

## **PRACTICE NOTE SC Gen 4 Supreme Court – Affidavits**

### **Commencement**

1. This Practice Note commences on 17 August 2005.

### **Application**

2. This Practice Note applies to the Court of Appeal, the Court of Criminal Appeal, and each of the Divisions of the Supreme Court.
3. This Practice Note does not apply to the Criminal List of the Common Law Division.

### **Definitions**

4. In this Practice Note:

**Tender bundle** means a bundle of affidavits that a party intends to rely upon at a hearing (including an interlocutory hearing), whether previously filed or not  
**UCPR** means the Uniform Civil Procedure Rules 2005

### **Introduction**

5. UCPR 35.9 provides that an affidavit may generally not be filed in proceedings except by leave of the Court. A rule may require an affidavit to be filed: UCPR 35.9(a) and (b); and see pars 8 and 16 below. UCPR 35.9(c) provides that affidavits may be filed in accordance with a Practice Note. The purpose of this Practice Note is to prescribe the procedures surrounding the use of affidavits in the Court.

### **Affidavits may not be filed without leave of the Court**

6. As stated, an affidavit generally may not be filed in proceedings except by leave of the Court. An affidavit which has not previously been filed should be filed in Court at the hearing before it is read.
7. However, where an affidavit is to be read, unless it has already been filed and served (see UCPR 10.1), the party seeking to rely upon that affidavit must serve the affidavit on the relevant parties within a reasonable time before the hearing, unless the Court otherwise orders. See UPCR 10.2.

### **Proceedings in which Affidavits must be filed**

8. Subject to any orders or directions of the Court, an affidavit must always be filed before it can be relied upon in the following types of proceedings:
  - All proceedings in the Court of Criminal Appeal.
  - All proceedings concerning the adoption of a child in the Equity Division.
  - All proceedings in the Admiralty List of the Equity Division.
  - All proceedings in the Corporations List of the Equity Division.
  - All proceedings in the Probate List of the Equity Division.
  - All proceedings in the Protective List of the Equity Division.
  - All proceedings involving an appeal to the Court under UCPR 46.

### **Tender Bundles**

9. Where a matter is for hearing, the party seeking to rely upon documents at that hearing must deliver not later than 48 hours prior to the hearing date a “tender bundle” to the chambers of the presiding judicial officer.

10. The tender bundle is to include a copy of all affidavits, whether filed or not, that the party intends to rely upon.
11. The tender bundle is also to include a copy of the exhibits to the affidavits, unless the size or nature of the exhibit precludes this.
12. The tender bundle may include other documents that will be relied upon at the hearing, such as a copy of the originating process, pleadings or notice of motion being relied upon.
13. The original affidavit and exhibit must be available for production at the hearing. Before an affidavit is read, it must be filed in Court.
14. At the conclusion of the hearing, the tender bundle will either be returned to the party, or will be destroyed by the Court.

### **Cross Examination**

15. Parties should note the provisions of UCPR 35.2 in respect of the requirements of giving notice for the attendance of a deponent for cross-examination.

### **Specific exemptions under the Rules.**

16. Notwithstanding this Practice Note, parties should note that certain provisions of the UCPR require the filing of an affidavit. These provisions include:

- UCPR 7.2 – Affidavit as to authority to commence proceedings.
- UCPR 12.2 – Affidavit where proceedings are discontinued.
- UCPR 14.23 – Verification of pleadings.
- UCPR 14.24 – Further affidavit as to verification of pleadings.
- UCPR 16.3 – Default judgment.
- UCPR 16.4 – Default judgment for possession of land.
- UCPR 16.5 – Default judgment for return of goods.
- UCPR 16.6 – default judgment on liquidated claim.
- UCPR 16.7 – Default judgment on unliquidated claim.
- UCPR 16.9 – Default judgment for costs alone.
- UCPR 26.6 – Default of receivers.
- UCPR 27.3 – Certificate on sale of land.
- UCPR 31.26 – Direction for further evidence by an expert.
- UCPR 32 - *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth).
- UCPR 36.8 – Judgment for possession of land.
- UCPR 36.10 – Filing of a certificate under the *Legal Profession Act 1987* or the *Legal Profession Act 2004*.
- UCPR 37.2 – Application for instalment order.
- UCPR 37.6 – Variation of an instalment order.
- UCPR 38.2 – Application for an Order for Examination.
- UCPR 39.3 – Application for Writ of Execution.
- UCPR 39.21 – Registration of Writ.
- UCPR 39.35 – Application for Garnishee Order.
- UCPR 39.45 – Application for a Charging Order.
- UCPR 43.2 – Stakeholder's interpleader.
- UCPR 46.14 – Affidavits in respect of appeals.

17 August 2005

**Related Information**

Practice Note SC Gen 4 was issued and commenced on 17 August 2005.

See also:

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes  
*Uniform Civil Procedure Rules 2005*