



Supreme Court Rules (Amendment No 421) 2012

under the

Supreme Court Act 1970

The Supreme Court Rule Committee has made the following rules of court under the *Supreme Court Act 1970*.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to repeal and remake Part 78 of the *Supreme Court Rules 1970* (relating to probate and administration) and to make consequential amendments to other provisions of those Rules.

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1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 421) 2012*.

2 Commencement

These Rules commence on 21 January 2013 and are required to be published on the NSW legislation website.

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[1] Part 78

Omit Part 78. Insert instead:

Part 78 Probate and administration

Division 1 Preliminary

1 Definitions (cf former Part 78, rule 1)

In this Part:

administration means administration of a deceased person's estate, and includes:

- (a) administration with the will annexed, and
- (b) administration where a prior grant of probate or administration has become inoperative, and
- (c) limited and special administration.

affidavit in support, in relation to an application:

- (a) for the grant of probate or administration, or
- (b) for the resealing of a foreign grant,

means an affidavit referred to in rule 12.

caveat against grant of probate or administration means a caveat referred to in rule 66.

caveat concerning an informal testamentary instrument means a caveat referred to in rule 67.

caveat requiring proof in solemn form means a caveat referred to in rule 68.

contentious proceedings means proceedings in which:

- (a) a notice of proceedings has been served on any person, or
- (b) there is a defendant,

but, in relation to proceedings concerning an informal testamentary document in which the only defendant is a person who has become a defendant pursuant to rule 44 (2), includes only such parts of the proceedings as are referred to in rule 44 (4).

foreign grant means probate, or letters of administration, granted elsewhere than in New South Wales by a court of competent jurisdiction referred to in section 107 (1) of the *Probate and Administration Act 1898*.

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informal testamentary document means a document that (together with any amendments to it) purports to embody a deceased person's testamentary intentions, being a document that has not been duly executed.

named executor, in relation to an application for grant of probate or administration, means an executor named in the will to which the application relates.

non-contentious proceedings means proceedings that are not contentious proceedings.

notice of proceedings means a notice referred to in rule 57 (1).

notice to apply for administration means a notice referred to in rule 53 (2).

notice to apply for probate means a notice referred to in rule 55 (2).

registrar means a registrar within the meaning of the *Probate and Administration Act 1898* or the *Succession Act 2006*, and includes a deputy or assistant to any such registrar who has been appointed as such under section 120 of the *Supreme Court Act 1970*.

resealing means the sealing, under section 107 of the *Probate and Administration Act 1898*, of a foreign grant.

will includes a codicil and any other testamentary document.

2 Forms

Documents under this Part for which a form is approved under section 17 of the *Civil Procedure Act 2005* are to be completed in accordance with, and are to include such information as is required by, the form so approved.

Division 2 Commencement of proceedings

3 Publication of notice of intended application for probate or administration: section 42 of P&A Act (cf former Part 78, rule 10)

- (1) The notice of an intended application for the grant of probate or administration that is required under section 42 of the *Probate and Administration Act 1898* must be published on the New South Wales Online Registry website.
- (2) The notice must include:
 - (a) the date of any will (and of any codicil to any such will) that is sought to be proved or, if the will bears no date, a statement of that fact and of the will's approximate date, if known, and

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- (b) a statement requiring creditors of the deceased to send in their claims.
- (3) Subrule (2) does not apply to the grant of administration under section 91 of the *Succession Act 2006*.
- (4) The Court may require further advertisement of the intended application.
- 4 Publication of notice of intended application for reseal of foreign grant: section 109 of P&A Act** (cf former Part 78, rule 10)
- (1) The notice of an intended application for the resealing of a foreign grant that is required under section 109 of the *Probate and Administration Act 1898* must be published on the New South Wales Online Registry website.
- (2) The Court may require further advertisement of the intended application.
- 5 Commencement of proceedings by creditor** (cf former Part 78, rule 33)
- (1) This rule applies to proceedings for the grant of administration that are commenced by a creditor of the deceased under section 63, 74 or 75 of the *Probate and Administration Act 1898*.
- (2) If a creditor knows that the deceased has left a will naming an executor, and that the executor has not renounced probate, the creditor may commence proceedings for the grant of administration if and only if:
- (a) the creditor has filed, and served on the executor, a notice requiring the executor to apply for probate, and
- (b) the executor has failed to comply with the notice.
- (3) If a creditor knows that the deceased has left a will, and that either the will does not name an executor or that each named executor has renounced probate, the creditor may commence proceedings for the grant of administration if and only if:
- (a) the creditor has filed, and served on:
- (i) each beneficiary under the will, and
- (ii) in the case of a partial intestacy, each person who, pursuant to section 63 (a), (b) or (c) of the *Probate and Administration Act 1898*, is eligible to be granted administration of the deceased's estate on intestacy,
- a notice requiring a beneficiary or person so eligible, as the case may be, to apply for the grant of administration, and

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- (b) each person on whom such a notice has been served has failed to comply with the notice.
- (4) A notice under subrule (3) need not be served on a named executor under the will if the executor has renounced probate, unless the Court so orders.
- (5) If a creditor knows that the deceased has not left a will or is unsure as to whether or not the deceased has left a will, the creditor may commence proceedings for the grant of administration if and only if:
 - (a) the creditor has filed, and served on each person who, pursuant to section 63 (a), (b) or (c) of the *Probate and Administration Act 1898*, is eligible to be granted administration of the deceased's estate on intestacy, a notice requiring a person so eligible to apply for the grant of administration, and
 - (b) each person on whom such a notice has been served has failed to comply with the notice.
- (6) The affidavit in support of a creditor's application for the grant of administration must include:
 - (a) proof of the deceased's debt to the creditor, and
 - (b) evidence as to the creditor's knowledge of the matters referred to in subrule (2), (3) or (5), as the case requires, and
 - (c) a statement indicating the steps taken by the creditor for the purpose of complying with the requirements of this rule.

6 Cross-claims

- (1) A defendant in the proceedings may, by cross-claim, apply for a grant of probate or administration, or the resealing of a foreign grant.
- (2) Such an application may be made whether or not notice of the intended application has been published.
- (3) A defendant who makes such an application is to publish notice of the application within 28 days after filing the cross-claim in accordance with rule 3 or 4, as the case requires.

Division 3 Non-contentious proceedings**Subdivision 1 General provisions in relation to non-contentious proceedings****7 Application of Division**

This Division applies to all non-contentious proceedings.

8 Commencement of non-contentious proceedings (cf former Part 78, rule 8)

Subject to rule 72, non-contentious proceedings are to be commenced by summons.

9 Disposal of non-contentious proceedings (cf former Part 78, rule 9)

- (1) Non-contentious proceedings may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (2) Rules 6.14, 6.15 and 6.16 of the *Uniform Civil Procedure Rules 2005* do not apply to the proceedings.

10 Documents to accompany application for grant of probate or administration

- (1) An application for the grant of probate or administration must be accompanied by:
 - (a) 2 separate sets of the following documents, each stapled together on the left hand side, in the following order:
 - (i) the proposed form of the grant of probate or administration,
 - (ii) if applicable, a copy of the will and any codicils,
 - (iii) an inventory of the assets of the estate, and
 - (b) if applicable, a certified copy of the relevant death certificate, and
 - (c) a stamped self-addressed A4 envelope.

Note. If preferred, the address on the envelope may be a DX address.
- (2) Without limiting rule 4.3 (1) of the *Uniform Civil Procedure Rules 2005*, archival paper may be used for the proposed form of the grant of probate.
- (3) Unless the court otherwise orders, the certified copy of the death certificate referred to in subrule (1) (b) is to be returned to the applicant when the grant of probate or administration is made.

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11 Documents to accompany application for resealing of foreign grant

An application for the resealing of a foreign grant must be accompanied by:

- (a) the document to be resealed, being:
 - (i) an original document (either a grant or similar document), or
 - (ii) a copy or exemplification of the original document that is certified by the court that issued the original document to be a true copy of the original, and
- (b) 2 separate sets of the following documents, each stapled together on the left hand side, in the following order:
 - (i) a notice of reseat,
 - (ii) a copy of the document to be resealed,
 - (iii) an inventory of the assets of the estate, and
- (c) a stamped self-addressed A4 envelope.

Note. If preferred, the address on the envelope may be a DX address.

12 Supporting affidavits

In addition to the documents referred to in rule 10 (1) or 11, as the case requires, an application:

- (a) for the grant of probate or administration, or
 - (b) for the resealing of a foreign grant,
- must be accompanied by:
- (c) an affidavit in support containing such information as may be required by the relevant form, and Subdivisions 2 and 3, and
 - (d) such additional affidavits as may be required by Subdivisions 2 and 3 if the evidence cannot be given by the deponent of the affidavit in support.

Note. The prescribed forms of affidavit in support of an application for probate, administration or resealing of a foreign grant are as follows:

- (a) probate—UCRP Form 118,
- (b) administration—UCPR Form 119,
- (c) administration with the will annexed—UCPR Form 120,
- (d) administration pursuant to section 91 of the *Succession Act 2006*—UCPR Form 122,
- (e) resealing of a foreign grant—UCPR Form 121.

13 Domicile outside New South Wales

If an application for the grant of probate or administration, or for the resealing of a foreign grant, is made in respect of a person who has died while domiciled outside New South Wales, the affidavit in support must include evidence as to:

- (a) the domicile of the deceased, and
- (b) the requirements of the law of the domicile:
 - (i) as to the validity of any will made by the deceased, and
 - (ii) as to the persons who may be entitled in distribution of the estate.

Subdivision 2 Evidence in support in non-contentious applications**14 Informal testamentary documents** (cf former Part 78, rule 24)

If an application for the grant of probate or administration is made in respect of the estate of a person who has died leaving an informal testamentary document, the affidavit in support must include:

- (a) the name and address of each person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the document (designating which of them, in the plaintiff's opinion, is or may be a person under legal incapacity), or
- (b) if the name and address of any such person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the person's identity and whereabouts.

15 Will made prior to divorce

If an application for the grant of probate or administration relies on:

- (a) section 13 of the *Succession Act 2006*, or
- (b) section 15A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,

the affidavit in support must include a statement of the facts on which the plaintiff relies.

Note. The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

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16 Delay

- (1) If an application for the grant of probate or administration:
 - (a) is filed later than 6 months after the death of the deceased, and
 - (b) is the first application for such a grant, the affidavit in support must include a statement explaining the delay.
- (2) Subrule (1) does not apply to the grant of administration under section 91 of the *Succession Act 2006*.

17 Application for grant of probate where named executor has renounced probate or reserved leave to apply

- (1) In proceedings on an application for the grant of probate in which one or more, but not all, named executors have renounced probate:
 - (a) evidence of each such renunciation must be furnished, and
 - (b) if any such renunciation has been signed by a named executor, the renunciation must be filed.
- (2) If a named executor is not joining in the application, but leave is sought to be reserved to the executor to come in and apply for probate at some future date, evidence must be furnished:
 - (a) that the executor was served with notice of the intended proceedings at least 14 days before the proceedings were commenced, or
 - (b) that the executor is a person under legal incapacity.

18 Application for grant of administration with will annexed where named executor has renounced probate (cf former Part 78, rule 26 (3))

- (1) In proceedings on an application for the grant of administration with the will annexed in which all named executors have renounced probate:
 - (a) evidence of each such renunciation must be furnished, and
 - (b) if any such renunciation has been signed by a named executor, the renunciation must be filed.
- (2) Where the executor or executors in a will have renounced probate in favour of the NSW Trustee and Guardian, administration with the will annexed may be granted to the NSW Trustee and Guardian without the consent of, or giving notice to, any person.

19 Application for grant of administration by some only of those entitled to administration

- (1) If a grant of administration is applied for by some only of the persons within Australia who are entitled to administration, the application must, in relation to each such person not applying, be supported by:
 - (a) the written consent of that person to the grant of administration to the applicant, with an affidavit verifying the consent endorsed on the document containing the consent, or
 - (b) an affidavit as to service on that person of the applicant's notice of intention to make such an application.
- (2) Service of the notice referred to in subrule (1) (b) must have occurred at least 14 days before the proceedings commence.
- (3) The affidavits and notice referred to in subrule (1) (b) may be served personally or by post.

20 Affidavit in support of application for administration generally (cf former Part 78, rule 24A)

- (1) This rule applies to an application for the grant of administration made in respect of the estate of a person who died before 1 March 2010, other than:
 - (a) an application for the grant of administration with the will annexed, or
 - (b) an application for the grant of administration made by or on behalf of a de facto partner, or
 - (c) an application for the grant of administration under section 91 of the *Succession Act 2006*.

Note. 1 March 2010 was the date on which the provisions of the *Probate and Administration Act 1898* referred to in subrule (3) (a) were repealed by the *Succession Amendment (Intestacy) Act 2009*.
- (2) The affidavit in support of an application for the grant of administration made by or on behalf of any person (other than a de facto partner of the deceased) must show that the deceased did not leave a de facto partner for whom the estate, or any part of it, is required to be held under a statutory trust for de facto partners.
- (3) In this rule, *statutory trust for de facto partners* means a trust for the benefit of a de facto partner:
 - (a) that arises under section 61B (3A) (a) or (3B) (a) or (b) (ii) of the *Probate and Administration Act 1898* (as in force before 1 March 2010), or

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- (b) that, by operation of section 32G (2) of that Act, arises under any other provision of that Act (as so in force).

21 Evidence in support of application for administration by de facto partner (cf former Part 78, rule 25A)

- (1) This rule applies to an application for the grant of administration made by or on behalf of a de facto partner of the deceased in respect of the estate of a person who died before 1 March 2010, other than:
 - (a) an application for the grant of administration with the will annexed, or
 - (b) an application for the grant of administration under section 91 of the *Succession Act 2006*.

Note. 1 March 2010 was the date on which the provisions of the *Probate and Administration Act 1898* referred to in subrule (3) (a) were repealed by the *Succession Amendment (Intestacy) Act 2009*.

- (2) The affidavit in support of an application for the grant of administration made by or on behalf of a de facto partner must show that the estate, or some part of it, is required to be held under a statutory trust for de facto partners.
- (3) The application must be supported by the written consent of each person who would be entitled to distribution of the estate if the deceased had not left a de facto spouse, or an affidavit of service on such a person of the applicant's intention to make such an application.
- (4) The provision of consents and service of notices is to be in accordance with rule 19.
- (5) In this rule, *statutory trust for de facto partners* means a trust for the benefit of a de facto partner:
 - (a) that arises under section 61B (3A) (a) or (3B) (a) or (b) (ii) of the *Probate and Administration Act 1898* (as in force before 1 March 2010), or
 - (b) that, by operation of section 32G (2) of that Act, arises under any other provision of that Act (as so in force).

22 Application in support of application for administration—domestic partnerships

- (1) This rule applies to an application for a grant of administration made in respect of a person who died after 1 March 2012, other than:
 - (a) an application for a grant of administration with the will annexed, or

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- (b) an application for a grant of administration under section 91 of the *Succession Act 2006*.
- (2) If the application is not made by a person claiming to have been a party to a domestic partnership with the deceased the affidavit in support of the application must show that the deceased did not leave a domestic partner who would be entitled to the estate or any part of it.
- (3) If the application is made by a person claiming to have been in a domestic partnership with the deceased:
- (a) the affidavit in support of the application must show that the applicant is entitled to the estate or some part of it, and
- (b) the application must be supported by the written consent of each person who would be entitled to distribution of the estate if the deceased person had not left a partner to a domestic partnership, or an affidavit of service on such persons of notice of the applicant's intention to make such an application.
- (4) The provision of consents and service of notices is to be in accordance with rule 19.
- (5) In this rule, *domestic partnership* has the same meaning as it has in section 105 of the *Succession Act 2006*.

23 Administration bonds

- (1) Before granting administration, the Court may require an administration bond to be filed.
- (2) Unless the Court otherwise orders, an administration bond must have 2 sureties conditioned for duly collecting and getting in the deceased's assets and administering the deceased's estate.

24 Evidence in support of application for administration for the purposes only of Chapter 3 of the Succession Act 2006 (cf former Part 78, rule 26A)

If the plaintiff under an application referred to in section 91 of the *Succession Act 2006* is aware of a proposal by any other person to make such an application, the affidavit in support must include a statement to the effect that notice of the plaintiff's intended application was served on the other person at least 14 days before the application was made.

Subdivision 3 Proof of wills in non-contentious proceedings

25 Application of Division

This Subdivision applies to proceedings in which the plaintiff seeks to prove a will.

26 Will not sufficiently attested (cf former Part 78, rule 15)

- (1) If the will contains either no attestation clause or an insufficient attestation clause, the plaintiff must file an affidavit by one or more of the attesting witnesses to the due execution of the will.
- (2) A plaintiff who is unable to comply with subrule (1) must file:
 - (a) an affidavit as to the reason for the inability, and
 - (b) a further affidavit by some other person who was present when the will was executed.
- (3) A plaintiff who is unable to comply with subrule (1) or (2) must file an affidavit as to:
 - (a) the reason for the inability, and
 - (b) either:
 - (i) the signatures of the testator and the attesting witnesses, or
 - (ii) other facts from which it may be inferred that the will was duly executed.

27 Blind or illiterate testator's will or will at another's direction (cf former Part 78, rule 16)

If the will was or appears to have been signed by:

- (a) a blind or illiterate testator, or
- (b) some other person at the testator's direction,

the affidavit in support must include all available evidence as to the manner in which the will was executed and as to whether the testator knew and approved its contents.

28 Date of execution (cf former Part 78, rule 18)

If the will is undated, the affidavit in support must include evidence establishing the date of its execution.

29 Interlineations, obliterations and alterations (cf former Part 78, rule 19)

If:

- (a) there is any interlineation, obliteration or alteration in the will, and
- (b) the interlineation, obliteration or alteration is not duly authenticated or otherwise validated,

the affidavit in support must include evidence establishing that the interlineation, obliteration or alteration was made before the will was executed.

30 Documents referred to or attached (cf former Part 78, rule 20)

If:

- (a) the will contains a reference to a document that suggests that the document forms part of the will, or
- (b) there are marks on the will from which it appears that a document has been attached to it,

the affidavit in support must include all available evidence in regard to those circumstances.

31 Part of will paper torn off or cut off (cf former Part 78, rule 21)

If it appears that any part of the material on which the will was written has been torn or cut off, the affidavit in support must include all available evidence (including the torn or cut-off part) in regard to those circumstances.

32 Burning, tearing or other sign of revocation (cf former Part 78, rule 22)

If:

- (a) it appears that there may have been an attempt to destroy the will by burning, tearing or otherwise, or
- (b) there are other circumstances that suggest that the testator may have revoked the will,

the affidavit in support must include all available evidence in regard to those circumstances.

33 Inoperative will (cf former Part 78, rule 23)

If it appears that the will is or may be wholly or partly inoperative, whether by reason of the executors and beneficiaries all predeceasing the testator or otherwise, the affidavit in support must include evidence as to what persons would be entitled to distribution of the estate on intestacy.

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Division 4 Contentious proceedings

34 Application of Division (cf former Part 78, rule 35)

This Division applies to contentious proceedings.

35 Commencement of contentious proceedings (cf former Part 78, rule 36)

Subject to rule 72, contentious proceedings must be commenced:

- (a) by statement of claim, if there is a defendant, or
- (b) by summons, if there is no defendant.

36 Admissions (cf former Part 78, rule 37)

Rule 17.7 of the *Uniform Civil Procedure Rules 2005* does not apply to contentious proceedings.

37 Disputes as to standing (cf former Part 78, rule 37A)

- (1) If a defendant opposes the grant of probate or administration and the plaintiff intends to dispute the defendant's standing to do so, the plaintiff's pleadings must allege the absence of standing.
- (2) If one party (the *first party*) has applied for the grant of administration and another party (the *second party*) alleges that the first party is not entitled to do so, the second party's pleadings must allege facts that, if proved, would show that the second party is entitled to apply for such a grant.

Division 5 Proceedings affecting other persons' interests

38 Plaintiff sole executor (cf former Part 78, rule 34B)

- (1) This rule applies to an application for an order under:
 - (a) section 10 (3) (c) of the *Succession Act 2006*, or
 - (b) section 13 (2) (c) of the *Probate and Administration Act 1898*, as in force before the repeal of that paragraph.

Note. The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

- (2) The originating process for such an application need not join any person as a defendant:
 - (a) if the plaintiff is the sole executor or administrator, or
 - (b) if there is otherwise sufficient reason for not doing so.

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- (3) Despite subrule (2), the Court may, at any stage of the proceedings, direct that:
 - (a) any person be added as a party or substituted for another party or a former party, or
 - (b) notice of the proceedings be served on any person in addition to, or instead of, the defendant.
 - (4) Rule 7.6 of the *Uniform Civil Procedure Rules 2005* applies to proceedings for an order referred to in subrule (1) in the same way as it applies to proceedings referred to in rule 7.6 (1) of those Rules.

39 Notice of proceedings to be served on certain persons (cf former Part 78, rule 34C)

- (1) This rule applies to any proceedings on an application for the grant of probate or administration in which an application is made for an order under:
 - (a) section 10 (3) (c) or 27 (1) of the *Succession Act 2006*, or
 - (b) section 13 (2) (c), 15A (2) (a) or 29A (1) of the *Probate and Administration Act 1898*, as in force before the repeal of those provisions.

Note. The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.
- (2) The applicant for the grant of probate or administration:
 - (a) must file an affidavit showing the persons whose interests would be adversely affected if the order were made, and
 - (b) must serve a notice of proceedings on each such person within 28 days after the application for the order is made.

Note. Division 9 (particularly Subdivisions 3, 4 and 5) apply to a notice of proceedings referred to in paragraph (b).
- (3) Subrule (2) (b) does not require a notice of proceedings to be served on a person who has consented to the making of the order.
- (4) Any document that the applicant intends to rely on as evidence of such consent must be filed.

40 Affidavit verifying consent (cf former Part 78, rule 34A)

Any document that the applicant intends to rely on as evidence of consent referred to in:

- (a) section 10 (3) (b) of the *Succession Act 2006*, or

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(b) section 13 (2) (b) of the *Probate and Administration Act 1898*, as in force before the repeal of that paragraph, must be filed.

Note. The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

Division 6 Proceedings concerning informal testamentary documents

41 Application of Division

This Division applies to proceedings on an application for the grant of probate or administration in relation to a will that comprises or includes an informal testamentary document.

42 Consent of or notice to person affected (cf former Part 78, rules 34E and 34G)

- (1) The plaintiff must serve notice of the application (*a prescribed notice*) on each person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the informal testamentary document.
- (2) Subrule (1) does not require a prescribed notice to be served:
 - (a) on the caveator under any caveat in force in respect of the informal testamentary document, or
 - (b) on any person who has consented to the grant of probate or administration to the plaintiff.
- (3) Any consent referred to in subrule (2) (b) must be filed by the plaintiff.
- (4) If the person whose interests are affected is a person under legal incapacity:
 - (a) subrule (2) (b) does not apply, and
 - (b) if the person has no tutor, service of a prescribed notice does not take effect until a tutor is appointed.
- (5) The Court may dispense with compliance with subrule (1) on any of the following grounds:
 - (a) that the person affected cannot readily be ascertained,
 - (b) that the person affected, though ascertained, cannot readily be found,
 - (c) that it would be expedient to do so (having regard to all the circumstances, including the amount at stake and the

degree of difficulty of the point to be determined) so as to save expense.

Note. Pursuant to rule 72, unless the Court otherwise directs, a caveator under any caveat in force in respect of an informal testamentary document is to be a party to proceedings for the grant of probate or administration that comprises or includes the informal testamentary document.

43 Appearance by person affected by informal testamentary document (cf former Part 78, rule 34H)

- (1) A person on whom a prescribed notice has been served in relation to any proceedings may enter an appearance in the proceedings.
- (2) Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005* applies to appearance by the person as if the person were a defendant in the proceedings.
- (3) Rule 12.11 of the *Uniform Civil Procedure Rules 2005* does not apply to the proceedings.
- (4) The time limited for the person to enter an appearance is:
 - (a) in the case of service within New South Wales, 14 days,
 - (b) in the case of service outside New South Wales, 28 days.
- (5) An appearance may not be entered after the expiration of the time so limited except by the leave of the Court.

44 Person affected by informal testamentary document becomes party on entering appearance (cf former Part 78, rule 34I)

- (1) This rule applies to a person on whom a prescribed notice has been served in relation to any proceedings if the person enters an appearance within the time limited for entering an appearance.
- (2) On entering an appearance, the person becomes a defendant in the proceedings.
- (3) The proceedings are to continue as if:
 - (a) the person had been joined as a defendant by the application for the grant of probate or administration, and
 - (b) the person had been served with that application on the day on which he or she was served with the prescribed notice.
- (4) The person may only take part in:
 - (a) such parts of the proceedings as relate to the decision under:
 - (i) section 8 of the *Succession Act 2006*, or

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- (ii) section 18A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,

in relation to the informal testamentary document, and

Note. The provisions referred to in subparagraph (ii) were repealed, and replaced by the provisions referred to in subparagraph (i), on 1 March 2008.

- (b) such other parts of the proceedings as the Court directs.
- (5) The person ceases to be a defendant on the conclusion of those parts of the proceedings referred to in subrule (4).

45 **Persons who are bound by Court's decision on informal testamentary document** (cf former Part 78, rule 34F)

- (1) This rule applies if a decision is made under:
- (a) section 8 of the *Succession Act 2006*, or
 - (b) section 18A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,

in relation to an informal testamentary document.

Note. The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

- (2) Subject to any order made by the Court, each of the following persons is bound by the decision made in relation to the informal testamentary document to the same extent as if he or she had been a party to the proceedings concerned when the decision was made:
- (a) any person whose consent to the grant of probate or administration has been filed in relation to the document,
 - (b) any person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the document, but only if:
 - (i) a prescribed notice has been served on the person, or
 - (ii) the Court has, pursuant to rule 42 (5), dispensed with the requirement for service.

Note. Pursuant to rule 60, subject to any contrary order, a person on whom a notice of proceedings has been served under rule 57 is also bound by the decision, as he or she is bound by all other orders and decisions made in the proceedings to which the decision relates, including orders and decisions made by consent or otherwise without a contested hearing.

Division 7 Proceedings for revocation of grant of probate or administration**46 Application**

This Division applies to proceedings for the revocation of a grant of probate or administration.

47 Commencement of proceedings with no defendant (cf former Part 78, rules 40 and 41)

If there is no defendant, the proceedings must be commenced by summons, and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.

48 Commencement of proceedings with defendant (cf former Part 78, rule 43)

- (1) If there is a defendant, proceedings for the revocation of a grant of probate or administration must be commenced by statement of claim.
- (2) The statement of claim must allege facts that, if proved, would show that the plaintiff has standing to commence the proceedings.

49 Deposit of grant of probate or administration (cf former Part 78, rules 38 and 39)

The Court may order an executor or administrator to deposit a grant of probate or administration in the registry:

- (a) on the application of a person who intends to commence proceedings for the revocation of the grant, or
- (b) if proceedings for the revocation of the grant have already commenced, on the application of the plaintiff or of its own motion.

Division 8 Proceedings for administration during minority**50 Administration during minority** (cf former Part 78, rule 29)

- (1) The Court may grant administration during minority, for the use and benefit of a minor, to any of the following:
 - (a) the minor's legal or testamentary guardian,
 - (b) a guardian assigned in accordance with rule 51,
 - (c) a guardian elected in accordance with rule 52.

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- (2) A grant of administration during minority is subject to such limitations and conditions as the Court thinks fit.

51 Assigned guardian (cf former Part 78, rule 31)

- (1) Any person may apply for an order assigning the person as a minor's guardian for the purpose of applying for the grant of administration.
- (2) The application may be made:
- (a) except as provided by paragraph (b), by summons, or
 - (b) if proceedings on an application for the grant of administration have already been commenced, by notice of motion in the proceedings,
- and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (3) There is to be no defendant in proceedings on a summons referred to in subrule (2) (a).
- (4) The application must be supported by evidence of:
- (a) the proposed guardian's relationship, if any, to the minor, and
 - (b) the proposed guardian's fitness and appropriateness to act as the minor's guardian.

52 Elected guardians (cf former Part 78, rule 30)

- (1) A minor who is aged 16 years or more may elect a guardian for the purpose of applying for the grant of administration.
- (2) The elected guardian may also act for any other minor in the same family who is aged less than 16 years.
- (3) Despite the election of a guardian, the Court may grant administration to any person referred to in rule 50 (1) (a) or (b) whom it considers more appropriate or better fitted to act as the minor's guardian.
- (4) An application for the grant of administration by a minor's elected guardian must be supported by evidence of:
- (a) the minor's election, and
 - (b) the elected guardian's fitness and appropriateness to act as the minor's guardian.

Division 9 Notices**Subdivision 1 Notice to apply for administration****53 Notice to apply for administration** (cf former Part 78, rule 51)

- (1) For the purposes of section 63 of the *Probate and Administration Act 1898*, any person may require a person referred to in paragraph (a), (b) or (c) of that section to apply for administration of an intestate person's estate, as referred to in that section.
- (2) Such a requirement must be made by filing and serving on the person concerned a notice to apply for administration.

Note. This notice, a "notice to apply for administration", was formerly referred to as a "citation to pray for administration".

54 Time for answer to notice (cf former Part 78, rule 54)

The time limited for answer to a notice to apply for administration is:

- (a) in the case of service within New South Wales, 14 days,
- (b) in the case of service outside New South Wales, 28 days.

Subdivision 2 Notice to apply for probate**55 Notice to apply for probate** (cf former Part 78, rule 52)

- (1) For the purposes of section 69 of the *Probate and Administration Act 1898*, any person may require a named executor to take probate, as referred to in that section.
- (2) Such a requirement must be made by filing and serving on the person concerned a notice to apply for probate.

Note. This notice, a "notice to apply for probate", was formerly referred to as a "citation to take probate".

56 Time for answer to notice (cf former Part 78, rule 54)

The time limited for answer to a notice to apply for probate is:

- (a) in the case of service within New South Wales, 14 days,
- (b) in the case of service outside New South Wales, 28 days.

Subdivision 3 Notice of proceedings

57 Notice of proceedings (cf former Part 78, rules 53 and 56)

- (1) Subject to subrule (2), any party to proceedings for the grant of probate or administration may file and serve on any person having an interest adverse to the party a notice of proceedings.

Note. This notice, a "notice of proceedings", was formerly referred to as a "citation to see proceedings".

- (2) Such a notice must be filed and served on each person on whom such a notice is required to be served pursuant to any other provision of this Part or any direction of the Court.
- (3) The notice must state that, if the person to whom it is addressed does not enter an appearance in the proceedings, the proceedings may be heard and determined in the person's absence.
- (4) Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005* (rule 6.10 excepted) applies to appearance by a person on whom a notice of proceedings has been served in the same way as if the person were a defendant in the proceedings.
- (5) If the person on whom the notice is served enters an appearance in the proceedings, he or she is entitled to the same notice of the hearing or trial of the proceedings as a defendant.

58 Election to be a defendant (cf former Part 78, rule 57)

- (1) A person on whom a notice of proceedings has been served may include in his or her notice of appearance a statement that he or she elects to be a defendant in the proceedings.
- (2) If the person makes such an election:
 - (a) he or she becomes a defendant in the proceedings, and
 - (b) the proceedings are to continue as if the person:
 - (i) had been joined as a defendant by the application for the grant of probate or administration, and
 - (ii) had been served with the application for the grant of probate or administration on the day on which he or she was served with the notice of proceedings.

59 Proof of service of notice of proceedings (cf former Part 78, rule 60)

A party at whose request a notice of proceedings has been issued (the *issuing party*) is not entitled to be heard, except by leave of the Court, unless:

- (a) the person to whom the notice is addressed (the *addressee*) has entered an appearance in the proceedings, or

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- (b) the issuing party has filed:
 - (i) an affidavit of service of the notice on the addressee, or
 - (ii) an affidavit stating that the notice has not been served on the addressee and explaining why it has not been served.

60 Persons served bound by certain orders and decisions

Subject to any order of the Court, any person on whom a notice of proceedings has been served is bound by all orders and decisions made in the proceedings concerned, including orders and decisions made by consent or otherwise without a contested hearing, and is so bound whether or not the person has elected to be a defendant in the proceedings or has entered an appearance in the proceedings.

Note. This is a substantive change to the former law. See note to rule 45.

Subdivision 4 Notices served on persons under legal incapacity

61 Service on persons under legal incapacity (cf former Part 78, rule 58)

- (1) Service on a person under legal incapacity of a notice under this Division is to be effected in accordance with this rule.
- (2) The notice may be served:
 - (a) if the person has a tutor, on the tutor, or
 - (b) if the person has no tutor, on someone with whom the person resides or in whose care the person is.
- (3) If the person to be served is a minor, the notice may also be served:
 - (a) on the minor, but only if he or she is aged 16 years or more and is under legal incapacity by reason only of minority, or
 - (b) on a parent of the minor, or
 - (c) on a guardian of the minor's person or estate.
- (4) The notice may also be served on any person (including the person under legal incapacity) whom the Court may, before or after the service, approve.
- (5) Service of the notice on a person under legal incapacity who has no tutor does not take effect until a tutor is appointed.

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62 Notice to be answered by tutor (cf former Part 78, rule 58)

- (1) A person under legal incapacity may not answer a notice under this Division otherwise than by his or her tutor.
- (2) If a person under legal incapacity has a tutor who has or may be given authority, under the *NSW Trustee and Guardian Act 2009*, to answer the notice on that person's behalf, then, unless the Court otherwise orders, no person other than the tutor may answer the notice.
- (3) If a notice of proceedings is served on a person under legal incapacity and that person's tutor is appointed to answer the notice, the appointment extends to the tutor electing on that person's behalf to become a defendant in the proceedings.
- (4) If a person under legal incapacity elects by tutor to become a defendant in the proceedings, Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005* applies as if the tutor had been appointed as provided by that Division.

63 Appointment of tutor (cf former Part 78, rule 59)

- (1) Any person may apply for an order appointing the person as tutor for a person under legal incapacity.
- (2) The application may be made:
 - (a) except as provided by paragraph (b), by summons, or
 - (b) if proceedings on an application for the grant of probate or administration have already been commenced, by notice of motion in the proceedings,
and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (3) There is to be no defendant in proceedings on a summons referred to in subrule (2) (a).
- (4) A tutor must not be appointed unless:
 - (a) he or she is the person applying for appointment, or
 - (b) evidence of his or her consent to act as tutor has been filed.
- (5) Subject to rule 62 (4), Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005* does not apply to the appointment of a tutor under this rule.

Subdivision 5 General**64 Service generally** (cf former Part 78, rule 55)

- (1) A notice under this Division must be served personally.
- (2) Part 11 of the *Uniform Civil Procedure Rules 2005* does not apply to service of such a notice.

Note. See also rule 61 in relation to service on persons under legal incapacity.

65 Assignment of case number

- (1) A case number or unique identifier is to be assigned to a notice under this Division when it is accepted for filing.
- (2) In the case of a notice for an estate in respect of which:
 - (a) proceedings for the grant of probate or administration have been commenced, or
 - (b) some other notice has been filed under this Division, or
 - (c) a caveat has been filed under Division 10,the case number or other unique identifier is to be the same as that previously assigned to the proceedings, notice or caveat.

Division 10 Caveats**Subdivision 1 Caveat against grant of probate or administration****66 Caveat against grant of probate or administration** (cf former Part 78, rule 61)

- (1) A person who claims an interest in an estate may file a caveat in respect of any grant of probate or administration, or resealing of a foreign grant, being made in respect of the estate.
- (2) The caveat must state fully the nature of the interest claimed by the caveator and an address for service.
- (3) If the caveator is aware that any other person is making, or is intending to make, an application for the grant of probate or administration, or the resealing of a foreign grant, in respect of the same estate, the caveator must, within 7 days after filing the caveat, serve a copy of the caveat on that other person.

Subdivision 2 Caveat concerning an informal testamentary instrument

67 Caveat concerning an informal testamentary instrument (cf former Part 78, rule 62A)

- (1) A person who claims to be a person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to an informal testamentary document may file a caveat requiring an opportunity to be heard before the Court makes such a decision.
- (2) Subrule (1) does not apply to a person who is a defendant in proceedings for the grant of probate or administration in relation to the deceased's estate.
- (3) The caveat may be lodged:
 - (a) at any time before service on that person of a copy of an application for the grant of probate or administration in relation to that estate, or
 - (b) by leave of the Court, at any time before the grant of probate or administration is made.
- (4) The caveat must state fully the nature of the interest claimed by the caveator and an address for service.
- (5) If the caveator is aware that any other person is making, or is intending to make, an application for the grant of probate or administration in respect of the same estate, the caveator must, within 7 days after filing the caveat, serve a copy of the caveat on that other person.

Subdivision 3 Caveat requiring proof in solemn form

68 Caveat requiring proof in solemn form (cf former Part 78, rule 62)

- (1) A person:
 - (a) who claims an interest in a deceased person's estate as a beneficiary under a will, or
 - (b) who has an interest in a deceased person's estate and who wishes to challenge an alleged will on the ground that the will has not been duly executed,may file a caveat requiring proof in solemn form of any such will.
- (2) The caveat must state fully the nature of the interest of the caveator and an address for service.

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- (3) If the caveator is aware that any other person is making, or intending to make, an application for the grant of probate or administration, or the resealing of a foreign grant, in respect of the same estate, the caveator must, within 7 days after filing the caveat, serve a copy of the caveat on that other person.

Subdivision 4 General

69 Duration of caveat (cf former Part 78, rule 63)

- (1) A caveat under this Division takes effect when it is filed and, unless the Court otherwise orders, lapses after 6 months.
- (2) The Court may extend the duration of a caveat.
- (3) Despite subrules (1) and (2), in any proceedings on an application for the grant of probate or administration in relation to a will that comprises or includes an informal testamentary document, a caveat concerning the informal testamentary instrument lapses when the caveator becomes a party to the proceedings.

Note. Rule 72 (2) provides that, unless the Court otherwise directs, the caveator is to be a party to the proceedings.

70 Withdrawal of caveat (cf former Part 78, rule 64)

- (1) The caveator in respect of any caveat under this Division may withdraw the caveat by filing a notice of withdrawal of caveat.
- (2) The withdrawal of the caveat takes effect when the notice is filed.

71 Order that caveat cease to be in force (cf former Part 78, rule 69)

- (1) If:
- (a) a person has applied or intends to apply for the grant of probate or administration or the resealing of a foreign grant, and
 - (b) a caveat under this Division is in force in respect of any grant of probate or administration, or resealing of a foreign grant, being made in respect of the estate concerned,
- the person may apply for an order that the caveat cease to be in force in relation to the application or intended application.
- (2) An application under this rule must be made:
- (a) except as provided by paragraph (b), by summons, or
 - (b) if the person has commenced proceedings for the grant of probate or administration, or the resealing of a foreign grant, by notice of motion in the proceedings.

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- (3) The caveator must be joined as a defendant in the proceedings on an application under this rule.
- (4) If the Court considers that the evidence fails to show:
 - (a) that the caveator has an interest in the estate concerned, or a reasonable prospect of establishing such an interest, and
 - (b) that there is a doubt as to whether the grant of probate or administration should be made or whether the foreign grant should be resealed,the Court may order that the caveat cease to be in force in respect of the application.
- (5) Part 13 of the *Uniform Civil Procedure Rules 2005* does not apply to the proceedings.
- (6) If it does not order that the caveat cease to be in force in respect of the application, the Court may give such directions as appear best adapted for the just, quick and cheap determination of proceedings on the application, or intended application.
- (7) Directions that the Court may give pursuant to subrule (6) include a direction to the caveator to commence proceedings.
- (8) If the Court directs the caveator to commence proceedings, it may order that if the caveator does not commence proceedings within such time as the Court fixes, the caveat is to lapse, either generally or in respect of the application or intended application.
- (9) An order under subrule (8) may be made at the time the caveator is directed to commence proceedings or at any subsequent time.

72 Certain proceedings to be commenced by statement of claim

(cf former Part 78, rule 70)

- (1) If a caveat under this Division is in force in respect of a deceased person's estate, proceedings for the grant of probate or administration, or the resealing of a foreign grant, in respect of the estate, must be commenced by statement of claim.
- (2) Unless the Court otherwise directs, the caveator is to be a party to the proceedings.

73 Service of documents on caveator

In the application of rule 10.5 of the *Uniform Civil Procedure Rules 2005* to the service on a caveator of either of the following documents, namely:

- (a) an application for an order referred to in rule 71,

(b) a statement of claim referred to in rule 72, the caveator's address for service is taken to be the address for service stated in the relevant caveat under rule 66, 67 or 68.

74 Assignment of case number

- (1) A case number or unique identifier is to be assigned to a caveat under this Division when it is accepted for filing.
- (2) In the case of a caveat for an estate in respect of which:
 - (a) proceedings for the grant of probate or administration have been commenced, or
 - (b) some other caveat has been filed under this Division, or
 - (c) a notice has been filed under Division 9,
 the case number or other unique identifier assigned to the caveat is to be the same as that previously assigned to the proceedings, caveat or notice.

Division 11 Accounts and commission

75 Definitions

In this Division:

commission means commission referred to in section 86 of the *Probate and Administration Act 1898*.

parent proceedings, in respect of an estate the subject of proceedings for the passing of accounts, means the proceedings in which:

- (a) probate or administration has been granted, or
- (b) a foreign grant has been resealed,

in respect of the estate.

proceedings for the passing of accounts means proceedings for an order passing accounts under section 85 of the *Probate and Administration Act 1898*.

76 Commencement of proceedings (cf former Part 78, rule 75)

- (1) Proceedings for the passing of accounts for an estate must be commenced by notice of motion in the parent proceedings.
- (2) The notice may, but need not, request the Court to allow the applicant to be paid commission from the assets of the estate.

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77 Further requirements where applicant seeks commission (cf former Part 78, rule 85)

If the applicant seeks commission he or she must file with the notice of motion commencing the proceedings:

- (a) an affidavit in support of the application, and
- (b) where the accounts were not filed within the time fixed by the rules or any order of the Court, an affidavit explaining the delay.

78 Objection prior to proceedings (cf former Part 78, rule 77A)

- (1) At any time prior to the commencement of proceedings for the passing of accounts for an estate in respect of which:
 - (a) probate or administration has been granted, or
 - (b) a foreign grant has been resealed,any person (*the objector*) may, by filing a notice of his or her intention to do so, object to the passing of accounts or the allowance of commission, as the case may be.
- (2) The address for service shown in the notice is taken to be the objector's address for service in any such proceedings.
- (3) On the commencement of any such proceedings, the registrar must serve a copy of the notice on the applicant.
- (4) As soon as practicable after being served with such a copy, the applicant in any such proceedings must serve a copy of the originating process on the objector.

79 Notice of proceedings (cf former Part 78, rules 76 and 87)

- (1) At least 14 days before the commencement of proceedings for the passing of accounts, the applicant must cause to be published a notice of:
 - (a) the filing of the accounts, and
 - (b) the order or orders claimed in the proceedings.
- (2) The notice must be published:
 - (a) if, when he or she died, the deceased was resident in New South Wales, in a newspaper circulating in the district where the deceased resided, or
 - (b) in any other case, in a Sydney daily newspaper.
- (3) The applicant must file an affidavit of compliance with this rule.
- (4) The Court may order the applicant to give notice of the proceedings to any person.

80 Sureties (cf former Part 78, rule 77)

- (1) At least 14 days before the commencement of proceedings for the passing of accounts for an estate in respect of which an administration bond has been executed under section 64 of the *Probate and Administration Act 1898*, the plaintiff must serve on each surety to the bond a copy of the notice referred to in rule 79 (1).
- (2) The plaintiff must file an affidavit of compliance with subrule (1).
- (3) Instead of or in addition to complying with subrules (1) and (2) in respect of any surety, the plaintiff may file the consent of the surety to an order passing the accounts, with an affidavit verifying the consent endorsed on the document containing the consent.

81 Inspection and appearance (cf former Part 78, rule 78)

- (1) This rule applies if proceedings for the passing of accounts have been commenced but the hearing of the proceedings has not been completed.
- (2) Any person may inspect the accounts at any time after the commencement of the proceedings, without leave, unless the registrar otherwise directs.
- (3) Any person intending to object to the passing of the accounts may, at any time before completion of the hearing, enter an appearance in the proceedings.
- (4) Any person entering an appearance in the proceedings is to be joined as a defendant in the proceedings.

82 Vouching (cf former Part 78, rule 79)

Unless the Court otherwise directs, accounts are to be vouched:

- (a) in the absence of the public, and
- (b) without the appearance before the Court of any person, and
- (c) without an appointment being obtained for the vouching.

83 Court may require further evidence, documents and notices

(cf former Part 78, rule 80)

In any proceedings for the passing of accounts, the Court:

- (a) may require further evidence to be furnished, further documents to be filed and further notices to be given, and

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- (b) if satisfied that the accounts are correct, may make an order passing the accounts, and
- (c) if satisfied that any commission that is sought is appropriate, may make an order allowing commission.

84 Certificate as to passing of accounts (cf former Part 78, rule 81)

- (1) If the Court makes an order passing accounts, the registrar is to issue the applicant with a certificate as to the balance of the accounts.
- (2) If the Court makes an order allowing commission, the certificate must also certify as to:
 - (a) the amount of capital realised, and
 - (b) the amount of income collected, and
 - (c) the value of any assets transferred to beneficiaries, and
 - (d) where a business was carried on, the gross receipts and net profit earned or loss incurred,during the period to which the accounts relate.

85 Time for filing etc accounts under section 85 of P&A Act (cf former Part 78, rules 71 and 73)

- (1) For the purposes of section 85 (1) and (1AA) of the *Probate and Administration Act 1898*, the time within which accounts for an estate in respect of which:
 - (a) probate or administration has been granted, or
 - (b) a foreign grant has been resealed,must be filed, verified and filed or verified, filed and passed, as the case requires, is 12 months after the relevant grant or resealing.
- (2) An executor or administrator may, in the proceedings for the grant of probate or administration or the resealing of a foreign grant, move for an order extending the period for compliance with section 85 (1) or (1AA) of the *Probate and Administration Act 1898*, including an order extending the period until the further order of the Court, without the prior filing or service of notice of the motion.

Note. These rules do not fix a time limit under section 85 (1A), (1B) or (5) of the *Probate and Administration Act 1898*. Subject to any order made by the Court, no time limit will therefore apply under those subsections.

86 Renunciation of commission under section 86 (3) of P&A Act

(cf former Part 78, rule 86)

If, in any proceedings for the passing of accounts, the applicant wishes to renounce his or her right to commission:

- (a) the applicant may do so, at any time before the hearing of the proceedings, by filing a renunciation of commission, and
- (b) if the applicant does so, the accounts must be allowed in accordance with the indemnity referred to in section 86 (3) of the *Probate and Administration Act 1898*.

Note. Under section 86 (3) of the *Probate and Administration Act 1898*, an executor, administrator or trustee who renounces their right to commission for work carried out in relation to a deceased's estate, and engages a legal practitioner to do that work (being non-professional work) on their behalf, is entitled to be indemnified by the estate, up to the amount of commission to which they would otherwise be entitled, for the legal practitioner's charges and disbursements in connection with that work.

87 Reduction of excessive commission under section 86A of P&A Act

(cf former Part 78, rule 75A)

Proceedings for an order under section 86A of the *Probate and Administration Act 1898* are to be commenced by notice of motion in the parent proceedings.

88 Notices and orders under section 87 of P&A Act (cf former Part 78, rule 72)

- (1) A notice or order under section 87 of the *Probate and Administration Act 1898* may be served by sending it to the executor, administrator or trustee concerned at his or her address for service in relation to the parent proceedings.
- (2) If an order has been made under section 87 of the *Probate and Administration Act 1898* requiring an executor, administrator or trustee to show cause, any application for an order extending the period referred to in section 87 (1) of that Act must be made on the day appointed for showing cause.

89 Order to file etc accounts (cf former Part 78, rule 74)

Proceedings for an order that an executor, administrator or trustee of a deceased person's estate do any of the following:

- (a) file an inventory,
- (b) verify and file an inventory,
- (c) file accounts,

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- (d) verify and file accounts,
 - (e) file and pass accounts,
 - (f) verify, file and pass accounts,
 - (g) pass accounts filed,
- must be commenced by notice of motion in the parent proceedings.

Division 12 Forms

90 Form of appointment: section 75A of P&A Act (cf former Part 78, rule 90)

The following documents under section 75A of the *Probate and Administration Act 1898* must be in the approved form:

- (a) a notice of appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator,
- (b) a deed of appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator,
- (c) a notice of objection to the appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator.

91 Affidavit of additional assets: section 81A of P&A Act (cf former Part 78, rule 28A)

Disclosure of assets and liabilities under section 81A (1) and (2) of the *Probate and Administration Act 1898* must be effected by filing an affidavit of assets or an affidavit of additional assets, as the case requires.

92 Form of acknowledgment: section 83 of P&A Act (cf former Part 78, rule 89)

An acknowledgment for the purposes set out in section 83 of the *Probate and Administration Act 1898* must be in the approved form.

93 Form of notice of intended distribution: section 92 of P&A Act (cf former Part 78, rule 91)

A notice under section 92 of the *Probate and Administration Act 1898* must be published:

- (a) if, when he or she died, the deceased was resident in New South Wales, in a newspaper circulating in the district where the deceased resided, or
- (b) in any other case, in a Sydney daily newspaper.

Division 13 Functions of registrar

- 94** (1) The registrar may exercise the functions of the Court, in respect of all proceedings under the *Probate and Administration Act 1898*, Chapter 2 of the *Succession Act 2006* or this Part, in relation to the estates of deceased persons, otherwise than:
- (a) on the hearing of proceedings for contempt, or
 - (b) on the hearing of an application for an order authorising a will to be made or altered, or for a will or part of a will to be revoked, by a minor, or
 - (c) on the hearing of an application for an order authorising a will to be made or altered, or for a will or part of a will to be revoked, on behalf of a person who lacks testamentary capacity, or
 - (d) on the hearing of an application for leave to make an application referred to in paragraph (c), or
 - (e) on the hearing of an application for an order under section 67 or 89 of the *Probate and Administration Act 1898*, or
 - (f) on the hearing of contested proceedings for:
 - (i) the grant of probate or administration, or
 - (ii) the resealing of a foreign grant, or
 - (iii) the rectification of a will, or
 - (iv) the determination of whether an interested witness can benefit under a will, or
 - (v) the determination of whether an informal testamentary document forms the deceased's will, an alteration of the deceased's will or a full or partial revocation of the deceased's will, or
 - (vi) an order under section 68, 84 or 84A (1) of the *Probate and Administration Act 1898*, or
 - (vii) an order under rule 51 or 71.
- (2) If the Court refers any matter to the registrar, the registrar may exercise the functions of the Court in respect of that matter.
- (3) The registrar may exercise the functions of the Court in respect of:
- (a) proceedings for the revocation of a grant of probate in common form where the grant was made in error, and
 - (b) proceedings for the revocation of a grant of probate where the application for revocation is not contested, and

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- (c) proceedings for the passing of accounts, or the allowance of commission, under Division 11, and
- (d) proceedings under section 21 of the *Status of Children Act 1996* for a declaration of parentage in connection with uncontested proceedings for the grant of probate or administration, or for the resealing of a foreign grant.

[2] Schedule D Powers of associate Judges

Omit “rules 34B (gift to witness), 60 (citation), 63, 69 and 70 (caveat)” from the matter relating to Part 78 in Part 2 of the Schedule.

Insert instead “rules 38, 59, 69, 71 and 72”.

[3] Schedule F Forms

Omit the explanatory notes appearing before Form 1.

[4] Schedule F, Form 1

Insert at the end of the Form:

(Forms lodged in relation to civil proceedings to which the Uniform Civil Procedure Rules 2005 apply should use UCPR Form 1 instead of this form. Forms lodged in relation to criminal proceedings should use UCPR Form 1 with appropriate amendments.)

[5] Schedule F, Forms 90–120

Omit the forms.