



LITIGATION AND DISPUTE RESOLUTION

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# Remote Swearing of Affidavits to Provide Greater Flexibility

by **Katie Linden, Shane Neville**

# Remote Swearing of Affidavits to Provide Greater Flexibility

31st March 2021 | by Katie Linden, Shane Neville

*In Zoom we trust - a new statutory instrument introduces a number of changes to the procedure relating to affidavits including remote swearing by way of video-conference in specific circumstances.*

On 31 March 2021, a new statutory instrument, the Rules of the Superior Courts (Affidavits) 2021 (S.I. No. 127/2021), will come into force, amending Order 40 of the Rules of the Superior Courts. The new statutory instrument introduces a number of changes to the procedure relating to affidavits. Of particular interest to practitioners is the introduction of remote swearing of affidavits by way of video-conference in specific circumstances.

## Swearing via Video-Conference

An affidavit must be sworn before an appropriate officer, generally a practising solicitor or a commissioner for oaths. Traditionally, this swearing had to be done in the physical presence of the officer. Due to the COVID-19 pandemic and the necessity for social distancing, the new rules provide for swearing to be completed remotely in certain circumstances. If swearing an affidavit remotely, the affidavit must refer briefly to the reasons why it is not practicable for the swearing to be done in the physical presence of the officer.

Order 40, rule 9 of the Rules of the Superior Courts sets out a number of conditions for remote swearing:

- The officer must be provided in advance or at the time of the video-conference, in either hard or soft copy, with a copy of the affidavit and any exhibits.
- The officer must ensure that the identification of the deponent is verified in accordance with the relevant paragraph in the affidavit and, where relevant, the officer must be provided in advance with a certified copy of the document to verify the deponent's identity.
- The officer needs to ensure the video-conference facility enables the deponent to see and hear the officer and be fully seen and heard.
- The officer must be satisfied that the deponent has the appropriate sacred text for taking the oath.
- During the video-conference, the deponent must produce the original of any identification document to verify his/her identity and must identify each page of the affidavit and every exhibit referred to therein and shall sign or mark every exhibit and sign and swear the affidavit. This should be done within the sight and hearing of the officer.
- Once the deponent has completed the swearing, the sworn affidavit and every exhibit shall be sent to the officer immediately after the video-conference for swearing.
- Once received from the deponent and once the officer is satisfied that the documents correspond with those from the video-conference, the officer will complete the attestation process of the documents.
- The swearing clause of the affidavit shall indicate that it was done by way of video-conference.

The new rules do not specify any particular software programme to be used for the video-conference.

## Conclusion

The introduction of remote swearing will be a welcome change for practitioners and deponents alike. The new procedure is likely to assist deponents travelling in remote parts of the world, deponents self-isolating or house-bound deponents. Swearing affidavits by video-conference is, however, unlikely to become the norm in the near future, given the requirement to provide reasons why it is not practicable for the swearing to be done in the physical presence of the officer.

The procedures surrounding the swearing of affidavits are likely to be further reformed with the introduction of Statements of Truth when the relevant parts of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 are enacted.

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