

Law Society Rule 18 – Witnessing, Commissioning and Notarizing Documents via Audio-Visual Communication

Purpose

18.01 This Rule outlines the Law Society’s requirements for members witnessing, commissioning and notarizing documents via audio-visual communication in accordance with the *Temporary Alternate Witnessing of Documents Act*.

Definitions:

18.02 In this Part:

“audio-visual communication”, as defined in the *Temporary Alternate Witnessing of Documents Act*, means technology which allows a person signing a document and a person witnessing the signing of the document to see, hear and communicate with each other at all times;

Insurance Requirement

18.02A A member must not witness, commission or notarize a document via audio-visual communication in accordance with the *Temporary Alternate Witnessing of Documents Act* unless the member:

- i. has professional liability insurance that covers witnessing, commissioning or notarizing that document; or
- ii. will be indemnified by the member’s employer for witnessing, commissioning or notarizing that document.

Client Identification and Verification

18.03 When witnessing, commissioning or notarizing a document via audio-visual communication, members are required to identify and verify the client’s identity.

18.04 Members must comply with the identification requirements outlined in Rule 16.

18.05 To verify a client for the purpose of witnessing, commissioning or notarizing a document via audio-visual communication, members must:

- i. require that a signator(s) display government issued photo identification;
- ii. ensure that the government issued identification is valid and current;
- iii. compare the image on the government issued photo identification with the client to be reasonably satisfied that it is the same person;
- iv. obtain a screen capture (or alternatively a photo of their screen) showing the face of the signator(s) of the documents alongside their photo identification;
- v. treat the interaction as a high-risk interaction and monitor the situation accordingly; and
- vi. record the details of the date and method of verification.

18.05A Notwithstanding Rule 18.05, where:

- i. a client does not have a government issued photo identification that is valid and current but the client is known to the member; and
- ii. the matter does not involve any of the following:
 - a) the receiving, paying or transferring of funds as outlined in Rule 16.04;
 - b) the witnessing of a will; or
 - c) the witnessing, notarizing or commissioning of a document under the *Registration of Deeds Act, 2009*,

a member may verify a client for the purpose of witnessing, commissioning or notarizing a document via audio-visual communication by:

- iii. complying with Rule 16.06(6)(a)(ii) or Rule 16.06(6)(a)(iii); and
- iv. executing an affidavit outlining:
 - a) the member's belief that the client does not have government issued photo identification that is valid and current and the reasons for that belief;
 - b) the particulars of how the client is known to the member;
 - c) the reasons for the member's belief that the client is who they claim to be; and
 - d) the particulars of the matter.

Mitigating the Risks

18.06 Before witnessing, commissioning or notarizing a document via audio-visual communication, members must take the following steps to mitigate the risks associated with fraud, identify theft, undue influence, duress and potential lack of capacity:

- i. consider whether there are red flags of fraud associated with the matter;
- ii. assess whether there is a risk that the client may be subject to undue influence or duress, including observing who else is physically in the room with the client during execution of documents; and
- iii. Confirm the client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the meeting carried out via audio-visual communication.

18.07 Members must decline to act where they are unable to mitigate the risks associated with witnessing, commissioning or notarizing documents via audio-visual communication.

Recording Requirements

18.08 Members must concurrently prepare a written record in Law Society Form 18: Witnessing, Commissioning and Notarizing Documents (the "Form") via Audio-Visual Communication, detailing how the risks outlined in Rule 18.06 were mitigated. A copy of the screen capture (or photo of the screen) outlined in Rule 18.05(iv) or the affidavit outlined in Rule 18.05A must be appended to the Form.

- 18.09 Members must:
- i. maintain the Form in the client's file; and
 - ii. provide the client with a copy of the Form.

Additional Requirements for Witnessing a Will

- 18.10 In addition to the other requirements outlined in this Rule, members witnessing a will via audio-visual communication must:
- i. upon receipt of a signed but unwitnessed, or partially witnessed, non-holograph will from a testator, and before signing as a witness, complete a line by line comparison of that document against the document that the member created and sent to the client to ensure that no unauthorized alterations have been made while the document has been in transit;
 - ii. where the member did not draft the will and is acting as a witness only, and therefore has no document to compare the partially signed will against, the member shall, before signing as a witness, read the entirety of the will to the testator during the meeting via audio-visual communication to confirm the intentions of the testator;
 - iii. record the details of the second witness to the will; and
 - iv. concurrently prepare a Proof of Will in accordance with the *Rules of the Supreme Court, 1986* and amend the jurat on the Proof of Will to include the words "via electronic means in accordance with the *Temporary Alternate Witnessing of Documents Act*".

Coming into Effect

- 18.11 This Rule shall take effect on the day the *Temporary Alternate Witnessing of Documents Act* comes into force.

Expiry

- 18.12 This Rule shall cease to have effect when the *Temporary Alternate Witnessing of Documents Act* ceases to have effect.