

# PART 57

## PROBATE CLAIMS RECTIFICATION OF WILLS SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

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**NOTE: These rules do not come into force until 15 October 2001**

### SCOPE OF THIS PART AND DEFINITIONS

- 57.1 (1) This Part contains rules about –
- (a) probate claims;

- (b) claims for the rectification of wills; and
- (c) claims and applications to –
  - (i) substitute another person for a personal representative; or
  - (ii) remove a personal representative.

(2) In this Part:

- (a) ‘probate claim’ means a claim for –
  - (i) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
  - (ii) the revocation of such a grant; or
  - (iii) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious (or common form) probate business;

(Section 128 of the Supreme Court Act 1981<sup>1</sup> defines non-contentious (or common form) probate business.)

- (b) ‘relevant office’ means –
  - (i) in the case of High Court proceedings in a Chancery district registry, that registry;
  - (ii) in the case of any other High Court proceedings, Chancery Chambers at the Royal Courts of Justice, Strand, London, WC2A 2LL; and
  - (iii) in the case of county court proceedings, the office of the county court in question;
- (c) ‘testamentary document’ means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;
- (d) ‘will’ includes a codicil.

## **I PROBATE CLAIMS**

### **GENERAL**

57.2

- (1) This Section contains rules about probate claims.
- (2) Probate claims in the High Court are assigned to the Chancery Division.
- (3) Probate claims in the county court must only be brought in a county court where there is also a Chancery district registry.

<sup>1</sup> 1981 c.54.

- (4) All probate claims are allocated to the multi-track.

## HOW TO START A PROBATE CLAIM

- 57.3 | A probate claim must be commenced –
- (a) in the relevant office; and
  - (b) using the procedure in Part 7.

## ACKNOWLEDGMENT OF SERVICE AND DEFENCE

- 57.4 |
- (1) A defendant who is served with a claim form must file an acknowledgment of service.
  - (2) Subject to paragraph (3), the period for filing an acknowledgment of service is –
    - (a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and
    - (b) in any other case, 28 days after service of the claim form.
  - (3) If the claim form is served out of the jurisdiction under rule 6.19, the period for filing an acknowledgment of service is 14 days longer than the relevant period specified in rule 6.22 or the practice direction supplementing Section 3 of Part 6.
  - (4) Rule 15(4) (which provides the period for filing a defence) applies as if the words ‘under Part 10’ were omitted from rule 15.4(1)(b).

## LODGING OF TESTAMENTARY DOCUMENTS AND FILING OF EVIDENCE ABOUT TESTAMENTARY DOCUMENTS

- 57.5 |
- (1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.
  - (2) Unless the court directs otherwise, the testamentary documents must be lodged in the relevant office –
    - (a) by the claimant when the claim form is issued; and
    - (b) by a defendant when he acknowledges service.
  - (3) The claimant and every defendant who acknowledges service of the claim form must in written evidence –
    - (a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and
    - (b) if any testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(A specimen form for the written evidence about testamentary documents is annexed to the practice direction.)

- (4) Unless the court directs otherwise, the written evidence required by paragraph (3) must be filed in the relevant office –
  - (a) by the claimant, when the claim form is issued; and
  - (b) by a defendant when he acknowledges service.
- (5) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.
- (6) The provisions of paragraphs (2) and (4) may be modified by a practice direction under this Part.

## REVOCATION OF EXISTING GRANT

57.6

- (1) In a probate claim which seeks the revocation of a grant of probate or letters of administration every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.
- (2) If the claimant is the person to whom the grant was made, he must lodge the probate or letters of administration in the relevant office when the claim form is issued.
- (3) If a defendant has the probate or letters of administration under his control, he must lodge it in the relevant office when he acknowledges service.
- (4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the court, which in this paragraph includes the Principal Registry of the Family Division or a district probate registry.

## CONTENTS OF STATEMENTS OF CASE

57.7

- (1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.
- (2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.
- (3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.
- (4) Any party who wishes to contend that –
  - (a) a will was not duly executed;
  - (b) at the time of the execution of a will the testator was not of sound mind, memory and understanding; or

(c) the execution of a will was obtained by undue influence or fraud,  
must set out the contention specifically and give particulars of the facts and matters relied on.

(5)

- (a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.
- (b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

## COUNTERCLAIM

57.8

- (1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention.
- (2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

## PROBATE COUNTERCLAIM IN OTHER PROCEEDINGS

57.9

- (1) In this rule ‘probate counterclaim’ means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 57.1(2)(a).
- (2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.
- (3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.
- (4) Unless an application notice is issued within 7 days after the service of a probate counterclaim for an order under rule 3.1(2)(e) or 3.4 for the probate counterclaim to be dealt with in separate proceedings or to be struck out, and the application is granted, the court shall order the transfer of the proceedings to either –
  - (a) the Chancery Division (if it is not already assigned to that Division) and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places); or
  - (b) if the county court has jurisdiction, to a county court where there is also a Chancery district registry.

- (5) If an order is made that a probate counterclaim be dealt with in separate proceedings, the order shall order the transfer of the probate counterclaim as required under paragraph (4).

## FAILURE TO ACKNOWLEDGE SERVICE OR TO FILE A DEFENCE

57.10

- (1) A default judgment cannot be obtained in a probate claim and rule 10.2 and Part 12 do not apply.
- (2) If any of several defendants fails to acknowledge service the claimant may –
  - (a) after the time for acknowledging service has expired; and
  - (b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.
- (3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.
- (4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.
- (5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

## DISCONTINUANCE AND DISMISSAL

57.11

- (1) Part 38 does not apply to probate claims.
- (2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that –
  - (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
  - (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

## II RECTIFICATION OF WILLS

### RECTIFICATION OF WILLS

- 57.12 | (1) This Section contains rules about claims for the rectification of a will.
- (Section 20 of the Administration of Justice Act 1982<sup>2</sup> provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987<sup>3</sup>.)
- (2) Every personal representative of the estate shall be joined as a party.
- (3) The practice direction makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

## III SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

### SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

- 57.13 | (1) This Section contains rules about claims and applications for substitution or removal of a personal representative.
- (2) Claims under this Section must be brought in the High Court and are assigned to the Chancery Division.
- (Section 50 of the Administration of Justice Act 1985<sup>4</sup> gives the High Court power to appoint a substitute for, or to remove, a personal representative.)
- (3) Every personal representative of the estate shall be joined as a party.
- (4) The practice direction makes provision for lodging the grant of probate or letters of administration in a claim under this Section.
- (5) If substitution or removal of a personal representative is sought by application in existing proceedings, this rule shall apply with references to claims being read as if they referred to applications.

<sup>2</sup> 1982 c.53.

<sup>3</sup> S.I. 1987/2024 as amended by S.I. 1991/1876, S.I. 1998/1903 and 1999/1015.

<sup>4</sup> 1985 c.61.

