

REGULATIONS GOVERNING THE ADMINISTERING OF AN OATH OR AFFIRMATION

**No. R 1258
21 July 1972**

(Amended by G.N.R. 1648 of 19 August 1977, G.N.R. 1428 of 11 July 1980 and G.N.R. 774 of 23 April 1982)

The State President has, in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963), been pleased to make the following regulations:

1. (1) An oath is administered by causing the deponent to utter the following words: "I swear that the contents of this declaration are true, so help me God".

(2) An affirmation is administered by causing the deponent to utter the following words: "I truly affirm that the contents of this declaration are true".

2. (1) Before a Commissioner of Oaths administers to any person the oath or affirmation prescribed by regulation 1, he shall ask the deponent –

a) Whether he knows and understands the contents of the declaration; b) Whether he has any objection to taking the prescribed oath; and c) Whether he considers the prescribed oath to be binding on his conscience.

(2) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the Commissioner of Oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the Commissioner of Oaths shall administer the oath prescribed by Regulation 1 (1).

(3) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the Commissioner of Oaths that he does not consider the oath to be binding on his conscience the Commissioner of Oaths shall administer the affirmation prescribed by Regulation 1 (2).

3. (1) The deponent shall sign the declaration in the presence of the Commissioner of Oaths.

(2) If the deponent cannot write he shall in the presence of the Commissioner of Oaths affix his mark at the foot of the declaration: Provided that the Commissioner of Oaths has any doubt as to the deponent's inability to write he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

4. (1) Below the deponent's signature or mark the Commissioner of Oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.

(2) The Commissioner of Oaths shall –

a) sign the declaration and print his full name and business address below his signature; and b) state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment ex officio.

5. Deleted by Regulation 774 of 23 April 1982.

6. A Commissioner of Oaths shall not charge any fee for administering any oath or affirmation or attesting any declaration.

7. (1) A Commissioner of Oaths shall not administer an oath or affirmation relating to a matter in which he has an interest.

(2) Sub regulation (1) shall not apply to an affidavit or a declaration mentioned in the Schedule.

8. Government Notice R. 1206 dated 15 December 1961, is hereby withdrawn.

FIRST SCHEDULE

DECLARATION EXEMPTED FROM THE PROVISIONS OF REGULATION 7 (1)

1. A declaration taken by an attorney which -

a) Is required for the obtaining of registration in a deed registry referred to in Section 1 (1) of the Deeds Registration Act, 1937 (Act 47 of 1937);

b) Should be furnished to a Minister or an administrator or an officer in the service of the State (including a provincial administration, the South African Railways and Harbours and the Department of Posts and Telecommunications), or to someone who is an officer or employee of the Government Service referred to in Section 2 of the Government Service Act, 1980 (Act 2 of 1980), of the National Assembly of South-West Africa.

2. A declaration taken by a Commissioner of Oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.

THE ROLE OF A COMMISSIONER OF OATHS

A Commission of Oaths is appointed for a particular area and can only serve in that position within the area for which he or she is appointed.

The role of a Commissioner of Oaths is to assist members of the local community by administering an oath or affirmation or taking a solemn or attested declaration from any person.

Another role of the Commissioner of Oaths, is to certify copies of documents as true copies of the original documents.

There is no fee to be charged for administering an oath or affirmation, attesting a declaration or certifying a document.

A Commissioner of Oaths is not allowed to administer an oath or affirmation relating to a matter in which he or she has an interest. The reason is that a

person attesting an affidavit should be unbiased and impartial in relation to the matter contained in the affidavit for the deponent to be free from any influence on the subject matter of the affidavit.

This service by Commissioners of Oaths, makes it unnecessary for persons to travel far to the nearest police station or magistrate's office for help.

PROCEDURE FOR ADMINISTERING AN OATH OR AFFIRMATION

A deponent (a person who has made an affidavit) may approach a Commissioner of Oaths with an affidavit, to take an oath or affirmation. The Commissioner of Oaths should ask the deponent the following questions:

1. Whether he/she knows and understands the contents of the declaration; 2. Whether he/she has any objection to taking the prescribed oath; and 3. Whether he/she considers the prescribed oath to be binding on his/her conscience.

A prescribed oath is administered by causing the deponent to utter the following words: "I swear that the contents of this declaration are true, so help me God." The deponent will be requested to raise up his/her right hand to take this oath.

Where a deponent acknowledges that he/she understands the contents of the declaration and informs the Commissioner of Oaths that he/she objects to taking the oath or informs the Commissioner of Oaths that he/she does not consider the oath to be binding on his/her conscience, the Commissioner of Oath shall administer an affirmation. An affirmation is administered by causing the deponent to utter the following words: "I truly affirm that the contents of this declaration are true."

The deponent should sign the declaration in the presence of the Commissioner of Oaths, affix a mark at the foot of the declaration. If a Commissioner of Oaths doubts the deponent's inability to write, he/she shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

After the deponent has signed or affixed a mark, the Commissioner of Oaths shall certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration and he/she shall state the MANNER, PLACE, and DATE of taking the declaration. The Commissioner of Oaths shall sign the declaration and print his/her full name and business address below his/her signature, and also state his/her designation and the area for which he/she holds an appointment or the office held by him or her. "Business address" means a physical address and not a postal address.

Ready made stamps are available to help Commissioners of Oaths to administer an oath or affirmation without any delay.

PROCEDURE FOR CERTIFYING DOCUMENTS

A copy of a document which must be certified as a true copy of the original, must be compared with the original document and it must be made sure that the two documents are, in fact, the same.

If the Commissioner of Oaths is sure that the copy is in fact a true copy of the original document and no unauthorised amendments have been made, the Commissioner of Oaths must write down or stamp that he/she certifies that the

document is a true copy of the original document and that there are no indications that the original document has been altered by unauthorised persons.

Thereafter the Commissioner of Oaths must append a signature and also print out name, designation, contact particulars and date. A ready made stamp is available to certify documents.

LEGAL IMPLICATIONS

1. If an oath or affirmation is not taken correctly as prescribed, and the matter goes to court, the affidavit will be declared invalid and may have serious consequences which for example, in criminal cases, may lead to the acquittal of the accused.
2. If the Commissioner of Oaths becomes aware that the person making a statement, was unwilling to take an oath, he or she should not administer an oath. There was a case where the accused arrested under the Internal Security Act, was after detention in solitary confinement and interrogation, induced by a police official, to take an oath before a Commissioner of Oaths. The court set aside the conviction when it was found that the accused was forced to take an oath before a Commissioner of Oaths.
3. It is an offence to make a false statement knowing it to be false in an affidavit, affirmation or solemn or attested declaration, provided that false statement is embodied in a document, the truth of which has been sworn to, affirmed, or declared before a person empowered by the statute to administer oaths or to take solemn or attested declaration.
4. In an appeal against conviction in a magistrate's court of exceeding the speed limit, it was found that an affidavit made by a traffic officer on the apparatus used to measure the speed, was invalid because the Commissioner of Oaths failed to comply with the requirements for administering an oath, by:
 - a) Failing to sign the declaration and to print his full name and business address below his signature, and
 - b) Failing to state his designation and area for which he held his appointment or the office held by him if he held his appointment ex officio. The appeal against conviction succeeded.
5. A Commissioner of Oaths who attests affidavits, is required to be impartial, unbiased and entirely independent of office where an affidavit was drawn up. In a case where an attorney practising in association with another, served as a Commissioner of Oaths for his colleague, it was found that he lacked complete independence and had an interest. The court ordered that the affidavit be re-attested before a competent Commissioner of Oaths.
6. If copies of documents are not certified correctly as true copies of the original, the Commissioner of Oaths who certified the document, may find himself or herself in court as a co-accused for assisting someone to commit fraud or as a witness to give evidence on the falsified documents.