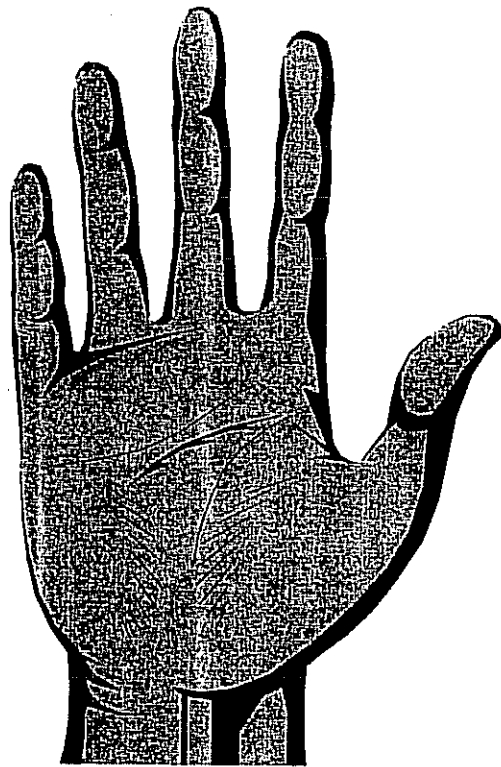


Oaths of Office



Essex County Clerk's Office

Office of the Essex County Clerk
Joseph A. Provoncha
Essex County Clerk
Clerk, Supreme and County Courts

William M. Garrison
Deputy County Clerk

Nancy A. Carr, Supv.
Dept of Motor Vehicles

Hon. Town Clerks
County of Essex

Ladies and Gentlemen:

Without a doubt one of the important parts of our positions is the filing of oaths of office. Although it is essential for someone to file an oath before he/she may officially assume responsibilities, many people do not take the filing of an oath all that seriously.

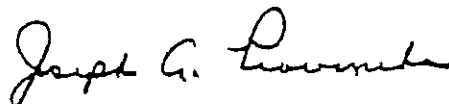
The municipal clerk, town and/or county, has the solemn responsibility of insuring that the filing of oaths is done correctly. With the new law from New York State, oaths of office are now filed in the municipality in which those officers are elected or appointed to represent.

Compiling many of your important questions in this booklet, the Essex County Clerk's Office is in hopes that the process of filing oaths is clearer.

Please feel free to ask any questions you may have.

With warmest personal regards, I remain,

Sincerely yours,



Joseph A. Provoncha
Essex County Clerk

JAP:nmc

Brief description of an oath

OATH, sworn statement, affirmation, or pledge, usually based upon religious principles and often used in legal matters. In a court of law, for example, every witness must swear or affirm that the testimony he or she gives is the truth. Another example is the oath taken by a public official such as the president or vice-president of the U.S., when that official assumes office. Aliens take an oath of allegiance when they become naturalized citizens. The taking of an oath generally implies some legal or some moral sanction for failing to carry out one's sworn pledge; a trial witness, for instance, may be charged with the crime of perjury for lying while under oath.

The oath has its origins in religious customs and some form of binding oath can be found in every culture. Oaths are administered upon entering such varied institutions as military service, secret societies, religious orders and marriage.

1. *What is an oath?*

An oath is a solemn appeal to God to witness to the truth of a statement or the sacredness of a promise (Merriam-Webster).

2. *What is the official oath of office?*

In New York State the official oath of office is.....

“I, name, do solemnly swear that I will defend the Constitution of the United States and the Constitution of the State of New York and that I will faithfully discharge the duties of position to the best of my ability.”

3. *May any word in the oath of office be changed?*

You are allowed to substitute the word “affirm” in place of the word “swear” if anyone on religious grounds objects to the word.

4. *Are you allowed to add any words?*

If the affiant does not raise his/her right hand or place his/her left hand on the “Gospels” then the words, “so help me, God” must be added. If the affiant does raise his/her hand, the words, “...so help me God” may be added upon the affiant’s request.

5. *Is a ceremony required when an oath is administered?*

A ceremony is not required when an oath is administered. The actual administration of the oath, although simple in nature, can be very meaningful.

6. *Does a book sacred to a particular religion need to be used when administering/taking an oath of office?*

Some states have a statute that mandates an oath being taken with the affiant’s hand on the “Gospels”, New York State does not have that statute but as a custom a Bible is often used. Therefore, a Bible, Torah, Koran, or a book similar in sacredness to a religion need not be used. However, to many people a sacred book does add to the solemnity of the oath taking ceremony. Many clerks will ask beforehand if the person taking the oath has a family Bible that is important to them, and if so would he/she like to bring the Bible to the oath taking ceremony.

7. *Do affiants still kiss the Bible?*

Some affiant still do kiss the Bible. The kissing of the Bible is not essential to the taking of an oath, but some affiant still like to carry on this old treasured tradition.

8. *In states that require the affiant to swear on the "gospels" may anything else be used?*

A statute requiring the affiant to take an oath to be administered on the Gospels is sufficiently complied with if the oath is administered on "The Evangelists, New Testaments, or the Bible."

9. *What would the administrant use as an optional book for the ceremony if he/she did not believe in a deity?*

Since a sacred book is not required in most cases this problem is moot. One might consider, although, using the State's Constitution.

10. *What color ink must be used?*

The law states that all legal documents must be signed in black or blue-black ink. Black ink produces a better copy.

11. *Must the person filing the oath or administering the oath be standing during the ceremony?*

If at all possible both the person filing the oath and administering the oath should be standing. This adds to the solemnity of the action. The clerk must of course take into consideration a person with disabilities.

12. *Does the person taking the oath of office have to raise his/her right hand?*

Yes, the person must raise his/her right hand when an oath of office is being administered. According to the law the person taking the oath must give an outward sign, either raising the right hand, placing the left hand on the Bible, or saying, "so help me, God", at the end of the oath. Symbolically, the raised hand means that you are attesting with all your heart you will live up to your pledge to "man" and God. Historically, it came into place so you could not draw your sword on the King administering the oath.

13. *Is it necessary for the person filing the oath to sign the oath form or the oath book?*

Yes, it is necessary to sign one's name. Without the signature the oath is invalid.

14. *Must the oath be taken in front of an American flag?*

No, nothing says that the oath must be administered in front of the American flag. However, keep in mind that the flag does represent a democratic nation based on free elections. Therefore an American flag in the same room is definitely not inappropriate.

15. *Does the town seal need to be affixed to the oath of office?*

No, the town seal does not need to be affixed to the original oath, but once again it does add to the importance of the act of filing one's oath.

The seal does need to be affixed to the certified copy.

16. *What does the County Clerk's Office use for oath forms?*

The Clerk's Office uses the standard oath form, but on "NCR" paper. This three page oath form, after the oath is taken and signed is then separated. The top, with the original signature, stays in the office; the middle page goes to the person taking the oath; and the bottom page goes to the personnel office.

The Clerk's Office then docket the oath on the computer, which is "run-out" every so often, and the original is filed. Later oaths will be microfilmed.

17. *Who may administer the oath of office?*

Any town officer may administer any necessary oath in any matter or proceeding lawfully before him, or in connection with any paper to be filed with him as such officer.

Since the oath is an affidavit, an oath of office may be administered by a notary public. A Judge may also be an administrant. The municipal clerk by virtue of the office is the usual administrant, but only of those oaths in the respective municipality. Also, by virtue of the office, the county clerk may administer an oath in any town of the respective county.

18. *May the deputy municipal clerk administer an oath of office?*

Yes, even if the deputy is not a notary he/she may administer the oath. Your deputy represents you, and since you administer the oath so can your deputy.

19. *Is there ever a conflict of interest in administering the oath of office?*

No, there is never a conflict of interest in administering an oath of office.

20. *May a notary from another state administer the oath of office?*

If the oath is taken in another state, due to an emergency, a notary from that state may administer the oath.

21. *May a municipal clerk from another state administer the oath of office?*

Unless the clerk is also a notary, the answer is no. The municipal clerk only has the authority to administer an oath in his/her respective municipality.

22. *May a municipal clerk withhold the oath from anyone?*

If all the necessary paperwork is in order the municipal clerk may not refuse to administer the oath. For whatever reason if a clerk feels uneasy about administering an oath to someone, it is the clerk's responsibility to secure someone who will administer the oath.

23. *May a clerk charge for administering an oath?*

In the performance of his/her duties of the office a clerk may not charge for the administering of an oath of office.

24. *If a person holds more than one office may the positions be combined on one oath?*

Although nothing prohibits the combining of offices on a single oath, the single position on a single oath does signify the importance of each.

25. *I have seen group oath takings. Are they legal?*

In the case of organizations, Elks, Lions, etc., often times the administrant will swear all the officers in together. The difference is these officers do not have to file an oath. The officers of a municipality must file an oath. Each officer should take his/her own oath separately.

26. *Who must take the Oath of Office?*

This question is probably the one most asked. All elected officials must file their oath of office. According to Public Officers Law any person on a municipal payroll must file the oath of office. As for appointed officers of a town board, even those not receiving any remuneration, should file the oath.

27. *What about the oaths of office for other town officers?*

The Town Clerk after filing the oaths of all its officers sends to the County Clerk a certified list of all of its officers and dates when their term expires. (A copy of this form is found in the back of this book.)

28. *Must fire commissioners take an oath of office?*

Most definitely. Fire commissioners by virtue of their position do a great deal with budgeting and spending tax dollars. Because these positions of authority and trust are elected they must file their oaths with the municipal clerk.

29. *Do local boards of elections need to file an oath?*

Yes, they too must file their oaths. Custodians of voting machines, too must file. The only exception is if the town employs a county custodian of machines. That person files his oath with the county clerk.

30. *Is a supervisor's oath placed on file in the County Clerk's Office?*

Because in Essex County a town supervisor also sits on the Board of Supervisors, his/her oath is filed on the first day of the ReOrganizational Meeting of the Board of Supervisors. The municipal clerk also files the Supervisor's oath in the respective town.

31. *Does an incumbent need to retake the oath of office?*

Yes, every time an incumbent is reelected that officer must retake the oath of office. Every time an officer is reappointed by the municipal board, that officer must retake the oath. A municipal employee need not retake the oath every time he/she changes positions only when that person goes from a civil service employee to an appointed or elected position.

32. *Do elected town political committee people take oath of office from the municipal clerk?*

No, town political committee people take their oaths at their county caucuses. The political party keeps the oaths.

33. *What does a deputy town officer receive to allow him/her to take the oath of office?*

A deputy town officer receives from the town officer doing the appointing a letter of appointment.

34. *What is a letter of appointment?*

When a person is appointed by a municipal board the municipal clerk sends a letter to that person telling of the appointment. With that letter in hand that person may file the oath of office.

35. *If a person, because of an emergency, does have to take an oath out of state, what does the notary have to affix to the oath?*

The notary must affix his/her signature, date commission expires, his/her notary number, his/her state of commission, and that the person taking the oath signed before the notary.

36. *When may someone take their oaths of office?*

As soon as the elected officer receives the letter or certificate of election from the county Board of Elections that officer may take the oath of office.

37. *What is a certificate or letter of election?*

A certificate or letter of election comes from the County Board of Elections and informs the person that he/she has received the majority of votes in a particular race and may assume his/her respective office. An oath of office may not be administered to an elected official without the administrator first seeing the letter or certificate.

38. *When does the oath become effective?*

Although an oath may be taken as soon as the officer receives the letter or certificate of election, the oath does not become effective until the date so set by law.

39. *How long does an oath remain in effect?*

For an elected officer the oath remains in effect for the entire term as long as the officer remains in office. For an appointed officer the oath remains in effect for the term of appointment as long as the officer remains in office. For a municipal employee the oath remains in effect as long as the employee remains on payroll in that position.

40. *What happens if no oath is taken?*

Legally, if no oath is taken within 30 days of a person's assumption of office, it is considered therefore that person is declining the position and no paycheck may be issued.

41. *What if someone is out of the area by the time the oath must be signed?*

Emergencies do arise. Discretion is an important part of the clerk's job. The clerk may send the oath to the person and have that person take the oath in front of a notary.

42. *When must an oath be taken?*

A person upon assuming an office or position has 30 days in which to file the oath.

43. *Who is the chief filing officer in a Town?*

The chief filing officer in a town is the town clerk.

44. *Who is the chief filing officer of the County?*

The county clerk is the chief filing officer of the County.

45. *Who is the chief filing officer of the State of New York?*

The chief filing officer in the State of New York is the Secretary of State.

46. *What is filed in the office of the municipal clerk?*

The original oath of office is filed in the office of the municipal clerk.

47. *Where must the oath be filed?*

The oath of office as it pertains to a municipality must be filed in the clerk's office of that municipality.

48. *What is filed in the office of the county clerk?*

The town clerk is required to certify to the county clerk within 20 days after their appointment, the names and addresses of all appointed officers (except inspectors of election), the date of their appointment and expiration of their term.

A duplicate original oath of office of the following officers are filed in the office of county clerk; town clerk, deputy town clerk, registrar, deputy registrar, tax collector, deputy tax collector, and town justice. The reason for these duplicates is to authenticate signatures for legal documents as required by law.

49. *How often does the municipal clerk have to submit the certified list of elected officers to the County Clerk?*

Once the complete list has been submitted the town clerk need only submit a list of the newly or reelected officers when they take their oaths.

50. *May an oath be certified?*

If an oath is filed in your office then it may be certified.

51. *May the clerk accept a fax of an oath?*

For filing purposes the clerk may only file an original oath of office.

52. *Should oaths be filed in a fire proof cabinet or in a bound book?*

Nothing in the law says that either method is inappropriate. The bound book does prevent oaths from being lost.

53. *Are oaths public records?*

Yes, oaths are public records and may be viewed by the general public.

54. *How long are oaths kept?*

Oath are permanent records therefore must be kept forever.

55. *Should town clerks notify anyone that an oath has been taken?*

It is always good to either make a copy of the oath or a note that an oath has been taken, then either one should go to the Town Supervisor who keeps the personnel file on each person and so that he/she can legally pay that person.

The town clerk is required to certify to the county clerk within 20 days after their appointment, the names and addresses of all appointed officers (except inspectors of election), the date of their appointment and expiration of their term. On or before January 10, the town clerk shall file a certificate with the Department of Audit and Control the names of all elected and appointed officers (except inspector of election).

On or before January 10 annually, the town clerk must file a certificate with the State Board of Equalization and Assessment, specifying the names of all town assessors, their post office addresses, date of appointment or election and expiration of term; and whenever a vacancy occurs in the office of town assessor, the clerk must also file a certificate with the State Board within five days after the vacancy is filled, specifying similar information.

Within 20 days of the appointment date of a member or chairman of the board of assessment review, the town clerk must notify the State Board of Equalization and Assessment and the county director of real property tax services of the name, address, date of appointment and term of the appointee.

56. *Does the County Clerk's Office still require that bonds be filed in the office?*

An insurance policy that municipalities take out on public officers is no longer placed on file in the Clerk's Office, only the tax collector's bond needs to be placed on file.

57. *How often do bonds/insurance binders on tax collectors need to be submitted to the County Clerk?*

Usually when the tax collector is reelected the bond should be submitted or when the town changes its policy.

58. *What is a bond?*

A bond, in insurance, covers the losses suffered through acts of an employee. Usually every officer and/or employee dealing with money has a bond.

59. *What is an undertaking?*

It is like a bond. The principal however usually signs a bond and not an undertaking.

60. *Do officers still have bonds for their offices?*

Most municipalities bond through insurance companies for all officers and employees under one policy instead of separate ones. Each supervisor, town clerk, collector, receiver of taxes and assessments, justice of the peace, constable, town superintendent of highways, and such other officers and employees as the town board may require, before entering upon the duties of his office, shall execute and file in the office of the clerk of the town, an official undertaking, conditioned for the faithful performance of his duties, in such form, in such sum and with such sureties as the town board shall direct and approve and such approval shall be indicated upon such undertaking. Such undertaking shall not be recorded unless the town board of the town shall adopt a resolution so requiring and shall indicate such requirement upon such undertaking. The undertaking of the supervisor shall be further conditioned that he will well and truly keep, pay over and account for all moneys and property, including any special district funds and the local school fund, if any, belonging to his town and coming into his hands as such supervisor. The undertaking of the receiver of taxes and assessments shall be further conditioned that he will and truly keep, pay over and account for all moneys and property coming into his hands as such receiver of taxes and assessments, including all school district taxes, and such undertaking shall be in lieu of any other bond or undertaking otherwise required by law in the collection of such school district taxes and the proper accounting therefor, except the undertaking required by sections twenty-five hundred six and twenty-five hundred twenty-seven of the education law and the trustees of every school district for which such receiver of taxes and assessments shall act as collector shall have and may exercise the same

powers and remedies with respect to such undertakings as is given them with respect to the official bond of the collector by the provisions of article forty-three of the education law or by the provisions of any other general or special law. The town board at any time may require any such officer or employee to file a new official undertaking for such sum and with such sureties as the board shall approve. In addition, the town board may require any town officer depositing funds or moneys of the town to file a depository bond identifying the town against any loss thereof. The town board may by resolution determine that any such undertaking or bond shall be executed by a surety company authorized to transact business in the state of New York and the expense thereof shall be a charge against the town. The filing of such oath and undertaking, when required, shall be deemed an acceptance of the office. The county clerk shall notify the town board in writing of the expiration of any undertaking or bond filed in his office pursuant to this section, at least thirty and not more than sixty days prior to the date of expiration thereof.

A neglect or an omission to take and file such oath, or a neglect to take and file within the time required by law such undertaking, when required, except in the case of justices of the peace, shall be deemed a refusal to serve and the office may be filled as in case of vacancy. The undertaking of a town officer provided by this section shall be in addition to any undertaking otherwise required by law.

61. *Should town clerks keep a copy of bonds/insurance binders?*

In most towns the town supervisor's office keeps the insurance policies, but it does not hurt to make a copy of the public officers coverage for your files.



62. *When an elected officer resigns or dies does the clerk notify anyone?*

When a vacancy occurs in a town office, the town clerk shall notify the county clerk thereof and the date of vacancy. The county clerk has the responsibility of preparing the list of officers whose terms have expired or became vacant and submitting that list to the County Board of Elections. Thereafter, within five days of filling of the vacancy, the town clerk shall certify to the county clerk and the Department of Audit and Control, the names and addresses of the persons elected or appointed to fill the vacancy and the term for which elected or appointed. If a vacancy occurs in the office of town justice, the town clerk must file a duplicate certificate of the filling of the office with the Chief Administrator of the Courts. The town clerk must immediately notify the State Board of Elections of the receipt of any resignation from an elective officer, together with the effective date thereof. (Public Officers Law, ss31(5))

63. *What happens to oaths of office if someone dies, resigns, retires, or is removed from office during a term?*

The oaths are permanent records and can never be thrown away. If someone retires or resigns that person writes his/her letter to you as clerk. You in turn send a copy to the supervisor. The letter you receive is then filed in your file. If a person is removed from office, you, as clerk, will get the court order, again that order is filed.

64. *Is January the only month that the clerk has to be concerned over oath filings?*

No, the filing of oaths is a year long process. January is generally the busiest time for filing oaths, however in September town boards appoint assessment review board members, primaries occur in September and general elections occur in November, and ad hoc committees are always being formed. No, the oath process is a continual project.



65. *What is an authentication?*

An authentication is a verification of a signature on file and a signature on a document. A certificate of authentication must state in substance that, at the time when such original certificate purports to have been made, the person whose name is subscribed on the original certificate was such officer as he is represented to be, that the authenticating officer is acquainted with the handwriting of the officer making the original certificate, or has compared the signature with the signature on file, that if the document requires a seal that the seal has been compared to the impression of the seal on file.

66. *Who is allowed to issue an authentication?*

The county clerk issues authentications.

67. *What is the charge for an authentication?*

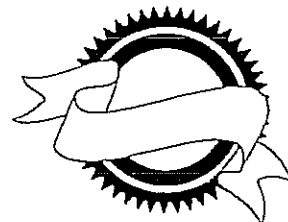
An authentication costs \$3.00 to be issued.

68. *Is an oath legal if the affiant just signs the oath without verbally reciting it?*

No, the oath is not legal. The oath, by statute must be verbally recited so that the one administering the oath can hear it.

69. *What if because of a disability a person cannot recite the oath?*

If because of a disability a person cannot give verbal consent the person administering the oath must read the oath aloud and take some sign of affirmation. It would be good to put on the oath what the symbolic consent was.



70. *What is an example of the approved oath form?*

OATH OF OFFICE

STATE OF NEW YORK

COUNTY OF _____

ss.

I, _____, do Solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of _____

_____ according to the best of my ability.

(Signed) _____

OFFICER

Subscribed and sworn to before this

_____ day of _____, 19____

(Signed) _____

_____ TITLE

Oath of Office

OF

AS

Filed

19

Appendix

71. *What is an example of the certificate of election?*



ESSEX COUNTY BOARD OF ELECTIONS

ELIZABETHTOWN, NEW YORK 12932

518-873-3474

Fax No. 518-873-3479

EDWARD P. HATCH
Democratic Commissioner
873-3475

Rita J. Phillips
Deputy
873-3477

ADOLPH N. DISKIN
Republican Commissioner
873-3478

Nancy G. Doyle
Deputy
873-3476

PURSUANT TO SECTION 9-212 OF THE ELECTION LAW, IT
IS HEREBY CERTIFIED THAT FROM THE OFFICIAL CANVASS OF
THE VOTE CAST AT THE GENERAL ELECTION ON THE _____
DAY OF NOVEMBER 19 ____, YOU WERE DULY ELECTED TO THE
OFFICE OF _____, IN THE
TOWN OF _____.

ESSEX COUNTY BOARD OF ELECTIONS

EDWARD P. HATCH, COMMISSIONER

ADOLPH N. DISKIN, COMMISSIONER

72. *What is an example of the certified list of town officers?*

List following

CERTIFIED LIST OF TOWN OFFICERS

OFFICE

OFFICE HOLDER

TERM

Town Supervisor

Address

Deputy Town Supervisor

Address

Town Board

Address

Address

Address

Address

Deputy Town Clerk

Address

Address

Address

Tax Collector

Address

Deputy Tax Collector

Address

Town Justice(s)

Address

Address

Assessor(s)

Address

Address

Address

Superintendent of
Highways

Address

Deputy Superintendent
of Highways

Address

Town Attorney

Address

Comptroller

Address

Medical Officer

Address

Zoning Officer

Address

Planning Board

Address

Address

Address

Address

Address

Board of Appeals

Address

Address

Address

Address

Address

Board of Assessment
Review

Address

Address

Address

Youth Commission

Address

Address

Address

Address

Address

Fire Commissioner

Address

Address

Address

Housing Coordinator

Address

Water Superintendent

Address

Lighting Superintendent _____

Address _____

Sewer Superintendent _____

Address _____

Public Works
Superintendent _____

Address _____

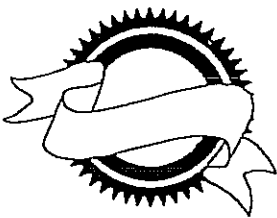
Park District Manager _____

Address _____

I, _____, Clerk of the Town of _____
certify that I have examined the oath(s) for the above listed officer(s) and do a
that the oath(s) ha(ve)(s) been placed on file in my office.

Town Clerk

Date



73. *What is an example of a resignation?*

RESIGNATION

I, _____, hereby resign from the
office of _____ of Essex County,
New York, effective _____, 19____.

State of New York)

)ss:

County of Essex)

On this ____ day of _____, 19____, before me
the subscriber came _____, to me
known and known to me to be the same person
described in and who executed the foregoing
instrument, and ____he acknowledged that ____he
executed the same.

Notary Public

74. *What is an example of an authentication?*

I, Joseph A. Provoncha, County Clerk and by the laws of the State of New York, chief filing officer of the County of Essex having by law a seal, DO HEREBY CERTIFY, that _____ whose name is subscribed to the attached document, was at that time the same officer who took an oath of office and that said oath was filed in the Office of the County Clerk.

I FURTHER HEREBY CERTIFY, that _____ took the oath of office for the office of _____ and that said signature is on file in my office on the oath of office.

I FURTHER HEREBY CERTIFY, that I am well acquainted with the handwriting of such an officer or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and believe that the signature is genuine, and that officer has a right by virtue of his office to set his hand or affix his seal to said document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____ 19____.

County Clerk of the County of Essex

75. *What is an example of a letter of appointment?*

TOWN OF ANYPLACE
PO Box 1500
Anyplace, New York 00000

Fax:

January 1, 1996

Town Clerk
Anyplace, New York 00000

Dear Town Clerk:

I, John Doe, Town Supervisor of the Town of Anyplace do hereby certify that I have appointed Jane Roe as deputy town supervisor effective January 1, 1996.

Respectfully,

John Doe,

Supervisor

LETTER OF APPOINTMENT

*Statutes
and
Court Rulings*

Holding up hand

The ceremony of holding up the hand is not essential to the validity of the oath of a witness,²⁸ the provision of the statute as to this form being directory merely.²⁹ Thus, a valid oath was held to have been properly administered to circulators of recall petitions who, despite a statutory provision requiring the uplifting of a hand as part of the oath ceremony, failed to do so.³⁰ There is, however, contrary authority where, pursuant to an express statute, the usual mode of administering an oath is by the person who swears holding up his right hand, failing which there is no formal valid oath.³¹ And in the absence of an actual recitation that a required oath was made to God, or "So help you God," it sufficed to require the affiant to uplift his hand and swear to the truthfulness of his statements.³²

32. *State v Sands*, 123 NH 570, 467 A2d 202, 37 ALR4th 904, habeas corpus proceeding (DC NH) 617 F Supp 1551 and (diverged from by *State v Carroll* (NH) 1988 NH LEXIS 103).

While an oath is usually taken upon the Gospels or by swearing with uplifted hand,⁸⁶ the required forms of oath have grown elastic and have gradually accommodated themselves to differences of creed, and varieties of belief.⁸⁷

It is now provided by statute that an oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.⁸⁶

85. CLS CPLR 2309, subd a.

86. O'Reilly v People (1881) 86 NY
154.

An oath administered in a form appealing to the conscience of the person sworn and binding him to speak the truth⁸⁹ will support a charge of perjury regardless of the exact form in which it was administered.⁹⁰ It is only required that there be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act by which the affiant consciously takes upon himself the obligation of an oath.⁹¹ Oaths of witnesses testifying orally before a court or other tribunal are valid and the affiant may be subject to prosecution for perjury irrespective of the absence of the jurat, and the fact the statute requires an application to be made "in writing under oath" does not necessarily mean that the oath itself must be in writing.⁹²

Cornelius O'Reilly, Plaintiff in Error, v. The People of the State of New York, Defendant in Error.

To constitute a valid oath, for the falsity of which perjury will lie, there must be an unequivocal and present act in some form in the presence of an officer authorized to administer oaths, by which the affiant consciously takes upon himself the obligation of an oath. The mere delivery of an affidavit, signed by the person presenting it, to the officer of his certificate, is not such an act.

Upon the trial of an indictment charging perjury in swearing to an affidavit, defendant's evidence tended to show that no words passed between the accused and the officer; that he simply handed the affidavit signed by him to the officer, who affixed his own name to the jurat. The affidavit began thus: "C. O'Reilly, being duly sworn, saith." The trial court charged in substance that these words, handed to the officer, were equivalent to a declaration by the prisoner that he swore to the truth of the statements in the affidavit, and if the prisoner delivered the affidavit to the officer to have it certified as sworn to before him, "intending thereby to declare*** that by oath he intended to verify and did verify the statement subscribed by him," and the officer regarding him as so declaring, signed the jurat for the purpose of evidencing the verification and delivered it to the prisoner who subsequently used it for the purpose intended; that then "the oath was duly and lawfully administered."

Held, error.

(Argued May 30, 1881; decided October 4, 1881.)

Error to the General Term of the Supreme Court, in the third judicial department, to review judgment entered upon an order made the first Tuesday of May, 1881, which affirmed a judgment of the Court of Oyer and Terminer of the county of Albany, entered upon a verdict convicting the plaintiff of the crime of perjury, in verifying an affidavit attached to an account presented by the prisoner, to the board of supervisors of the county of Albany. The affidavit was as follows:

"State of New York}
City and County of Albany.}
C. O'Reilly, being duly sworn, saith that the items of the within account are correct, that the material, services, etc., charged therein has been in fact furnished and that no part thereof has been paid or satisfied.
C. O'REILLY
Sworn before me this 24th }
day of Nov. 1980. }
JEREMIAH KIELEY, *Comr. of Deeds.*"

The material facts are stated in the opinion.

Rufus W. Peckham for the plaintiff in error. An oath requires some ceremony, some form of words to be used in calling God to witness as to the truth of the testimony about to be given. It cannot be taken in silence. (1 Phil. On Ev. [C. & H. and Edw. notes], 15, 17; 1 Greenl. on Ev., SS 328; Tyler on Oaths, 15; 1 F. on Ev., SS 56, 58; American notes, by H. G. Wood; 1 Starkie on Evidence, 23, 24; 3 Ins. 165; 3 Whart. Am. C. Law, SS 2205; *Tuttle v. People*, 36 N.Y. 431; *Campbell v. People*, 8 Wend. 636.) Some outward form or ceremony is necessary in administration of an oath. (2 Bish. Cr. Law, SS 1018; *Ashburn v. The State*, 15 Ga. 2. *The State v. Trask*, 42 Vt. 152; 1 Allison's Cr. Law, 474; 1 Greenl. On Ev., SS 371; 1 Starkie on Ev., SS 23; 1 P. On Ev. [C. & H. and Edwards' notes], 17, 18; *Jackson v. The State*, 1 Ind. 184; *State v. Norris*, 9 N.H. 96; 1 B. on Ev., SS 162, 163 [American Notes, by H. G. Wood]; 3 Whart. Am. Cr. Law, SS 2205; 1 Arch. Cr. Pr. and Pl. 487, note [SS 3, title "Parol Evidence"]; 2 R.S. 407, SS 82; *Maher v. The State*, 3 Minn. 444; Code of Civil Pro SS 845.) The nature of an oath, or its form or mode of administration, is not altered because the oath is made on paper called an affidavit, and is administered

Statement of case.

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Sworn before me this 24th }
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meaning of the term a regular clerk any more than of that of head of a bureau, we do not conceive that the relator can legally question the action of the board. That has power to remove, without showing cause, all subordinates save heads of bureaux, or regular clerks.

The judgment should be affirmed.

All concur.

Judgment affirmed.

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