

ORDER 41
(R.S.C. 1978)

AFFIDAVITS.

Form of affidavit (O.41, r.1).

1.—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and must state the place of residence of the

deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

(5) Every affidavit must follow continuously from page to page.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

Affidavit by two or more deponents (O.41, r.2).

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavit by illiterate or blind person (O.41, r.3).

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that—

(a) the affidavit was read in his presence to the deponent,

(b) the deponent seemed perfectly to understand it, and

(c) the deponent made his signature or mark in his presence; and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

Use of defective affidavit (O.41, r.4).

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

Contents of affidavit (O.41, r.5).

5.—(1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

Scandalous, etc., matter in affidavit (O.41, r.6).

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

Alterations in affidavits (O.41, r.7).

7.—(1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at the Registry, the official stamp of that office may be substituted for the signature or initials required by this rule.

Filing of affidavits (O.41, r.8).

8.—(1) Every affidavit must be filed in the Registry.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

Use of original affidavit or office copy (O.41, r.9).

9.—(1) An original affidavit may not be used in any proceedings unless it has previously been stamped.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he

must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(3) Where an affidavit has been filed, a certified copy thereof may be used in any proceedings.

Documents to be used in conjunction with affidavit to be exhibited to it (O.41, r.10).

10.—(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled, in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

Affidavit taken in Commonwealth and other countries (O.41, r.11).

11. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside The Bahamas in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person:

Provided that no such document signed, sealed, executed or sworn outside The Bahamas or other part of the Commonwealth shall be admitted in evidence unless the seal or signature is proved by a certificate of the person having authority to give such certificate, which shall be conclusive in all respects, if it states that the person signing the certificate has such authority.
