

# ROYAL COURT OF JERSEY

RC20/05

## **Guide for the attestation of documents for Probate and the execution of wills under the Covid-19 (Signing of Instruments) (Jersey) Regulations 2020 (“the Signing Regulations”)**

1. Following the adoption of the Signing Regulations by the States Assembly on the 22<sup>nd</sup> April 2020, the manner in which some documents are capable of being executed, witnessed and sworn has been altered to facilitate compliance with the social distancing requirement issued by the States of Jersey in response to the Covid-19 pandemic. These include:
  - a) Applications for a Grant of Probate under Rule 2 of the Probate (General) Rules 1998
  - b) Application for Letters of Administration under Rule 3 of the Probate (General) Rules 1998
  - c) Documents required for the renunciation, disclaimer, certificate or other such document as may be required by the Greffier under Rule 10(1) of the Probate (General) Rules 1998
  - d) Wills of movable and immovable estate where the testator cannot execute the will in the physical presence of one or more of the witnesses.
2. In order to provide for uniformity in the manner in which parties execute the written declaration required under Rules 3(4) and Rule 4 of the Signing Regulations and Article 17B(3) or (4) of the Wills and Successions (Jersey) Law 1993, all parties are required to utilise the form of written declaration attached to this Practice Direction at Appendix A.
3. Rule 2 of the Signing Regulations details the process for swearing of an oath and probate applications via an audio-visual link when the application is made with the assistance and representation of an Advocate or Solicitor. Any Advocate or Solicitor instructed in this manner is required to appear by audio-visual link together with the applicant, and this to ensure compliance with Rule 2 of the Probate (General) (Jersey) Rules 1998, which mandates that the applicant and the lawyer shall appear together before the Greffier when making the application.
4. Rule 2(2)(a) of the Signing Regulations state that “*any documents required to be produced under Rule 2(1) or (2) or 3(1) or (2) must be delivered to the*

*Greffier for the Greffier's review not less than 3 working days before the application is made".* Where an application is being made for a Grant of Probate under Rules 2(1) and (2) the original will or authenticated copy of a will that has been proved in probate proceedings in another jurisdiction must be retained by the executor/attorney executor so that this may be signed via the audio-visual link at the same time as the oath. The process for signing the will shall follow the same process set out at Rules 2(3) and 2(4)(a).

5. It remains permissible, only where a client applicant does not have access to audio-visual equipment, for the client applicant and instructed lawyer to appear personally before the Greffier in the usual way. In those circumstances, arrangements will be made for appropriate social distancing to be maintained. Documents in support of such applications must be filed with the Greffier at least 3 working days in advance of the appointment.
6. Rule 3 of the Signing Regulations provides for the attestation of probate documents via an audio-visual link. Under the rule, the attester must provide a written declaration to the Greffier within 14 days of witnessing the document. It is not a requirement that the attester need sign the probate document. The written declaration will stand as evidence of the appropriate witnessing of the probate document in question.
7. Rule 4 of the Signing Regulations provides for the witnessing of wills via an audio-visual link. Under the rule, it is not a requirement for the witness(es) to sign the will as the intention of the Signing Regulations is to make the written declaration stand as the evidence of the correct execution and witnessing of the will.
8. Members of the profession are reminded that the Signing Regulations have been implemented to facilitate the execution of probate and testamentary documents at a time when the usual physical attendance with clients is not available. Whilst the Court believes that the provisions set out in the Signing Regulations make for robust procedure, there remains the possibility that the lack of face to face contact may lead to a heightening in concerns regarding any assessment of the capacity of the testator to execute the will or whether the contents of the instrument constitute the true intentions of the testator (i.e. that the testator has been subjected to duress or coercion by a third party). The profession is reminded to be especially conscious of ensuring that when attesting to the execution of probate and testamentary documents via audio-visual link, appropriate checks have been carried out to ensure the efficacy of the document in question.

This Practice Direction will come into force with immediate effect.

## Appendix A – Written Declaration

### Written declaration required under Regulations 3 or 4 the Covid 19 (Signing of Instruments) (Jersey) Regulations 2020

### Remote witnessing the execution of documents under Rule 10 of the Probate (General) Rules 1998 and remote witnessing Wills of Movable and Immovable estate

I [ ], [Advocate]/[Solicitor], of  
[ ] certify as follows:

1. On [time and date] I was asked by a person [known to me as/ who identified themselves to me as] [deponent's name appearing in the executed document] ("the deponent") to witness that person's [signature/mark] on a document described to me as [for example: will of movable estate].
2. Due to the mandatory isolation requirements and restrictions on movement resulting from the Covid-19 (Restricted Movement) (Jersey) Order 2020 made by the Minister for Health on 29th March 2020, I was not present with the deponent when I was asked to witness that person's [signature/mark] on their [will/document].
3. I attended to a form of attestation adopting the following procedure:  
[For example ...]
  - (a) The deponent and I met by audio-visual link at [eg 10am on Tuesday 31 March 2020]. The audio-visual link system we used was [eg Zoom/Skype];
  - (b) I asked the deponent to identify him/herself to me by name and to hold up to the camera his/her photograph and personal identification page from his/her passport. I observed the [eg passport/driver's licence] and satisfied myself that the person in the photograph was the person meeting with me by [eg Zoom/Skype];  
[Alternatively, I know the deponent because [eg they are a regular client of mine and have been for the last 10 years.]]
  - (c) I asked the deponent to expose to the camera the document intended to be [attested/witnessed] including the [description of document] itself. I observed the document to be the unsigned [will/document etc] of the [deponent].
  - (d) [(If the document is a will of immovable estate) I read the will aloud/I heard the will read aloud in its entirety to the deponent and to [full name] who was acting as a further witness.]

- (e) I then watched the deponent place the document down on a desk in view of the camera and I witnessed the deponent signing the jurat page [and initialling each preceding page]. The deponent held [each page of] the signed [or initialled] document up to the camera. I then asked the deponent to scan the document and send it to me. I received it at [time and date];
- (f) I was satisfied that this was the same document that I had seen the deponent sign, as far as it was possible for me to do so by following these procedures.

4. I am unaware of any circumstances to show either that:

- (a) The deponent was not the person identified to me; or
- (b) The signature on the document was not the deponent's signature.

Signed: ..... Advocate/ Solicitor

Dated: .....