

Mr. Justice Liam Hamilton, The Chief Justice, issued a memorandum to all practising solicitors on 22nd December 1994 regarding the exercise by them of the powers of a Commissioner for Oaths conferred by section 72 of the Solicitors (Amendment) Act, 1994. The full text of this memorandum is set out below:

22nd December 1994

**URGENT AND IMPORTANT MEMORANDUM TO ALL
PRACTISING SOLICITORS**

Re: Section 72 of Solicitors (Amendment) Act 1994 (Exercise of the powers of a Commissioner for Oaths by Practising Solicitors)

On the enactment of the Solicitors (Amendment) Act 1994 on 4 November 1994, the provisions of section 72 thereof came into effect. Section 72 gives to “every solicitor who holds a practising certificate which is in force ... all the powers conferred by any enactment or statutory instrument... on a commissioner for oaths”. For convenience of reference, the full text of section 72 is set out in the Schedule to this Memorandum.

A solicitor who holds a practising certificate that is in force (hereinafter referred to as ‘a practising solicitor’) who is also a commissioner for oaths **MAY**, continue to refer to himself/herself in the jurat as a “commissioner for oaths”.

A practising solicitor who is not also a commissioner for oaths **SHALL** refer to himself/herself in the jurat as a practising solicitor.”

Therefore, the following will be the revised adaptable standard form of jurat:

“Sworn/Declared by [name of deponent] this
____ day of _____ 19__ at _____
in the City/County of _____ before me a
commissioner for oaths/practising solicitor, and
I know the deponent/declarant.

Commissioner for Oaths/Practising Solicitor”
PLEASE NOTE THE FOLLOWING:

- (1) A practising solicitor who is not also a commissioner for oaths, in exercising is/her powers pursuant to section 72, is subject to all the acts, regulations and rules of practice to which a commissioner for oaths is subject.
- (2) Section 72(2) requires that a practising solicitor “shall not exercise the powers conferred by this section in any proceedings in which he is solicitor to any of the parties

or in which he has an interest, or in contravention of any relevant condition” (i.e. in contravention of any condition to which his/her practising certificate may be subject).

- (3) Apart from the express statutory prohibition in section 72(2) in relation to exercising the powers of a commissioner for oaths in proceedings, a practising solicitor (whether or not also a commissioner for oaths) **CANNOT** exercise such powers in any conveyancing, probate, commercial or other matter in which he/she is a solicitor to any of the parties thereto or in which he/she has an interest.
- (4) The definition of “solicitor” in section 3 of the Solicitors (Amendment) Act 1994 includes “a firm of solicitors” Therefore, in exercising his/her powers pursuant to section 72, a practising solicitor (whether or not also a commissioner for oaths) **MUST** regard himself/herself as having an interest in any proceedings or in any conveyancing, probate, commercial or other matter in which his/her principal, partner, associate, consultant or assistant is engaged as a solicitor or has an interest.
- (5) **FEES:** (Please note: The section of the original memorandum in relation to fees has been superceded by the Euro Changeover and the increase in Commissioners Fees. For current fees payable to a commissioner for oaths please see Fees Payable to Commissioners for Oaths below.)
- (6) Every practising solicitor exercising his/her powers pursuant to section 72 must at all times be fully aware of the importance and solemnity of the proper exercise of such powers, and be conscious that “misconduct” (for the purposes of the Solicitors’ Acts 1954/1994) includes a contravention of (inter alia) section 72.

Signed: **Liam Hamilton**
Chief Justice

Fees Payable to Commissioners of Oaths

A practising solicitor who is not a commissioner for oaths, in exercising his/her powers pursuant to section 72, is subject to the same regulations as to fees as is a commissioner for oaths.

The current fees payable to a commissioner for oaths as provided for in Part VI of Appendix W of the Rules of the Superior Courts, 1986 (S.I. No. 15 of 1986), as inserted by the Rules of the Superior Courts (No. 4), 1990 (S.I. No. 281 of 1990) and amended by the Rules of the Superior Courts (No. 4) (Euro Changeover), 2001 (S.I. No. 585 of 2001) and by the Rules of the Superior Courts (Fees Payable to Commissioners for Oaths), 2003 (S.I. No. 616 of 2003)* are as follows:

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| (i) | on taking an affidavit, affirmation or declaration | e10 |
| (ii) | on marking exhibits therein referred to and required to be marked – for each exhibit | e2 |
| | but not exceeding for all exhibits | e30 |

*Effective from 11th December, 2003.

SCHEDULE
within referred to

Full text of section 72 of the Solicitors (Amendment) Act 1994:

72.– (1) Subject to the provisions of this section, every solicitor who holds a practising certificate which is in force shall, subject to any condition to which that practising certificate is subject under the Solicitors Acts, 1954 to 1994 (in this section referred to as a “relevant condition”), have all the powers conferred by any enactment or statutory instrument (within the meaning of the Statutory Instruments Act, 1947) on a commissioner for oaths (including section 24 of the Stamp Duties Management Act, 1891) and any reference to such a commissioner in any such enactment or statutory instrument, whether passed or made before or after the commencement of this section, shall include a reference to such a solicitor, unless the context otherwise requires.

(2) A solicitor shall not exercise the powers conferred by this section in any proceedings in which he is solicitor to any of the parties or in which he has an interest, or in contravention of any relevant condition.

(3) A solicitor before whom any oath or affidavit is taken or made shall state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

(4) A document containing the statement in the jurat or attestation mentioned in subsection (3) of this section and purporting to be sealed or signed by a solicitor pursuant to his powers as a commissioner for oaths or pursuant to this section shall be admitted in evidence without proof of the said seal or signature, and without proof that he is a solicitor or that he holds a practising certificate which is in force or that such document has not been so sealed or signed in contravention of a relevant condition.

(5) Nothing in this section shall affect the power to appoint commissioners for oaths under section 73 of the Supreme Court of Judicature Act (Ireland), 1877.”