

# SDS Clerk review process – Updated April 15, 2024

## Stage 1

The review items listed in Stage 1 below are the only reasons for returning an application to counsel.

Section	Review task	Decision / action	Grant type
Judicial Centre	Check if the correct J.C. is selected based on 'nearest by road'.	<ol style="list-style-type: none"><li>1. If the selected J.C. is incorrect, <b>update it and complete the review</b>, even if the application is not for your J.C.</li><li>2. <b>DO NOT</b> return the application to the dashboard.</li></ol>	All
Clearance search	Check for caveats or conflicting applications.	<ol style="list-style-type: none"><li>1. If a CASES match is found but it is <b>NOT</b> for a caveat or competing application (ie: for an order validating a will) the application can proceed. Select "<b>Non-conflicting match found</b>". Enter the action number from CASES and the reason it can proceed. When you complete your review, SDS will prompt you to add the DES file number to CASES.</li><li>2. If a <b>caveat</b> is found, select "Caveat found" and enter the caveat expiry date and duration in order to <b>HALT</b> the application.</li><li>3. If a competing application is found, select "<b>Conflicting application found</b>" and <b>HALT</b> both applications.</li></ol>	All
Proof of death	Check that the attached file is a death certificate or funeral director's statement and that the name and date of death match the application.	<b>RETURN TO COUNSEL IF:</b> <ol style="list-style-type: none"><li>1. The attached file is <b>NOT</b> a proof of death</li><li>2. The deceased name on the proof of death does not match the name on the application or one of the AKAs</li><li>3. The date of death on the proof of death does not match the date of death in the application</li></ol>	All
Will and deceased's name	Check the uploaded will; compare the deceased's name on application.	<b>RETURN TO COUNSEL IF:</b> <ol style="list-style-type: none"><li>1. The attached file is not the will for the estate in the application.</li><li>2. The name of the deceased on the will does not match the name on the application or one of the AKAs.</li></ol>	Probate Admin w/Will Annexed
Memo or list	Check lawyer's memo statement. Compare testamentary documents mentioned in the will to those listed in the application.	<b>RETURN TO COUNSEL IF:</b> <ol style="list-style-type: none"><li>1. The lawyer's memo statement indicates that a memo, list or other testamentary document is attached, and they are <b>NOT</b> attached.</li></ol>	Probate Admin w/Will Annexed

<b>Will and codicil(s) endorsements</b>	Check for Rule 16 endorsement on the will and codicil(s), if any.	<b>RETURN TO COUNSEL IF:</b> 1. An endorsement or signature is missing <b>AND</b> Counsel has not included an explanation in the irregularities section	Probate Admin w/Will Annexed
<b>Will and survivorship period</b>	If the will includes a survivorship period, check if it has been included on the application.	<b>RETURN TO COUNSEL IF:</b> 1. A survivorship period specified in the will is NOT listed in the application AND no explanation has been provided.	Probate Admin w/Will Annexed
<b>Affidavit of execution</b>	Check if the will (and codicil if there is one) includes either an Affidavit of witness to a will or Affidavit of handwriting.	<b>RETURN TO COUNSEL IF:</b> 1. There is no affidavit of witness or affidavit of handwriting AND no explanation is provided for the absence of these. 2. The Affidavit is on an NC form, was sworn after June 14, 2022, AND counsel has not provided an explanation.  <b>DO NOT REJECT OR MAKE NOTES IF:</b> <ul style="list-style-type: none"> <li>An Affidavit of execution was sworn before June 15, 2022 on an NC form</li> <li><i>NOTE: It doesn't matter if the affidavit appears before the will OR the will appears before the affidavit in the uploaded file.</i></li> </ul>	Probate Admin w/Will Annexed
<b>Nominations and/or Renunciations</b>	Check uploaded nominations or renunciations.	<b>RETURN TO COUNSEL IF:</b> 1. An uploaded renunciation or nomination file is not a GA 11 or GA 13 <i>NOTE: Digital nominations and renunciations DO NOT require a document upload</i>	All
<b>Supporting documents</b>	Check that each uploaded document is acceptable and matches the indicated document type.	<b>RETURN TO COUNSEL IF:</b> 1. An uploaded document doesn't match the indicated type (ie: the document is described as an Affidavit, but it is not an Affidavit). 2. C Forms, proposed orders, or Chambers applications are uploaded. SDS does not accept these documents. Instruct counsel to proceed on GA forms.	All

**END STAGE 1.** At this point, all reasons for return to counsel are complete. Any irregularities found in Stage 2 will only be noted for the Justice.

## Stage 2

There are no reasons for return to counsel in Stage 2.

Section	Review task	Decision / action	Grant type
<b>Will, memos, lists and other testamentary documents</b>	Check the lawyer's memo statement.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>The will has a memo clause and counsel's memo statement says there isn't a memo clause.</li> <li>The will fails to address residue or does not address the entirety of the residue <b>AND</b> the application is not for "partial intestacy"</li> </ol> <b>ACCEPT WITHOUT NOTES IF:</b> <ul style="list-style-type: none"> <li><i>Counsel has correctly indicated that a memo clause does / does not exist</i></li> <li><i>Counsel indicates a copy of a will or other testamentary document is being used. SDS will communicate that to the Justice.</i></li> </ul>	Probate Admin w/Will Annexed
<b>Will and codicil(s) endorsements</b>	Check for Rule 16 endorsement on the will and codicil(s).	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>An endorsement is worded differently than those in Rule 16(8)</li> <li>A Surrogate Rule 16 endorsement interferes with the integrity of the text</li> <li>An endorsement or signature is missing, and Counsel has included an explanation in the irregularities section. Simply highlight the explanation for the Justice.</li> </ol> <b>ACCEPT WITHOUT NOTES IF:</b> <ul style="list-style-type: none"> <li><i>Rule 16 endorsements appear on the front of the last page under the signatures, on the back of the last page, or a combination of the two</i></li> </ul>	Probate Admin w/Will Annexed
<b>Supporting documents</b>	Check that needed documents are included and that each uploaded document is correctly commissioned.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>A document includes a commission that is not correctly completed</li> <li>The irregularities mention an Order validating the will, but no such Order is uploaded as a supporting document.</li> </ol>	All
<b>Survivorship period</b>	Check if the will specifies a survivorship period.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>The will includes a survivorship period that has <b>NOT</b> been entered in the application, but Counsel has provided an explanation in the irregularities. Simply highlight the explanation for the Justice.</li> </ol>	Probate Admin w/Will Annexed
<b>Applicants, renunciants &amp; nominators</b>	Compare names in the will and other documents to those in the application.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>There are differences between the applicant(s), renunciant(s), or nominator(s) names on the will or codicil and the corresponding names or AKAs on the application.</li> </ol>	

<b>Priority to apply</b>	Check that information on the Priority Card is displayed and irregularities are explained.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>Someone is listed in the "People with greater priority to apply" or "People with equal priority to apply" sections <b>AND</b> they are not renouncing or nominating <b>AND</b> Counsel has not provided an explanation.</li> <li>An applicant, nominator or renunciant does not have priority to act in that capacity or renounce based on their beneficiary type in the will.</li> </ol> <b>DO NOT:</b> <ul style="list-style-type: none"> <li><i>Evaluate or comment on Counsel's explanation.</i></li> <li><i>Question or comment on whether unlisted people may exist.</i></li> </ul>	Admin Admin w/Will Annexed
<b>Beneficiaries of specific gifts or residue</b>	Compare will and other relevant documents to application. Determine if notice will be given to all beneficiaries.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>A beneficiary mentioned in the will is not accounted for in the application</li> <li>A beneficiary's name on the will or codicil doesn't match the name or AKAs on the application.</li> <li>Gifts listed in the will are not included in the application.</li> <li>Disposition of the residue in the application is not the same as in the will</li> <li>Residue is gifted in a document other than the will (ie: in a memo)</li> </ol>	Probate Admin w/Will Annexed
<b>Beneficiaries on intestacy</b>	Check that beneficiaries are eligible based on relationship to the deceased and that description of any gift is accurate.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>An ineligible beneficiary is listed, based on the person's relationship to the deceased (See sections 60-69 of the Wills and Succession Act:)</li> <li>The description of any gift is inaccurate</li> </ol>	Admin Admin w/Will Annexed and Partial Intestacy Probate with Partial Intestacy
<b>Potential Claimants</b>	Check that all identified potential claimants are entered.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>A potential claimant is missing (ie: a minor listed as a beneficiary on intestacy isn't identified as a potential claimant)</li> </ol>	All
<b>Irregularities</b>	Review irregularities.	<b>MAKE A NOTE TO JUSTICE IF:</b> <ol style="list-style-type: none"> <li>Counsel has explained known deficiencies in the application. Simply highlight the explanation for the Justice. (ie: "The named PR is not the applicant. Counsel has provided an explanation in irregularities.")</li> </ol> <b>DO NOT:</b> <ul style="list-style-type: none"> <li><i>Evaluate the validity of explanations provided by counsel.</i></li> </ul>	All

## END STAGE 2.

## Do not check

Item	Notes
<b>Family tree</b>	Clerks will not receive, should not request and should not attempt to create a family tree.
<b>Applicant affidavit (SDS)</b>	In SDS, the applicant will certify the digital application. There is no separate affidavit.
<b>Affidavit of Service (SDS)</b>	In SDS, service happens after the clerk's review. As a result, there are no Affidavits of Service for the clerk to review. SDS tracks whether or not service happens. The Justice will not see an application until service is complete. Clerks don't need to track or assess service.
<b>Mailing address / contact info for beneficiaries and other interested parties</b>	SDS will not accept a submission if beneficiary contact information is omitted. Clerks can be assured that the information has been captured if they are seeing an application. Clerks do not need to review this information.
<b>Validity of will or other documents</b>	<p>Clerks should not spend any time assessing the validity of the will or other attached documents.</p> <ul style="list-style-type: none"> <li>• Do not look for misnumbered pages or paragraphs.</li> <li>• Do not evaluate signatures</li> <li>• Do not evaluate whether will or codicil pages have been correctly initialed by testator and/or witnesses.</li> <li>• Do not evaluate or make note of inconsistencies in colour of ink used in signatures, initials, or other markings.</li> <li>• Do not send back to counsel if the Surrogate Rule 16 endorsement is not included in the digital will.</li> <li>• Do not send back to counsel if the will is not signed or witnessed.</li> <li>• Do not comment on memo clauses in the will.</li> </ul>
<b>Inventory</b>	Clerks do not see a separate inventory document. Clerks compare gifts in the will with gifts in the application for the purpose of ensuring all entitled persons are served notice.
<b>Express Authorizations</b>	Counsel can request an Express Authorization be added to a grant. Clerks do not need to comment on these requests, as they will be clearly identified for Justices.