

PART B-AFFIDAVITS

1. The provisions of the Code of Civil Procedure, 1908, on the subject of affidavits, are contained in section 139 and Order XIX of the Code.

Relevant law.

2. When an application for the attestation of an affidavit is presented to any Court superior to the Court of Sub-Judge, 4th Class, such Court may, if convenient, refer it for disposal to an inferior Court sitting at the same place.

Superior Court may send affidavit for attestation to a lower Court.

3. No court-fee or other stamp is required upon an affidavit made for the immediate purpose of being filed and used in any court or before and other of any court [(Indian Stamp Act, 1899, Schedule I, Article 4, exemption (b)] and no fee has been prescribed as chargeable for the attestation of an affidavit except as laid down in paragraph 5 below.

Affidavit exempted from court-fees.

4. There is no legal objection to several persons joining in a single affidavit in whole or in part; but Courts or Magistrates should, in such cases, be careful that each declarant deposes separately, and that the certificate is adapted to the actual circumstances of the particular case.

Joint affidavit.

^[1]5[(i) The High Court shall appoint Commissioners for the purpose of administering oaths and affirmations under clause (b) of Section 139 of the Code of Civil Procedure, Clause (b) of Sub-Section (1) of Section 297 of the Code of Criminal Procedure, 1973 and Clause (a) of Sub-section (2) of Section 3 of Oaths Act, 1969, at the headquarters of each sub-division/tehsil/sub-tehsil of a district.]^[2]

(ii) No person shall be qualified for appointment as a commissioner unless_____

(a) he has for at least two years but not exceeding five years been an advocate of the High Court; and

[1] Rule 5 as a whole substituted vide Correction Slip No.61 Rules.X.B.9(b) (General) dated 12.10.1976.

[2] Rule 5(i) Substituted vide Correction Slip No.55 Rules.X.B.9(b) (General) dated 2.4.1979.

(b) he is below the age of thirty five years.

(iii) The eligible Advocates shall submit their application^[1] in the prescribed form III for appointment as Oath Commissioners to the District Judge concerned and to the resident of the High Court Bar in the case of those seeking appointment for the High Court premises, who shall forward the same with his comments about the suitability of the candidates to the High Court and every such application may be accepted if the High Court is satisfied about the suitability of the candidate for appointment as Oath Commissioner.

(iv) An Oath Commissioner shall hold office for a term of two years from the date of his appointment or until the date on which he completes five years of practice at the Bar, whichever is earlier:

Provided that the High Court may curtail the term if it thinks fit to do so.

Provided further that the High Court may relax the conditions regarding eligibility and duration of the term of office of an Oath Commissioner on compassionate grounds or in public interest.

Note :- This Court, pursuant to second proviso to Rule 5 (iv), had framed a policy which was amended vide letter No. 3461 Rules/X.B.9(b) dated 05.02.2007 as follows :-

“Appointment or extension as Oath Commissioner may be made or given, as the case may be, by relaxation of the rules under second proviso to sub-rule (iv) of rule 5 contained in Chapter 12-B of the High Court Rules and Orders, Volume – IV, in the following cases for the periods indicated there against in addition to the maximum period of three years availed of by them under rule 5 ibid :-

[1] Added vide Correction Slip No.105 Rules/II.D.4 dated 11.9.1997.

- a) In the case of Advocates suffering from permanent disability between 50 to 69 percent for a period of 5 to 7 years.
- b) In the case of Advocates suffering from permanent disability from 70% or more for a period of 10 years to 15 years.
- c) ^[4]In the case of Senior Citizen of 60 years of age or more, as many terms of two years each as may be requested for by them.
- d) ^[4]In the case of deserted/widowed/divorcee/unmarried women Advocates for one term of two years.”

^[1] (v) The Oath Commissioners may charge a remuneration of ^[2]rupees twenty five for each affidavit and shall keep a register in the form prescribed in paragraph 7 infra in which all affidavits shall be entered. A written receipt for the amount paid shall be given by the Commissioner to the deponent. The receipt shall be in a ^[3]prescribed printed form ^[3]containing the following, information consisting of foil and counter foil, the foil being handed over to the person paying the money and the counter foil being kept by the Commissioner for purposes of inspection. The Commissioner will be entitled to an additional fee of Rs. 5/- from a deponent when he is required to attend the deponent's residence.

The above charge will be in addition to any stamp duty payable on the affidavit under the Indian stamp Act, 1899, Schedule I, Article 4]

Note:- With a view to ensure that all affidavits which are attested by an Oath Commissioner are entered in the register and receipts for the money received are given by him, each District and Sessions Judge will obtain such certificate from Oath Commissioners of their

[1] Substituted vide Correction Slip No.67 Rules.X.B.9(b) dated 17.9.1981.

[2] Substituted vide Correction Slip No. 164 Rules/II.D.4 dated 21.8.2012.

[3] Added vide Correction Slip No.105 Rules/II.D.4 dated 11.9.1997.

[4] Amended vide Correction Slip No. 180 Rules/II.D.4 dated 31.07.2018.

registers and receipt books containing counter foils as may be considered necessary.

Name of the Oath Commissioner:-

Received Rs_____ as attestation charges from _____
_____for affidavit bearing No._____in the register.

Signature.

Date.

[1] (vi) The registers and receipt books consisting of counterfoils maintained by each Oath Commissioner shall be kept by him in safe custody and deposited in the office of the District & Sessions Judge concerned within fifteen days after the expiry of his term of office and a receipt obtained from the official nominated for the purpose. The record shall be kept in the office of District and Sessions Judge concerned and preserved for five years and destroyed thereafter unless it is required in proceedings before any authority or in connection with the investigation, inquiry or trial of a case and in that event, it shall be destroyed after the final decision in the proceedings of the case.

Attestation of
affidavits by
process serving
and other
officials.

6. In order to facilitate the verification of affidavits of serving officers made under Order V, Rule 19, or Order XVI, Rule 10, of the Code of Civil Procedure, the State Government has empowered the Court of the Subordinate Judge of the First Class in charge of the Nazarat to appoint an officer subordinate to itself to administer oaths to process-servers, bailiffs, naib-nazirs and nazirs making affidavits of service of summons, notices and other processes under the Code of Civil Procedure. Punjab Government Notification No. 216-19, dated the 20th June, 1931). In the case of such affidavits and of all other affidavits made by officers of the Courts in their official capacity, no application, such as is referred to in paragraph 2 is necessary.

Register of
affidavits.

7. A register of affidavits, in the following form, should be maintained at the head quarters of every district and at each Court at a distance from headquarters in which every application to have an affidavit attested and every affidavit verified, should be entered:-

[1] added vide correction slip no. 53 dated 08.01.1979.

FORM OF REGISTER

REGISTER OF AFFIDAVITS ATTESTED IN THE _____ COURT OF THE
 _____ DISTRICT

1	Serial No.
2	Date of application or of tendering affidavit.
3	Name and address of the person tendering an application (if any) or affidavit.
4	Nature of affidavit briefly stated: if the affidavit relates to a cause in Court, the cause should be specified.
5	Detail of exhibits if any attached to affidavit.
6	Civil Court, Magistrate or other officer empowered in that behalf administering the oath or affirmation.
7	Date of administering oath or affirmation.
8	Name and address of witness identifying the Deponent if he is not known to Officer administering oath and his signature or thumb-impression.
9	Signatures or thumb-impression of the Deponent.
10	Name of the Court or Office in which the affidavit is intended to be filed.
11	Signatures and designation of Civil Court, Magistrate or other Officer.

8. (i) Every affidavit to be used in a Civil Court shall be entitled:-

Title of affidavits

“In the Court of _____ at _____ (naming) the Court and place of sitting).

(ii) If there be a cause in Court, the affidavit in support of or in opposition to an application respecting it shall also be entitled in the cause, thus:-

_____, PLAINTIFF
 against
 _____ DEFENDANT.
 Claim: _____

(naming the parties and stating the nature of the claim).

(iii) If there be no cause in Court, the affidavit shall be entitled:-

“In the matter of the petition of _____(name) praying _____”.

(brief statement of subject)

(iv) Every affidavit shall be further entitled:-

“Affidavit of _____(name) made on this _____ day of _____ 19 (date) before _____(name of attesting officer), at (place).”

Contents of affidavits.

9. (i) Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

^[1]Provided that a short affidavit verified in the manner prescribed under Order 19 Rule 3 of the Code of Civil Procedure may be filed to support the averments made in any application.

(ii) Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such manner as will serve to identify him clearly: that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

(iii) When the declarant in any affidavit speaks to any facts within his own knowledge, he must do so directly and positively, using the words “I affirm” or ‘I make oath and say’.

[1] Added vide Correction Slip No. 131 Rules/II.D.4 dated 8.2.2005.

(iv) When the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression 'I am informed',- and, if such be the case, should add 'and verily believe it to be true, -or he may state the source from which he received such information. When the statement rests on facts disclosed in documents, or copies of documents procured from any Court of Justice or other source, the declarant shall specify the source from which they were procured, and state his information or belief as to the truth of the facts disclosed in such documents.

10. (i) Attention is drawn to Order XIX, Rule 3, which lays down that affidavits shall be confined to such facts, as the deponent is able of his own knowledge to prove, except interlocutory applications (See Order XXXIX, Rules 6 to 10), on which statements of his belief may be admitted: provided that the grounds thereof are stated.

Affidavits generally to be confined to facts which are within defendant's knowledge.

(ii) All interlineations, alterations or erasures in an affidavit shall be initialed by the person swearing it and the person before whom it is sworn. Such interlineations, alterations or erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read the original matter. In case such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-written on the margin and initialed by the person before whom the affidavit is sworn.

11. Every person making an affidavit shall, if not personally known to the Court, Magistrate or other officer appointed to administer the oath or affirmation, be identified to such Court, Magistrate or officer by some person known to him; and such Court, Magistrate or officer shall specify, at the foot of the affidavit, the name and description of the person by whom the identification is made, as well as the time and place of the identification and of the making of the affidavit.

Identification of deponent.

Mode of
attestation.

12. The Court, Magistrate, or other officer as aforesaid, before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of such affidavit before him, and shall enter the date and subscribe his signature to such certificate, and shall, for the purpose of identification, mark, date, and initial every exhibit referred to in the affidavit. The name of the verifying authority must be signed in full, and care must be taken that his proper designation as a Civil Court or Magistrate is added.

Female
deponents.

13. An affidavit purporting to have been made by a female declarant, who has not appeared unveiled before the Court, Magistrate, or other officer as aforesaid, before whom the affidavit is made, shall not be certified, unless and until she has been duly identified before, and an affidavit of her identity by the person identifying her has been made before, and certified by such Court, Magistrate or officer.

Attesting
officer's duty.

14. If any person making an affidavit appears to the Court, Magistrate or other officer administering the oath or affirmation, to be ignorant of the language in which it is written, or to be illiterate, or not fully to understand the contents of the affidavit, such Court, Magistrate or officer shall cause the affidavit to be read and explained to him in a language which both he and such Court, Magistrate or officer understand; either doing so himself, or causing another person to do so in his presence. When an affidavit is read and explained as herein provided, such Court, Magistrate or other officer as aforesaid shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the declarant seemed perfectly to understand the same at the time of making it.

Attesting, signing
and verification of
affidavits.

15. Every affidavit shall be signed or marked and verified at foot by the deponent and attested by the Court, Magistrate or other officer administering the oath or affirmation. Every page of the affidavit shall be signed by the deponent and initialed by the attesting Officer. The verification by the deponent shall be in one of the forms attached hereto, and shall be signed or marked by the deponent. The attestation of

the Court, Magistrate or other officer administering the oath or affirmation shall also be in the form prescribed below.

16. In administering an oath or affirmation to the declarant in the case of any affidavit under the Code of Civil Procedure, the Court, Magistrate or other officer appointed in that behalf shall be guided by the rules under the Indian Oaths Act, 1873, printed in Part A of this Chapter and shall follow the form of verification by oath or affirmation hereto appended.

Manner of administering oath to deponent.

I-FORM OF VERIFICATION OF OATH OR AFFIRMATION
(Vide PARAGRAPH 15 ABOVE)

Oath

I solemnly swear that this my declaration is true, that it conceals nothing, and that no part of it is false-so help me God!

Affirmation

I solemnly affirm that this my declaration is true, that it conceals nothing, and that no part of it is false.

II-FORM OF CERTIFICATE

(Vide PARAGRAPHS 12,14 AND 15 ABOVE)

Certified that the above was declared on (a) before me this (b)_____day of (c) 19, at (d) in the district of (e) by (f) who is (g)_____.

(full signature) A. B.

(Office) District Judge (or as the case may be) of_____.

Oath

- (a) here enter-----as the case may be, Affirmation
- (b) date,
- (c) month,
- (d) place,
- (e) name of district,
- (f) full name and description of declarant,
- (g) here enter "personally known to me" or "identified at (time and place of identification) by (full name and description of person making the identification who is personally known to me)."

II-A

The exhibits marked A,B, C (as the case may be) above referred to are annexed hereto under this date and my initials.

II-B

Certified further that this affidavit has been read and explained to (name)_____the declarant who seemed perfectly to understand the same at the time of making thereof.

^[1]**[FORM III]**
APPLICATION FORM

(For Appointment as Oath Commissioner)

1. Name :

2. Parentage :

3. Date of Birth :

(Attach attested copy of matriculation certificate or other attested proof of age)

4. Address :

5. Date of enrolment as an Advocate

(Attach attested copy of enrolment certificate)

6. Place of Practice :

7. Area for which application is made :

8. Particulars of all earlier appointments as Oath Commissioner and the periods of such appointments. :

9. Whether his term was ever curtailed by this Court :

10. Special category, if any, for seeking Appointment :

11. Declaration by the applicant :

I hereby declare that I shall be bound by the rules/directions pertaining to the appointment of the Oath Commissioner and shall have no objection if my licence is cancelled for non-compliance of any of the rules notification or directions issued. I shall properly maintain the register and accounts and shall regularly submit the same for inspection to the authority concerned.

Signature of the applicant.

12. Recommendation of the District Judge/Bar Association with regard to suitability for appointment and report regarding honesty and integrity.

[1] Form III added vide Correction Slip No.105 Rules/II.D.4 dated 11.9.1997.