

Western Australia

Non-contentious Probate Rules 1967

As at 19 Apr 2005

Version 04-b0-09

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Non-contentious Probate Rules 1967

CONTENTS

1.	Citation and commencement	1
2.	Interpretation	1
3.	Application of Supreme Court Rules and prior practice	2
4.	Jurisdiction of the Registrar	2
5.	Appeal from the Registrar	3
6.	Probate and administration generally	4
7.	Personal applications	4
7A.	Postal applications	5
8.	Affidavit of executor or administrator with the will annexed	5
9.	Administrator's affidavit	6
9A.	Orders to administer	7
9B.	Statement of assets and liabilities to be filed	8
10.	Inquiries to be answered before grant issues	9
11.	Grant in additional name	10
12.	Marking of will	10
13.	Invalid will to be produced	10
14.	Address for service	11
15.	Evidence as to due execution of will	11
16.	Execution of will of blind or illiterate testator	12
17.	Evidence as to terms, condition and date of execution of will	12
18.	Attempted revocation of will	13
19.	Affidavit as to due execution, terms, etc., of will	13
20.	Will not proved under section 9 of <i>Wills Act 1837</i>	13
20A.	Additional requirements where Part X of the <i>Wills Act 1970</i> is relevant	14

Contents

21.	Privileged wills	15
22.	Notice of application for administration	15
25.	Grant to creditor	15
26.	Grants on behalf of infants	16
27.	Guarantee where administration applied for	16
27A.	Guarantee where application to reseal	18
28.	Effect of renunciation	18
29.	Citations generally	18
30.	Citation to accept or refuse or to take a grant	19
31.	Citation to propound a will	21
32.	Citation to bring in a will	21
33.	Caveats	21
34.	Application for leave to swear to death	22
35.	Amendment and revocation of grant	22
36.	Taxation of costs	23
37.	Executors and administrators to pass accounts	23
38.	Form of grant, etc.	24
39.	Requirements as to documents	25
42.	Will to be engrossed in certain cases	25
43.	Documents to be lodged with application to reseal	26
43A.	Searches	26
43B.	Costs chargeable for non-contentious probate applications	26
44.	Application to pending proceedings	27
	First Schedule	28
	Second Schedule	37
	Notes	
	Compilation table	38

Non-contentious Probate Rules 1967

1. Citation and commencement

These rules may be cited as the *Non-contentious Probate Rules 1967*, and shall come into operation at the expiration of one month after publication in the *Government Gazette*¹.

2. Interpretation

- (1) In these rules, unless the contrary intention appears —

grant means a grant of probate or administration, or an order to administer made under section 10 or section 12 of the *Public Trustee Act 1941*;

Registrar means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935*, “Registrar of the Supreme Court”, and a reference to the Registrar or to a Registrar may include a reference to the Principal Registrar or a deputy Registrar;

rule means one of these rules;

the Act means the *Administration Act 1903*;

the Registry means the Probate Office of the Supreme Court;

the Wills Act 1837, means the Imperial Act 7 Will. IV and I Vict. c.26² as adopted by 2 Vict. No. 1; and

words and expressions defined in section 3 of the Act and used in these rules have the same respective meanings as in the Act.

r. 3

- (2) A form referred to by number means the form so numbered in the First Schedule; and those forms shall be used wherever applicable, with such variations as the Registrar may in any particular case direct or approve.

*[Rule 2 amended in Gazette 14 December 1979 p.3876;
6 March 1981 p.895.]*

3. Application of Supreme Court Rules and prior practice

- (1) The *Rules of the Supreme Court 1971*, and the general practice of the Court including the course of practice and procedure in Chambers apply, so far as may be practicable, to proceedings to which these rules relate, but only to the extent that the Act or these rules do not otherwise provide.
- (2) Where no other provision is made, the practice and procedure heretofore in force shall continue to apply.
- (3) All proceedings to which these rules relate shall be intitled “In the Supreme Court of Western Australia” “Probate Jurisdiction”.
- (4) In addition to the requirements of Order 69 of the *Rules of the Supreme Court 1971*, each document shall have endorsed on the back of the right hand half of the last page the name of the deceased and a short description of the document.

*[Rule 3 amended in Gazette 20 October 1972 p.4159;
15 December 1989 p.4520.]*

4. Jurisdiction of the Registrar

- (1) The Registrar may exercise the powers of a Judge in Chambers in and about the granting of probate and administration, and in and about the granting to the Public Trustee of orders to administer the estates of deceased persons, and may transact all such business and exercise all such powers and authorities in respect of voluntary or non-contentious probate jurisdiction as under the Act, the *Supreme Court Act 1935*, the *Public Trustee Act 1941*, the *Rules of the Supreme Court 1971*, or these rules,

may be transacted or exercised by a Judge in Chambers, except in respect of the following proceedings and matters, that is to say —

- (a) applications and orders under section 26(2) and (6) of the Act;
 - (b) subject to the provisions of rule 35(1) and (2), applications and orders under section 29 of the Act; and
 - (c) applications under section 64 of the Act to remove caveats.
- (2) Nothing contained in these rules derogates from or limits the jurisdiction or powers conferred by the Act on a Registrar.
 - (3) The Registrar may require an application made to him to be brought by summons, and may require an application made to him, whether by summons or otherwise, to be brought before a Judge by summons or before the Court on motion.
 - (4) Without prejudice to the provisions of subrule (3), where a matter appears to the Registrar proper for the determination of a Judge, the Registrar may refer it to a Judge, and the Judge may either dispose of the matter or refer it back to the Registrar with such directions as he may think fit.

*[Rule 4 amended in Gazette 20 October 1972 p.4159;
7 October 1977 p.3604; 14 December 1979 p.3876.]*

5. Appeal from the Registrar

- (1) A person aggrieved by an order, decision or requirement of the Registrar may appeal therefrom to a Judge in Chambers.
- (2) An appeal shall be by notice in writing to attend before the Judge and shall be filed in the Registry within 5 days after the order, decision or requirement complained of, or within such further time as may be allowed by a Judge or the Registrar.
- (3) A notice of appeal shall be served on every person, other than the appellant, who appeared or was represented before the Registrar.

r. 6

- (4) Where a notice of appeal is required to be served, there shall be at least 2 clear days between service of the notice and the day of hearing.

[Rule 5 amended in Gazette 14 December 1979 p.3876.]

6. Probate and administration generally

- (1) An application for a grant may be made on motion ex parte to the Registrar in Chambers at any time after 14 days from the death of the deceased; and all papers in support thereof shall be filed in the Registry.
- (2) An applicant for a grant may be made through a solicitor, or in person by an executor or a person entitled to administration.
- (3) An applicant for a first grant shall produce a certificate of the death of the deceased, or give a reason, to the satisfaction of the Registrar, why it is not produced.
- (4) Subrule (3) does not require a certificate of the death of the deceased to be produced where the Public Trustee applies for an order to administer under section 10(1)(f) of the *Public Trustee Act 1941*.

*[Rule 6 amended in Gazette 20 October 1972 p.4159;
14 December 1979 p.3876.]*

7. Personal applications

- (1) A person wishing to obtain a grant without the intervention of a solicitor, shall apply in person, and not through an agent.
- (2) An application that has in the first instance been made through a solicitor will not be entertained as a personal application without the leave of a Judge or the Registrar.
- (3) Where a caveat has been lodged, or where, in the opinion of the Registrar, it becomes necessary in the course of a personal application to obtain the directions of the Court, the application shall not be further proceeded with as a personal application except by leave of a Judge or the Registrar.

- (4) No legal advice, except such information as is referred to in section 56(1) of the Act, shall be given to a personal applicant by an officer of the Registry or by a district agent.

*[Rule 7 amended in Gazette 14 December 1979 p.3876;
1 August 1980 p.2560.]*

7A. Postal applications

Nothing in these rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

[Rule 7A inserted in Gazette 1 August 1980 p.2560.]

8. Affidavit of executor or administrator with the will annexed

An application for probate or for letters of administration with the will annexed shall be supported by an affidavit (accompanied by the will and any other instrument of a testamentary nature) setting forth —

- (i) that the applicant (if a natural person) has attained the age of 18 years;
- (ii) the death of the testator, and the date and place of his death;
- (iii) that the testator has left a will, the date thereof, that the will is unrevoked, whether there is any codicil thereto, and that any codicil sought to be proved is unrevoked;
- (iv) that the testator did not marry after the time of execution of the will, and had then attained —
 - (a) the age of 21 years, where his death occurred before 1 July 1970, or
 - (b) the age of 18 years, where his death occurred on or after that date;
- (v) the names of the executor and of the subscribing witnesses to the will and the true place of abode (if

reasonably ascertainable) of each of them at the time the affidavit is sworn;

- (vi) that the testator left estate within Western Australia;
- (vii) that the applicant, if given a grant, will administer the estate according to law;
- (viii) that no application for probate or administration in the matter has previously been made, or if there has been a previous application, the full particulars thereof; and
- (ix) in the case of a application for letters of administration with the will, the reason why the executor (if any) does not apply and the capacity in which the applicant claims to be entitled, and also, where the applicant is a natural person, the gross value of the estate in Western Australia.

*[Rule 8 amended in Gazette 18 December 1970 p.3815;
20 October 1972 p.4159.]*

9. Administrator's affidavit

An application for administration of the estate of a deceased person dying intestate shall be supported by an affidavit setting forth —

- (i) that the applicant (if a natural person) has attained the age of 18 years;
- (ii) the death of the intestate and the date and place of his death and the status of the intestate, that is whether leaving a widow or widower, a person who was in a de facto relationship with the intestate immediately before the death of the intestate, or dying a bachelor, widower, spinster, widow, or divorced person;
- (iii) that the deceased died intestate;
- (iv) that the applicant has made careful search and inquiry to ascertain whether the deceased left a will;

- (v) that the intestate left estate within Western Australia, and, where the applicant is a natural person, the gross value thereof;
- (vi) that the applicant has a right to the administration of the estate of the intestate, and the names and addresses of all persons who have a right thereto prior to or equal with the right of the applicant;
- (vii) the names, addresses and ages of the persons entitled in distribution to the estate of the intestate, and whether the deceased had adopted any child;
- (viii) the facts relied on to show who are the persons entitled to the administration of the estate of the intestate, and who are the persons entitled in distribution thereto;
- (ix) that the applicant if given a grant will administer the estate according to law; and
- (x) that no application for probate or administration in the matter has previously been made, or if there has been a previous application, the full particulars thereof.

[Rule 9 inserted in Gazette 17 October 1986 p.3894; amended in Gazette 30 June 2003 p.2619.]

9A. Orders to administer

- (1) An application by the Public Trustee for an order to administer the estate of a deceased person dying testate shall be supported by an affidavit setting forth —
 - (a) the information required by rule 8, other than paragraphs (i) and (ix); and
 - (b) the grounds upon which the application is based.
- (2) An application by the Public Trustee for an order to administer the estate of a deceased person dying intestate shall be supported by an affidavit setting forth —
 - (a) the information required by rule 9, other than paragraph (i) and paragraphs (vi) to (viii) inclusive;

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- (b) particulars of the persons entitled in distribution to the estate of the intestate, in so far as they are known to the Public Trustee; and
 - (c) the grounds upon which the application is based.
- (3) An order under section 10 of the *Public Trustee Act 1941*, to administer the estate of a deceased person shall reserve to the Court the right to grant probate or administration to any person who shall apply therefor and who might have obtained a grant if the order had not been made.
- (4) Where an order to administer the estate of a deceased person has been granted to the Public Trustee, a person who applies for probate of the will or administration of the estate of the deceased shall give at least 7 days' notice in writing to the Public Trustee of the intended application.
- (5) An application to the Court under section 12 of the *Public Trustee Act 1941*, other than an application by the Public Trustee, shall be made by summons supported by an affidavit of the facts relied on; and copies of the summons and affidavit shall be served upon the Public Trustee at least 2 clear days before the return day.

[Rule 9A inserted in Gazette 20 October 1972 p.4160; amended in Gazette 17 October 1986 p.3894.]

9B. Statement of assets and liabilities to be filed

- (1) Subject to subrule (3), the affidavit of an applicant for a grant shall exhibit and verify a statement giving particulars of —
- (a) all movable property, wherever situated, and all immovable property in Western Australia, comprised in the estate of the deceased;
 - (b) the value at the time of the death of the deceased of the property referred to in paragraph (a); and
 - (c) all debts, wherever situated, owing by the deceased at the time of his death.

- (2) Subject to subrule (3), the affidavit of an applicant to reseal a grant shall exhibit and verify a statement giving particulars of —
 - (a) all movable and immovable property in Western Australia comprised in the estate of the deceased;
 - (b) the value at the time of the death of the deceased of the property referred to in paragraph (a); and
 - (c) all debts in Western Australia owing by the deceased at the time of his death.
- (3) This rule shall not apply where the deceased died before 1 January 1980, or where the applicant is the Public Trustee or a corporation authorised by law to obtain a grant, or where the court or the Registrar, in special circumstances, so directs.
- (4) A direction under subrule (3) may be given on such terms and subject to such conditions as the Court or Registrar thinks fit.
[Rule 9B inserted in Gazette 1 August 1980 pp.2560-1.]

10. Inquiries to be answered before grant issues

- (1) The Registrar shall not allow a grant to issue until all inquiries that he may see fit to make have been answered to his satisfaction.
- (2) Where the omission is deemed to be of no consequence the Registrar may dispense with full compliance with the requirements of rule 8, rule 9 or 9A.
- (3) The Registrar may require proof of the identity of the deceased or of the applicant beyond that contained in the applicant's affidavit.
- (4) The Registrar shall not require a guarantee under section 26 of the Act as a condition of granting administration to any person without giving that person or, where the application for the grant is made through a solicitor, the solicitor an opportunity of being heard with respect to the requirement.

*[Rule 10 amended in Gazette 20 October 1972 p.4160;
7 October 1977 p.3604; 14 December 1979 p.3876.]*

11. Grant in additional name

Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall depose to the true name of the deceased, and shall also depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

12. Marking of will

- (1) A will sought to be proved shall be marked by the signatures of the applicant and the person before whom his affidavit is sworn, and shall be exhibited to any affidavit that may be required under these rules as to the validity, terms, condition or date of execution of the will.
- (2) Where the Registrar is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy of the will to be marked or exhibited in lieu of the original document.
- (3) The signatures referred to in subrule (1) and any necessary exhibit note shall be endorsed on the cover of the will or on such other place where the signatures and exhibit note will not appear in any photographic reproduction of the will.

*[Rule 12 amended in Gazette 20 October 1972 p.4160;
14 December 1979 p.3876.]*

13. Invalid will to be produced

A document of a testamentary character purporting to be of the deceased, if alleged to be invalid for any reason other than revocation, shall be brought into the Registry with the application, unless production is dispensed with by order of the Registrar.

[Rule 13 amended in Gazette 14 December 1979 p.3876.]

14. Address for service

An application for a grant or to reseal a grant, or a caveat, shall contain a notice of an address for service within Western Australia; and service at that address is sufficient service of any notification, summons or other proceeding under the Act or these rules.

[Rule 14 inserted in Gazette 1 August 1980 p.2561.]

15. Evidence as to due execution of will

- (1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to him that there is some doubt concerning the due execution of the will, the Registrar shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.
- (2) An affidavit of due execution shall be in accordance with Form 1 with such variations as the circumstances may require.
- (3) Where an affidavit cannot be obtained in accordance with subrule (1), the Registrar may, having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from such person as he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter that may raise a presumption in favour of the due execution of the will.
- (4) Where the Registrar, after considering the evidence —
 - (a) is satisfied that the will was not duly executed, he shall refuse the application and shall mark the will accordingly;
 - (b) is in doubt whether the will was duly executed, he may refer the matter to the Court on motion.

[Rule 15 amended in Gazette 14 December 1976 p.3876.]

16. Execution of will of blind or illiterate testator

Before admitting to proof a will that appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

[Rule 16 amended in Gazette 14 December 1979 p.3876.]

17. Evidence as to terms, condition and date of execution of will

- (1) Where there appears in a will any obliteration, interlineation, or other alteration that is not authenticated in the manner prescribed by section 21 of the *Wills Act 1837*, or section 10 of the *Wills Act 1970* (whichever is applicable), or by the re-execution of the will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed, and shall give directions as to the form in which the will is to be proved.
- (2) Subrule (1) does not apply to an alteration that appears to the Registrar to be of no practical importance.
- (3) Where from a mark on a will it appears to the Registrar that some other document has been attached to the will, or where a will contains a reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Registrar may require the document to be produced and may call for evidence in regard to the attachment or incorporation of the document.
- (4) Where there is doubt as to the date on which a will was executed, the Registrar may require such evidence as may be necessary to establish the date.
- (5) Where a sheet of a will is not signed by the testator and by the attesting witnesses, affidavit evidence shall be adduced

establishing that the sheet formed part of the will as executed by the testator, unless in any particular case this requirement is dispensed with by order of the Registrar.

*[Rule 17 amended in Gazette 20 October 1972 p.4160;
14 December 1979 p.3876.]*

18. Attempted revocation of will

Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the satisfaction of the Registrar.

[Rule 18 amended in Gazette 14 December 1979 p.3876.]

19. Affidavit as to due execution, terms, etc., of will

The Registrar may require an affidavit from such person as he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 16, 17 and 18; and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

[Rule 19 amended in Gazette 14 December 1979 p.3876.]

20. Will not proved under section 9 of Wills Act 1837

- (1) Nothing in rules 15, 16, 17 or 18 applies to any will that it is sought to establish otherwise than by reference to section 9 of the *Wills Act 1837*, as explained by Act 18 Vict. No. 13 or section 8 of the *Wills Act 1970*; but the terms and validity of any such will shall be established to the satisfaction of the Registrar.
- (2) Nothing in rules 15, 16, 17 or 18 applies to any document to which rule 20A applies.

*[Rule 20 amended in Gazette 20 October 1972 p.4160;
14 December 1979 p.3876; 19 January 1990 p.204.]*

r. 20A

20A. Additional requirements where Part X of the *Wills Act 1970* is relevant

- (1) Where it appears that Part X of the *Wills Act 1970* may apply to any document of a testamentary nature the applicant, in addition to any other requirements relating to an application for a grant, shall by affidavit, accompanied by such document or documents, set forth —
 - (a) the gross value of the estate wherever situated;
 - (b) all material facts relating to the circumstances in which the document is said to have come into existence, or to have been altered, revoked or revived and of the intention of the deceased relating thereto; and
 - (c) the full names, ages and addresses of all persons who may be prejudiced by —
 - (i) the application of that Part where the applicant seeks to apply that Part; or
 - (ii) the non-application of that Part where the applicant seeks not to apply that Part,and, for each such person, the reason why it is said that the person may be prejudiced.
- (2) The applicant shall exhibit to an affidavit the consents of all persons who may be prejudiced as mentioned in subrule (1)(c) but the Registrar may, on such terms and subject to such conditions as the Registrar thinks fit, dispense with the consent of a person who may be so prejudiced if he is satisfied that —
 - (a) the person —
 - (i) is not of full age or is incapable of consenting by reason of mental illness, defect or infirmity; or
 - (ii) cannot be found;or
 - (b) it is otherwise just or expedient to do so.

[Rule 20A inserted in Gazette 19 January 1990 p.204 (Erratum in Gazette 26 January 1990 p.657); amended in Gazette 5 March 1996 p.830.]

21. Privileged wills

Where it appears to the Registrar that there is a prima facie evidence that the will is one to which either of the following provisions apply, namely, section II of the *Wills Act 1837*, as amended by the *Wills (Soldiers, Sailors and Airmen) Act 1941*², or Part VI of the *Wills Act 1970*, the will may be admitted to proof where the Registrar is satisfied that the will was signed by the testator or, if unsigned, that it is in the testator's handwriting.

[Rule 21 inserted in Gazette 20 October 1972 p.4161; amended in Gazette 14 December 1979 p.3876.]

22. Notice of application for administration

- (1) Where the applicant for administration is not the sole person entitled to administration, there being another person or other persons within the jurisdiction also entitled thereto, the consents, duly verified, of any such persons shall be filed, or evidence shall be adduced that they were served with notice of the application, or that they cannot be found.
- (2) The Registrar may direct that notice of an application for administration be given to any person, wherever he is resident, and whether or not he appears to be entitled in distribution to the estate of the intestate, and may dispense wholly or in part with the requirements of subrule (1).

[Rule 22 inserted in Gazette 17 October 1986 p.3894.]

[23., 24. Deleted in Gazette 20 October 1972 p.4161.]

25. Grant to creditor

Where a creditor intends to apply for administration, he shall first issue a citation calling upon the persons entitled in

distribution to show cause why administration should not be granted to him, and prove his debt before the Registrar.

[Rule 25 inserted in Gazette 17 October 1986 p.3895.]

26. Grants on behalf of infants

- (1) Grants of administration *durante minore aetate* may be made to guardians of infants for their use and benefit, subject to such limitations or conditions as the Registrar may order.
- (2) Infants above the age of 14 years may elect a guardian; and in other cases the Registrar may, on application made to him on motion, appoint as guardian a fit and proper person who consents to act.
- (3) Where a guardian applies for administration, he shall produce evidence of his election or assignment.
- (4) In a family where there are infants both above and under the age of 14 years, an elected guardian may act for all the infants without special assignment.

*[Rule 26 amended in Gazette 20 October 1972 p.4161;
14 December 1979 p.3876.]*

27. Guarantee where administration applied for

- (1) The Registrar shall not require a guarantee under section 26 of the Act as a condition of granting administration except where it is proposed to grant administration —
 - (a) for the use and benefit of another person or where the grant is otherwise limited;
 - (b) to an applicant who appears to the Registrar to be resident elsewhere than in Western Australia;
 - (c) where a beneficiary is not of full age or capacity; or
 - (d) where a beneficiary is not resident in Western Australia and has no agent or attorney there;

or except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

- (2) Notwithstanding that it is proposed to grant administration in any of the cases mentioned in paragraphs (a) to (d) inclusive of subrule (1), a guarantee shall not be required, except in special circumstances, where the applicant or one of the applicants is —
 - (a) a corporation authorised by the law of Western Australia to obtain a grant; or
 - (b) a person holding a current practice certificate under the *Legal Practice Act 2003*.
- (3) A guarantee entered into by a surety for the purposes of section 26 of the Act shall be in Form 2.
- (4) A guarantee shall not be required from the Public Trustee or from a person obtaining administration for the benefit of the State.
- (5) Where it is required, the guarantee shall be by 2 sureties resident in Western Australia unless the surety is a corporation approved by the Court or the applicant is a corporation authorised by the law of Western Australia to obtain a grant or where the Registrar otherwise orders.
- (6) Where it is required, the guarantee shall be for an amount equal to the gross value of the estate in Western Australia or such reduced or increased amount as the Registrar orders; and in fixing the amount of the guarantee the Registrar shall take into account the extent to which the claim of a creditor is secured over a mortgage or charge of real or personal estate of the deceased.
- (7) A surety other than a corporation shall justify to the satisfaction of the Registrar.
- (8) Except where the surety is a corporation, the guarantee shall be attested by a person authorised to administer oaths.

r. 27A

[Rule 27 inserted in Gazette 7 Oct 1977 p. 3604-5; amended in Gazette 14 Dec 1979 p. 3876; 1 Aug 1980 p. 2561; 19 Apr 2005 p. 1297.]

27A. Guarantee where application to reseal

On an application for the sealing of a grant of administration —

- (a) the Registrar shall not require a guarantee under section 62 of the Act as a condition of sealing the grant except where it appears to him that the grant is made to a person or in any of the circumstances mentioned in paragraphs (a) to (d) inclusive of rule 27(1) or except where the Registrar considers that there are special circumstances making it desirable to require a guarantee;
- (b) subrule 10(4) and rule 27(2), (4), (5), (6), (7) and (8) shall apply with any necessary modifications; and
- (c) a guarantee entered into by a surety for the purposes of section 62 of the Act shall be in Form 2A.

[Rule 27A inserted in Gazette 7 October 1977 p.3605; amended in Gazette 14 December 1979 p.3876; 1 August 1980 p.2561.]

28. Effect of renunciation

Unless the Registrar otherwise directs, a person who has renounced probate of the will or administration of the estate of a deceased person in one capacity may not take a representation to the same deceased in another capacity.

[Rule 28 amended in Gazette 14 December 1979 p.3876.]

29. Citations generally

- (1) A citation shall be settled by the Registrar before being issued.
- (2) An averment in a citation, and such other information as the Registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these rules called “**the citor**”) or, if there are 2 or more citors, by one of them; but the

Registrar may in special circumstances accept an affidavit sworn by the citor's solicitor.

- (3) The citor shall enter a caveat before issuing a citation.
- (4) A citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.
- (5) A will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the will is not in the possession of the citor and the Registrar is satisfied that it is impracticable to lodge it.
- (6) A person who has been cited to appear may, within such time as the Registrar may fix, or at any time thereafter if no application has been made by the citor under rule 30(5) or rule 31(2), file a notification of his intention to be heard and shall forthwith thereafter serve on the citor a copy of the notification.

[Rule 29 amended in Gazette 14 December 1979 p.3876.]

30. Citation to accept or refuse or to take a grant

- (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
- (2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.
- (3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased; but no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

- (4) A person cited who is willing to accept or take a grant may apply *ex parte* to the Registrar for a grant on filing an affidavit showing that he has filed a notification of his intention to be heard and that he has not been served by the citor with notice of any application for a grant to himself.
- (5) Where the time limited for filing a notification of intention to be heard has expired and the person cited has not filed a notification, the citor may —
 - (a) in the case of a citation under subrule (1), apply to the Registrar for a grant to himself;
 - (b) in the case of a citation under subrule (2), apply to the Registrar for an order that a note be made on the grant that the executor to whom power was reserved has been duly cited and has not filed a notification of his intention to be heard and that all his rights in respect of the executorship have wholly ceased;
 - (c) in the case of a citation under subrule (3), apply to the Registrar by summons (which shall be served on the person cited) for an order requiring that person to take a grant within a specified time.
- (6) An application under subrule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not filed a notification of his intention to be heard.
- (7) Where the person cited has filed a notification of his intention to be heard but has not applied for a grant under subrule (4), or has failed to prosecute his application with reasonable diligence, the citor may —
 - (a) in the case of a citation under subrule (1), apply by summons to the Registrar for an order for a grant to himself;
 - (b) in the case of a citation under subrule (2), apply by summons to the Registrar for an order striking out the notification of intention to be heard and for the

endorsement on the grant of such a note as is mentioned in subrule (5)(b);

- (c) in the case of a citation under subrule (3), apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time;

and the summons shall be served on the person cited.

[Rule 30 amended in Gazette 14 December 1979 p.3876.]

31. Citation to propound a will

- (1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested under the will, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.
- (2) Where the time limited for filing a notification of intention to be heard has expired and no person cited has filed a notification, or where no person who has filed a notification proceeds with reasonable diligence to propound the will, the citor may apply on motion for a grant as if the will were invalid.

32. Citation to bring in a will

- (1) A person bringing in a will or testamentary paper in obedience to a citation or order, shall deposit it at the Registry, and may require a receipt therefor.
- (2) A person served with a citation to bring in a will or testamentary paper may file a notification of his intention to be heard, on payment of the prescribed fees, if he thinks fit to do so.

33. Caveats

- (1) A person having any interest in an estate in which application is being made for a grant or the sealing of a grant, and intending to oppose the application, shall either personally or by his solicitor enter a caveat in the Registry.
- (2) A caveat shall be in accordance with Form 3, and shall state fully the nature of the interest of the caveator.

r. 34

- (3) Subject to subrule (4), a caveat shall remain in force for the space of 6 months only from the day it is entered and then expire and be of no effect, unless otherwise ordered.
- (4) Notwithstanding that a period of 6 months has elapsed after entry of a caveat, the Registrar may require the applicant for a grant to give notice to the caveator before proceeding with his application.
- (5) Where the applicant for a grant or for the sealing of a grant does not obtain an order under section 64 of the Act, he shall, within one month, or such extended time as a Judge or the Registrar may allow after notice of the entry of the caveat, commence contentious proceedings by issuing a writ against the caveator and proceeding in the ordinary manner.
- (6) A caveator may, if no step is taken by the executor or applicant for administration within a period of one month after notice of the entry of the caveat, apply to a Judge or the Registrar for an order directing the executor or applicant to proceed with his application; and the Judge or Registrar may make an order upon such terms as he thinks fit.

[Rule 33 amended in Gazette 14 December 1979 p.3876.]

34. Application for leave to swear to death

An application for leave to swear to the death of a person shall be made to the Registrar by originating motion and shall be supported by an affidavit setting out the grounds of the application and particulars of all policies of insurance on the life of the person the subject of the application.

*[Rule 34 amended in Gazette 30 March 1973 p.818;
14 December 1979 p.3876.]*

35. Amendment and revocation of grant

- (1) Where the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly.

- (2) Except in special circumstances, a grant shall not be amended or revoked under this rule other than on the application or with the consent of the person to whom the grant was made.
- (3) Where an order has been made for the amendment of a grant, the original grant shall be produced to the Registry for notation, or its non-production accounted for.
- (4) Where an order has been made under the *Inheritance (Family and Dependants Provision) Act 1972*, the original grant shall be produced to the Registry, together with a certified copy of the order and 2 photographic copies thereof.

[Rule 35 amended in Gazette 20 October 1972 p.4161; 14 December 1979 p.3876; 1 August 1980 p.2560.]

36. Taxation of costs

The taxing officer shall tax all bills of costs referred to him for taxation.

[Rule 36 amended in Gazette 14 December 1979 p.3876.]

37. Executors and administrators to pass accounts

- (1) Every executor and administrator (other than the Public Trustee) shall file in the Registry his accounts relating to the estate of the deceased in accordance with Form 4, and shall attend before the Registrar at such time as the Registrar may appoint to have the accounts passed and allowed.
- (2) Where there is any balance available for distribution, the executor or administrator shall file a plan of distribution with his accounts.
- (3) The accounts and plan of distribution mentioned in this rule shall be filed within 12 months after the grant, or within such further time as a Judge or the Registrar may allow, and shall be verified by the affidavit of the executor or administrator.
- (4) Notice in accordance with Form 5 of filing of the accounts of an executor or administrator shall be advertised once, 14 days at

least before the day fixed for passing the accounts, in a daily newspaper published in Perth.

- (5) In the case of an administrator, notice of the filing and of the appointment to pass his accounts shall also be served on the sureties of the administration bond.
- (6) A person wishing to object to the passing of the accounts of an executor or administrator, shall file in the Registry, before the day fixed for the passing of the accounts, a notice of his intention to object, and also an affidavit stating his interest and the nature and grounds of his objection.
- (7) Upon the taking of the accounts, the Registrar may make such order as to service upon any of the parties or persons interested as he may think fit.
- (8) Any person interested may attend before the Registrar upon the taking of the accounts.
- (9) The costs of the accounting party and of any person who has filed a notice of objection under this rule shall be in the discretion of the Registrar.
- (10) The Registrar's allowance of an account shall be recorded by a certificate.

*[Rule 37 amended in Gazette 14 December 1979 p.3876;
1 August 1980 p.2561.]*

38. Form of grant, etc.

Grants of probate, letters of administration, letters of administration with the will annexed and orders to administer shall be in such form as the Registrar from time to time directs.

[Rule 38 inserted in Gazette 12 January 1996 p.106.]

39. Requirements as to documents

Documents for filing in the Registry shall comply with the requirements of Order 69 Rule 2 of the *Rules of the Supreme Court 1971*.

[Rule 39 inserted in Gazette 12 January 1996 p.106.]

[40, 41. Deleted in Gazette 12 January 1996 p.106.]

42. Will to be engrossed in certain cases

- (1) Where the Registrar considers that a will or other document required to be copied for the purpose of grant, sealing, or record is unsuitable for photography, he may require an engrossment of the document, suitable for photographic reproduction, to be lodged.
- (2) Where some of the documents intended to form part of the probate or letters of administration with the will annexed are not suitable for photography, the Registrar may require a copy of the whole of the documents to be made and lodged for that purpose.
- (3) Where a will or codicil contains alterations not admitted to proof, an engrossment of the will or codicil in the form in which it is proved, shall be lodged.
- (4) An engrossment lodged pursuant to this rule shall reproduce the punctuation, spacing and division into paragraphs of the will, and shall be legibly and clearly typewritten in pica type on one side only of foolscap paper of durable quality with a quarter margin and not less than 6 millimetres between each line.
- (5) Where a will or codicil, or any part thereof, is written in pencil, there shall be lodged a facsimile copy of the will or codicil, in which the pencil writings in the original shall be reproduced in red ink. The copy may be made on paper of such size as the Registrar may direct, and shall be kept on the Court file.

*[Rule 42 amended in Gazette 7 December 1973 p.4487;
14 December 1979 p.3876; 1 August 1980 p.2561.]*

43. Documents to be lodged with application to reseal

- (1) A grant lodged for sealing shall include an authentic copy of the will and codicil (if any) to which the grant relates, or shall be accompanied by a copy thereof certified as correct by or under the authority of the Court by which the grant was made.
- (2) The person producing a grant for sealing shall also lodge for record purposes a copy of the grant and of any will and codicil to which it relates.
- (3) The copy required by subrule (2) shall, unless otherwise directed by the Registrar, be a photographic copy made in the Registry.

*[Rule 43 amended in Gazette 18 December 1970 p.3815;
14 December 1979 p.3876.]*

43A. Searches

Any person shall, on payment of the prescribed fee, be entitled during office hours to search for and obtain a copy of any of the following documents filed or of record in the Registry, namely —

- (a) a will or codicil that has been proved;
- (b) a grant of probate or administration;
- (c) an order to administer; and
- (d) with the leave of the Registrar, any other document.

*[Rule 43A inserted in Gazette 20 October 1972 p.4161;
amended in Gazette 14 December 1979 p.3876.]*

43B. Costs chargeable for non-contentious probate applications

- (1) Subject to this rule, solicitors are entitled to charge and shall be allowed out of the estates of deceased persons the fees set forth in the Second Schedule in respect of the matters referred to in

that schedule; and higher fees shall not be allowed except as otherwise provided in this rule.

- (2) The fees prescribed by the Second Schedule do not include any proper disbursements necessarily made or incurred.
- (3) The fees prescribed by item 1 of the Second Schedule do not include the costs of preparation of the statement required by rule 9B; and those costs shall be regulated by item 9 of the *Solicitors Remuneration Order 1976*, as amended from time to time.
- (4) The fees prescribed by item 2 of the Second Schedule are allowable only where it is necessary or desirable for a country solicitor to employ a Perth agent in connection with an application for a grant or to reseal a grant.
- (5) Where an application for a grant or to reseal a grant is unusually complex, or involves an unusually high degree of skill or urgency, the solicitor shall be entitled to charge and shall be allowed out of the estate of the deceased person such further fee as is reasonable in the circumstances.
- (6) The costs incurred in relation to the administration of estates of deceased persons, not being the costs of an application for a grant or to reseal a grant, shall be regulated by the *Solicitors Remuneration Order 1976*, as amended from time to time.

[Rule 43B inserted in Gazette 6 March 1981 p.895.]

44. Application to pending proceedings

Subject in any particular case to any direction given by a Judge or the Registrar, these rules shall apply to any proceeding that is pending on the day on which these rules come into operation as well as to any proceeding commenced after that day.

[Rule 44 amended in Gazette 14 December 1979 p.3876.]

[45. Omitted under the Reprints Act 1984 s.7(4)(f).]

First Schedule

First Schedule

rule 15

Form 1

AFFIDAVIT OF ATTESTING WITNESS (WHERE REQUISITE)

In the Will of _____, late of _____, deceased.

I, _____, of _____, in the State of Western Australia, being duly sworn, make oath and say as follows: —

1. I am one of the subscribing witnesses to the last will and testament of the said _____ late of _____, deceased, bearing date the _____ day of _____, 19____, and produced and shown to me and marked 'A'.

2. The said testator executed the said will on the day of the date thereof, by signing his name at the foot or end thereof, as the same now appears thereon, in the presence of me and of _____ the other subscribed witness thereto, both of us being present at the same time and we thereupon attested and subscribed the said will in the presence of the said testator.

Sworn by the deponent, this _____ day of _____ 19____, at _____, before me,

Form 2

SURETY'S GUARANTEE

Whereas (1) of (2) died on the day of 19 , and (and) (3) (hereinafter called "the administrator(s)") is/are (4) the intended administrator(s) of his estate.

Now therefore:

1. I/We (5) of (and of) (5) hereby (jointly and severally) (6) guarantee that I/We (4) will, when lawfully required to do so (7) make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their (4) duty —

- (a) to collect and get in the real and personal estate of the deceased and administer it according to law;
- (b) file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the Court may order;
- (c) when so required by the Court to deliver up the grant to the Court.

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our (4) liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our aggregate) total liability shall not in any event exceed the sum of \$. (8).

Dated the day of 19 .

Signed, sealed and delivered by the above-named in the presence of

A Commissioner for affidavits (or other person authorised by law to administer an oath) (9)

(The Common Seal of

First Schedule

was hereunto affixed in the presence of _____).

- (1) Full name of deceased.
- (2) Address of deceased.
- (3) Full name(s) and address(es) and description(s) of proposed administrator(s).
- (4) Delete whichever is inapplicable.
- (5) Full name(s) address(es) and description(s) of surety(ies).
- (6) Delete if only one surety.
- (7) An action on the guarantee may only be brought with the leave of the Court.
- (8) Insert gross value of estate in Western Australia (unless the Master has directed otherwise).
- (9) Attestation is not required in the case of a corporation.

Form 2A

SURETY'S GUARANTEE ON APPLICATION TO RESEAL

In the Estate of (1) deceased
Whereas (1) of (2) died on
the day of 19 , and letters of
administration of his estate were on the day of 19 ,
granted by the (3) to (and)
(4) and are about to be sealed in Western Australia.

Now therefore:

1. I/We (5) of (and) (6) hereby (jointly and severally) (7) guarantee
that I/We (5) will, when lawfully required to do so (8), make good any loss
which any person interested in the administration of the estate of the deceased in
Western Australia may suffer in consequence of the breach by the
administrator(s) of his/her/their (5) duty —

- (a) to collect and get in the real and personal estate of the deceased
which is situated in Western Australia and administer it according
to law;
(b) file an inventory of the estate of the deceased, and pass his
accounts relating thereto within such time, and from time to time,
and in such manner as may be prescribed by the rules or as the
Court may order.

2. The giving of time to the administrator(s) or any other forbearance or
indulgence shall not in any way affect my/our (5) liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the
whole amount of the loss mentioned in paragraph 1 above, but (my) (our
aggregate) total liability shall not in any event exceed the sum of \$. (9)

Dated the day of 19

Signed, sealed and delivered
by the above-named in the
presence of

A Commissioner for affidavits
(or other person authorised
by law to administer an oath) (10)

(The Common Seal of

First Schedule

was hereunto affixed in the presence of _____).

- (1) Full name of deceased.
- (2) Address of deceased.
- (3) Description of Court by which grant was issued.
- (4) Full name(s) and address(es) and description(s) of administrators.
- (5) Delete whichever is inapplicable.
- (6) Full name(s) address(es) and description(s) of surety(ies).
- (7) Delete if only one surety.
- (8) An action on the guarantee may only be brought with the leave of the Court.
- (9) Insert gross value of estate in Western Australia (unless the Master has directed otherwise).
- (10) Attestation is not required in the case of a corporation.

rule 33

Form 3

CAVEAT

Take notice that I (*name of caveator in full*) of (*address and description in full*) claiming interest (*state relationship or particulars of interest*) in the estate of (or under the will of — *set out full description*) do hereby demand that nothing be done therein without notice to me.

Take further notice that my address for service is: —

Dated this day of , 19 .

(Signature of Caveator or his Solicitor.)

Witness:

First Schedule

rule 37

Form 4

ACCOUNTS OF EXECUTORS AND ADMINISTRATORS

The account of the administration of the estate of the abovenamed deceased by the Executor(s) (or Administrator) to the _____ day of _____, 19____, filed pursuant to rule 37 of the *Non-contentious Probate Rules 1967*

**Part A
Receipts**

Number of Item	Date	Particulars	\$	
		Total		
		Disbursements	\$	
		Balance		
		Totals \$		

Part B

PORTION OF ESTATE DISTRIBUTED IN SPECIE

(Set out briefly, with particulars of value for purposes of Probate Duty.)

Part C

PORTION OF ESTATE RETAINED OR REMAINING UNCOLLECTED

(Set out briefly, with particulars of value for purposes of Probate Duty.)

Part D

STATEMENT OF MONEYS AND SECURITIES HELD BY THE EXECUTOR(S) (OR ADMINISTRATOR)

(Set out particulars of moneys now in hand and investments made since date of death.)

First Schedule

rule 37

Form 5

NOTICE OF FILING ACCOUNTS

NOTICE is hereby given that the accounts and plan of distribution in the above estate have this day been filed in my office, and all persons having any claim on the said estate, or being otherwise interested therein, are hereby required to come in before me at my said office on or before the _____ day of _____, 19____, at _____ o'clock in the _____ noon and inspect the same, and if they shall think fit object thereto; otherwise if the said accounts be not objected to, the same will be examined by me and passed according to law.

Dated this _____ day of _____, 19____.

Registrar.

*[First Schedule amended in Gazette 20 October 1972 p.4162;
7 October 1977 pp.3606-7; 14 December 1979 p.3876; 6 March 1981
p.895; 12 January 1996 p.106.]*

Second Schedule

rule 43B

Scale of costs

1. Application for a grant, or to reseal a grant made outside Western Australia —

Value of Estate	Fee
	\$

Where the gross value of the property of the deceased in Western Australia —

does not exceed \$27 580	380
exceeds \$27 580 and does not exceed \$55 160	430
exceeds \$55 160 and does not exceed \$82 740	485
exceeds \$82 740 and does not exceed \$110 320	585
exceeds \$110 320 and does not exceed \$137 900	690
exceeds \$137 900	690, plus \$140 for each \$69 000 or part thereof, with a maximum allowance of \$2 070.

2. Agency allowance where the solicitor for the applicant for a grant or to reseal a grant does not carry on practice in the Perth metropolitan area and employs a solicitor in Perth as his agent in connection with the application —

Value of Estate	Fee
	\$

Where the gross value of the property of the deceased in Western Australia —

does not exceed \$27 580	55
exceeds \$27 580	70

[Second Schedule inserted in Gazette 13 December 1985 pp.4764-5.]

Notes

- ¹ This is a compilation of the *Non-contentious Probate Rules 1967* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any previous reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Non-contentious Probate Rules 1967</i>	11 Sep 1967 p. 2249-64	12 Oct 1967 (see rule 1)
<i>Non-contentious Probate Amendment Rules 1989</i>	15 Dec 1989 p.4520	1 Jan 1989 (see rule 2)
<i>Non-contentious Probate Amendment Rules 1989</i>	19 Jan 1990 p. 203-4 (erratum in <i>Gazette</i> 26 Jan 1990 p.657)	26 Jan 1990 (see rule 2)
<i>Non-contentious Probate Amendment Rules 1996</i>	12 Jan 1996 p.106	12 Jan 1996
<i>Non-contentious Probate Amendment Rules (No. 2) 1996</i>	5 Mar 1996 pp.830-1	5 Mar 1996
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 28</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Courts and Legal Practice (Consequential Amendments) Regulations 2005 r. 8</i>	19 Apr 2005 p. 1294-302	19 Apr 2005

- ² Repealed by the *Wills Act 1970* (No. 12 of 1970).