



# In The Supreme Court of Bermuda

## PRACTICE DIRECTION ISSUED BY THE REGISTRAR

Ref. A/50

CIRCULAR NO. 11 OF 2007

TO ALL ATTORNEYS

### ESTATE MATTERS

In order to avoid unnecessary delay, costs and requests for amended documents in estate matters, please note the following:

#### 1. SLIP RULE

- (A) Attorneys will be allowed to file supplementary affidavits to correct non-controversial factual matters in estate applications for Grants of Probate or Letters of Administration. For example, where a name of the deceased or an applicant has been incorrectly spelled and there is supporting documentation such as the will, death certificate or birth certificate showing the correct spelling of the name.
- (B) Where corrections are made to the Affidavit of Value, the slip rule will not apply where the calculation of the estate stamp duty is amended. In such cases, an Amended Affidavit of Value shall be prepared and re-sworn by the deponents of the original Affidavit of Value.
- (C) Where corrections are made to the estate duty calculation in the Affidavit of Value before the Grant is issued by the Registrar and the gross value of an estate changes, then the Oath for Grant shall also be amended and re-sworn to show the change in the gross value of an estate. However, after the Grant has been issued and an Amended Affidavit of Value is filed, it will not be necessary to file an Amended Oath notwithstanding a change in the gross value of an estate.

#### 2. RULE 5(2) OF THE NON-CONTENTIOUS PROBATE RULES 1974

- (A) When an Oath or other document is submitted in draft for settling by the Registrar under Rule 5(2) of the Non-Contentious Probate Rules 1974, the matter will only be considered when all supporting documentation relevant to the Application is submitted in draft to the Registrar.
- (B) An Oath or other document should only be submitted in draft for settling by the Registrar when it involves complicated issues of law or fact or it would be difficult to re-swear supporting affidavits. For example, where foreign applicants or beneficiaries are involved, Bermuda estates involving foreign assets or when

foreign expenses are incurred where the foreign assets were not sufficient to cover the expenses and such foreign expenses were paid out of the Bermuda estate.

### 3. CHILDREN BORN OUTSIDE OF MARRIAGE

- (A) The Children Act 1998, as Amended by the 2002 Act, states in section 18(d) that the purpose of the legislation is "... to ensure that the rights of a child are not affected by the fact that his parents were not married". Accordingly, all estate applications will now require the Registrar to be satisfied that the Executors/Administrators have made sufficient effort to ensure that they have accounted for all of the children of the male deceased for whose estate the application is being made, whether or not the deceased died testate or intestate.
- (B) An advertisement published once in the Official Gazette in the form annexed will be accepted as proof of such and, if such advertisement is not published, then the Oath should include a statement by the Applicant Executors/Administrators as to what efforts they have made to ascertain the identity of the children of the deceased.

### 4. CERTIFICATES IN LIEU OF GRANT

- (A) The Registrar will, in future, list on Certificates in Lieu of Grant all of the assets of an estate as set out in the Affidavit of Value to ensure that such Certificates are not being misused.

### 5. DEATH CERTIFICATES

- (A) In cases of accidental deaths, deaths by misadventure or deaths caused by criminal acts, death certificates are not issued until after the Inquest and, therefore, causes undue delay in settling estates of such deceased persons. In such cases, in lieu of a death certificate the Registry has and will continue to accept a certificate from the attending physician certifying death where an undertaking is given by the Applicant in the Oath that upon issue of the death certificate, an original certificate will be supplied to the Registry.
- (B) In cases where no body is found, for example when the deceased has been lost at sea, Applications for a Grant for such deceased persons will have to await the Coroner's verdict and the issue of the death certificate.

### 6. MARRIAGE CERTIFICATES

- (A) In Applications for a Grant of Letters of Administration where an applicant purports to be the spouse of the deceased, a marriage certificate will be required to ensure that the Applicant is indeed the lawful spouse of the deceased together with a statement in the Oath that the applicant spouse was lawfully married to the deceased at the time of the deceased's death
- (B) In Applications for a Grant of Probate, whether or not the spouse is named in the Will of the deceased as an executor or a beneficiary, a marriage certificate will be required as well as a statement in the Oath that the spouse was lawfully married to the deceased at the time of the deceased's death.

### 7. BIRTH CERTIFICATES

- (A) Where children of a deceased are applying for a Grant and are either not named in the Will of the deceased or there is an intestacy, birth certificates of the children applying for the Grant will be required to prove their relationship to the deceased.

8. SIZE OF PAPER FOR APPLICATIONS

- (A) In the future, Applications for Grants of Probates and/or Letters of Administration may be made on paper sizes 8 x 14, 8 ½ x 11 or A4.

Dated this 23 day of April 2007

A handwritten signature in black ink, appearing to read "Scott", written over a horizontal line.

The Registrar