

PRACTICE DIRECTION – PROBATE

THIS PRACTICE DIRECTION SUPPLEMENTS PART 57

NOTE: This Practice Direction does not take effect until 15 October 2001

I PROBATE CLAIMS

General

- 1.1 This Section of this practice direction applies to contentious probate claims.
- 1.2 The rules and procedure relating to non-contentious probate proceedings (also known as ‘common form’) are the Non-Contentious Probate Rules 1987 as amended.

How to start a probate claim

- 2.1 A claim form and all subsequent court documents relating to a probate claim must be marked at the top ‘In the estate of [*name*] deceased (Probate)’.
- 2.2 The claim form must be issued out of –
 - (1) Chancery Chambers at the Royal Courts of Justice; or
 - (2) one of the Chancery district registries; or
 - (3) if the claim is suitable to be heard in the county court, a county court in a place where there is also a Chancery district registry.

There are Chancery district registries at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle upon Tyne and Preston.

(Section 32 of the County Courts Act 1984 identifies which probate claims may be heard in a county court.)

- 2.3 When the claim form is issued, the relevant office will send a notice to Leeds District Probate Registry, Coronet House, Queen Street, Leeds, LS1 2BA, DX 26451 Leeds (Park Square), telephone 0113 243 1505, requesting that all testamentary documents, grants of representation and other relevant documents currently held at any probate registry are sent to the relevant office.

- 2.4 The commencement of a probate claim will, unless a court otherwise directs, prevent any grant of probate or letters of administration being made until the probate claim has been disposed of.

(Rule 45 of the Non-Contentious Probate Rules 1987 makes provision for notice of the probate claim to be given, and section 117 of the Supreme Court Act 1981 for the grant of letters of administration pending the determination of a probate claim. Paragraph 8 of this practice direction makes provision about an application for such a grant.)

Testamentary documents and evidence about testamentary documents

- 3.1 Unless the court orders otherwise, if a testamentary document is held by the court (whether it was lodged by a party or it was previously held at a probate registry) when the claim has been disposed of the court will send it to the Leeds District Probate Registry.
- 3.2 The written evidence about testamentary documents required by this Part –
- (1) should be in the form annexed to this practice direction; and
 - (2) must be signed by the party personally and not by his solicitor or other representative (except that if the party is a child or patient the written evidence must be signed by his litigation friend).
- 3.3 In a case in which there is urgent need to commence a probate claim (for example, in order to be able to apply immediately for the appointment of an administrator pending the determination of the claim) and it is not possible for the claimant to lodge the testamentary documents or to file the evidence about testamentary documents in the relevant office at the same time as the claim form is to be issued, the court may direct that the claimant shall be allowed to issue the claim form upon his giving an undertaking to the court to lodge the documents and file the evidence within such time as the court shall specify.

Case management

- 4 In giving case management directions in a probate claim the court will give consideration to the questions –
- (1) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party or given notice of the claim, whether under rule 19.8A or otherwise; and
 - (2) whether to make a representation order under rule 19.6 or rule 19.7.

Summary judgment

- 5.1 If an order pronouncing for a will in solemn form is sought on an application for summary judgment, the evidence in support of the application must include written evidence proving due execution of the will.
- 5.2 If a defendant has given notice in his defence under rule 57.7(5) that he raises no positive case but –
- (1) he insists that the will be proved in solemn form; and
 - (2) for that purpose he will cross-examine the witnesses who attested the will;
- any application by the claimant for summary judgment is subject to the right of that defendant to require those witnesses to attend court for cross-examination.

Settlement of a probate claim

- 6.1 If at any time the parties agree to settle a probate claim, the court may –
- (1) order the trial of the claim on written evidence, which will lead to a grant in solemn form;
 - (2) order that the claim be discontinued or dismissed under rule 57.11, which will lead to a grant in common form; or
 - (3) pronounce for or against the validity of one or more wills under section 49 of the Administration of Justice Act 1985.
- (For a form of order which is also applicable to discontinuance and which may be adapted as appropriate, see Practice Form No. CH38)
- (Section 49 of the Administration of Justice Act 1985 permits a probate claim to be compromised without a trial if every ‘relevant beneficiary’, as defined in that section, has consented to the proposed order. It is only available in the High Court.)
- 6.2 Applications under section 49 of the Administration of Justice Act 1985 may be heard by a master or district judge and must be supported by written evidence identifying the relevant beneficiaries and exhibiting the written consent of each of them. The written evidence of testamentary documents required by rule 57.5 will still be necessary.

Application for an order to bring in a will, etc.

- 7.1 Any party applying for an order under section 122 of the Supreme Court Act 1981 ('the 1981 Act') must serve the application notice on the person against whom the order is sought.

(Section 122 of the 1981 Act empowers the court to order a person to attend court for examination, and to answer questions and bring in documents, if there are reasonable grounds for believing that such person has knowledge of a testamentary document. Rule 50(1) of the Non-Contentious Probate Rules 1987 makes similar provision where a probate claim has not been commenced.)

- 7.2 An application for the issue of a witness summons under section 123 of the 1981 Act –

- (1) may be made without notice; and
- (2) must be supported by written evidence setting out the grounds of the application.

(Section 123 of the 1981 Act empowers the court, where it appears that any person has in his possession, custody or power a testamentary document, to issue a witness summons ordering such person to bring in that document. Rule 50(2) of the Non-Contentious Probate Rules makes similar provision where a probate claim has not been commenced.)

- 7.3 An application under section 122 or 123 of the 1981 Act should be made to a master or district judge.

- 7.4 A person against whom a witness summons is issued under section 123 of the 1981 Act who denies that the testamentary document referred to in the witness summons is in his possession or under his control may file written evidence to that effect.

Administration pending the determination of a probate claim

- 8.1 An application under section 117 of the Supreme Court Act 1981 for an order for the grant of administration pending the determination of a probate claim should be made by application notice in the probate claim.

- 8.2 If an order for a grant of administration is made under section 117 of the 1981 Act –

- (1) CPR Schedule 1, RSC Order 30 rules 2, 3, 4 and 6 shall apply as if the administrator were a receiver appointed by the court;
- (2) if the court allows the administrator remuneration under rule 3 of that Order, it may make an order under section 117(3) of the 1981 Act assigning the remuneration out of the estate of the deceased; and
- (3) every application relating to the conduct of the administration shall be made by application notice in the probate claim.

- 8.3 An order under section 117 may be made by a master or district judge.
- 8.4 If an order is made under section 117 an application for the grant of letters of administration should be made to the Principal Registry of the Family Division, First Avenue House, 42–49 High Holborn, London WC1V 6NP.
- 8.5 The appointment of an administrator to whom letters of administration are granted following an order under section 117 will cease automatically when a final order in the probate claim is made but will continue pending any appeal.

II RECTIFICATION OF WILLS

Scope of this Section

- 9. This Section of this practice direction applies to claims for the rectification of a will.

Lodging the grant

- 10.1 If the claimant is the person to whom the grant was made in respect of the will of which rectification is sought, he must, unless the court orders otherwise, lodge the probate or letters of administration with the will annexed with the court when the claim form is issued.
- 10.2 If a defendant has the probate or letters of administration in his possession or under his control, he must, unless the court orders otherwise, lodge it in the relevant office within 14 days after the service of the claim form on him.

Orders

- 11. A copy of every order made for the rectification of a will shall be sent to the Principal Registry of the Family Division for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

III SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

Scope of this Section

- 12. This Section of this practice direction applies to claims and applications for substitution or removal of a personal representative. If substitution or removal of a personal representative is sought by application in existing proceedings, this Section shall apply with references to the claim, claim form and claimant being read as if they referred to the application, application notice and applicant respectively.

Starting the claim

- 13.1 The claim form must be accompanied by:
- (1) a sealed or certified copy of the grant of probate or letters of administration; and
 - (2) written evidence containing the grounds of the claim and the following information so far as it is known to the claimant –
 - (a) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;
 - (b) brief details of the liabilities of the estate;
 - (c) the names and address of the persons who are in possession of the documents relating to the estate;
 - (d) the names of the beneficiaries and their respective interests in the estate; and
 - (e) the name, address and occupation of any proposed substituted personal representative;
- 13.2 If the claim is for the appointment of a substituted personal representative, the claim form must be accompanied by –
- (1) a signed or (in the case of the Public Trustee or a corporation) sealed consent to act; and
 - (2) written evidence as to the fitness of the proposed substituted personal representative, if an individual, to act.

Production of the grant

- 14.1 On the hearing of the claim the personal representative must produce to the Court the grant of representation to the deceased's estate.
- 14.2 If an order is made substituting or removing the personal representative, the grant (together with a sealed copy of the order) must be sent to and remain in the custody of the Principal Registry of the Family Division until a memorandum of the order has been endorsed on or permanently annexed to the grant.

ANNEX

A FORM OF WITNESS STATEMENT OR AFFIDAVIT ABOUT TESTAMENTARY DOCUMENTS

(CPR RULE 57.5)

(Title of the claim)

I [*name and address*] the claimant/defendant in this claim state [on oath] that I have no knowledge of any document –

- (i) being or purported to be or having the form or effect of a will or codicil of [*name of deceased*] whose estate is the subject of this claim;
- (ii) being or purporting to be a draft or written instructions for any such will or codicil made by or at the request of or under the instructions of the deceased;
- (iii) being or purporting to be evidence of the contents or a copy of any such will or codicil which is alleged to have been lost or destroyed,

except ... [*describe any testamentary document of the deceased, and if any such document is not in your control, give the name and address of the person who you believe has possession or control of it, or state that you do not know the name and address of that person*] ...

[I believe that the facts stated in this witness statement are true] [*or jurat for affidavit*]

(NOTE: ‘testamentary document’ is defined in CPR rule 57.1)

