

From the Professional Development Advisor



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Affidavits: the basics

What is an affidavit?

It is a statement in writing made on oath or affirmed.

Its primary purpose in New Zealand is to be used as evidence in court or tribunal proceedings.

This document can be used instead of the deponent appearing in court to give their evidence orally from the witness stand. For instance, an officer may write an affidavit to support the prosecution's case in a criminal trial. Couples applying for dissolution complete an affidavit as part of their application to the Family Court for an order of dissolution.

"When a matter proceeds to Court the parties must often file affidavits. An affidavit is a sworn or affirmed statement which provides a person's story of events. It is these affidavits that provide the relevant facts and other information to the Court to assist it in making a decision." (raineycollins.co.nz)

The Citizens Advice Bureau describes affidavits as written, signed and witnessed statements which will be used as evidence in court, for example, if you can't be at the hearing.

In other countries, the term "affidavit" can have a wider meaning relating to making a statement of truth and is not necessarily a statement to be submitted to court as evidence. However, in New Zealand, legislation relating to affidavits envisages their usage in court proceedings. Statutory declarations are used as an alternative where a person wishes to declare something as true outside the court.

What does a NZ affidavit look like?

1

The beginning statement

The affidavit should begin with the below statement. See 6.3.1 of the Ministerial Manual for more information.

I [full name, place of residence, occupation] swear/solemnly and sincerely affirm:

2

The body of the affidavit

A statement written by the deponent about something they swear/affirm to be the truth from their perspective.



Some affidavits include pre-written statements. For instance, an affidavit to accompany an application for an order of dissolution of marriage includes pre-written statements such as: "We are living apart."

3

The jurat

The affidavit should conclude with the below statement. See 6.3.2 of the Manual for more information.

SWORN/AFFIRMED at
this day of 20

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

4

Any exhibit documents (optional)

An affidavit may sometimes be accompanied by additional documents to support the statements made by the deponent in their affidavit. For instance, a marriage certificate is attached to an affidavit within an application for order of dissolution of marriage. These documents are called attachments or exhibits.

See 6.9 of the Manual for more information about exhibits.

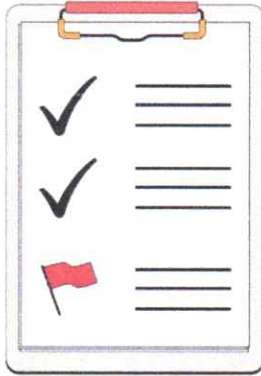
What does the law say?

The District Court Rules, the Family Court Rules, the High Court Rules and other legislation relating to tribunals and judicial bodies set out the form, content, purpose and rules for submission and filing of affidavits in New Zealand.

In general, these laws require affidavits to:

- Be expressed in the first person.
- State the full name, occupation and place of residence of the deponent.
- Be signed or marked by the deponent.
- Be signed by an authorised person.
- Include a statement by the authorised person of the date and place of swearing or affirming and the qualification that authorises them to take the affidavit.
- Be initialled or marked by the deponent and authorised person on every page that precedes the jurat.
- Be single-sided if the document is to be processed by the Family Court.

For more information about the rules and requirements relating to affidavits, see the Manual.



Red flags within a document

Here are some red flags that may indicate that a document does not or is not likely to meet the requirements of an affidavit.

If you notice a red flag, check the document carefully to ensure that it meets the criteria for an affidavit. It may be that the client needs to make some changes to ensure the document complies with legislation or that the client calls the document an

affidavit but it is actually a document of a different kind.

- The client refuses to complete the document correctly

- for instance, by refusing to write their legal name or occupation or address when required to by law.

- The client refers to themselves as a "natural person" or uses a punctuation mark instead of their legal name.
- Red ink is used in the document.
- The document doesn't follow the affidavit format set out above with the appropriate beginning statement and jurat.
- The document provides a space for the client or Justice to sign to "verify" the document.
- The document is addressed to an organisation other than a court or tribunal.
- The document contains written threats towards others or you.
- The document clearly deviates from accepted formatting in a way that could mislead the recipient. For instance, if the document's page numbers begin -3, -2, -1, 0, 1 – the client could discard the first four pages without the recipient's knowledge.

This is not an affidavit

My client has a document entitled "affidavit" that does not appear to be a proper affidavit. What should I do?

One way to avoid the awkward situation of declining to complete a client's document when they present it to you is to thoroughly question the client about the nature of the document when they call to make an appointment.

1. Double-check that the document does not meet requirements.

It may be that the document has been created by the client rather than taken from a template and is formatted a little differently. Documents formatted a little differently could still meet the requirements or may miss a few requisite elements. Consult the Manual to be certain.

If the document is missing a requisite element, point this out to the client. If the client needs further advice on affidavit requirements, direct them to Community Law or perhaps the Ministry of Justice website.

2. Ask questions

The Manual says:

"If in doubt, don't act". This applies when there is a genuine doubt about the legality or propriety of the document or task requested."

Best practice, when in doubt, is to decline to execute the document with which you are presented. However, before you decline, it is a good idea to form a clear understanding of the circumstances, and to determine whether you have good reason to genuinely doubt the circumstances or the document.



Ask: what does the client intend to do with the completed document?

The client wishes to submit this document to a New Zealand court or tribunal:

They may not have understood that the courts have content and form requirements for documents. If the document does not meet the requirements, the Ministry of Justice may not accept the document from the client. To save the client time and effort, refer them to the Ministry of Justice webpage about affidavits and statutory declarations.

The client wishes to submit this document to an overseas organisation:

The document is not an affidavit under New Zealand legislation. If the client intends to submit this document to an overseas organisation, the document will be subject to different legal requirements and this affidavit may meet those foreign legal requirements. The client will need to confirm with the receiving organisation or with their local embassy that a New Zealand Justice of the Peace is authorised to take that affidavit.

The client wishes to submit this document to a different New Zealand organisation or agency:

The client may not understand that affidavits are used in court proceedings and must adhere to a set format. Recommend the client re-write their "affidavit" as a statutory declaration, or that they complete some other document that better fits their purpose.

Decline to sign a document entitled "affidavit" that does not meet the legal requirements and is not intended to be used as an affidavit.

3. Take note of the client's intent

The client may behave in a way that leads you to doubt the propriety of the task.

For instance, the client may:

- pressure you to sign the document
- act in a way that indicates they are being pressured or influenced to sign the document
- be distressed or not currently have the mental capacity to appreciate the repercussions of signing the document
- believe that the document will be valid in a way that it is not
- ask much more of you than could be expected from a Justice of the Peace, for instance, requiring you to initial and date every paragraph of a large document or to take the client's affidavit 10 times using 10 identical documents
- request you to sign the document to make it appear more valid.

4. If in doubt, do not execute. Refer to someone who can assist.

Where the document is not an affidavit or any other document you're familiar with, and the client does not want to make a statutory declaration, decline to sign the document.

Having established a genuine doubt as to the propriety or legality of the document or task, you are perfectly entitled to decline to execute the document.

To aid the client you should endeavour to offer an alternative solution.

- You could advise the client to visit their local District Court.
- You could advise the client to visit their local Community Law centre or Citizens Advice Bureau for advice.
- The client could also see a private lawyer.

What are the consequences of signing a fake/invalid affidavit?

If the client intends to submit the document to a court, it will likely be rejected if it falls short of the form and content requirements of that court or tribunal. In this instance the client will be inconvenienced.

If the client does not intend to submit their "affidavit" to the court and instead wishes to submit it to another organisation, that organisation will likely reject the document or ignore it. The document is of little practical value if it does not meet the organisation's requirements or expectations for documents or if the document has no meaning to that organisation. If the document is rejected, this has inconvenienced both you and the client.

Sometimes clients wish to provide these documents to important figures such as the Prime Minister or the Governor-General. This would be the equivalent to a member of the public writing a letter to that person, albeit in unusual form. They are perfectly entitled to do this subject to any laws pertaining to harmful communications and threats. Entitling the document "affidavit" does not lend the document more authority in this context. Your signature on the document may be seen as lending support to the client's views.

Overall, entitling a document "affidavit" has little legislative effect in New Zealand if the document does not meet the legislative requirements for affidavits. You are not doing your client a favour by signing their document if the document holds little practical value. Your signature and acquiescence could be taken as approval of the document and could give the client false hope that it is somehow more valid.

The recipient of the document may view your signature as approval of the document's validity and this may damage the public opinion of Justices of the Peace.

Are you "abandoning your post" by not signing?

There is no legal requirement that a person authorised to take an affidavit must take an affidavit. There is especially no legal requirement that a person authorised to take an affidavit must execute a document that is pretending to be an affidavit.

You are required to "undertake your statutory, judicial and ministerial duties in a proper manner and administer the law in so far as you are called to do so" by the Justice of the Peace Code of Ethics. Signing a document that you suspect or know is invalid is contrary to the Code of Ethics.