

## **RULE 49 – AFFIDAVITS**

### **Affidavit to be filed**

- (1) An affidavit used in a hearing or trial must be filed.

### **Form and content of affidavit**

- (2) An affidavit shall
  - (a) be expressed in the first person and show the name, address and occupation of the deponent,
  - (b) if the deponent is a party or the lawyer, agent, director, officer or employee of a party, state that fact,
  - (c) be divided into paragraphs numbered consecutively,
  - (d) be in Form 59, and
  - (e) when containing more than one exhibit, have tabs placed on the first page of each exhibit, so the exhibits may be readily located.

### **Identifying affidavits**

- (3) An affidavit, other than an affidavit of service or of delivery, must be endorsed, in the top right hand corner of the title page, with
  - (a) the initials and surname of the deponent,
  - (b) the sequential number of the affidavit made by that deponent in the same proceeding, and
  - (c) the date on which the affidavit was made,

as in the following example:

J. Doe #3  
July 24, 2000.

### **Making affidavit**

- (4) An affidavit is made when
  - (a) the affidavit is sworn or affirmed by the deponent,
  - (b) the deponent

(i) signs the affidavit, or

(ii) where the deponent is unable to sign the affidavit, places his or her mark on it, and

(c) the jurat of the affidavit is signed by the person before whom it is sworn or affirmed.

### **Reference to oath in affidavit or exhibit**

(5) In an affidavit or in a certificate placed on an exhibit, the word "sworn" shall be deemed to include the word "affirmed".

### **Jurat where deponent unable to read**

(6) Where it appears to a person before whom an affidavit is sworn that a deponent is unable to read it, he or she shall certify in the jurat that the affidavit was read in his or her presence to the deponent who seemed to understand it.

### **Interpretation to deponent who does not understand English**

(7) Where it appears to a person before whom an affidavit is to be sworn that the deponent does not understand the English language, the affidavit shall be interpreted to the deponent by a competent interpreter who shall swear by affidavit in Form 60 that he or she has interpreted the affidavit to the deponent.

### **Exhibit to be marked**

(8) An exhibit referred to in an affidavit must be identified by the person before whom it is sworn by signing a certificate placed on the exhibit in the following form:

This is Exhibit ..... referred to in the affidavit of ..... sworn before me on ..... [date].

### **Copies of documentary exhibits**

(9) An exhibit referred to in an affidavit need not be filed, but must be made available for the use of the court and for the prior inspection of a party to the proceeding and, in the case of a documentary exhibit not exceeding 5 pages, a true reproduction must be attached to the affidavit and to all copies served or delivered.

### **Numbering exhibit pages**

(10) Each page of the documentary exhibits referred to in an affidavit, other than an affidavit of service or of delivery, must be numbered consecutively, beginning with the first page of the first exhibit and ending with the last page of the last exhibit,

(a) on the original exhibits and on all copies that are served or delivered, and

(b) even though one or more of those exhibits is not attached to the affidavit.

#### **Alterations to be initialled**

- (11) The person before whom an affidavit is sworn shall initial all alterations in the affidavit, and unless so initialled the affidavit shall not be used in a proceeding without leave of the court.

#### **Contents of affidavit**

- (12) An affidavit may state only what a deponent would be permitted to state in evidence at a trial, except that, if the source of the information is given, an affidavit may contain statements as to the deponent's information and belief, if it is made

(a) in respect of an application for pre-trial order, or

(b) by leave of the court under Rule 42(53)(a) or 50(9)(e).

#### **Use of defective affidavit**

- (13) With leave of the court an affidavit may be used in evidence notwithstanding an irregularity in form.

#### **Affidavit sworn before proceeding commenced**

- (14) An affidavit may be used in a proceeding notwithstanding that it was sworn before the proceeding was commenced.

#### **Affidavit of patient under legal disability**

- (15) If an affidavit is required for use in a proceeding and the proposed deponent is a person under a legal disability, the affidavit may be sworn, on information and belief, by the litigation guardian of the person.