

## Attendance Notes for Wills Preparation and Execution<sup>1</sup>

### Re Will of ABC

#### Why record attendance notes:

*Low Ah Cheow and others v Ng Hock Guan [2009] SGCA 25*

"38 In cases where the construction of the terms of a will is contested, it may be necessary to compare the testimony of the solicitor who drafted the will ("the drafting solicitor") with his attendance notes since those notes are (or at least should be) a contemporaneous record of the testator's instructions. A failure on the drafting solicitor's part to keep proper attendance notes and/or records may have adverse consequences. This omission could persuade the court to doubt the veracity of the drafting solicitor's testimony if a dispute arises as to the purport of the terms of the will; the court may even draw adverse inferences against the drafting solicitor..."(emphasis added)

(See also *ULV v ULW [2019] 3 SLR 1270 at [49]*)

*Chee Mu Lin Muriel v Chee Ka Lin Caroline [2010] 4 SLR 373:*

"60 In our view, this case demonstrates that solicitors who undertake the task of preparing wills and/or witnessing the execution of wills must take the necessary precautions or steps in order to fulfil their duties to their clients. The precautions are not complicated nor are they time consuming. In any case, as solicitors, they must do what is required, however complicated or difficult the task may be. The central task is to ensure that the terms of the will reflect the wishes of the testator. How this is done depends on the circumstances of each case. In every case, the solicitor should be cautious about taking instructions from any person who is to be named as a beneficiary in the will. If a testator is known to be suffering from any mental infirmity, a doctor should be called to certify her mental capacity before she is allowed to sign the will to ensure that such a testator fully understands the will. In the case of a person with mental infirmities like Mdm Goh, it should have included attending on Mdm Goh personally to take instructions from her, providing her with and explaining a draft of the will to her, and if there is any doubt as to her mental capacity, to advise that a psychiatrist (or some other qualified medical practitioner) attend on her to assess her mental capacity. Furthermore, the solicitor should ask the appropriate questions to ascertain the testator's capacity to understand the contents of the will. The testator should be asked as simple a question as whether he or she is making a will for the first time or whether he or she had made a will previously. In the latter case, the solicitor should ask whether the testator knows that he or she is revoking the existing will. These questions may be formulaic, but they are necessary to avoid cases such as this. Finally, as a matter of good professional practice, if not professional prudence, the solicitor should make a contemporary written record of

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<sup>1</sup> Updated in July 2024 by Vincent Ho, Partner at WongPartnership LLP

*his or her attendances on the testator so that he or she would be able to recall exactly what had transpired during the meeting or meetings".* (emphasis added)

*Mahidon Nichair bte Mohd Ali v Dawood Sultan Kamaldin [2015] SGCA 36*

"105 Turning to the crucial meeting on 27 February 2004, we first note the troubling absence, once again, of any attendance notes.... The explanation which [the solicitor] gave for this was that the solicitors ran "a very small practice" and so, it was unnecessary to minute everything, unlike in a big firm. We find this manifest disregard for proper standards appalling. As Professor Tan Yock Lin has observed in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths, 2nd Ed, 1998) ("Tan Yock Lin") at p 951, the main purpose of a solicitor keeping proper records is to advance the client's interests as such a practice may protect against a different or faulty recollection of a particular transaction and help to avoid unnecessary disputes over the retainer. This sound rationale must apply equally across all firms, whether big or small. All firms, regardless of their size and stature, place themselves at the service of their clients and charge a fee for doing so."

(emphasis added)

#### **What should go into a will-preparation / execution attendance note ?**

Some suggested data to be noted are as follows:-

- How long had you known the testator/testatrix?
- Who introduced you to the testator/testatrix?
- On what date did you receive instructions from the testator/testatrix?
- How were the instructions expressed?
- What indication did the testator/testatrix give to you that he/she knew he/she was making a will?
- Were you informed or otherwise aware of any medical history of the testator/testatrix that might bear upon the issue of his / her capacity?
- Did the testator/testatrix exhibit any signs of confusion or loss of memory? If there are concerns as to capacity, a doctor should be called to certify mental capacity before testator is allowed to sign the will to ensure that such a testator fully understands the will.
- To what extent were earlier wills discussed with the testator/testatrix and what attempts were made to discuss departures from his earlier will-making pattern? What reasons, if any, did the testator give for making any such departures?

- When the will had been drafted, how were the provisions of the will explained to the testator/testatrix?
- Can the testator read / speak English? Is the testator handicapped such that he cannot read (eg, he is blind or visually-handicapped?) If not, in what language / dialect was the will interpreted and read out to the testator? Who carried out the interpretation?
- What is the basis of the interpreter's competence to translate into that language? Is the interpreter one of the witnesses?
- Is there a properly-drawn up attestation clause confirming the testator's language competence and how the will was interpreted?
- Can the other witness understand the language / dialect which the will was interpreted in?
- Who, apart from the attesting witnesses, was present at the execution of the will? Where, when and how did this take place?
- Please provide copies of any other documents relating to your instructions for the preparation and execution of the will and surrounding circumstances.

*[ Note: these documents may have to be made available for inspection if the will is challenged].*

#### Sample attendance notes taken at a client meeting with Mr ABC

- This is based on a hypothetical scenario where Mr ABC is doing a new will with the lawyer, having done a previous will in 2017.
- There have already been email exchanges and calls with Mr ABC to discuss the drafting of the will, and Mr ABC is attending at the lawyer's to execute the will.
- To aid your understanding, we have included learning points in the sample attendance notes in red text.
- Please note that every case is different and there is no "model" attendance notes. You will need to take guidance from the cases above as to what should be required for attendance notes.

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### **Attendance Notes for the Will Execution of Mr ABC**

Date & Time: 2 January 2024, 4pm – 4.45pm

Venue: XYZ Law LLC, Meeting Room 1

Persons present: Mr ABC (the Testator), Ms Bella (the Testator's daughter), Mr Caleb Tan (Solicitor 1), and Ms Dalia Ong (Solicitor 2).

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Solicitor 1: Hi, Mr ABC. This is my colleague, Ms Dalia Ong. We will be bringing you through the contents of the draft Will today. Please us know if anything needs to be amended, and if everything is in order, we will witness your signing of the Will.

Mr ABC: Hi Mr Tan and Ms Ong. This is my daughter, Ms Bella, who has accompanied me today for the execution of my Will.

Solicitor 1: Mr ABC, can I first take a look at your NRIC to confirm some details.

\*checks NRIC\*

Solicitor 1: thank you. As we will be discussing your will, would you prefer Ms Bella to stay in the room or wait in the next room?

Mr ABC: don't worry, I am comfortable with Bella staying here. She is my daughter and I trust her. Maybe if we get to some parts where we need to have a private discussion, we can ask her to step out.

Solicitor 1: Did Bella help you with the arrangements for the draft Will?

Mr ABC: no, I was the one liaising with your firm over emails. She is not involved. [Learning Point: If the testator is accompanied at the will execution, you will need to check and continue to monitor if there is any concern of any pressure, duress, or undue influence]

Solicitor 1: Ok. I printed the draft Will which we discussed over email. Would you want to read through first or we can take you through the clauses?

Mr ABC: Let me look through first and I ask you if I have questions.

\*Mr ABC flips through draft\*

Mr ABC: Ok looks fine but please go through with me?

Solicitor 1: Alright. Before we start, we would like to emphasize the significance of a Will. Your Will documents your wishes regarding the distribution of your assets and affairs after

your death. It is important that your wishes are accurately reflected in this Will. [Learning Point: You need to ensure that the testator understands the significance of making a Will]

Mr ABC: yes I know, you have explained to me on the phone before

Solicitor 1: have you have made any previous Wills before?

Mr ABC: yes, I made a will previously in 2017 which gives my son some of my assets.

Solicitor 1: could you share with me why are you changing your will?

Mr ABC: My son is now doing very well in life and very rich, and I have also already helped him to buy a house. I do not need to leave anything for my son, and want to give more in my will to my daughter.

Solicitor 1: can you share with me what are the properties you own?

Mr ABC: my significant properties are really just my house at 1 King's Road Singapore 123456 which is in my sole name, and my savings in my Singapore Bank Account. I want to make sure these are specified in my will. For the remainder of my assets such as my personal items, I am happy to just split it between my wife and daughter.

[Learning Point: The testator needs to know the extent of the property he is disposing under the will]

Solicitor 1: Understood. How old are you now and how is your health condition? [Learning Point: You need to ask the appropriate questions to ascertain the testator's capacity. If you have any doubt as to the testator's mental capacity, you should advise that a psychiatrist (or other qualified medical practitioner) attend to the testator to assess his/her mental capacity]

Mr ABC: I am turning 65 years old. I am in very good health and go for yearly check-ups with my wife. My wife is not here today because she is meeting her friends for a walk.

Solicitor 1: when is your date of birth?

Mr ABC: 16 July 1959

\*solicitor's observation – Mr ABC responded without pausing, spoke a strong voice, looked sharp. Remembers things clearly when making small talk with him\* [Learning Point: You can jot down your own observations of how the testator behaved.]

Solicitor 1: Thank you. You mentioned earlier that you have a son. Can you let me know how many children you have?

Mr ABC: I only have 1 son called Jason and 1 daughter Bella. They are both adults and working now, my son is now 30 years old, and my daughter is 25 years old. As I said earlier, my son is doing well now so I don't need to provide for him under my will. I just want to give to my wife and daughter in my Will.

[Learning Point: To ascertain if there are potentially “dependants” who may make a claim under the Inheritance (Family Provision) Act 1966, and advise the client accordingly. You should ensure that the testator knows who his beneficiaries are and can appreciate their claims to his property.]

Solicitor 1: we will proceed to explain the provisions of the Will. You prefer using English or Mandarin? If Mandarin, I can get my colleague to help translate [Learning Point: To ensure that the testator can read and understand English, and to ascertain whether an interpretation of the Will is required]

Mr ABC: English please

Solicitor 1: Mr ABC, please review the cover page and the top section of the first page of your Will, and confirm that your name, identification number, address, and any other details are accurate.

Mr ABC: Yes, all correct.

Solicitor 1: Paragraph 1 of your Will states that by signing this Will, you revoke all previous wills and testamentary dispositions made by you regarding your assets, including the Will you made in 2017. This means that once you execute this Will, your 2017 Will is no longer valid and this Will is the valid Will.

Mr ABC: Yes, understood.

Solicitor 1: Paragraph 2 states that you appoint your wife, Mrs ABC, as the executrix and trustee of this Will. She will administer your estate and distribute your assets according to your wishes in this Will upon your death. If your wife is for any reason unable or unwilling to act as your executor and trustee, you appoint your daughter, Ms Bella, as your executrix and trustee.

Mr ABC: Yes.

Solicitor 1: Paragraph 3 states that you give all your right, title, and interest in your property at 1 King's Road Singapore 123456, to your wife absolutely. Can you confirm that upon your death, you wish for your interest in this property to pass to your wife?

Mr ABC: yes

Solicitor 1: paragraph 4 states that you give all your cash in your Singapore Bank Account to your daughter, Ms Bella, absolutely. Is this your wish?

Mr ABC: Yes, correct.

Solicitor 1: Paragraph 5 states that your trustee would have the authority to sell, call in, collect, and convert your assets into money for the administration of your estate after your death. They would also have to use these funds to pay your debts, funeral expenses, and testamentary expenses before making any distributions.

Mr ABC: Yes

Solicitor 1: Paragraph 6 is what we call the residuary clause - that you give the rest of your assets, not specifically disposed of in this Will, whether movable or immovable whatsoever and wherever situated, to your wife and daughter Bella, in equal shares absolutely. This includes all your assets not specifically mentioned in this Will. Can you confirm that this is your intention?

Mr ABC: Yes. They are the only 2 beneficiaries.

Solicitor 1: Mr ABC, I note that you have two children, but this will only provide for Bella and not your son. Can you confirm again why you are not providing for your son? [Learning Point: To ensure that the testator's intentions are clearly reflected in the Will and to reduce the risk of the Will being challenged]

Ms Bella: This is my father's intention. My brother already got some money for his house from my father.

Solicitor 1: Thank you Bella. I need to speak to your father directly on this matter, I hope you understand. Could I trouble you to wait in the next room? [Learning Point: Be cautious if a beneficiary is accompanying the testator to make a will. You have to ensure that the wishes expressed in the Will truly belong to the testator and that it is not made under any pressure, duress, or undue influence]

\*Ms Bella moves to the next meeting room\*

Solicitor 1: Mr ABC, can you tell us again the reasons why you are not providing for your son in this will?

Mr ABC: my son is very smart, earning big money at an international firm. I also helped him with his purchase of a house when he got married recently. I want to ensure fairness between my two children.

[Learning Point: you may repeat questions occasionally to check if testator is consistent]

Solicitor 1: would your son be unhappy if he finds out that your Will does not provide for him?

Mr ABC: no, he is aware that I am doing this. When I helped him with the purchase of his house, I told him that to be fair to his sister I will benefit her under my will. He understands that.

Solicitor 1: Mr ABC, was your daughter involved in the making of this Will?

Mr ABC: my daughter wasn't involved at all. My daughter accompanied me today because we happened to meet for lunch earlier. But like I said I've talked to both my children and they know my intention is to benefit my daughter under the will as I have already provided for my son significantly by helping him with his house.

Solicitor 1: Understood. We have explained the provisions of the Will to you, do have any further questions before we sign? [Learning Point: Explaining each provision in the Will ensures the testator fully understands and confirms his wishes in the Will]

Mr ABC: I understand the Will. What should I do with my 2017 Will?

Solicitor 1: You should destroy it by tearing it up, so that there is no confusion as to which is your last will. It is important to keep the original copy of this Will which you are about to sign in a safe place, and that your executors know whether to locate the will. [Learning Point: To ensure that the latest version of the Will is available and produced when an application for grant of probate is made]

Mr ABC: noted

Solicitor 1: Sign here at the end of the last page near the attestation clause and initial at the bottom of each page. Then my colleague and I will sign as your witnesses on the last page. [Learning Point: To ensure that the Will is fully executed by the testator and two witnesses in accordance with the requirements in the Wills Act]

\*Mr ABC proceed to sign the Will, 2 witnesses sign\*

Solicitor 1: Alright, and where do you plan to keep the original Will? We can help you to register this information with the Will registry on your behalf. [Learning Point: To ensure that the Will registry accurately reflects the most current information about the Will]

Mr ABC: I will keep it in my safe at home, and tell my executors. Help me register on the Will Registry.

\*Original and certified true copies of the Will handed over to the Testator.

**Meeting ended at 4.45pm**

**Notes taken by:** Dalia Ong

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