

SUPREME COURT OF SOUTH AUSTRALIA

PROBATE RULES 2015

The Probate Rules 2015, dated 30th April 2015, came into operation on 1st July 2015 (*Government Gazette* 25 June 2015, p. 3120).

		<i>Gazette</i>	<i>Date of operation</i>
# 1	27 August 2018	11 October 2018, p. 3802	11 October 2018
#2	17 September 2020	24 September 2020, p. 4715	1 October 2020

By virtue and in pursuance of section 122 of the *Administration and Probate Act 1919*, section 72 of the *Supreme Court Act 1935* and all other enabling powers, we, Judges of the Supreme Court of South Australia, make the following Probate Rules 2015.

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History of Amendment

Chapter 1—Preliminary

1 Citation

These Rules may be cited as the “*Probate Rules 2015*”.

2 Commencement

These Rules commence on 1 July 2015.

3 Interpretation

(1) In these Rules, unless a contrary intention appears or the context otherwise requires—

- (a) words and expressions defined in the *Administration and Probate Act 1919* and the *Wills Act 1936* shall have the same meanings as are assigned to them in those Acts;
- (b) **the Act** means the *Administration and Probate Act 1919*, and any Act amending the same or substituted therefor and where a section is mentioned the reference is to that section of the *Administration and Probate Act 1919*, or the corresponding provision of any amending or substituted Act;

affidavit means an affidavit whether sworn or affirmed;

the caveator— see rule 52(2);

the citor— see rule 53(2);

the Court means the Supreme Court of South Australia;

cousin in relation to a person means the child of that person’s uncle or aunt;

the Crown means the Crown in right of this State;

domestic partner means a domestic partner within the meaning of section 11A of the *Family Relationships Act 1975*;

General Civil Rules (or a reference to a Supreme Court Rule) means the *Uniform Civil Rules 2020*;

grant means a grant of probate or administration, an order under section 9 of the *Public Trustee Act 1995* authorising Public Trustee to administer the estate of a deceased person or a re-seal of a foreign grant;

gross value in relation to any estate means the value of the estate without deduction for debts, encumbrances or funeral expenses;

Judge means a Judge of the Court;

market value in relation to an estate asset means its gross value in the market under the state of things existing at the relevant time;

oath means the oath required by rule 11 to be sworn by every applicant for a grant;

parent includes a co-parent;

personal applicant means a person including a trust corporation who seeks to obtain a grant, order, certificate or other document from the Court other than through a practitioner;

personal application means an application by a personal applicant;

practitioner means a person duly admitted and enrolled as a practitioner of the Court who holds a current practising certificate;

proposed testator— see rule 92(1);

Registrar means the Registrar of Probates, any acting Registrar, any deputy Registrar of Probates and any acting deputy Registrar;

Registry means the Probate Registry of the Court;

single person means a person who has never married;

statutory guardian means a person who is a guardian of the infant by virtue of any enactment or order of any court of competent jurisdiction;

Supreme Court Registry means the Civil Registry of the Court;

testamentary guardian means a person appointed by deed or will to be guardian of an infant under the power conferred by section 13 of the *Guardianship of Infants Act 1940*;

trust corporation means a body corporate authorised by the *Trustee Companies Act 1988* or other special Act to administer the estates of deceased persons.

- (2) In an application brought under these Rules, the description “testator”, “executor” or “administrator” should be used whatever the person’s sex.
- (3) A Form referred to by number means the form so numbered in the Schedule to the Probate Supplementary Rules 2015.
- (4) For the purposes of these Rules, it is immaterial whether a relationship is of the whole blood or the half blood.

4 Repeal and transitional provision

- (1) The *Probate Rules 2004* are repealed.
- (2) Unless the Court otherwise directs, these Rules apply to—
 - (a) proceedings commenced on or after the commencement date; and
 - (b) steps taken or required to be taken or matters occurring on or after the commencement date in proceedings commenced before the commencement date.
- (3) The Court may direct that these Rules, or the Rules in force before these Rules were made, apply to a transitional proceeding or a particular step or matter in a transitional proceeding.

4A E-filing

- (1) The Registrar of the Supreme Court may establish, maintain and amend from time to time an electronic filing system for the creation, filing, execution,

authentication, issue, service and/or management of court documents in probate matters (*probate documents*) governed by these Rules (*the PEFS*).

- (2) The Registrar may by notice published on the Supreme Court website determine the date on which the PEFS is to commence and may from time to time vary that date (*the operative date*).
- (3) The Registrar may determine that in preparation for the commencement of the PEFS, unless the Court or the Registrar otherwise orders:
 - (a) no probate document instituting a new proceedings is to be accepted for filing by the Registry under the pre-electronic filing system (*the manual filing system*) after a date determined by the Registrar which date may be varied by the Registrar from time to time (*the new proceedings cut off date*) and/or
 - (b) no document in an existing proceeding is to be accepted for filing by the Registry under the manual filing system after a date determined by the Registrar which date may be varied by the Registrar from time to time (*the existing proceedings cut off date*).
- (4) On and after the operative date, unless the Court or the Registrar otherwise orders, no probate document is to be accepted for filing by the Registry other than via the PEFS.
- (5) On and after the operative date, the Registrar or the PEFS may require, as a condition of acceptance for filing of a document in a proceeding instituted before the operative date, unless the Court or the Registrar otherwise orders, all documents previously filed in the proceeding under the manual filing system be re-filed in the PEFS.
- (6) Compliance with the PEFS as determined by the Registrar shall unless the Court or the Registrar otherwise orders be deemed to be compliance with these Rules and where applicable with the General Civil Rules.
- (7) The Court or the Registrar may give directions in a matter about the implementation and operation of the PEFS and the transition from the manual filing system to the PEFS.

5 Application of Rules

- (1) These Rules apply to all proceedings in the testamentary causes jurisdiction of the Court unless these Rules or the General Civil Rules provide otherwise.
- (2) Subject to subrules (3) and (4), the General Civil Rules apply to proceedings to which these Rules relate so far as is practicable.
- (3) To the extent of any inconsistency between these Rules and the General Civil Rules, these Rules prevail.
- (4) For the purposes of proceedings to which these Rules relate, references in the General Civil Rules to the Masters or to the Registrar of the Supreme Court are taken to include the Registrar.
- (5) In addition to other jurisdiction and powers conferred by legislation or rules of the Court, a Master of the Court has jurisdiction and power to give approval, advice, power or direction to an executor, administrator or trustee pursuant to

section 69 of the Act (or otherwise under the Act) or section 91 of the *Trustee Act 1936* in cases to which rule 80(2) applies.

- (6) The Court or the Registrar shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging or abridging the time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.
- (7) Non-compliance with any of these Rules shall not render the proceedings in any matter void unless the Court or the Registrar so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or the Registrar thinks fit.
- (8) The Court or the Registrar may dispense with the observance of any Rule.
- (9) In all matters in which there are no Rules regulating or applicable to the procedure the Court or the Registrar may give directions regulating the mode and manner of procedure and directing the persons upon whom any summons or proceedings shall be served, and the manner of service and what shall be deemed sufficient service on any person.
- (10) In any case in which these Rules do not expressly stipulate the procedure to be followed, an application with respect to non-contentious probate matters for any order direction or dispensation may be made to the Registrar by summons in Form 34.
- (11) If there is any doubt as to what is the correct procedure, the Registrar may direct (and without notice to any other party if the Registrar thinks fit) what shall be done in each particular instance, or that the procedure which has been adopted shall be sufficient and every such direction shall be subject to review by the Registrar who may give such further or other directions as may be necessary or proper.
- (12) The Registrar may publish Practice Notes for the guidance of practitioners and personal applicants.

Chapter 2—Rules relating to non-contentious probate matters

Part 1—Applications for grants

6 Applications for grants through practitioners

An application by a person applying through a practitioner may be lodged at the Registry or may be lodged by post.

7 Personal applications

- (1) A personal applicant, other than Public Trustee or an officer of a trust corporation who is authorised to make an application for a grant on behalf of the corporation, must attend before the Registrar in person.

- (2) No personal application will be received through an agent nor may a personal applicant be accompanied by any person acting or appearing to act as the applicant's adviser unless with the permission of the Registrar.
- (3) No personal application will be received or proceeded with if an application has already been made through a practitioner on behalf of the applicant and has not been withdrawn.
- (4) Applications for grants in cases which have already been before the Court must be made through a practitioner unless the Registrar otherwise directs.
- (5) The Registrar may at any point if it appears expedient in the circumstances of the case direct that an application proceed through a practitioner.
- (6) The papers necessary for a personal application for a grant must be executed and sworn in the Registry.
- (7) Legal advice will not be given to a personal applicant by any officer of the Registry upon any matter connected with the application but such officer will, as far as practicable, assist such applicant by providing directions as to the course he or she must pursue.
- (8) Unless the Registrar otherwise directs, every oath, affidavit and renunciation required on a personal application must be sworn or executed by all the deponents and renunciants before the Registrar.
- (9) Every personal applicant must satisfy the Registrar of his or her identity.
- (10) The functions of the Registrar under subrules (1), (8) and (9) may be performed by an officer of the Registry designated by the Registrar for that purpose.
- (11) Every personal applicant must endorse upon the backsheet of every document lodged for filing the name, address and telephone number of the personal applicant.

8 Disclosure of assets and liabilities

- (1) A person who applies for a grant or for the re-sealing of a grant under section 17 of the Act, in respect of the estate of a deceased person who has died on or after 1 July 1987, must, for the purposes of section 121A(1) of the Act, lodge with the application an affidavit, in Form 54 if a personal application and otherwise in Form 55, disclosing the assets and liabilities of the deceased and the value thereof at the date of the deceased's death which are known to the applicant at the time of making the application.

Provided that, where the application is made more than 12 months after the date of death of the deceased person, the values deposed to are to be the values at the date of the application.

- (2) An executor, administrator or trustee of the estate of a deceased person who has died on or after 1 July 1987 (being an estate in respect of which a grant has been made or re-sealed under section 17 of the Act), must, pursuant to section 121A(2) of the Act, lodge at the Registry an affidavit in Form 56 disclosing the assets and liabilities and the value thereof not previously disclosed under subrule (1) which come to his or her knowledge while acting in that capacity.

Provided that—

- (a) where the application is made more than 12 months after the date of death of the deceased person— the values deposited to are to be (and be expressed to be) the values at the date of the disclosure; and
 - (b) where there are liabilities only which have not been previously disclosed— such disclosure may be made by letter to the Registrar.
- (3) If the affidavit lodged for the purposes of subrule (1) or (2) is inaccurate or incomplete, unless the Registrar otherwise directs, a further affidavit must be lodged with the Registrar correcting the inaccuracy or supplying the deficiency.
 - (4) The Registrar may issue a certificate of disclosure in the terms of the disclosure made under this rule.

9 Grants

- (1) Every grant is, subject to the direction of the Registrar, to issue in Form 36 with any modifications that are appropriate for the case.
- (2) A draft grant in Form 36 must be lodged with every application for a grant.

10 Duty of Registrar on receiving application for grant

- (1) The Registrar may refuse to accept any application until all enquiries which the Registrar sees fit to institute have been answered to the Registrar's satisfaction.
- (2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.
- (3) Except with the permission of the Court or the Registrar, no grant is to issue within 28 days from the death of the deceased.
- (4) If permission is sought under subrule (3), the application must be made by affidavit setting out the facts on which the applicant relies, including—
 - (a) that to the best of the applicant's knowledge and belief no-one is likely to be prejudiced by the issue of the grant;
 - (b) that the applicant has made due inquiry and is satisfied that the will tendered for proof is the last will of the deceased or if the deceased died intestate, the nature of the search and inquiry made for a will;
 - (c) that the applicant has no notice of any opposition to the grant; and
 - (d) an undertaking not to distribute the estate within 28 days from the date of death.
- (5) Where an application is made for proof of a will which, in the Registrar's opinion, contains words of an offensive or libelous nature— the grant is not to issue until an application has been made under rule 67 to have such words excluded from the grant copy of the will.
- (6) A grant is not to issue until all the inquiries which the Registrar sees fit to institute have been answered to the Registrar's satisfaction.

Part 2—Oaths

11 Oath in support of grant

- (1) Every application for a grant must be supported by an oath in the form applicable to the circumstances of the case, which must be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require. Every oath and affidavit must be framed in accordance with the facts of the case and as the Registrar may direct.
- (2) On any application for a grant, the deponent to the oath must depose in the oath to the fact that the deceased died possessed of assets in the State of South Australia.

Provided that where the deceased died before 1 July 1987— a statement of the value of such property in Form 54 or 55 must be annexed to the oath.

- (3) Where a codicil (or more than one codicil) is sought to be admitted to proof— the codicil (or the number of codicils) must be mentioned in the oath and in the grant and the deposition in the oath concerning the will and codicil or codicils must refer to the “paper writings”.
- (4) Upon application of Public Trustee for a grant it is sufficient if the oath and any affidavit necessary to procure the grant are made by the Public Trustee, a Deputy Public Trustee, an Assistant Public Trustee or a person delegated for the purpose pursuant to section 8 of the *Public Trustee Act 1995*.
- (5) On an application for proof of a will of a testator who has died on or after 5 August 1996 under which the testator’s spouse is named as a beneficiary, executor, trustee or guardian, or as an appointor or an appointee under a power of appointment granted by the will—
 - (a) where the applicant’s title to the grant is dependent upon the revocation pursuant to subsection 20A(1) of the *Wills Act 1936* of the said beneficial interest appointment or power— the applicant must depose in the oath to the manner in which the testator’s marriage was terminated and a copy of any decree or order terminating the marriage must be annexed to the oath;and
 - (b) where the applicant’s title to the grant is dependent upon the said beneficial interest appointment or power not having been revoked by subsection 20A(1) of the *Wills Act 1936*— the oath must disclose such facts as are necessary to exclude the operation of the aforesaid subsection.
- (6) The oath of administrator and of administrator with the will annexed must be so worded as to clear off all persons having a prior entitlement to the grant.
- (7) Where the deceased died on or after 29 January 1976 wholly intestate— the wording in the following table must be used in the oath to clear off all persons having a prior entitlement to the grant under subrule 34(1):

TABLE

<i>Applicant for grant of letters of administration</i>	<i>Wording</i> <i>In order to clear off the persons having the prior entitlement to the grant it must be sworn in the oath that the deceased died -</i>
1 spouse or domestic partner	“intestate”
2 child, or issue of a child <i>Note: where a grandchild or remoter issue apply for administration the beneficial interest of the applicant must be established in the oath. Refer to note under “Issue of a child” in rule 14.</i>	“intestate a widower [widow] [divorced person] [single person] without any other person entitled in priority to share in his [or her] estate by virtue of any enactment.”
3 parent	“intestate a widower [widow] [divorced person] [single person] without issue or any other person entitled in priority to share in his [or her] estate by virtue of any enactment.”
4 brother or sister, or issue of a brother or sister <i>Note: where a nephew or niece or remoter issue apply for administration the beneficial interest of the applicant must also be established in the oath. Refer to note under “Issue of a brother or sister” in rule 14.</i>	“intestate a widower [widow] [divorced person] [single person] without issue or a parent or any other person entitled in priority to share in his [or her] estate by virtue of any enactment.”
5 grandparent	“intestate a widower [widow] [divorced person] [single person] without issue parent brother or sister or issue thereof or any other person entitled in priority to share in his [or her] estate by virtue of any enactment.”

<i>Applicant for grant of letters of administration</i>	<i>Wording</i> <i>In order to clear off the persons having the prior entitlement to the grant it must be sworn in the oath that the deceased died -</i>
6 uncle or aunt, or issue of an uncle or aunt <i>Note: where a cousin or remoter issue apply for administration the beneficial interest of the applicant must be established in the oath. Refer to the note under “Issue of an uncle or aunt” in rule 14.</i>	“intestate a widower [widow] [divorced person] [single man] [single woman] without issue parent brother or sister or issue thereof or grandparent or any other person entitled in priority to share in his [or her] estate by virtue of any enactment.”

- (8) If an applicant for a grant is the wife or husband or widow or widower of the testator or is related in blood to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, cousin, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, or great niece, such relationship must be disclosed in the oath.

12 Description of testator in oath

- (1) As a general rule the signature of the testator should be adopted as the testator’s name notwithstanding that it differs from the name written in the heading of the will.
- Provided that where the heading of a will gives the true name of the testator but the signature omits names or initials— the testator must be described by the true name alone.
- (2) Where there is a variance between the name of the testator in the heading of the will and the name signed and the former is the more correct of the two — the testator must be described by the name signed, the word “otherwise”, followed by the name given in the will being added.
- (3) Where the testator’s name is wrongly spelt in the will and the will is signed using the testator’s initial or initials or by a mark or by an abbreviated given name or the signature is not in the opinion of the Registrar decipherable— the testator must be described by his or her correct name, the word “otherwise”, followed by the name written in the will being added.
- (4) Except in the cases provided in subrules (2) and (3), where a grant is required to issue in more than one name— the grounds for requiring the grant to so issue (for example, that the deceased held assets in each alternate name) and the identity of the deceased under the respective names must be established by affidavit as to alias in Form 3 or Form 4 or otherwise to the Registrar’s satisfaction.

- (5) The testator’s last place of residence must appear as part of the testator’s description in the oath.
- (6) The address of the testator in the will (if any) must be given as part of the testator’s description in the oath; but if such address is not the last place of residence the testator must be described as “formerly of ...”, [as in the will] “but late of ... “, but not more than three places of residence may be stated.

13 Description of executor in oath

- (1) An executor (or more than one executor) may be described in the oath as “the executor [*or “one of the executors” or ‘the executors’*] as described in the will”, but the oath must clear off other persons having a prior entitlement to the grant [*as “one of the executors described in the will” or “the other executor described in the will” or as the case may be*].
- (2) Where the name of an executor is misspelled or is imperfectly or incompletely given in the will— the words “in the will called ... (*as in the will*)” must be added to the executor’s correct name in the oath.
- (3) Where an executor’s name has changed since the date of the will— the words “formerly called ... (*as in the will*)” must be added to the executor’s name in the oath, and the oath must include evidence in proof of the change of name.

Provided that such evidence, if not included in the oath, must be given in an affidavit of identity in Form 5 or Form 6.

- (4) Where the relationship of an executor is erroneously stated in the will— the oath must include a statement that the executor was erroneously so described and that the testator had no such relation bearing the name of the deponent at the date of the will.
- (5) Where an executor is described in the will by a former address (or otherwise) — such address must be included as part of the executor’s description (or otherwise explained) in the oath.
- (6) The executors must be named in the oath in the order in which they appear in the will.

Provided that if a variation of the order of executors is sought in the grant, the consents of the executors to such variation must be lodged.

14 Description of administrator in oath

If the deceased died on or after 29 January 1976, a person applying for—

- (a) letters of administration, or
- (b) letters of administration with the will annexed where the residuary estate has not been disposed of by the will and the applicant is a person entitled to share in the residue of the estate not so disposed of,

must be described in the oath in the manner shown in the following table—

	died in the lifetime of the intestate.”	
4	<p>A parent</p> <p><i>Note: if a parent of the deceased is described as the “only” person entitled, evidence must be given as to the death of the other parent during the lifetime of the intestate.</i></p>	<p>“the father (<i>or</i> mother <i>or</i> co-parent) and only person entitled to the estate”, <i>or</i>, where the parents of the deceased are living, “father (<i>or</i> mother) and one of the persons entitled to share in the estate.”</p>
5	A brother or sister	<p>“the brother (<i>or</i> sister) and only person entitled to the estate”, <i>or</i> “the brother (<i>or</i> sister) and one of the persons entitled to share in the estate”.</p>
6	<p>Issue of a brother or a sister</p> <p><i>Note: in the case of nephews or nieces or remoter issue of a brother or sister the oath must establish that the applicant has a beneficial interest in the estate, i.e., that the applicant is the son (<i>or</i> daughter) of A.B. the brother (<i>or</i> sister) of the intestate who died in the lifetime of the intestate.</i></p>	<p>“the nephew (<i>or</i> niece) and only person entitled to the estate”, <i>or</i> “the nephew (<i>or</i> niece) and one of the persons entitled to share in the estate.”</p>
7	A grandparent	<p>“the grandfather (<i>or</i> grandmother) and only person entitled to the estate”, <i>or</i> “the grandfather (<i>or</i> grandmother) and one of the persons entitled to share in the estate.”</p>
8	An uncle or an aunt	<p>“the uncle (<i>or</i> aunt) and only person entitled to the estate”, <i>or</i> “the uncle (<i>or</i> aunt) and one of the persons entitled to share in the estate.”</p>
9	<p>Issue of an uncle or an aunt</p> <p><i>Note: the oath must establish that the applicant has a beneficial interest in a similar manner to that given under “Issue of a brother or sister.”</i></p>	<p>“the cousin (<i>or as the case may be</i>) and only person entitled to the estate”, <i>or</i> “the cousin (<i>or as the case may be</i>) and one of the persons entitled to share in the estate.”</p>

15 Marking of wills

Every will and any testamentary document or copy or reconstruction of the same and any document proving or tending to prove the contents of a nuncupative will in respect of which an application for a grant is made—

- (a) must be marked on the back of it (if practicable) by the signatures of the applicant and the person before whom the oath is sworn, the authority of such person to administer oaths and the date on which the oath is sworn.

Provided that if a will has been executed in duplicate, both copies must be produced for probate and marked in the above manner and the deposition in the oath concerning the will must refer to “the paper writings”;

and

- (b) must be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will.

Provided that, if the Registrar is satisfied that compliance with this rule might result in the loss or damage of the original document, the Registrar may allow a photocopy to be marked or exhibited instead of the original document in which case the oath or affidavit (as the case may be) must describe the document so marked or exhibited as a copy.

16 Use of duly authenticated and sealed copies of wills

Where a will is not available owing to its being retained in the custody of a foreign Court or official or a Court or official of any Australian State or Territory— a duly authenticated copy of the will may be admitted to proof. Each page of such copy should bear the seal of that Court or official and the copy is to be marked in the manner stated in rule 15.

Part 3—Evidence in support of applications

17 Engrossments for purposes of record

- (1) Where the Registrar considers that a will or other document required to be photocopied is unsuitable for the purpose of a grant, sealing or record— the Registrar may require an engrossment of any such document suitable for photocopying to be lodged. In such a case the engrossment (rather than the original) will be annexed to the grant or sealed or put on record.
- (2) Where a will contains alterations of practical importance which are not admissible to proof— an engrossment of the will must be lodged in the form in which it is to be proved.
- (3) Any engrossment must reproduce the contents of the document (including signatures and dates) to be admitted to proof in typed form, word by word, line by line and page by page. Any part of the document written in pencil must be underlined in red.

18 Evidence as to due execution of will

- (1) Where a will contains no attestation clause or the attestation clause is insufficient or it appears to the Registrar that there is some doubt about the due execution of the will— an affidavit as to due execution from one or more of the

attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed is to be filed. The affidavit must establish the testator's knowledge of the contents of the will or explain to the satisfaction of the Registrar why that fact cannot be established.

- (2) If no affidavit can be obtained in accordance with subrule (1), the Registrar may, if the Registrar thinks fit, accept evidence on affidavit to show that the signatures on the will are in the handwriting of the deceased and of the subscribing witnesses or of any other matter which may raise a presumption in favour of the due execution of the will.
- (3) If no affidavits can be obtained in accordance with subrules (1) and (2), the Registrar may require evidence that the distribution of the estate would be the same if the will were not admitted to proof.
- (4) The Registrar may admit a will to proof without evidence as aforesaid if satisfied that it is proper to do so.

19 Evidence as to knowledge and contents of will

If for any reason the Registrar has a doubt as to whether the testator knew and approved the contents of a will at the time of its execution, the Registrar may require affidavit evidence that the testator had such knowledge.

20 Orders restricting testamentary capacity

If any order has been made restricting the ability of the testator to make a testamentary disposition, a copy of such order must be annexed to the oath and the applicant must by affidavit establish to the satisfaction of the Registrar that he or she is entitled to the grant notwithstanding the restriction.

21 Evidence as to date of execution of will

- (1) Where the Registrar has a doubt as to the date on which a will was executed— an affidavit from one of the attesting witnesses in proof of the actual date is to be filed.
- (2) If neither of the attesting witnesses nor any other person can make this affidavit, evidence must be given showing that the will is the latest or only will of the testator.
- (3) Where the fact is disclosed that the will was executed on some other day than the day of the date it bears or the will is undated or imperfectly dated— the true date of execution must appear on the face of the grant.
- (4) Where the will is not dated— it must be described in the oath and grant as “without date but in fact executed on (or on or about) 20...” (as the case may be).
- (5) Where the date in the will is incorrect or imperfect— the will must be described as “bearing date 20..., but in fact executed on 20...” (as the circumstances of the case require).

22 Evidence as to obliterations interlineations and alterations in will

Where there appears in a will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed in section 24 of the *Wills Act 1936*, or by the re-execution of the will, or by the execution of a codicil—evidence to show

whether the alteration was present at the time the will was executed is to be provided, and the Registrar may give directions as to the form in which the will is to be proved:

Provided that this rule does not apply to any alteration if the Registrar determines that it is of no practical importance.

23 Condition of will

If from any mark on or hole in the will or other testamentary document it appears to the Registrar that a paper, memorandum, or other document may have been annexed or attached to the same, it must be accounted for and such paper, memorandum, or other document (if any) must be produced; and, if not produced, its non-production must be accounted for to the Registrar's satisfaction.

24 Documents referred to in a will

Where a will contains a reference to any deed, paper, memorandum, or other document of such a nature as to raise a question whether it ought to form a constituent part of the will— it must be accounted for and such deed, paper, memorandum, or other document must be produced, with a view to ascertaining whether it is entitled to proof; and, if not produced, its non-production must be accounted for to the Registrar's satisfaction.

25 Evidence refuting attempted revocation of will

Where there is any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator— it must be accounted for to the Registrar's satisfaction.

26 Certain affidavits to include evidence of due execution

Where an affidavit is made by a subscribing witness or other person present at the time of the execution of the will in respect of any of the matters referred to in rules 21, 22, 23, 24 or 25— the deponent must also depose to due execution of the will as provided in rule 18.

27 Evidence of foreign law

Where evidence as to the law of any country, state or territory outside the State of South Australia is required on any application for a grant— unless otherwise ordered by the Court or the Registrar, it may be proved by an affidavit from any person who, by virtue of that person's knowledge or experience given in the affidavit, is suitably qualified to give expert evidence of the law in question.

28 Evidence as to death and/or date of death

- (1) A death certificate must be lodged with every application for a grant or order.

Provided that where the application is made through a practitioner — a copy of the death certificate certified by the practitioner to be a true and complete copy shall be sufficient.

- (2) Where the death occurred in a country which is not a member of the British Commonwealth— the death certificate issued from such country must be authenticated in the manner prescribed by sections 66, 66A and 67 of the *Evidence Act 1929*; or if such country is a signatory to, and has ratified, the *Hague Convention Abolishing the Requirements of Legislation for Foreign*

Public Documents, in the manner prescribed by the *Foreign Evidence Act 1994* (Cth).

- (3) Where the death has been registered under the *Registration of Deaths Abroad Act 1984* (Cth) or section 33(4) of the *Births Deaths and Marriages Registration Act 1996* (SA)— a death certificate issued under such Act may be lodged in lieu of a death certificate issued from the country of the place of death.
- (4) If the Registrar is satisfied that a death certificate cannot conveniently be obtained, the Registrar may accept such other evidence of death as the Registrar may approve.
- (5) If the fact of death is certain but the exact date of death is unknown and cannot be proved to the satisfaction of the Registrar, the applicant must provide evidence—
 - (a) establishing the identity of the last person known to have seen or known the deceased to be alive, who must depose to the date and circumstances;
 - (b) from the person who found the body of the deceased, who must depose to the date when and place where the body was found;
 - (c) establishing that the body found was that of the deceased.

Provided that the Registrar may act on such evidence as appears to be sufficient in the circumstances of the case.

- (6) In all cases to which subrule (5) applies, the oath of the executor or administrator must state the date on which the deceased was last seen (or otherwise known to have been) alive, the date on which the deceased’s dead body was found and the place where it was found, and the circumstances of the deceased’s death shall be described in the grant in the following manner—

“who was last seen alive or was last known to have been alive (as the case may be) (or ‘who died intestate having last been seen alive or was last known to have been alive (as the case may be)’) on 20... and whose dead body was found at in the State of on 20...”
- (7) Where the fact of death is uncertain but there is evidence from which death may be presumed to have occurred— an application must be made under rule 68 for an order giving permission to swear to such death.

29 Documents

- (1) A document lodged for filing must—
 - (a) be in the English language;
 - (b) be on A4 size white bond paper;
 - (c) be paginated;
 - (d) be typed or printed so as to be completely legible in no less than size 12 font except for quotations and footnotes which may be in size 10 font;
 - (e) have margins of 4 centimetres to the left and 2 centimetres to the right;
 - (f) have one and a half spacing between lines (unless the document is to be settled by the Court, in which case double spacing is to be used);

- (g) have double spacing between paragraphs;
 - (h) have figures and amounts of money expressed in numerals and not in words; and
 - (i) have any erasures or handwritten additions authenticated; and
 - (j) (subject to subrule 29(5)) have a backsheet.
- (2) Unless the Court or the Registrar otherwise directs, a document prepared for filing in Court is to be typed or printed—
- (a) on a single side of the page if it is an original affidavit or statutory declaration (including the exhibits to an affidavit or annexures to a statutory declaration); and
 - (b) otherwise, on both sides of the page.
- (3) Every practitioner through whom an application for a grant is made must endorse upon the backsheet of every document lodged for filing—
- (a) the name and telephone number of the practitioner;
 - (b) the address of the practitioner or, if applicable, the name and address of the practitioner’s firm or practice; and
 - (c) the “L Code” being the designator issued by the Law Society of South Australia (“the Society”) to the practitioner’s firm or to the practitioner (if a sole practitioner) for practice identification purposes and the “P Code” being the designator issued by the Society to the practitioner for personal identification purposes.
 - (d) the email address and facsimile number of the practitioner.
- (4) Addresses within Australia may be given in the manner indicated in the example to note (2) to Form 36 or in such other manner as the Registrar thinks fit.
- (5) No backsheet is to be attached to any of the following documents—
- (a) caveats;
 - (b) warnings to caveats;
 - (c) certificates of disclosure; or
 - (d) appearances to warnings or citations.
- (6) A will or any other testamentary document once deposited in the Registry will not be given out, unless under special circumstances and then only by permission of the Registrar.

30 Affidavits

- (1) Where an affidavit is made by two or more persons— the names of the deponents must be written in the jurat, except that if the affidavit of all the deponents is taken at one time by the same person before whom it is sworn or affirmed, it shall be sufficient to state that it was sworn or (as the case may be) affirmed by both (or all) of the “abovenamed” deponents.
- (2) Affidavits must comply with the notes to Form 22.
- (3) Affidavits may be sworn or affirmed and declarations made—

- (a) in the State of South Australia— before any of the persons mentioned in section 123 of the Act or in the *Evidence (Affidavits) Act 1928*;
 - (b) outside the State of South Australia— before any of the persons mentioned in section 123 of the Act or in sections 66 and 66A of the *Evidence Act 1929*.
- (4) Where an affidavit has in the jurat or text any interlineation, alteration, or erasure— the interlineation or alteration is to be authenticated by the initials of the person taking the affidavit.
 - (5) Any document referred to in an affidavit which is or purports to be testamentary must be made an exhibit to the affidavit and must be marked in the manner set out in note 6 to Form 22. Other documents referred to in affidavits are to be annexed, not made exhibits to the affidavit.
 - (6) Every affidavit must be stapled together and any annexure to the affidavit must be within the body of the affidavit before the back sheet.
 - (7) Where it appears to a person before whom an affidavit is sworn that the deponent is illiterate, blind or otherwise physically incapable of reading the affidavit— the person before whom such affidavit is made must state in the jurat that the affidavit was read in the presence of the deponent and that the deponent seemed perfectly to understand and approve the same and also made his or her mark, or wrote his or her signature, in the presence of the person by whom the affidavit is taken.
 - (8) Where it appears that a page or pages of an affidavit (including any annexure) may have been detached from the affidavit after execution— the Registrar may refuse to receive the affidavit.
 - (9) With the permission of the Registrar an affidavit may be received for the purpose of any matter, notwithstanding any defect or irregularity or non-compliance with this rule.

31 Evidence on oath

Any evidence on oath, other than by affidavit under any of these Rules, is to be taken before the Court, the Registrar or such other person as may be directed by a Judge.

32 Affirmation in lieu of oath

In every case where an oath is required, an affirmation may be made instead. Such affirmation must be in Form 21 and the requirements of these Rules with regard to affidavits and the jurats of affidavits apply to affidavits whether sworn or affirmed.

Part 4—Priority of entitlement to grant

33 Order of priority for grant where deceased left a will

The person or persons entitled to a grant of probate or administration with the will annexed are to be determined in accordance with the following order of priority—

- (1) Any instituted executor, whether the appointment is limited (see *In the Estate of Kavanagh (Deceased)* (1977) 16 SASR 342 at 346) or not.
- (2) Any substituted executor (or executor substituted in the will) according to any degrees provided in the will, whether the appointment is limited or not.

- (3) Any residuary devisee and/or legatee in trust for any other person.
- (4) Any residuary devisee and/or legatee for life.
- (5) The universal or residuary devisee and/or legatee (including one entitled on the happening of any contingency) or where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of or, subject to subrule 37(3), the personal representative of any such person.

Provided that:

- (i) unless the Registrar otherwise directs a residuary devisee or legatee whose devise or legacy is vested in interest is to be preferred to one entitled on the happening of a contingency; and
 - (ii) where the residue is not in terms wholly disposed of — the Registrar may, if the Registrar is satisfied that the testator has nevertheless disposed of the whole, or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made to any devisee or legatee entitled to, or to a share in, the estate so disposed of or, subject to subrule 37(3), the personal representative of any such person without regard to the persons entitled to share in any residue not disposed of.
- (6) Any specific devisee or legatee or any creditor or, subject to subrule 37(3), the personal representative of any such person or, where the estate is not wholly disposed of by the will, any person who, notwithstanding that the value of the estate is such that he or she has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.
 - (7) Any specific devisee or legatee entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

34 Order of priority for grant in case of intestacy

- (1) Where the deceased died on or after 29 January 1976, wholly intestate, the persons entitled in distribution under Part 3A of the Act are entitled to a grant of administration in the following order of priority—
 - (a) Where the spouse [*or* the domestic partner] of the deceased has survived the deceased for 28 days— the surviving spouse [*or* the domestic partner]
 - (b) The children of the deceased, or the issue of any such child who died before the deceased.
 - (c) The father or mother of the deceased.
 - (d) Brothers and sisters of the deceased, or the issue of any deceased brother or sister who died before the deceased.
 - (e) Grandparents of the deceased.
 - (f) Uncles and aunts of the deceased and the issue of any deceased uncle or aunt who died before the deceased.
- (2) In default of any person having a beneficial interest in the estate, administration is to be granted to the Attorney-General if the Attorney-General claims *bona vacantia* on behalf of the Crown.

- (3) If all persons entitled to a grant under subrules 34(1) and 34(2) have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he or she has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

Provided that the Registrar may give permission to a creditor to take a grant if the persons entitled in paragraph 34(1)(a) have been cleared off and the Registrar is satisfied that in the circumstances of the case it is just or expedient to do so.

- (4) Subject to subrule 37(3), the personal representative of a person in any of the classes mentioned in subrule 34(1) or the personal representative of a creditor have the same right to a grant as the person whom he or she represents.

Provided that the persons mentioned in paragraph 34(1)(b) are to be preferred to the personal representative of a spouse [*or a domestic partner*] who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant.

Part 5—Special grants

35 Right of assignee to a grant

- (1) Where all the persons entitled to the estate of the deceased (whether under a will or an intestacy) have assigned their whole interest in the estate to one or more persons— subject to grant of permission by the Registrar, the assignee or assignees replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.
- (2) Where there are two or more assignees— administration may be granted with the consent of the others to any one or more (not exceeding three) of them.
- (3) Where administration is applied for by an assignee— the instrument of assignment must be lodged in the Registry together with the renunciation and consent of all persons entitled to a general grant.

36 Joint grants of administration

No grant of administration will be made to more than three persons jointly without the Registrar's order first having been obtained.

37 Grants where two or more persons entitled in same order of priority

- (1) A grant may be made to any person entitled to a grant without notice to other persons entitled in the same order of priority.
- (2) A dispute between persons entitled to a grant in the same order of priority must be brought by summons in Form 34 before the Registrar in Chambers. The applicant must enter a caveat before such a summons is issued.

- (3) Unless the Registrar otherwise directs, administration will be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same order of priority and to a person not under disability in preference to a person under disability in the same order.

38 Exceptions to rules as to priority

- (1) Nothing in rules 33 or 34 operates to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.
- (2) Rules 33 and 34 do not apply where the deceased died domiciled outside the State of South Australia, except in a case to which the proviso to subrule 42(1) applies.

39 Grants to person having *spes successionis*

Where the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his or her right to a grant and has consented to administration being granted to the person or persons who would be entitled to the estate of the renunciant if he or she had died intestate— administration may be granted to such other person or one or more of such other persons:

Provided that a surviving spouse is not regarded as a person in whom the estate has vested absolutely unless he or she would be entitled to the whole of the estate, whatever its value may be.

40 Limited and special grants

- (1) Except by direction of the Registrar, limited administration will not be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear.
- (2) No person entitled to a general grant of administration of the estate of the deceased is permitted to take a limited grant, except under the direction of the Registrar.

41 Grants limited to trust property

- (1) Where an application for a grant is made limited to the property of which the deceased was trustee— it must be sworn in the oath that the deceased died possessed of such property as a trustee only and that the deceased had no beneficial interest in it.
- (2) The will or deed creating the trust of which the deceased was trustee must be lodged in the Registry with the application for the grant.

42 Grants where the deceased died domiciled outside a State or Territory of the Commonwealth of Australia

- (1) If the deceased died domiciled outside a State or Territory of the Commonwealth of Australia, the Registrar may order (except where the deceased has appointed executors in the State of South Australia to administer the estate in this State) that a grant do issue—
 - (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;
 - (c) if there is no such person as is mentioned in paragraph (a) or (b) or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct.
- (2) An application for an order under subrule (1) may be made to the Registrar by affidavit.
 - (3) An order under subrule (1) is not required—
 - (a) if the will is in the English language, in which case probate may be granted to the executor as described in the will; or
 - (b) if the will describes the duties of a named person in terms sufficient to constitute such person as executor according to the tenor of the will, in which case probate may be granted to that person; or
 - (c) if the whole of the estate in the State of South Australia consists of immovable property, in which case a grant limited to such property may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State of South Australia.

43 Grants to attorneys

- (1) Where a person entitled to a grant resides outside the State of South Australia— administration may be granted to his or her constituted attorney for the use and benefit of such person, and until he or she shall duly apply for and obtain a grant.
 Provided that where the person so entitled is an executor, administration will not be granted to such person’s attorney without notice to the other executors, if any, unless the Registrar dispenses with such notice.
- (2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the constituted attorney of a person entitled to a grant of administration and resident in the State of South Australia— the Registrar may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant, or in such other way as the Registrar may direct.
- (3) The power of attorney for the purposes of obtaining a grant must be executed as a deed and must be lodged in the Registry with the application for the grant.
 Provided that if the power of attorney in addition to the specific powers required for obtaining administration contains general powers required for other purposes, it may be given out after the grant has issued on a certified copy being lodged.
- (4) A power of attorney may be in Form 59.

44 Grants of administration to guardians on behalf of minors

- (1) Where the person to whom a grant would otherwise be made is a minor — administration for the minor’s use and benefit until the minor attains the age of eighteen years may, subject to subrules (3) and (4), be granted on application by summons in Form 34:

- (a) to both parents of the minor jointly or to one parent with the consent of the other or to the statutory or testamentary guardian or any guardian appointed by a court of competent jurisdiction, or
 - (b) where there is no such guardian able and willing to act and the minor has attained the age of sixteen years— to any relative of the minor within the meaning of Part 3A of the Act elected by the minor or, where the minor is married, to any such relative, or to the husband or wife of the minor if elected by her or him.
- (2) Any person elected under paragraph (1)(b) may represent any other minor whose next of kin he or she is, being a minor below the age of sixteen years and entitled in the same degree as the minor who made the election.
 - (3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until the minor attains the age of eighteen years may be granted to any person assigned as guardian by order of the Registrar, in default of, or jointly with, or to the exclusion of, any such person as is mentioned in subrule (1) and such an order may be made on application by the intended guardian if the intended guardian files an affidavit in support of the application and, if required by the Registrar, an affidavit of fitness sworn by a responsible person is filed.
 - (4) Where a minor who is sole executor has no interest in the residuary estate of the deceased— administration for the use and benefit of the minor until the minor attains the age of eighteen years, will be granted to the person entitled to the residuary estate unless the Registrar otherwise directs.
 - (5) A minor’s right to administration may be renounced only by a person assigned as guardian under subrule (3) and authorised to renounce by the Registrar.

45 Grants where minor co-executor

- (1) Where one of two or more executors is a minor— probate may be granted to the other executor or executors not under disability, with leave reserved to the minor to apply for probate on the minor attaining the age of eighteen years and administration for the use and benefit of the minor until the minor attains the age of eighteen years may be granted under rule 44 if, and only if, the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application.
- (2) A minor executor’s right to probate on attaining the age of eighteen years may not be renounced by any person on the minor’s behalf.

46 Grants in case of mental or physical incapacity

- (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his or her affairs — the Registrar may on application by summons in Form 34 order that administration for such person’s use and benefit limited during such person’s incapacity or in such other way as the Registrar may direct, be granted—
 - (a) to any administrator of the estate of such person appointed pursuant to section 35 of the *Guardianship and Administration Act 1993*; or
 - (b) to any manager of the property of such person appointed under the *Aged and Infirm Persons’ Property Act 1940*; or

- (c) where there is no such administrator or manager appointed—
 - (i) where the person incapable is entitled as executor and has no interest in the residuary estate of the deceased— to the person entitled to the residuary estate;
 - (ii) where the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased— to the person who would be entitled to the grant in respect of his or her estate if he or she had died intestate;

or to such other person as the Registrar may by order direct.

- (2) Where after a grant has been made the sole executor or administrator, or the surviving executor or administrator, becomes by reason of mental or physical incapacity incapable of managing his or her affairs— upon the grant being impounded, an application for a grant of administration *de bonis non* for the use and benefit of the incapable grantee, limited during his or her incapacity may be made in accordance with subrule (1).
- (3) Where a grant of probate has been made to one executor with leave reserved to one or more executors and the proving executor becomes, by reason of mental or physical incapacity, incapable of managing his or her affairs— upon the grant being impounded, an application for double probate may be made by one or more of the non-proving executors.
- (4) Where a grant of probate has been made to two or more executors of whom one becomes by reason of mental or physical incapacity incapable of managing his or her affairs— upon the grant being revoked, a grant of probate may be made to the capable executor or executors leave being reserved to the incapable executor to apply for probate when such executor becomes capable of managing his or her affairs.
- (5) Unless the Registrar otherwise directs, no grant of administration will be made under this rule unless all persons entitled in the same order of priority as the person incapable have been cleared off.
- (6) In the case of physical incapacity the application for the grant under this rule must, unless the Registrar otherwise directs, be supported by evidence of the consent of the person alleged to be so physically incapacitated.
- (7) An administrator appointed under section 35 of the *Guardianship and Administration Act 1993*, or a manager appointed under the *Aged and Infirm Persons' Property Act 1940*, of a person incapable of managing his or her affairs may, on such person's behalf, renounce probate or administration except where such person is also a minor.

47 Grants to trust corporations

Where a trust corporation applies for a grant through one of its officers— such officer must depose in the oath to his or her authority to make the application and such officer must lodge with the application a certified copy of the resolution of the board of directors of such corporation authorising such officer to make the application.

Provided that it shall not be necessary to lodge a certified copy of the resolution if the officer through whom the application is made is included in a list of persons authorised to make such applications filed in the Registry by the trust corporation.

48 Grants to corporate bodies

Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant— administration for its use and benefit may be granted to its syndic constituted attorney and a copy of the resolution appointing the syndic or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the Registrar's satisfaction must be lodged with the application for the grant.

Provided that a grant may not be made to a syndic or attorney of a body corporate (not being a trust corporation) and to one or more individuals.

Part 6—Renunciations, re-sealing, amendments and revocations

49 Renunciation of probate and administration

- (1) At any time after the death of his or her testator, an executor or, if there is no executor, the person who would be entitled under rule 33 to a grant of administration with the will annexed or, if the deceased died intestate, the person who would be entitled to a grant of administration under rule 34, may renounce probate or administration (as the case may be) by filing a renunciation in the prescribed form in the Registry.

Provided that if the renunciation is of probate or administration with the will annexed, the original will must be deposited in the Registry with the renunciation.

- (2) A person who has not renounced probate or administration in respect of a will which has been deposited in the Registry under subrule (1) and who intends to make application to the Court to prove the same may apply by affidavit in Form 8 for its withdrawal.
- (3) Renunciation of probate by an executor does not operate as a renunciation of any right which the executor may have to a grant of administration in some other capacity unless the executor expressly renounces such right.
- (4) Unless the Registrar otherwise directs, no person who has renounced administration in one capacity may obtain a grant of administration in some other capacity.
- (5) Where an executor to whom leave has been reserved to apply for probate renounces probate after the issue of the grant to a co-executor— the original grant must be produced and a Registrar's order to file the renunciation obtained.

Provided that if the original grant cannot be produced, an office copy may be produced in its stead.

- (6) An application for permission to retract a renunciation of probate or administration must be made to the Registrar by summons in Form 34.

Provided that only in exceptional circumstances will permission be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

- (7) An application under subrule (6) must be supported by an affidavit showing that the retraction of the renunciation is for the benefit of the estate, or of the parties interested.

50 Re-sealing of grants under s 17 of the Act

- (1) Application for the re-sealing of a grant under section 17 of the Act may be made either in person or through a practitioner—
 - (a) by the executor or administrator, or by one of the executors or administrators with the consent by affidavit of the co-executors or co-administrators to whom the grant was made; or
 - (b) by the attorney (authorised for that purpose) of such executor, or administrator; or
 - (c) by a practitioner authorised in writing to apply on behalf of the executor or administrator,

or, in the case of a trust corporation being the executor, administrator, or attorney—

- (d) by an officer of such corporation who must depose in the oath to his or her authority to make the application and must lodge with the application a certified copy of the resolution of the board of directors of the corporation authorising the officer to make the application for the re-sealing of the grant.

Provided that it shall not be necessary to lodge a certified copy of the resolution if the officer through whom the application is made is included in a list of persons authorised to make such applications filed in the Registry by the trust corporation.

- (2) An application under subrule (1) must be accompanied by an oath of the applicant or officer of the company, as the case may be, in Form 52 or as nearly in such form as the circumstances of the case allow.
- (3) If the Registrar so requires, notice of the application is to be advertised in such manner as the Registrar may direct, and in such case the form of advertisement in Form 53 may be used.
- (4) Where on an application for the re-sealing of a grant the domicile of the deceased at the date of death as sworn to in the oath differs from that suggested by the description in the grant— the Registrar may require further evidence as to domicile.
- (5) Where the deceased was not at the date of death domiciled within the jurisdiction of the Court from which the grant issued— the seal is not to be affixed except by order of the Registrar.
- (6) The grant lodged for re-sealing must include or be accompanied by a copy of any testamentary papers to which the grant relates certified as correct by or under the authority of the Court by which the grant was made.
- (7) Where it appears that a page or pages of a grant lodged for re-sealing (including any annexure) may have been detached from the grant after it was made— the Registrar may refuse to re-seal the grant.
- (8) Special or limited or temporary grants shall not be re-sealed except by order of the Registrar.

- (9) Notice of the re-sealing in South Australia of any grant is to be sent by the Registrar to the Court from which the grant issued.
- (10) Where notice has been received in the Registry of the re-sealing of a South Australian grant— notice of any amendment or revocation of the grant is to be sent by the Registrar to the Court by which it was re-sealed.

51 Amendment and revocation of grants

- (1) An application for an order to amend or revoke a grant may be made to the Registrar by affidavit setting out the grounds of the application.
Provided that if the Registrar is satisfied that all persons who are adversely affected by the amendment or revocation are not under a disability and consent to the application, no further grounds of the application need be set out.
- (2) If the Registrar is satisfied that a grant should be amended or revoked, the Registrar may make an order accordingly.
- (3) A grant may be revoked without being called in.
- (4) Except in special circumstances, no grant will be revoked or amended under this rule unless it is on the application of or by the consent of the person to whom the grant was made.

Part 7—Caveats and citations

52 Caveats

- (1) Any person who wishes to ensure that no grant is sealed without notice to such person may enter a caveat in the Registry.
- (2) Any person who wishes to enter a caveat (in these Rules called *the caveator*) may do so by lodging a caveat in Form 60 and a copy of the relevant death certificate.
Provided that if the caveator cannot obtain a copy of the death certificate, the caveat may be entered upon the caveator satisfying the Registrar of that fact.
- (3) Where the caveat is entered by a practitioner on the caveator's behalf— the name of the caveator must be given in the caveat.
- (4) A caveat must bear the date on which it is entered and remains in force for a period of six months only, and then subject to subrule (11) expires and is of no effect; but caveats may be renewed from time to time for additional periods of six months.
- (5) No caveat affects any grant made on the day on which the caveat is entered.
- (6) Any person claiming to have an interest in the estate of the deceased may cause to be issued from the Registry a warning against the caveat in Form 61. The person warning must state his or her interest in the estate and if such person claims under a will, the date of the will. The caveat must require the caveator to give particulars of any contrary interest in the estate. A copy of the warning must be served on the caveator forthwith. A copy of any will referred to in the warning must be lodged in the Registry before the warning is issued.

- (7) A caveator may withdraw the caveat by letter to the Registrar at any time before entering any appearances to a warning and the caveat thereupon ceases to take effect. If it has been warned, the caveator must forthwith give notice of withdrawal of the caveat to the person warning.
- (8) A caveator having an interest contrary to that of the person warning may enter an appearance at the Registry in Form 62 at any time before an affidavit has been filed under subrule (10).
- (9) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to the person warning may at any time before an affidavit is filed under subrule (10) issue and serve a summons in Form 34 for directions, which shall be returnable before the Registrar in Chambers.
- (10) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file an affidavit in Form 10 showing that the warning was duly served, that no appearance has been entered and that the person warning has not received a summons for directions under subrule (9), whereupon the Registrar may make an order that the caveat cease to have effect.
- (11) Unless the Registrar by order made on summons in Form 34 otherwise directs—
 - (a) any caveat in force at the commencement of proceedings by way of citation or summons, unless withdrawn pursuant to subrule (7), remains in force until an application for a grant is made by the person shown to be entitled by the decision of the Court or the Registrar in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings ceases to have effect;
 - (b) any caveat in respect of which an appearance to a warning has been entered remains in force until discontinued by the order of the Court or the Registrar;
 - (c) the commencement of a probate action, whether or not any caveat has been entered, operates to prevent the sealing of a grant (other than a grant of administration *pendente lite*) until application for a grant is made by the person shown to be entitled by the decision of the Court in such action, and upon such application any caveat entered by a party who has been cited to see proceedings ceases to have effect;
 - (d) any caveat lodged in conjunction with an application under rule 37 remains in force until discontinued by the order of the Court or the Registrar.
- (12) Except with the permission of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under subrules (10) and (11).
- (13) In this rule, **grant** includes a grant made by any Court outside this State which is produced for re-sealing by the Court.

53 Citations

- (1) Every citation must be settled by the Registrar before being issued.

- (2) Every averment in a citation, and such other information as the Registrar may require, must be verified by an affidavit sworn by the person issuing the citation (in these Rules called *the citor*) or, if there are two or more citors, by one of them.

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's practitioner.

- (3) The citor must enter a caveat before issuing a citation.
- (4) Every citation must be served personally by leaving a sealed copy of the citation with the person cited unless the Court or the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.
- (5) Every will referred to in a citation must be lodged in the Registry before the citation is issued, unless the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.
- (6) Except in the case of a citation to see proceedings, a person who has been cited to appear may, within the time limited for appearance by the citation or at any time thereafter if no application has been made by the citor under subrule 54(5) or subrule 55(2), enter an appearance in Form 62 at the Registry.

54 Citation to accept or refuse to take a grant

- (1) A citation to accept or refuse a grant may be issued at the instance of any person who would be entitled to a grant in the event of the person cited renouncing his or her right thereto.
- (2) Where leave has been reserved to an executor to apply for probate— a citation calling on such executor to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the survivors of them or of the executors of the last survivor of deceased executors who have proved.
- (3) A citation calling on an executor who has inter-meddled in the estate of the deceased to show cause why such executor should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of four months from the death of the deceased.

Provided that no citation to take a grant is to issue while proceedings as to the validity of the will are pending.

- (4) A person cited who is willing to accept or take a grant may apply without notice to any other party to the Registrar for an order for a grant on filing an affidavit showing that he or she has entered an appearance and has not been served with notice of any application for a grant to the citor.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—
 - (a) in the case of a citation under subrule (1)— apply without notice to any other party to the Registrar for an order for a grant to the citor;
 - (b) in the case of a citation under subrule (2)— apply without notice to any other party to the Registrar for an order that a note be made on the grant that the executor in respect of whom leave was reserved has been duly

cited and has not appeared and that all the executor's rights in respect of the executorship have wholly ceased;

- (c) in the case of a citation under subrule (3)— apply to the Registrar by summons in Form 34 (which must be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to the citor or to some other person specified in the summons.
- (6) An application under subrule (5) must be supported by an affidavit in Form 11 showing that the citation was duly served and that the person cited has not entered an appearance.
- (7) If the person cited has entered an appearance but has not applied for a grant under subrule (4), or has failed to prosecute his or her application with reasonable diligence, the citor may—
 - (a) in the case of a citation under subrule (1)— apply by summons in Form 34 to the Registrar for an order for a grant to the citor;
 - (b) in the case of a citation under subrule (2)— apply by summons in Form 34 to the Registrar for an order striking out the appearance and for the endorsement on the grant of such note as is mentioned in paragraph (5)(b);
 - (c) in the case of a citation under subrule (3)— apply by summons in Form 34 to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to the citor or to some other person specified in the summons,

and the summons must be served on the person cited.

55 Citation to propound a will

- (1) A citation to propound a will must be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.
- (2) If the time limited for appearance has expired, the citor may—
 - (a) where no person has entered an appearance— apply to the Registrar by summons in Form 34 supported by an affidavit in Form 11 of service search and non-appearance for an order for a grant as if the will were invalid.

Provided that if citations have been directed to more than one person and one or more but not all of the citees have entered an appearance, the summons is to name all of the citees as defendants and be served on all of them;

- (b) where no person who has entered an appearance proceeds with reasonable diligence to propound the will— apply to the Registrar by summons in Form 34 (which must be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a).

56 Citation to bring in grant

- (1) A citation to bring in a grant may be issued at the instance of a citor who is the intended plaintiff in a probate action for the revocation of such grant and must

unless the Registrar otherwise orders be extracted prior to, or contemporaneously with, the commencement of a probate action under the Supreme Court Rules.

- (2) The citation must be directed to the executor or administrator named in the grant and require such person to bring into and leave in the Registry the grant in order that the citor may proceed for the revocation of the same.
- (3) Every citation issued under this rule must, unless the Court or the Registrar otherwise orders, have endorsed on it a warning to the person to whom it is directed of the possible consequences of failure to comply with the citation.
- (4) Where within 14 days after the grant has been brought into the Registry the citor fails to commence a probate action for the revocation of the grant — the executor or administrator may apply by summons in Form 34 to the Registrar for the redelivery out to him or her of the grant.

57 Citation to see proceedings

A citation to see proceedings may be extracted from the Registry on the application of any party to a probate action under the Supreme Court Rules.

Part 8—Appearances

58 Appearances

- (1) All appearances to warnings and citations (other than citations to see proceedings) shall be entered in the Registry. The entry must set out in Form 62 the interest which the person on whose behalf it is entered has in the estate of the deceased.
- (2) A person served with a summons or notice thereof may enter an appearance in Form 63 and must serve a copy of the appearance on the plaintiff as the case may be.

59 Address for service

- (1) All summonses, caveats, citations, warnings and appearances must contain an address for service being an address at a place where proceedings, notices and other documents may be left for the party giving such address.
- (2) Except where otherwise specifically provided in these Rules or unless the Registrar otherwise directs any address for service shall be—
 - (a) premises at which the party's practitioner practises in South Australia; or
 - (b) premises within 50 kilometres of the GPO at Adelaide.

Provided that a party may in addition provide a postal address for service.

Part 9—Examination and subpoenas

60 Application for order to bring in testamentary papers or to attend for examination

An application under section 25 of the Act for an order requiring a person to bring in any paper writing being or purporting to be testamentary or to attend for examination may be made to the Court by summons in Form 34.

61 Subpoena to bring in testamentary papers

- (1) An application for the issue by the Registrar of a subpoena to bring in any paper or writing being or purporting to be testamentary must be made by an affidavit in Form 20 setting out the grounds of the application. If any person served with the subpoena denies that the paper or writing is in his or her possession or control, such person may file an affidavit to that effect.
- (2) Every subpoena must be served personally by leaving a sealed copy with the person to whom it is addressed unless the Court or Registrar directs some other mode of service.
- (3) Any person bringing in a will or testamentary paper in obedience to an order under section 25 of the Act or a subpoena issued by the Registrar under subrule (1) must take it to the Registry, which will record its delivery and issue a receipt.

62 Time allowed for appearing to a warning, citation or subpoena

Unless the Registrar otherwise directs, the time fixed by a warning or citation for entering an appearance, or by a subpoena to bring in a testamentary paper, is to be 14 days from the service of the summons, warning, citation or subpoena, inclusive of the day of such service.

Part 10—Grants of administration under discretionary powers of Court and grants *ad colligenda bona*

63 Grants of administration under discretionary powers of Court and grants *ad colligenda bona*

An application for an order for:

- (a) a grant of administration to a person not entitled under other provisions of these Rules (for example, a grant of administration of the kind formerly granted under section 67 of the *Testamentary Causes Act 1867* to administer personal estate where no grant has been obtained); or
- (b) a grant of administration *ad colligenda bona*,

may be made to the Registrar by summons in Form 34 and is to be supported by an affidavit setting out the grounds of the application.

Part 11—Applications by summons

64 Grants under section 12(2) of the *Wills Act 1936*

- (1) Unless a probate action has been commenced, an application under section 12(2) of the *Wills Act 1936* for an order admitting to proof a document purporting to express the testamentary intentions of a deceased person must be made by summons to the Registrar in Form 34A and must be supported by an affidavit setting out the facts upon which the applicant relies to which is annexed the written consents to the application of all persons not under disability who may be prejudiced by the admission of the document to proof.

Provided that if it appears to the Court or the Registrar expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined), the Court or the Registrar may dispense with the requirement of a summons in Form 34 (and if the Registrar thinks fit also dispense with the requirement for an oath in modification (f) to Form 37) for the purpose of saving expense.

- (2) The Registrar may dispose of an application under section 12(2) of the *Wills Act 1936* if the Registrar is satisfied that all persons who may be prejudiced by the admission of the document to proof are not under a disability and have consented to the application.

Provided that if it appears to the Court or the Registrar expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined), the Court or the Registrar may dispense with compliance for the purpose of saving expense.

- (3) Where a person who is not under a disability and may be prejudiced by the admission of the document to proof has not given a written consent to the application — the Registrar may deem that person to have consented if that person fails to attend before the Registrar after such service upon him or her as the Registrar may direct of the proceedings and notice of the application.
- (4) Where—
 - (a) any person who may be prejudiced by an order sought under this rule is under a disability or cannot be ascertained or found or has not consented; or
 - (b) the Registrar is in doubt or difficulty about any order which should be made pursuant to this rule,

the Registrar may refer the application to a Judge in Court or in Chambers.

65 Revocation of a document under section 12(3) of the *Wills Act 1936*

- (1) Unless a probate action has been commenced, an application for an order under section 12(3) of the *Wills Act 1936* that a document that has not been executed with the formalities required by that Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to proof must be made by summons in Form 34A to the Registrar and must be supported by an affidavit setting out the facts upon which the applicant relies together with the written consents of all persons not under disability who may be prejudiced by the application.

Provided that if it appears to the Court or the Registrar expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined), the Court or the Registrar may dispense with compliance for the purpose of saving expense.

- (2) The Registrar may dispose of an application under subrule (1) if the Registrar is satisfied that all persons who may be prejudiced are not under a disability and have consented.
- (3) Where a person who is not under a disability may be prejudiced by the order sought but has not given a written consent to the application and is not under disability — the Registrar may deem that person to have consented if that person fails to appear before the Registrar after service upon him or her as the Registrar may direct of the proceedings and notice of the application.
- (4) Subject to these Rules where—
 - (a) any person who may be prejudiced by the order sought under this rule is under a disability or cannot be ascertained or found or has not consented; or
 - (b) the Registrar is in doubt or difficulty about any order which should be made pursuant to this rule,the Registrar may refer the application to a Judge in Court or in Chambers.
- (5) Where an application for a grant is made following an order under section 12(3) of the *Wills Act 1936*—
 - (a) the order must be recited in the administrator’s oath; and
 - (b) where the document revokes all former testamentary acts — the document and its revocatory effect must be recited in the grant of letters of administration; viz– “(the deceased having made a document dated 20... revoking all former testamentary acts)”.

66 Application for rectification of a will

- (1) An application under section 25AA of the *Wills Act 1936* for an order for rectification of a will or other testamentary document is to be made by summons to the Registrar in Form 34 unless a probate action has been commenced.
- (2) The application must be supported by an affidavit setting out the facts upon which the applicant relies including such evidence as can be adduced as to the testator’s testamentary intentions with regard to the document sought to be rectified.
- (3) Unless otherwise directed, notice of the application must be given to every person whose interest might be adversely affected by the rectification applied for and any consents of such persons to the application must be annexed to the affidavit in support of the application.
- (4) In every case in which an order for rectification is made—
 - (a) where the will has been admitted to proof— unless the Court or the Registrar otherwise directs, a certified copy of the order for rectification must be made upon the grant under which the estate is administered, and the grant for that purpose is to be produced to the Registrar;

- (b) where the will has not been admitted to proof— an engrossment of the will in the form in which it is to be proved must be lodged with the application for the grant and such engrossment must comply with the provisions of subrule 17(3) so far as the same are applicable.

67 Application for omission of words of an offensive or libellous nature from grant

- (1) An application for an order for the omission of words of an offensive or libellous nature from the copy of the will to be admitted to proof may be made without notice to any other party to the Registrar by summons in Form 34.
- (2) The application must be supported by an affidavit (to which the will must be exhibited) setting out the grounds of the application, together with the consents in writing to the application given by all persons who may be prejudiced by the order.

Provided that if a person who is prejudiced by the application is not under a disability or cannot be ascertained or found, or if the Registrar is satisfied that in the circumstances it is just and expedient to do so, the Registrar may dispense with such consent.

68 Application for permission to swear death

An application for permission to swear to the death of any person in respect of whose estate a grant is sought may be made to the Registrar by summons in Form 34A, and shall be supported by an affidavit setting out the grounds of the application.

69 Grants in respect of copies of wills

- (1) An application for an order admitting to proof a will contained in a copy, a completed draft, a reconstruction or the subject of other evidence of its contents where the original will is not available may be made without notice to any other party to the Registrar by summons in Form 34A.

Provided that where a will is not available owing to its being retained in the custody of a foreign Court or official or a Court or official of any Australian State or Territory, a duly authenticated copy of the will may be admitted to proof without such order as aforesaid.

- (2) The application is to be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—
 - (a) the due execution of the will;
 - (b) its existence after the death of the testator (or if the will cannot be found at the testator's death such evidence as rebuts a presumption of its revocation by the testator); and
 - (c) the accuracy of the copy or other evidence of the contents of the will,together with the consents in writing to the application given by all persons who may be prejudiced by the grant.

Provided that if a person who is prejudiced by the application is under a disability or cannot be ascertained or found, or if the Registrar is satisfied that

in the circumstances it is just and expedient to do so, the Registrar may dispense with such consent.

70 Grants in respect of nuncupative wills

The provisions of rule 69 apply *mutatis mutandis* to any application for an order admitting a nuncupative will to proof in accordance with section 11 of the *Wills Act 1936*.

71 Grants of special administration

An application for an order for a grant of special administration under section 37 of the Act where the personal representative is residing out of this State may be made to the Registrar by summons in Form 34A.

72 Grants *pendente lite*

An application for a grant of administration *pendente lite* must be made by the administrator appointed pursuant to an order of the Court pending a probate action instituted in the Court touching the validity of the will of any deceased person or for obtaining or revoking any grant and a sealed copy of such order must be annexed to the oath.

Part 12—Registry

73 Preparation of grants and copies

All grants and exemplifications or certified copies of grants will be prepared in the Registry unless the Registrar otherwise directs.

74 Restrictions on searches and removal of documents

- (1) Unless the Registrar otherwise directs, no person is, without the permission of the Registrar of the Court, allowed to inspect, or to order a copy, or any extract of, any will or document deposited under section 29 of the Act or filed in the Registry other than the registered copy of the will of a deceased person.
- (2) No affidavit or record of the Court in its Testamentary Causes Jurisdiction is to be taken out of Court without an order of the Court or the Registrar and no subpoena for the production of any such document is to be issued.
- (3) Where an order has been obtained under subrule (2) the Registrar may require that, before the document is taken out of the Court, an office copy of the document be filed in the Registry by the person requiring the document to be produced.

75 Issue of copies of original wills and other documents

Subject to subrule 74(1), where a copy is required of the whole or any part of an original will or other document deposited under section 29 of the Act or of any grant, such copy must, unless otherwise directed by the Registrar, be a photocopy made in the Registry and is to issue as a search (non-official) copy.

Provided that if the copy required is—

- (a) an office copy (pursuant to section 30 of the Act), or
- (b) a copy certified under the hand of the Registrar to be a true copy,

such copy will be issued only if it is required that the seal of the Court be affixed thereto.

Part 13—Statutory applications

76 Statutory matters in common form dealt with by the Registrar

Every application to the Court under—

- (a) sections 9, 14 or 15(1)(a) and (b) of the *Public Trustee Act 1995*; or
- (b) section 4(4) of the *Trustee Companies Act 1988*,

is to be brought by summons in Form 34 and may be made to the Registrar.

77 Proceedings under Part 3 of the Act and Part 3 of the *Public Trustee Act 1995*

Except where otherwise provided in these Rules, all proceedings under Part 3 of the Act or Part 3 of the *Public Trustee Act 1995* are to be entitled “In the matter of the trusts of the will of” or “In the matter of the estate of [testator or intestate by name]” and “In the matter of the *Administration and Probate Act 1919*”, or “In the matter of the *Public Trustee Act 1995*” (as the case may be) and be made by summons in Form 34 to the Registrar.

78 Applications for trustee’s commission

- (1) Applications for remuneration under section 70 of the Act must be made by summons in Form 34 supported by the affidavit and the accounts of the applicant, verified on oath, with respect to the estate or the trust property and its administration.
- (2) The Court or the Registrar may without requiring the attendance of parties refer the summons to a Master or the Registrar for an inquiry and a report. The Master or Registrar may take the Supreme Court Indicator on the Allowance of Commission in Deceased Estates into consideration.
- (3) Unless any appearance has been entered under subrule (16), the Court may without requiring the attendance of the parties make an order on a summons based on a report of a Master or the Registrar.
- (4) Where an order for payment of remuneration has been made, unless the Court otherwise orders, the summons remains on foot and is available to be used for applications for remuneration by the applicant for subsequent periods but subrule (2) applies in respect of any subsequent application for remuneration based as if a further summons had been taken out by the applicant.
- (5) The application must state whether any previous application having the same or a similar object has been made to the Court with respect to the same estate or trust property.
- (6) The accounts supporting the summons must contain separate items of capital and income giving particulars and the date of each receipt and payment and must show with respect to each item of receipt whether the getting in or realisation has been effected by the applicant personally or with the paid assistance of agents or practitioners, and in the latter case the amount of the expense incurred.

- (7) Where estate or trust funds have been retained in the hands of the applicant—the accounts must contain a statement showing the present state of investment, distinguishing from re-investments those assets which are still in the same state of investment as they were when they vested in the applicant.
- (8) The accounts must also contain a summary of the assets and income got in, realised, specifically appropriated in specie, or distributed, showing what portion of such assets or income were got in or realised with the paid assistance of agents or practitioners, and where any estate or trust funds have been retained in the hands of the applicant, a plan of the distribution of such funds.
- (9) Upon the hearing of the summons, or any subsequent application made in the same matter, the Court or the Registrar may make such orders as to service upon any of the parties interested, or as to the advertisement of the application, as may be appropriate.
- (10) Where an applicant is one of several executors, administrators or trustees—notice of the application is to be served on the other or others of them.
- (11) Where the applicant is administrator of an intestate estate— notice of the application must be served on Public Trustee.
Provided that the Court or the Registrar may dispense with the observance of this subrule.
- (12) No order will be made on the summons until and unless an affidavit is filed proving service of the notice required to be given under subrules (10) and (11).
- (13) Any person wishing to object to the allowance of commission or other remuneration may at any time enter a caveat in the Registry in Form 64. A copy of the caveat must be served on the applicant or the applicant's practitioner.
- (14) Every caveator is to be served with notice of all applications and is entitled to attend all proceedings on the summons or any subsequent application, until and unless the caveator withdraws the caveat referred to in subrule (13) by filing a notice of withdrawal, a copy of which must be served on the applicant or on the applicant's practitioner, but if the Court or the Registrar is of the opinion that any costs occasioned to the applicant by entering of the caveat, or the attendance of the caveator upon any proceedings, should not be borne by the estate, or the trust fund, or the applicant, the Court or the Registrar may direct that such costs be taxed, or a gross sum in lieu thereof, be paid by the caveator.
- (15) No person is permitted to attend before a Master or the Registrar on the inquiry or upon the application to consider a Master's report or the Registrar's report until such person has entered an appearance in the Registry and forthwith after such entry given notice of the appearance to the applicant.
- (16) The costs of the applicant and of the parties attending before a Master or the Registrar on the application of and incidental to the proceedings are in the discretion of the Court or the Registrar.

79 Applications by Public Trustee

- (1) In any case—
 - (a) under section 64 of the Act, or

- (b) under sections 5(3), 14(2), 34B, 35(1)(k), 37 and 45(3)(b), (4) and (5) of the *Public Trustee Act 1995*,

Public Trustee may apply without notice to any other party to the Court for approval, advice, power or directions upon a written statement setting out the facts.

- (2) It shall not be necessary, on any such application unless the Court so directs, for Public Trustee to serve notice of the application on any person interested.
- (3) If the Court sees fit to approve, advise, empower or direct on such statement without notice to any other party, such approval, advice, power or direction is sufficiently evidenced by the fiat endorsed on it and unless otherwise directed, it is not necessary to draw up any formal order.
- (4) Upon the making of an order the statement together with the fiat, or the sealed order, must be filed in the Supreme Court Registry.

80 Section 69 of the Act

- (1) Subject to subrule (2) an application under section 69 of the Act or section 91 of the *Trustee Act 1936* is to be made by summons in Form 34.
- (2) Where the net value of the whole estate, trust or fund or any share in such estate, trust or fund in respect of which approval, advice, power or direction pursuant to section 69 of the Act (or otherwise under the Act) or section 91 of the *Trustee Act 1936* is sought does not exceed \$500,000— any trustee, executor or administrator may apply without notice to any other party to the Court under this rule for approval, advice, power or directions upon a written statement in Form 70 setting out the facts and verified upon oath by the applicant. The provisions of subrules 79(2) to (4), *mutatis mutandis*, apply to applications made pursuant to this rule.

Provided that if it appears to the Registrar or the Court that it is not appropriate for the application to be dealt with under this subrule, the Registrar or the Court may direct that the application be made by summons in Form 34A or Form 34B and may give directions as to service of the summons.

Part 14—Miscellaneous

81 Disclosure of estate to parties having interest

- (1) Any person claiming to be entitled to share in the estate of a deceased person under the will or the intestacy, or otherwise claiming a proper interest in the estate of the deceased or any creditor of the deceased, may apply by summons in Form 34 to the Registrar for an order directing the executor or administrator to furnish particulars of the assets and liabilities of the estate.
- (2) Upon the hearing of an application under this rule, the Registrar may order that the executor or administrator file in the Registry an affidavit setting out in the manner directed by the Registrar, particulars of the assets and liabilities of the estate, wherever situated, insofar as the same are then known to the executor or administrator, or may give such other direction as the Registrar shall in the circumstances of the case think fit.

- (3) Nothing in subrules (1) and (2) affects the power of the Court to require personal representatives to exhibit an inventory and account.

82 Appeals from Registrar

- (1) An appeal lies to a Judge in Chambers from any judgment, determination, order, direction or decision given or made by the Registrar.

Provided that where any person aggrieved is desirous of appealing from any judgment, determination, order, direction or decision of the Deputy Registrar, the matter must first be referred to the Registrar for a direction (unless the Registrar is absent) and the Deputy Registrar must act in accordance with such direction.

- (2) The notice of appeal must be in Form 65 and must be issued within 14 days after the judgment, determination, order, direction or decision complained of, or if the matter has been referred for the direction of the Registrar, within 14 days of such direction being given, and must be served at least two clear days before the hearing of the appeal.
- (3) In the case of an appeal under subrule (1), if any person besides the appellant has appeared or has been represented before the Registrar from whose judgment, determination, order, direction or decision the appeal is brought, the notice must be served on every such person.
- (4) Except by permission of the Judge, the appellant is not entitled at the hearing of the appeal to rely on any ground not set out in the notice of appeal.

83 Power to require application to be made by summons

The Registrar may require any application made to the Registrar to be brought before the Registrar by summons in Form 34, and may refer any application made to the Registrar, or any matter, whether by summons or otherwise, to a Judge or require the same to be brought before the Court by summons.

84 Estate and administration accounts

The statement and account required to be delivered at the office of Public Trustee pursuant to section 56 of the Act is to be in Form 66.

85 Notice of application

- (1) The Court or the Registrar may direct that notice of any application be given to such person interested as the Court or the Registrar may think fit.
- (2) Notice of an application is to be given by serving the summons together with such other documents filed in support of the application as the Court or Registrar may direct.
- (3) The Court or Registrar may dispense with service of the summons on all or any one or more of the persons beneficially interested, and may direct substituted service on any person on behalf of any person beneficially interested.

86 Appearances

- (1) Any person served with a summons must enter an appearance within the time limited by the summons or order of the Registrar and must on the day on which the appearance is entered serve a copy of the appearance on the applicant.

- (2) An appearance entered under subrule (1) by a party opposing the application must state with sufficient particularity the grounds of the opposition to the application.
- (3) All persons who have entered an appearance are entitled to adduce evidence either for or against any application.

87 Representation orders and procedure where no personal representative

- (1) In any proceedings, the Court or the Registrar may appoint one or more persons to represent any person (including an unborn person) (whether presently or for any future, contingent or unascertained interest) who may have a relevant interest or who may be affected by the proceedings where—
 - (a) the person, class or some member of the class cannot be ascertained or cannot readily be ascertained;
 - (b) the person, class or some member of the class though ascertained cannot be found; or
 - (c) it appears to the Court or Registrar expedient to exercise the power for the purpose of saving the expense.
- (2) If a deceased person was before his or her death interested, or where the estate of a deceased person has an interest in a matter in question in any proceeding but there is no legal personal representative, the Court or Registrar may as it thinks fit—
 - (a) proceed in the absence of a person representing the estate;
 - (b) appoint a person to represent the estate for the purposes of the proceeding.

An order made in the proceedings unless otherwise ordered binds the estate to the same extent as it would have been bound had a representative of the deceased person been a party to the proceeding.

88 Forms

The Forms set out in the Schedule to the Probate Supplementary Rules 2015 must be used with such modifications as the circumstances may require.

89 Practitioners' Charges

- (1) Practitioners may charge costs in respect of both non-contentious and contentious business in the Testamentary Causes Jurisdiction of the Court as if the work done were contentious business in the Supreme Court.
- (2) An adjudication of costs in respect of non-contentious or contentious business in the Testamentary Causes Jurisdiction of the Court is to proceed pursuant to the General Civil Rules and scales *mutatis mutandi* as if the work done were contentious business in the Supreme Court.

Chapter 3—Rules relating to sections 6 and 7 of the *Wills Act 1936*

90 Title of proceedings

All proceedings under sections 6 and 7 of the *Wills Act 1936* are to be entitled “In the matter of the *Wills Act 1936*”.

91 Wills of minor pursuant to permission of Court

- (1) An application by a minor under section 6 of the *Wills Act 1936* is to be made to a Judge in Chambers by his or her next friend by summons in Form 34C with such variations as the circumstances may require.
- (2) There is to be filed contemporaneously with the summons under subrule (1)—
 - (a) the written consent of the next friend of the minor to act as next friend;
 - (b) an affidavit by the practitioner on the record stating—
 - (i) that the practitioner is aware that the person for whom the practitioner acts is a minor;
 - (ii) that the person named as next friend of the minor has no interest in the application;
 - (iii) that to the best of the practitioner’s knowledge information and belief there is no reason why that person is not a fit and proper person to act as next friend.

Provided that paragraph (2)(b) does not apply where Public Trustee has filed a consent to act as next friend.

- (3) The application must be supported by affidavit setting out all the facts on which the applicant relies including—
 - (a) the full name, age and residential address of the minor;
 - (b) the full names and addresses of the persons having the guardianship and custody of the minor and if a guardian has been appointed by a Court of competent jurisdiction a sealed copy of the guardianship order must be exhibited to the affidavit;
 - (c) the names and addresses of the persons who would be entitled to share in the minor’s estate whether under an existing will of the minor or in the event of the minor dying intestate;
 - (d) the minor’s assets and living expenses and whether there may be a variation in such expenses;
 - (e) a history of the circumstances of the minor and the reasons for the manner in which the minor is seeking to dispose of his estate;
 - (f) evidence in Form 35 that the proposed executor or executors consent to act.
- (4) The Court or the Registrar may order that notice of the application be served on such person who appears to the Court or the Registrar to be interested as the Court or the Registrar may direct.

- (5) A person who has been served under subrule (4) may enter an appearance within the time specified in the order or afterwards by permission of the Court or the Registrar.
- (6) Notice of the application is to be given in the manner prescribed by rule 85.

92 Will for person lacking testamentary capacity pursuant to permission of Court

- (1) In this rule *proposed testator* means a person lacking testamentary capacity who is the subject of an application under section 7 of the *Wills Act 1936*.
- (2) An application under section 7 for an order authorising the making or alteration or revocation of a will on behalf of a proposed testator must include an application for permission to apply for such order and be made by summons in Form 34C and the applicant must be described as plaintiff and the proposed testator as defendant.
- (3) Where no appearance to the summons has been entered on behalf of the proposed testator, the applicant must before proceeding with the summons obtain an order from the Court or the Registrar appointing a guardian *ad litem* for the proposed testator.
- (4) In any proceeding to which the proposed testator has entered an appearance, the Court or the Registrar may, if it is in the interest of the proposed testator to do so, appoint a guardian *ad litem* for the proposed testator, and may remove or substitute any such guardian.
- (5) Notice of the application shall be given to—
 - (a) such of the persons mentioned in section 7(7) of the *Wills Act 1936*; and
 - (b) such other persons who appear to the Court or the Registrar to be interested,as the Court or the Registrar may direct.
- (6) Unless the Court or the Registrar otherwise directs, the time limited for filing an appearance by any person served with the summons or notice of the application is fourteen days.
- (7) Except where these Rules otherwise provide, the application must be supported by affidavit evidence setting out all the facts on which the applicant relies, including—
 - (a) the full name, residential address and age of the proposed testator;
 - (b) evidence that the proposed testator lacks testamentary capacity;
 - (c) the full name and address and details of the appointment of the proposed testator's administrator, guardian or enduring guardian if one has been appointed under the *Guardianship and Administration Act 1993*, or the proposed testator's manager if one has been appointed under the *Aged and Infirm Persons' Property Act 1940*, or the proposed testator's attorney if one has been appointed under an enduring power of attorney, and where any such appointment has been made a sealed copy of the order or a certified copy of the enduring power of attorney must be exhibited to the affidavit;

- (d) full details relating to all of the matters referred to in subparagraphs (a) to (g) inclusive of section 7(4) of the *Wills Act 1936*;
 - (e) the terms of any will, codicil, draft of a will or codicil, written instructions for the same or any other document of a testamentary nature made by or under the direction of the proposed testator of which the applicant has knowledge, and whether the applicant has or has not such documents in his or her possession and where any document is not in the applicant's possession, the name and address of the person in whose possession it is, or is believed to be, or if the applicant does not know that information it should be so stated and every such document in the custody or control of the applicant must be exhibited to the affidavit;
 - (f) evidence in Form 35 that the proposed executor or executors consent to act;
 - (g) the reasons why in all the circumstances the applicant considers that the order should be made.
- (8) The evidence of a legally qualified medical practitioner in an application under section 7 of the *Wills Act 1936* may be given by a report signed by the medical practitioner which is duly exhibited to an affidavit sworn by the applicant or the applicant's practitioner who must depose to the fact that he or she has received the report in relation to the proceedings.

Provided that the Court or a Judge may at the request of any other party, or may of its or the Judge's own volition, decline to receive the evidence of a medical practitioner adduced in such manner and may require such evidence to be proved in such way as the Court or the Judge thinks fit.

- (9) Notwithstanding subrule (7), the Court or a Judge may accept and act upon a statement of facts or such other evidence, whether oral or written, as the Court or the Judge considers sufficient, although not given on oath.
- (10) A statement of facts or other written evidence under subrule (9) must—
- (a) be drawn up in numbered paragraphs and dated;
 - (b) set out the matters specified in paragraphs (a) to (g) of subrule (7); and
 - (c) be signed by the person by whom it is made.

History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
3(1)(b)	am am 2 del am 2	1 October 2020 1 October 2020
4A	ins am 1	11 October 2018
4A(6)	am am 2	1 October 2020
5(2)	am am 2	1 October 2020
5(3)	am am 2	1 October 2020
5(4)	am am 2	1 October 2020