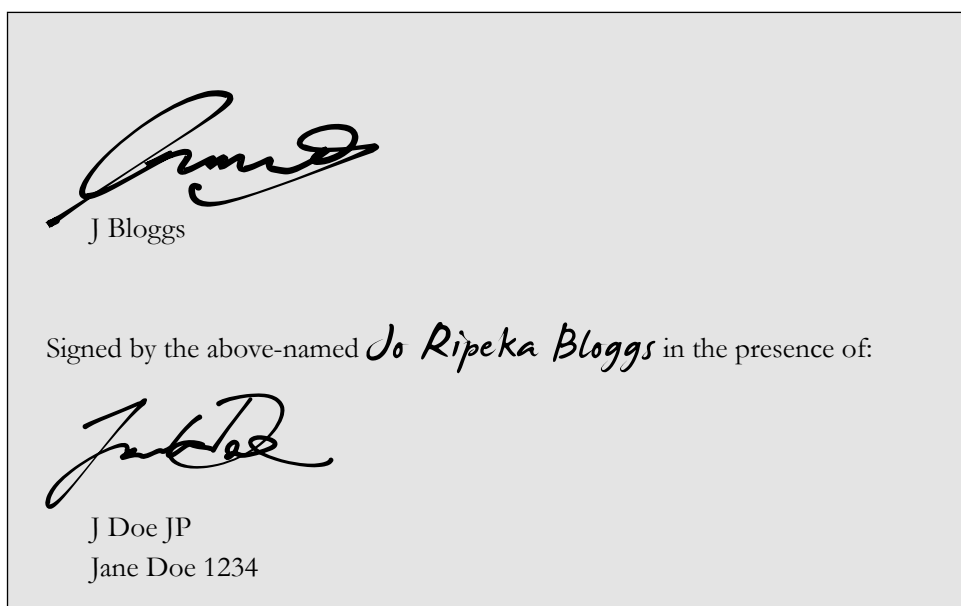
Signatory: person who must sign a document or form to make it valid.

Witness: person who sees the signatory sign the document.

6.3 Method of witnessing a signature

1. **Identify** the client (see paragraph 4.3).
2. Check for and attend to **alterations** in the usual way (see paragraph 4.11).
3. Check that **pages are numbered**, or number them, in the usual way (see 4.12).
4. The **signatory** then **signs** the document in front of the Justice.
 - 4.1 If the signatory has signed the document before coming to the Justice, ask the signatory to cross out the original signature and re-sign the document in front of the Justice. The Justice and the signatory must both initial this alteration.
5. Then, in the presence of the signatory, the **Justice signs**, writes or stamps 'JP', his or her name, and JP number.
6. Now the Justice and the signatory both **initial each page** of the whole document, except the signing page (see paragraph 4.13).

The form and layout of legal documents may be confusing to a layperson, but most solicitors mention in a covering letter how a document is to be signed and witnessed, and indicate the places for signing and initialling on the document itself. If that advice is not given, remember that most documents are signed at or near the end of the document and that there is clear wording indicating where the signatures are to go.



6.3.1 WILLS

Witnessing a will is **not a task of a JP**. However, some members of the public believe that a Justice must be a witness to a will and approach Justices especially. In fact, witnesses to a will need no special qualifications, except that they must not be beneficiaries of that will.

There must always be two witnesses to a will. This is one reason you should always ask a client what kind of document he or she will be bringing you. If it is a will the Justice must explain that it will not be possible unless the client brings another person who is not a beneficiary of the will.

The basic legal requirements to ensure that a will is validly executed are¹⁵:

1. There must be **two** witnesses present together **at the same time**.
2. Normally, each witness and the will-maker (testator) must see the two others sign. In other words, all three persons, the will-maker and the two witnesses will watch two people sign.
3. Sometimes the will-maker has already signed the will or directed someone else to sign on his or her behalf before meeting with the two witnesses. In that case, the will-maker must acknowledge (say) to the two witnesses who are present together that he or she did so, and the witnesses must write a statement on the will to that effect before each signing in the presence of each other and the will-maker.
4. No document should be attached to a will.
5. The will-maker and each witness must all initial the bottom of each page other than the page containing the signature.

Because this witnessing is not carried out as a JP, do not write 'JP' after your name.

6.3.2 ENDURING POWERS OF ATTORNEY

Enduring powers of attorney (EPAs) are regulated by the Protection of Personal and Property Rights Act 1988.

An enduring power of attorney is a document that creates a future right for someone to act on someone else's behalf in relation to that person's property and financial affairs and/or his or her personal care and welfare if he or she becomes incapable.

THE DONOR:

The donor is the person **appointing someone else as their attorney**.

The donor is potentially giving away the power over his or her affairs.

There are strict rules surrounding the witnessing of the donor's signature. Only a lawyer, a qualified legal executive or an authorised officer of a trustee corporation who is independent of the attorney can witness a donor's signature. The witness to the donor's signature is obliged to provide the donor with an explanation of the document and complete a certificate of witness before signing.

A Justice of the Peace **must not** witness a **donor's** signature.

THE ATTORNEY:

The attorney is the person who **has been asked to be someone else's attorney** and has accepted this potential future duty.

Witnessing of the attorney's signature is not subject to strict rules. Any person who did not witness the donor's signature (except the donor) can witness the attorney's signature.

Justices of the Peace **may witness** an **attorney's** signature. You simply witness the attorney's signature in the usual way. A Justice has no further duties and does not give any advice of any kind.

Because this witnessing is not carried out as a JP, do not write 'JP' after your name.

7. Statutory declarations

7.1 Introduction

One of the functions and powers of a Justice of the Peace is to:

'Take oaths and declarations under the provisions of the Oaths and Declarations Act 1957 or any other enactment'.¹⁶

A statutory declaration under the Oaths and Declarations Act 1957 is a document recording a statement in writing which the person making the statement declares to be true. A statutory declaration is not made under oath, but it does create a legal duty on the declarant to tell the truth: it is a crime punishable by 3 years' imprisonment to make a false declaration.¹⁷ The Oaths and Declarations Act 1957 prescribes the wording that must be used at the beginning and end of a statutory declaration.

Some other statutes also specify that a person may make an application or take certain steps under their provisions by declaration, and most make it an offence punishable by fine or imprisonment if the contents of the declaration are proved to be false¹⁸.

These declarations sometimes contain different wording from declarations under the Oaths and Declarations Act 1957, but must still be declared orally to be the truth by the declarant.¹⁹

7.2 Definitions

Attestation clause: the part at the end of the document where the witness certifies to its genuineness.

Declarant: person who makes a statutory declaration.

Joint statutory declaration: a declaration that more than one person will declare.

Make a statutory declaration: to declare the truth of a statement. The declarant 'makes' the declaration.

Place of abode: this is the town or city where the declarant currently lives.

Severally: to take turns doing something.

Take a declaration: the act of administering a statutory declaration.

16 s 4(a) Justices of the Peace Act 1957

17 s 111 Crimes Act 1961

18 For example, see s 277 Customs and Excise Act 1996 and schedule 2 Custom and Excise Regulations 1996; s 14 Rates Rebate Act 1973.

19 *Customs Dept v Meates* [1982] 2NZLR 500

7.3 Declarant must be present in person

The declarant must be personally present before the Justice. Justices must never take a statutory declaration from somebody other than the named declarant.

7.4 Wording of statutory declaration

Schedule 1 of the Oaths and Declarations Act 1957 prescribes the form (wording) to be used in a statutory declaration.

A statutory declaration must begin with:

I, (full name of declarant) of (place of abode and occupation) solemnly and sincerely declare that

(Here follow the facts that are declared, usually numbered in paragraphs).

A statutory declaration must conclude with:

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 ____


before me:

Justice of the Peace, solicitor, registrar, or other person
authorised to take a statutory declaration

7.5 Taking a statutory declaration

1. **Identify** the client (see paragraph 4.3).
2. Check for and attend to **alterations** in the usual way (see paragraph 4.11).
3. Check that **pages are numbered**, or number them, in the usual way (see 4.12).
4. The declarant signs the declaration:

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.


J Bloggs

DECLARED at _____ this _____ day of _____ 20 ____

before me:

Justice of the Peace, solicitor, registrar, or other person
authorised to take a statutory declaration

Remember that a person may make any mark as their signature; it does not have to be in English and does not have to be legible. It may be an 'X' (see paragraph 4.16).

4.1 If the declarant has signed the declaration before presenting it to the Justice, the Justice should ask the declarant to cross out the original signature and re-sign the declaration in front of the Justice. The Justice and the declarant must initial this alteration. That way, when the declarant declares the truth of the contents of the declaration, their signature is included (see also paragraph 7.6).

Continued over the page ...

5. Now the **declarant solemnly declares** as to the truth of the contents by answering the Justice's question:

Justice: "Do you solemnly and sincerely declare that the contents of this your declaration are true?"

Declarant: "Yes" *or* "I do".


Declarants **must** say something **aloud**. A nod of the head is not enough to make the declaration legally valid.

It is helpful to learn the question by heart so that you can ask it the same way every time. However it is possible to ask a different question if you forget it. The key points of the standard question or any question you ask, which are necessary to make the declaration legally valid, are:

- That the declaration belongs to the declarant.
- That the declarant is aware of its contents.
- That the declarant states aloud that the declaration is true.

6. Now the **Justice** fills in the attestation clause by:


- Completing the **place** of signing and **date**.
- **Deleting** the references to the possible other witnesses.
- **Signing** the declaration.



J Bloggs

DECLARED at *Wellington* this *21st* day of *June* 20 *15*

before me:



Jane Doe 1234

~~Justice of the Peace, solicitor, registrar, or other person~~
~~authorised to take a statutory declaration~~

Justices only need to write the letters 'JP' after their name if Justice of the Peace is not already typed or printed beneath the signature line.

7. The Justice and the declarant now both initial each page of the declaration except the signing page (see paragraph 4.13). If the declaration is one page, no initialling is needed.

7.6 Declare-sign method

It is acceptable for a client to declare the truth of the contents of his or her declaration, and then sign it. When signing, the Justice is both attesting that the declaration was made before him or her, and witnessing the signature of the client.

7.7 Joint declarants

More than one person may make the same declaration.

The joint declarants may visit the JP together, or they may go to the JP at separate times, or each go to a different JP.

7.7.1 BOTH OR ALL JOINT DECLARANTS ARE PRESENT WITH THE JP

Each declarant must declare the declaration separately – that is the meaning of the word ‘severally’ in the opening and concluding words of the joint declaration.

The declaration commences:

We, Joe Rawiri Bloggs, of Wellington, Jeweller, and Jo Ripeka Bloggs, of Wellington, Quantity Surveyor, do severally solemnly and sincerely declare as follows:

The declarations are made in the same way as outlined in this chapter.

Each declarant **must** be asked the declaration question separately, and each **must** say “yes” or “I do” separately, as follows:

Justice: “Do you solemnly and sincerely declare that the contents of this your declaration are true?”

Declarant 1: “Yes” or “I do”.

Justice: “Do you solemnly and sincerely declare that the contents of this your declaration are true?”

Declarant 2: “Yes” or “I do”.

The finished attestation clause looks like this:

SEVERALLY DECLARED at *Wellington*

by the said *Joe Rawiri Bloggs* and *Jo Ripeka Bloggs*

this *21st* day of *April* 20 *16*

before me:


 *Jane Doe JP 1234*

Justice of the Peace, ~~solicitor, registrar, or other person~~
authorised to take a statutory declaration

7.7.2 ONLY ONE JOINT DECLARANT IS PRESENT WITH THE JP

If only one declarant to a joint declaration is before the Justice, the steps for taking the declaration are the same as outlined in paragraph 7.5.

Each declarant has a separate attestation clause. The JP will complete only one of them. Whoever the other joint declarant/s go to will complete the other/s.

<p>DECLARED by the said <i>Joe Rawiri Bloggs</i></p> <p>At <i>Wellington</i> this <i>20th</i> day of <i>February</i> 20 <i>16</i></p> <p>before me:</p> <p> <i>Jane Doe JP 1234</i></p> <p>Justice of the Peace, solicitor, registrar, or other person authorised to take a statutory declaration</p> <p>DECLARED by the said _____</p> <p>at _____ this _____ day of _____ 20 _____</p> <p>before me:</p> <p>_____</p> <p>Justice of the Peace, solicitor, registrar, or other person authorised to take a statutory declaration</p>

7.8 Attachments to statutory declarations

Attachments to declarations **must** have exhibit notes completed on them.

Sometimes a person mentions a document in their declaration such as a letter or contract, then attaches that document to the declaration for the recipient to read. These documents are known as 'attachments' or 'annexures'.

So that the recipient can be sure which attachment is the one referred to, the Justice must complete an 'exhibit note' on each one. For court documents these exhibit notes are compulsory (see paragraph 8.5) whereas for statutory declarations it is a matter of legal practice that they must always be completed.

Each attachment must have a distinguishing letter or number written on it. Consecutive letters of the alphabet are nearly always used. For example if there are five attachments mentioned in the declaration, they will have 'A', 'B', 'C', 'D' and 'E' written on them, preferably in the order that they are mentioned in the declaration.

If letters of the alphabet have not been written on the attachments already, the Justice can write a clear capital letter at the top of the front of each attachment.

For example, if a declarant's declaration contains the sentence:

On 6/2/15 I received a letter from Mr Jones dated 1/2/15 a copy of which is attached and marked 'A'.

The Justice of the Peace should ensure that the letter from Mr Jones has 'A' written at the top of it, then write or stamp an exhibit note on it as follows:

This is the *letter* marked *A* referred to in the declaration of
Joe Rawiri Bloggs declared at *Wellington*
this *12th* day of *June* 2015
before me:


Jane Doe JP 1234

The declarant does not sign the exhibit note.

7.9 Overseas statutory declarations

Most countries and states have 'oaths and declarations' or similar legislation and all have different rules about who may administer declarations under that legislation when the declarant is overseas.

If it is stated on the form that a New Zealand Justice may administer the declaration, that is fine, take the declaration as usual. Do not change any wording on the form. Write 'Justice of the Peace for New Zealand' after your signature. Make sure your name and JP number are clearly written in case the agency wants to verify your authenticity.

If it is not stated that a New Zealand Justice may act, there is a decision to be made about taking the declaration.

- It cannot be assumed that you have authority to act, and it is inconvenient for clients when documents are returned to them because they are not validly executed.
- On the other hand, the client may be comfortable with you administering the form. They may know of circumstances when a similar form was accepted with a JP's signature. The form may simply need to be witnessed. It may be possible for you or the client to check the actual legislation online, or check with the appropriate High Commission, Embassy or consulate. In some cases a notary public is acceptable. You need to discuss the issue with the client. It is the client's responsibility and prerogative to make a decision about whether you should proceed, and the foreign agency's prerogative to accept your signature or not.

It is not usually acceptable to change the wording so as to make the declaration into a New Zealand Oaths and Declarations Act 1957 statutory declaration. It is the prerogative of agencies from other countries to use their own wording, however much it may differ from New Zealand wording.

7.9.1 AUSTRALIAN DECLARATIONS

New Zealand Justices of the Peace **do not** have authority to take a declaration under the Australian Oaths and Declarations Act 1959. However, some Australian states do allow overseas Justices to take declarations and this may be stated on the form.

Refer the client to the Australian High Commission for specific advice.

newzealand.embassy.gov.au

7.10 **Statutory declarations by children**

There is no statutory age limit for making a declaration.

It is obvious that very young children cannot promise to tell the truth. If a child is brought to a Justice for the purpose of making a statutory declaration, the Justice needs to make an ordinary (layperson's) assessment of the child's ability to describe what telling the truth means and to make a promise to do so. It can be helpful to talk with the child a little bit before drawing a conclusion (see paragraph 4.17).

Then take the declaration as usual.

Some agencies put their own age limit on declarations. Check on the form. If necessary you will need to see the birth certificate of the child.

7.11 **Statutory declaration in language other than English**

A person may write the content of their declaration in a language that is not English. The Justice does not need to understand the content of the declaration and should administer the declaration as described in this chapter.

However, the entire declaration must not be in the other language (see paragraph 4.18).

- The wording at the beginning and end of the declaration prescribed by the Oaths and Declarations Act 1957 must be in English.
- The declaration must be made in English, i.e. the declarant must say 'yes' or 'I do' in English.
- The Justice must be satisfied that the declarant adequately understands the legal importance of making a declaration and the meaning of the question the Justice asks. The person may have a friend present to translate and discuss this with the client.

8. Affidavits

8.1 Introduction

An affidavit is 'a statement made on oath in writing, sworn or affirmed before someone who has authority to administer it'.²⁰ The layout and wording of affidavits is regulated by the High Court Rules, Family Courts Rules 2002 and District Courts Rules 2014. The completion of affidavits is covered by the Oaths and Declarations Act 1957.

An affidavit is similar to a statutory declaration in that it is a solemn form of recording a truthful statement, but an affidavit is a sworn document usually used as evidence in connection with court proceedings. The person the affidavit belongs to is called a deponent. This is because 'to depose' means 'to make a deposition or statement on oath' and a deposition is 'a statement made by a witness under oath which is reduced to writing for subsequent use in court proceedings'.²¹

Some people do not want to swear on oath that their statement is true. In that case they have the right to 'affirm' their affidavit instead.²² Affirming an affidavit has the same legal effect as swearing on oath. Justices should not query the reason for a person choosing to make an affirmation rather than taking an oath.

²⁰ P. Spiller (ed), Butterworths New Zealand Law Dictionary 5th Edition.

²¹ Ibid.

²² s 4 Oaths and Declarations Act 1957

8.2 Definitions

Administering an affidavit: the act of hearing a person state that his or her affidavit is true. Also known as **taking an affidavit**.

Affidavit: a statement in writing and on oath, sworn before someone who has authority to administer it. Usually used in court as evidence.

Affirm/affirmation: to make a solemn declaration equivalent to a statement upon oath.

Deponent: the person whose affidavit it is.

Full name: the deponent should write all his or her names as on their birth certificate.

Jurat: a statement at the end of an affidavit stating when, where and before whom it was sworn or affirmed (sometimes referred to as the 'attestation clause' or 'statement by the taker').

Make oath and say: an older-style phrase that is still sometimes used at the beginning of affidavits instead of the word 'swear'.

Oath: a solemn promise to tell the truth, usually with reference to something sacred.

Occupation: this is the name or general description of the person's employment, eg retail worker, retired, home duties, self-employed. It is not necessary to state the employer or any specifics of the job. The reason for stating this is only to identify the person in relation to someone else with the same name in the same town or city.

Place of residence: This is the town or city where the deponent currently lives, eg Te Kauwhata, Lower Hutt, Oamaru. The street address is not required.

Swear: to state something on oath.

Taking an affidavit: the act of administering an affidavit.

Taking an oath: the person who is swearing an oath is said to be 'taking' an oath. Sometimes also called 'making' an oath or 'making' an affidavit. Remember that affirming an affidavit has the same legal strength as swearing on oath.

8.3 Wording of affidavit

Affidavits have usually been drafted by the deponent's lawyer. Affidavits have standard layout and wording, but some variations are acceptable. The actual content of the deponent's statement must be in numbered paragraphs.

- a. An affidavit which will be **sworn** usually commences:

I (*full name of deponent*) of (*place of residence and occupation*) swear as follows:

- b. An affidavit which will be **affirmed** usually commences:

I (*full name of deponent*) of (*place of residence and occupation*)
solemnly and sincerely affirm as follows:

- c. Sometimes the affidavit has both phrases printed at the beginning.
The Justice taking the affidavit must **cross out** one of them according to what the deponent has chosen to do:

I (*full name of deponent*) of (*place of residence and occupation*)
swear/~~solemnly and sincerely affirm~~ as follows:

- d. If necessary, it is acceptable to cross out and replace the words. This alteration should be initialled by the Justice and the deponent.

I (*full name of deponent*) of (*place of residence and occupation*)
~~solemnly and sincerely affirm~~ **swear** ^{JB JD} as follows:

Affidavits usually conclude with this jurat:

SWORN/AFFIRMED at
thisday of..... 20..... before me

Registrar/Justice of the Peace/solicitor of the High Court

The Justice taking the affidavit **must** cross out 'sworn' or 'affirmed, as appropriate.

8.4 Administering an affidavit

8.4.1 STEPS

1. The deponent must be **personally present** before the Justice. It is not possible for someone to take an affidavit for someone else, or at a distance.
2. Check the deponent's **identification** in the usual way (see paragraph 4.3).
3. Check for and attend to **alterations** in the usual way (see paragraph (4.11).
4. Check for and attend to **blanks and gaps** in the usual way (see paragraph 4.14).
5. Check that **pages are numbered**, or number them in the usual way (see paragraph 4.12).
6. Find out whether the deponent wishes to **swear** or **affirm** the affidavit.
7. Check and confirm or correct the **wording at the beginning** of the affidavit (see paragraph 8.3).
8. Fill in the **place** (town or city where the signing is taking place).
9. Fill in the **date**.
10. Now the **deponent will swear or affirm** the affidavit:
 - 10.1 If the deponent is swearing, follow the steps in paragraph 8.4.2
 - Or*
 - 10.2 If the deponent is affirming, follow the steps in paragraph 8.4.3
11. The deponent **must answer aloud** with "yes" or "I do", whether swearing or affirming.

Continued over the page ...

12. **Sign** the affidavit.
13. **Cross out** the roles other than JP that are written below your signature. If nothing is written there, you **must** write Justice of the Peace to your signature.

J Bloggs
J Bloggs

SWORN/AFFIRMED at *Wellington* this *12th* day of *June* 20 *15*

before me:

Jane Doe
Jane Doe JP 1234

Registrar/ Justice of the Peace/ ~~solicitor of the High Court~~

14. Now the Justice **and** the deponent must **both initial** the right-hand bottom corner of every page except the signing page (see paragraph 4.13).
15. The Justice **must** now complete **exhibit notes** on each attachment (see paragraph 8.5).
16. Always **check carefully** that each step has been completed correctly.

If there is **more than one deponent**, **each** deponent must answer the appropriate question separately. One deponent may swear and one may affirm. There must be a **separate jurat** for each deponent. Check that the wording at the beginning of the affidavit accurately reflects what each deponent did.

8.4.2 DEPONENT SWEARING ON OATH


- a. **Cross out** AFFIRMED in the jurat

SWORN/~~AFFIRMED~~ at *Wellington* this *12th* day of *June* 20 *15*

before me:

Registrar/Justice of the Peace/solicitor of the High Court

- b. The **deponent signs** the affidavit. (If the deponent has signed the affidavit prior to the appointment, ask the deponent to cross out the original signature and re-sign the affidavit in front of you. The Justice and the deponent both initial this alteration.)


J Bloggs

SWORN/~~AFFIRMED~~ at *Wellington* this *12th* day of *June* 20 *15*

before me:

Registrar/Justice of the Peace/solicitor of the High Court

- c. The Justice has a duty to be satisfied that the affidavit belongs to the deponent, and that the deponent believes in the truth of its contents. To ascertain this, **ask the deponent:** “Is this your affidavit?”, “Have you read it?”, “Is it true and correct?” or similar questions.
- d. Ask the deponent to swear the affidavit as follows:
- The deponent holds a copy of the Bible or other religious book or object in either hand.
 - Ask the deponent:
“Do you swear by Almighty God that the contents of this your affidavit are true, so help you God?”

(now continue with step 11, paragraph 8.4.1)

8.4.3 DEPONENT AFFIRMING


- a. **Cross out** SWORN in the jurat:

~~SWORN~~/AFFIRMED at *Wellington* this *12th* day of *June* 20 *15*

before me:

Registrar/Justice of the Peace/solicitor of the High Court

- b. The **deponent signs** the affidavit. (If the deponent has signed the affidavit prior to the appointment, ask the deponent to cross out the original signature and re-sign the affidavit in front of you. The Justice and the deponent both initial this alteration.)


J Bloggs

~~SWORN~~/AFFIRMED at *Wellington* this *12th* day of *June* 20 *15*

before me:

Registrar/Justice of the Peace/solicitor of the High Court

- c. The Justice has a duty to be satisfied that the affidavit belongs to the deponent, and that the deponent believes in the truth of its contents. To ascertain this, **ask the deponent:**

"Is this your affidavit?", "Have you read it?", "Is it true and correct?" or similar questions.

- d. **Ask the deponent:**

"Do you solemnly, sincerely and truly declare and affirm that the contents of this your affidavit are true?"

(now continue with step 11, paragraph 8.4.1)

8.5 Attachments and exhibit notes

Sometimes a person mentions in an affidavit a document such as a letter, receipt or contract, then attaches that document to the affidavit for the court to read. These documents are known as ‘attachments’ or ‘annexures’.

It is vital that courts are able to identify every attachment as being the correct document that was referred to in the affidavit.

The High Court Rules²³, Family Courts Rules 2002²⁴, and District Court Rules 2014²⁵ all require each attachment to have an ‘exhibit note’ typed or written on it.

A Justice taking an affidavit must ensure that an exhibit note is completed and signed on every attachment.

Each attachment must have a distinguishing letter or number written on it. Consecutive letters of the alphabet are nearly always used. For example, if there are five attachments mentioned in the affidavit, they will have ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’ written on them, ideally in the order that they are mentioned in the affidavit.

If letters of the alphabet have not been written on the attachments, the Justice can write a clear capital letter at the top of the front of each attachment.

For example, if a deponent’s affidavit contains the sentence:

On 6/2/15 I received a letter from Mr Jones dated 1/2/15, a copy of which is attached and marked ‘A’...

The Justice of the Peace should ensure that the letter from Mr Jones has ‘A’ written at the top of it, then the Justice must write or stamp an exhibit note on it as follows:

This is the *letter* marked *A* referred to in the affidavit of
Joe Rawiri Bloggs declared at *Wellington*
this *12th* day of *June* 20*15*
before me:


Jane Doe JP 1234

Justice of the Peace

The deponent does not sign the exhibit note.

23 R9.77(1)(c) Sch 2 Judicature Act 1908

24 R159 Family Courts Rules 2002

25 R9.67 District Courts Rules 2014

8.5.1 LARGE ATTACHMENTS

If an attachment is so large that it cannot be attached to the affidavit, all the pages must be securely stapled or bound together, and a cover page attached with an exhibit note on it (as outlined in paragraph 8.5).

8.6 **Other manners of taking an affidavit**

Although the standard method described above is the usual way, it is possible for deponents to request other manners of taking an application. Section 3(c) of the Oaths and Declarations Act 1957 provides that: 'the oath may be administered and taken in any manner which the person taking it may declare to be binding on him'.

If a deponent chooses not to swear or affirm an affidavit and wants to perform some other action, for example to blow out a candle, that is fine.

However the deponent must still state aloud, in person, in front of the Justice:

- That the affidavit is his or hers.
- That it is true.
- That this statement is intended to be binding.

Cross out both 'sworn' and 'affirmed' in the jurat and write 'taken' instead.

8.7 Applications for dissolution of marriage or civil union

The process for dissolution of marriage or civil union (divorce) is administered by the Family Court and governed by the Family Courts Rules 2012. There is detailed information in the Family Court website²⁶ which Justices should be familiar with, as updates and changes are common.

There is only one ground for dissolution in New Zealand and that is 'irreconcilable differences' which is evidenced by the couple having lived apart for more than two years. Therefore they must have lived apart for at least two years and one day in order to apply for a dissolution order.

Applications may be made by both members of the couple (known as parties) or one party to the marriage or civil union. If both parties are applying the process is often a little easier. If just one party is applying for a dissolution and the other party opposes the application, there are more steps and more forms.

Applications for dissolution contain an **affidavit**. Therefore the tasks for the Justice of the Peace are:

1. Ensure the application booklet is completed correctly.
2. Take the affidavit.
3. Complete exhibit notes on attachments.

Because it is a court document ruled by statute, it is vitally important that every aspect is completed correctly. If not, the application may be rejected by the court registrar, costing the applicant wasted time and effort, and in some cases causing major inconvenience. The application form and affidavit are set out clearly. Take the time to go through each numbered statement or question and ensure that it has been completed. This is one time that more than a 'glance through' a document is needed. Then make sure you take the affidavit correctly and complete exhibit notes on attachments.

For more information see:

justice.govt.nz/family-justice

26 www.justice.govt.nz/family-justice

8.7.1 TAKING THE AFFIDAVIT WITHIN AN APPLICATION FOR DIVORCE (DISSOLUTION OF MARRIAGE OR CIVIL UNION)

When taking the affidavit within the application for an order dissolving a marriage/civil union the Justice should follow all the points in chapter 8. Whether it is a joint or one-party application, every point should be completed meticulously.

You **must** check that:

- The full name, address and occupation of each deponent (applicant) is completed.
- The affidavit is completed in full, i.e. all sections of the affidavit are completed and where there are options that do not apply they are deleted.
- The signature of each deponent is carried out in your presence.
- The oath or affirmation is administered correctly and if it is a joint application, administered separately to each deponent.
- It is noted in the appropriate places on the affidavit whether the affidavit was sworn or affirmed for each deponent. Cross out either 'sworn' or 'affirmed'.
- The Justice of the Peace signs in the correct place and the designation Justice of the Peace is also noted clearly and other roles crossed out.
- The documents attached to the affidavit (usually a marriage/civil union certificate and a separation agreement) have exhibit notes completed on them.

8.7.2 AFFIDAVIT OF SERVICE

When one party applies for dissolution, a set of the documents must then be sent to the other party, who is now called the 'respondent'. This is called 'serving' the other party. The person who served the documents must then make an affidavit of service to provide the court with evidence that the respondent has in fact been given the documents.

When taking affidavits of service check that:

- The person who actually served the documents on the respondent is the person who will be swearing or affirming the affidavit of service.
- The affidavit bears the full name, address and occupation of the deponent (the person who served the documents).
- The affidavit is completed in full, i.e. all sections of the affidavit are completed and where there are options that do not apply they are deleted.
- The signature of the deponent is completed in your presence.
- The oath or affirmation is completed appropriately.
- The appropriate places on the affidavit are noted as to the affidavit being sworn or affirmed.
- The Justice of the Peace has signed in an appropriate place and the designation Justice of the Peace is also noted clearly and other roles crossed out.
- The exhibit notes on documents attached to the affidavit are completed and signed by the Justice of the Peace.

Matters to be aware of:

- The applicant for an application for an order dissolving a marriage/civil union (i.e. the husband, wife or partner) cannot serve the documents on the respondent himself or herself.
- If the person serving the documents does not personally know the respondent then either the acknowledgement of service must be signed by the respondent, or the deponent (the person serving the documents) must identify the person they are serving (the respondent) by a photograph. This photograph must then be attached to the affidavit of service as exhibit 'C'.
- The documents cannot be served on a Sunday, Christmas Day, New Year's Day, Good Friday or Anzac Day.
- Where service is effected in New Zealand it must be effected at least 21 clear days prior to the registrar's list date allocated to the matter.

8.7.3 AFFIDAVIT OF IDENTIFICATION

Occasionally a Justice of the Peace may be approached by an applicant for an order dissolving a marriage/civil union to have an affidavit of identification sworn or affirmed.

These affidavits only need to be completed when dissolution documents have been served on a respondent by a person who did not personally know the respondent. In this case the applicant must swear or affirm an affidavit either identifying the respondent's signature on the affidavit of service or identifying the photograph that was used by the person serving the dissolution documents.

All matters previously mentioned should be checked when taking these affidavits. When swearing or affirming an affidavit of identification, the applicant must have access to the affidavit of service to identify either the signature or photograph of the respondent.

8.7.4 ACKNOWLEDGEMENT OF SERVICE

This document is required when the respondent has to acknowledge that he or she was served with (given) a copy of the spouse or partner's application for dissolution and the associated affidavit.

9. Statutory roles

9.1 Introduction

There are some Acts which provide that a task may or must be carried out by a Justice of the Peace, or that a Justice of the Peace is specifically eligible for appointment.

9.2 Elections

It is the role of a Justice of the Peace under the Electoral Act 1993 to act as an independent observer for various stages of the electoral process.

Justices may be appointed to carry out the following roles:

- A Justice of the Peace must accompany an issuing team as an independent observer during the issuing of advance votes in hospitals and rest homes if no scrutineers have been appointed by local party officials.
- A Justice of the Peace must accompany an issuing team as an independent observer during the issuing of advance votes if an issuing team visits a voter at home.
- A Justice of the Peace must also be present throughout the official count at the electorate headquarters to:
 - Observe the progress of the count.
 - Initial any amendment to the results counted on election night for each polling place.
 - Sign the official certificate of results for each polling place as it is completed.
 - Certify the progress of the count at the end of each day by signing the official notification certificate of the results for the electorate.

A Justice of the Peace cannot be employed in another role (such as an issuing officer of advance votes) during an election process while he or she is undertaking the duties of a Justice of the Peace.

Returning Officers contact their local JP Associations to obtain names of Justices of the Peace who are available during the election period and suitable to carry out the role.

Justices should inform their Association Registrar of their interest in the role well before an election. It is acceptable to receive payment and reimbursement of costs incurred for this role.

For more information see:

elections.org.nz

9.3 Visiting Justices

Visiting Justices preside over hearings of misconduct charges within prisons.²⁷

A Visiting Justice must be either a Justice of the Peace or a barrister and solicitor of the High Court of New Zealand. Appointments are for 3 years and may be renewed. The role is advertised publicly from time to time and the application and appointment process is carried out by the Ministry of Justice.

A Justice who is interested in the role should contact his or her JP Association Registrar. This is a paid role.

9.4 Issuing officers

Issuing officers assess applications for search warrants and production orders for police and other enforcement agencies and make a decision about whether to issue the warrant or production order or not. An issuing officer is personally authorised by the Attorney-General for a 3-year term.²⁸

Justices of the Peace are eligible to be authorised, and if suitable, undertake training and assessment provided by Royal Federation before having their name forwarded to the Chief District Court Judge for recommendation to the Attorney-General.

A Justice who is interested in the role should contact his or her JP Association Registrar. This is an unpaid role.

27 s19 Corrections Act 2004

28 s108 Search and Surveillance Act 2012

10. Other roles

10.1 **Introduction**

Justices of the Peace are known in the community as persons of good character because of the personal attributes and community service required of a nominee and the vetting process undertaken before appointment. Often, as well as their ministerial duties, Justices are invited to undertake other tasks for which a trustworthy member of society is required.

These tasks are carried out not as a Justice of the Peace, but because you are a Justice of the Peace. It is acceptable to receive payment and reimbursement of costs incurred for the roles outlined in this chapter, and other similar roles, if such payment is offered.

10.2 **Nominated witness for police interview of child or young person**

A Justice who is interested in either of the following roles should contact their JP Association Registrar. It is acceptable to receive payment and reimbursement for costs incurred for these roles, if offered.

10.2.1 **POLICE INTERVIEW OF CHILD OR YOUNG PERSON**

The Children, Young Persons and their Families Act 1989 (CYPF Act) stipulates that when police interview a child or young person under 17 years there must be a parent or guardian present, or another adult nominated by the young person. If none of these persons is available or the young person declines to accept any of these options, the police can nominate an adult of their choice provided that the person is not an enforcement officer²⁹. This role is known as a 'nominated witness' (or sometimes 'nominated person').

In some areas Police choose a nominated witness from a list of Justices of the Peace provided to them by the local JP Association.

The main role of the nominated witness is to ensure that the young person to be interviewed is fully aware of his or her rights under the CYPF Act before the interview commences. This means not just witnessing the reading of the rights by the interviewing officer, but also actively ensuring that the young person understands them.

The nominated witness does not play an active role in the course of the interview as such, but is given a form on which to record what happened, and may intervene if the young person appears to be confused at any point. There is provision on the form to record whether or not undue pressure was applied to the young person.

If there are any concerns about the interview, the matter is taken up with a senior police officer.

Interviews may be simple questions and answers recorded in a notebook, a formal written statement, or a video-recorded interview. In the case of written statements, the nominated witness also signs the statement as a witness to it being a correct record of the interview and to the young person's signature.

10.2.2 **POLICE TAKING OF DNA SAMPLES FROM YOUNG PEOPLE**

In some areas police also ask Justices of the Peace to observe the taking of a DNA sample from a young person under the Criminal Investigations (Bodily Samples) Act 1995. This only occurs when a parent, caregiver or other person of the young person's choice is not available or cannot be located; or the young person or his or her parent or caregiver fails or refuses to choose another person to be present.

The JP observing the DNA sample should ensure that the requirements of the Act are observed, including:

- The giving of and explanation of a written notice in a manner and in language that the young person is likely to understand.
- A choice of a fingerprick or buccal (mouth) sample. (If the young person does not choose after a reasonable opportunity, the police officer may make the choice). A fingerprick sample must be taken by a suitably qualified person, while a buccal sample may be taken by the young person himself or herself or by a suitably qualified person.
- The young person must be told that if he or she refuses to give a DNA sample then the constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample.

29 s222(1)(d) Children, Young Persons and Their Families Act 1989

10.3 Nominated witness for mental health patient

The Mental Health (Compulsory Assessment and Treatment) Act 1992 governs the assessment and treatment process when a person suffers a mental disorder to the extent that they pose a serious danger to their own health or safety or that of others, or which 'seriously diminishes the capacity of that person to take care of himself or herself'.³⁰ An application for an assessment may be made by anyone who believes a person is suffering such a mental disorder. The application must include a medical certificate. When an application is received, the Director of Area Mental Health Services, or a duly authorised officer acting with the authority of the Director, makes arrangements for the assessment to take place.

The duly authorised officer is required to explain to the proposed patient in person:

- When and where the assessment will take place.
- Why the assessment is proposed.
- Who is going to carry out the assessment.

As well, the proposed patient must receive a written statement of his or her rights and be kept informed of his or her legal status as a prospective patient. All of this information is collectively known as a 'section 9 notice'.³¹

As the proposed patient is in a vulnerable state, the Section 9 notice must be given and explained in the presence of a member of his or her family, or a caregiver, or other person concerned with that person's welfare.

In the absence of a family member or caregiver, District Health Boards (DHBs) in some areas ask Justices of the Peace to fulfil the role as an 'other person'.

A Justice of the Peace in this role is therefore, in relation to the patient, a '...person concerned with that person's welfare'. The role is usually referred to as a 'nominated witness' or 'nominated person'. The responsibilities of the Justice of the Peace acting as a nominated witness are to:

- Be present and observe the process.
- Support the proposed patient as appropriate.
- Observe the proposed patient being given an explanation of his or her rights.

The Justice of the Peace:

- Meets with the duly authorised officer.
- Meets the proposed patient and is introduced.
- Witnesses the delivery of the section 9 notice (both orally and on paper).
- Leaves once the section 9 notice has been given appropriately.

If there are any concerns with the process, the Justice of the Peace should talk with the duly authorised officer at the time or on the next working day.

A Justice of the Peace who is interested in this role should contact his or her JP Association Registrar. In an area where the DHB does utilise JPs for the role, the Association provides it with a list of appropriate Justices, and also provides information, training and support to Justices. It is acceptable to receive payment and reimbursement of costs incurred for this role, if offered.

30 s2 Mental Health (Compulsory Assessment and Treatment) Act 1992

31 s9 Mental Health (Compulsory Assessment and Treatment) Act 1992

10.4 Marriages and civil unions

Justices of the Peace are not marriage or civil union celebrants. However, some Justices make a personal decision to apply to become a celebrant.

To become a marriage or civil union celebrant, any person may apply to the Registrar-General through the Department of Internal Affairs.³²

A Justice of the Peace automatically fulfils the requirement for an applicant to be of good character³³, but in other aspects a Justice of the Peace must apply for the role in the same way as other applicants.

For more information see:

dia.govt.nz/services-births-deaths-and-marriages-becoming-a-marriage-celebrant

10.5 Exam supervision

Tertiary and other institutions may ask Justices of the Peace to act as exam supervisors (also known as ‘invigilators’). The task involves being present while students complete exam papers, and requires patience and concentration. It is acceptable to receive payment for this task.

32 s11 Marriage Act 1955

33 s11(3) Marriage Act 1955

10.6 Citizenship

10.6.1 CITIZENSHIP APPLICATIONS

The first step towards New Zealand Citizenship is an application. Justices of the Peace may be called upon to take the declaration that is part of this form as well as to sign a photograph of the person making the declaration.

The declaration and the certification on the back of the photograph must bear the same date.

10.6.2 CITIZENSHIP CEREMONIES

Once a citizenship application has been successful, the person must make an oath or affirmation of allegiance before they are in fact a citizen.³⁴

Nearly all applicants for New Zealand Citizenship have the oath or affirmation of allegiance administered at a public ceremony by a mayor or deputy mayor of a local authority. However, in special circumstances the Minister may grant a dispensation to have the oath of allegiance administered in a private ceremony by a Justice of the Peace. This is an unpaid task.

Having received permission from the Minister, the new citizen contacts a Justice of the Peace to request the ceremony. The Department of Internal Affairs will then send the appropriate form to the Justice, who is required to complete it and return it after the ceremony. The Justice becomes the administrator of the form; a task usually undertaken by the mayor's office staff.

The ceremony must take place on the date specified on the Certificate of Citizenship. It is appropriate for members of the new citizen's family to be present, and for them to take photos.

Take the ceremony as follows:

1. The new citizen will already have a card provided by the Department of Internal Affairs with the words of the oath (or affirmation) written on it.
2. The new citizen must read the words on the card aloud. It is usual for the person to stand up to say the words of the oath (or affirmation). If the person has chosen to swear the oath, a Bible or other religious book or object may be held in either hand. The words may also be spoken in Māori.
3. The Justice should ensure that the full name of the deponent and the place and date of swearing (or affirming) are correctly written on the form.
4. The deponent and the Justice then sign the form in the spaces provided.
5. The form should be returned to the address provided as soon as possible.

34 s11 Citizenship Act 1977

THE OATH OF ALLEGIANCE

"I, (candidate's full name), swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Queen of New Zealand, her heirs and successors, according to law, and that I will faithfully observe the laws of New Zealand and fulfil my duties as a New Zealand Citizen. So help me God."

THE AFFIRMATION OF ALLEGIANCE

"I, (candidate's full name), solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Queen of New Zealand, her heirs and successors, according to law, and that I will faithfully observe the laws of New Zealand and fulfil my duties as a New Zealand Citizen."

THE OATH OF ALLEGIANCE IN MĀORI

"Ko ahau, ko _____ e oati ana ka noho pūmau taku pono ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke, e ai ki te ture. Ko te Atua nei hoki taku pou."

For more information see:

dia.govt.nz/New-Zealand-Citizenship

11. Conclusion

This manual outlines the basic skills and tasks of a Justice. It should initially be studied carefully, then referred to regularly. It is also valuable to make notes in your manual or in a separate notebook.

The importance, dignity and responsibility of accepting appointment as a Justice of the Peace may be maintained with diligent application of all the principles in this manual combined with regular ongoing learning.