

Authorised Version No. 010
**Supreme Court (Administration and
Probate) Rules 2004**

S.R. No. 54/2004

Authorised Version incorporating amendments as at
28 February 2011

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**Supreme Court (Administration and
Probate) Rules 2004**

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The Judges of the Supreme Court make the following Rules:

ORDER 1—PRELIMINARY

1.01 Title and object

- (1) These Rules constitute Chapter III of the Rules of the Supreme Court and are entitled the Supreme Court (Administration and Probate) Rules 2004.
- (2) The object of these Rules is to re-make the Rules that constitute Chapter III of the Rules of the Supreme Court, regulating procedures in the Court in relation to administration and probate.

1.02 Authorising provisions

These Rules are made under section 25 of the **Supreme Court Act 1986**, the **Administration and Probate Act 1958** and all other enabling powers.

1.03 Commencement, revocation and savings

- (1) These Rules come into operation on 15 June 2004.
- (2) The Rules set out in the Schedule are **revoked**.
- (3) These Rules apply to any application in the Court made on or after 15 June 2004.
- (4) Chapter III of the Rules of the Supreme Court as in force immediately before the commencement of these Rules shall continue to apply to an application in the Court commenced before 15 June 2004 as if these Rules had not been made.

r. 1.04

1.04 Definitions

(1) In these Rules—

Rule 1.04(1)
def. of
*Court's
website*
inserted by
S.R. No.
18/2009 rule 5.

Court's website means the website whose address
is www.supremecourt.vic.gov.au;

Rule 1.04(1)
def. of
*dual
advertising
system period*
inserted by
S.R. No.
18/2009 rule 5.

dual advertising system period means the period
of 6 months from 2 March 2009 until
2 September 2009;

grant of representation means a grant of probate
or administration;

the Act means the **Administration and Probate
Act 1958**.

(2) The words and expressions defined in section 3
and Part I of the Act have the same meaning in
these Rules as they have in that section and that
Part.

1.05 Chapter I of Rules and general practice to apply

Chapter I of the Rules of the Supreme Court for
the time being in force and the general practice of
the Court apply in relation to a proceeding to
which these Rules apply so far as practicable
except so far as is otherwise provided by these
Rules or any Act.

Rule 1.06
(Heading)
amended by
S.R. No.
100/2008
rule 17(1).

1.06 Jurisdiction of Associate Judge

Rule 1.06(1)
amended by
S.R. No.
100/2008
rule 17(2)(a).

(1) Except where otherwise provided by these Rules,
an Associate Judge, in addition to exercising the
powers and authorities conferred on an Associate

Judge by any other provision of these Rules or by any Act may, in any proceeding to which these Rules apply, give any judgment or make any order, including any judgment or order in the exercise of the inherent jurisdiction of the Court.

- (2) Subject to paragraph (3) and these Rules, the trial of a proceeding shall not be held before an Associate Judge and an Associate Judge shall not give any judgment or make any order at the trial of a proceeding. **Rule 1.06(2) amended by S.R. No. 100/2008 rule 17(2)(a).**
- (3) Except as provided by paragraph (4), an Associate Judge may— **Rule 1.06(3) amended by S.R. No. 100/2008 rule 17(2)(a), substituted by S.R. No. 44/2009 rule 13(1).**
- (a) at the trial of a proceeding give judgment or make an order by consent of all parties;
- (b) hear and determine a trial of an undefended civil proceeding.
- (4) An Associate Judge shall not have authority to hear and determine any application which by these Rules or any Act is required to be heard only by a Judge of the Court. **Rule 1.06(4) amended by S.R. No. 100/2008 rule 17(2)(b).**
- (5) This Rule has effect as if it contained, modified as necessary, Rules 77.03, 77.04, 77.05 and 77.08 of Chapter I. **Rule 1.06(5) amended by S.R. No. 100/2008 rule 17(3).**

1.06.1 Reference by Judge of the Court to Associate Judge

Rule 1.06.1 inserted by S.R. No. 100/2008 rule 18.

- (1) If a matter before a Judge of the Court, which matter would not otherwise be within the authority of an Associate Judge, is a matter to which these Rules apply and it appears to the Judge to be proper for the determination of an Associate Judge, the Judge of the Court, by order, may refer the matter to an Associate Judge. **Rule 1.06.1(1) amended by S.R. No. 44/2009 rule 13(2).**

r. 1.07

- (2) If a Judge of the Court refers a matter to an Associate Judge, the Associate Judge may—
 - (a) hear and determine the matter, subject to any directions in the order referring the matter; or
 - (b) refer the matter back to the Judge of the Court for hearing and determination.
- (3) In hearing and determining a matter referred by a Judge of the Court to an Associate Judge, the Associate Judge has, the same powers as a Judge of the Court would have in hearing and determining such a matter, subject to any directions in the order referring the matter.

Rule 1.06.1(3)
inserted by
S.R. No.
44/2009
rule 13(3).

1.07 Documents

- (1) All documents to be filed under these Rules shall be filed in the office of the Registrar.
- (2) All certified and office copies of grants and of documents on the file and all exemplifications shall be made in the office of the Registrar.
- (3) A document in a proceeding to which these Rules apply shall contain a heading in Form 3–1A or 3–1B, unless circumstances otherwise require.

* * * * *

Order 2
(Heading and
rules 2.01–
2.09)
amended by
S.R. No.
18/2009 rule 6,
revoked by
S.R. No.
18/2009
rule 13(a).

**ORDER 2A—APPLICATION FOR PROBATE WITH
ADVERTISING ON COURT WEBSITE**

Order 2A
(Heading and
rules 2A.01–
2A.10)
inserted by
S.R. No.
18/2009 rule 7.

2A.01 Application of Order

Rule 2A.01
inserted by
S.R. No.
18/2009 rule 7.

- (1) This Order applies to an application for the grant of probate of a will of a deceased person.
- (2) Compliance with a provision of Order 2 during the dual advertising system period is, for the purposes of this Order, sufficient compliance with the corresponding provision of this Order.

2A.02 Process

Rule 2A.02
inserted by
S.R. No.
18/2009 rule 7.

An application for the grant of probate of a will of a deceased person shall—

- (a) be made by filing an originating motion in Form 3–2AA; and
- (b) be entitled "In the matter of the Will of [*name of deceased*], deceased".

2A.03 Notice of intention to apply

Rule 2A.03
inserted by
S.R. No.
18/2009 rule 7.

- (1) An application shall not be made unless, not less than 14 days before it is made, a notice of the applicant's intention to apply for a grant of probate has been duly posted on the Court's website.
- (2) The notice shall include—
 - (a) the name and address of the deceased;
 - (b) the date of the will of the deceased;
 - (c) the names of the persons identified in the will as the executors of the will;

- (d) the name and address and the e-mail address (if any) of—
 - (i) the applicant; or
 - (ii) if the application is to be made by a solicitor on the applicant's behalf or by a trustee company under the **Trustee Companies Act 1984**, the solicitor or the trustee company, as the case may be;
 - (e) a statement that 14 days after posting the notice on the Court's website, the applicant intends to apply for a grant of probate of that will.
- (3) If the Registrar is not satisfied that the notice is sufficient advertisement of the applicant's intention, the Registrar may require a further notice to be given, as the Registrar may direct.

Rule 2A.04
inserted by
S.R. No.
18/2009 rule 7.

2A.04 Application supported by affidavit

- (1) The application shall be supported by an affidavit in accordance with this Rule.
- (2) An affidavit under this Rule—
 - (a) shall be made by the applicant and, if the applicant is a corporation, by its secretary or other proper officer; and
 - (b) shall state—
 - (i) that the applicant (if a natural person) is aged 18 years or over;
 - (ii) that the testator died leaving property in Victoria;
 - (iii) the date of death of the testator;
 - (iv) that the testator left a will and that that will is unrevoked;
 - (v) the date of the will;

-
- (vi) whether at the date of execution of the will the testator was 18 years of age or over;
 - (vii) if at the date of execution of the will the testator was less than 18 years of age, whether the applicant relies on section 6 or 20 of the **Wills Act 1997** and the acts, facts and circumstances to justify such reliance;
 - (viii) whether the testator married after the date of the will;
 - (ix) whether after the date of the will any marriage of the testator ended within the meaning of section 16A(2) of the **Wills Act 1958** or the testator was divorced within the meaning of section 14(4) of the **Wills Act 1997**;
 - (x) the name and the place of residence of each executor;
 - (xi) the name of each subscribing witness to the will and, if known, the place of residence of each witness;
 - (xii) that no other application has been made by the applicant for a grant of representation in respect of the estate of the testator or details of any such application and its result;
- (c) shall contain an undertaking that if the applicant obtains probate—
- (i) the applicant will well and truly collect and administer the estate of the testator according to law and, if so required by the Court, deliver up the grant to the Court; and

-
- (ii) if the Court or the Registrar requires, the applicant will make and file, or cause to be made and filed, a true and just account of the administration of the estate; and
- (d) shall exhibit—
- (i) the will of which probate is sought;
 - (ii) a certified copy of the death registration of the testator given by the Registrar of Births, Deaths and Marriages or an equivalent certificate, satisfactory to the Registrar, given or issued by a competent authority or person; and
 - (iii) so far as the Registrar requires, an inventory of assets of the estate of the testator in Victoria and elsewhere setting out the gross value of all known assets distinguishing between real and personal property and a statement of the known liabilities of the testator as at the date of death.
- (3) An applicant may comply with paragraph (2)(d)(ii) by exhibiting to the affidavit a photocopy of a certified copy of the death registration or its equivalent.
- (4) A photocopy exhibited under paragraph (3) shall be certified as a true copy by the person before whom the affidavit is sworn.
- (5) An applicant unable to comply with paragraph (2)(d)(ii) may submit other evidence of the death of the testator to justify an inference or a presumption of death.
- (6) All exhibits to the affidavit shall be filed with the affidavit.

2A.05 Affidavit of searches

Rule 2A.05
inserted by
S.R. No.
18/2009 rule 7.

- (1) The application shall also be supported by an affidavit in accordance with this Rule made on the day the application is made—
 - (a) stating—
 - (i) that a search for any other will of the testator in the register of deposited wills maintained by the Registrar has been made and the result of that search;
 - (ii) whether a caveat has been lodged against the making of a grant of representation;
 - (iii) that a search has been made in the office of the Registrar for any previous application for a grant of representation in respect of the estate of the testator and, if a previous application has been made, the details of the application and of its result;
 - (b) stating the date on which the notice of intention to apply was posted on the Court's website in accordance with Rule 2A.03(1); and
 - (c) exhibiting a copy of the notice as it appeared on that date on the Court's website.
- (2) An affidavit under this Rule shall be made by—
 - (a) the applicant; or
 - (b) a solicitor who has instructions to conduct the searches referred to in paragraph (1); or
 - (c) a person employed by or engaged and authorised by that solicitor; or
 - (d) the Melbourne agent of that solicitor who is himself or herself a solicitor; or

- (e) a person employed by or engaged and authorised by that Melbourne agent; or
- (f) if State Trustees is the applicant, a person employed in the office of State Trustees; or
- (g) if a trustee company under the **Trustee Companies Act 1984** is the applicant, a person employed by that company; or
- (h) a clerk in the office of the Registrar acting under Part II of the Act.

Rule 2A.06
inserted by
S.R. No.
18/2009 rule 7.

2A.06 Affidavit of due execution

The application shall also be supported by an affidavit of due execution in the following cases—

- (a) where the will was executed by a testator affixing his or her mark to the will;
- (b) where the will contains no attestation clause or the attestation clause is insufficient to afford evidence of due execution;
- (c) where the will bears no date of execution or there is doubt as to the date of execution;
- (d) where the will was or appears to have been executed by a blind or illiterate person or by another person at the direction of the testator;
- (e) in any other case in which it is required by the Registrar.

Rule 2A.07
inserted by
S.R. No.
18/2009 rule 7.

2A.07 Will wholly or partly inoperative

If it appears that the will the subject of the application is wholly or partly inoperative or does not dispose of the whole of the estate of the testator, the Registrar may require the applicant to file an affidavit stating what relatives or next of kin, or domestic partner if any, survived the testator so far as known and so far as material in law to the right to administer or share in the testator's estate.

2A.08 Will not executed according to Wills Act

Rule 2A.08
inserted by
S.R. No.
18/2009 rule 7.

- (1) This Rule applies to an application that the Court admit to probate as the will of a deceased person—
 - (a) a document which has not been executed in the manner in which a will is required to be executed by the **Wills Act 1997**; or
 - (b) a document an alteration to which has not been executed in the manner in which an alteration to a will is required to be executed by the **Wills Act 1997**.
- (2) Rules 2A.03, 2A.04, 2A.05, 2A.06 and 2A.07 apply to the application with any necessary modification.
- (3) In particular, a reference to a "will" in Rule 2A.04(2) shall be taken to be a reference to a "document intended to be a will".
- (4) If probate is sought of a document not executed in the manner in which a will is required to be executed by the **Wills Act 1997**, the affidavit supporting the application shall also state the acts, facts, matters and circumstances relied upon to satisfy the Court that the deceased intended the document of which probate is being sought to be his or her will.
- (5) If probate is sought of a document an alteration to which was not executed in the manner in which an alteration to a will is required to be executed by the **Wills Act 1997**, the affidavit supporting the application shall also state the acts, facts, matters and circumstances relied upon to satisfy the Court that the deceased intended the document, so altered, to be his or her will.

r. 2A.09

Rule 2A.09
inserted by
S.R. No.
18/2009 rule 7.

2A.09 Registrar's powers

The Registrar may exercise the powers of the Court under section 9 of the **Wills Act 1997** if satisfied by affidavit that—

- (a) all persons who would be affected by a decision under section 9 consent to those powers being exercised by the Registrar; or
- (b) if consent is not given—the deceased person died leaving property not exceeding \$50 000 in value.

Rule 2A.10
inserted by
S.R. No.
18/2009 rule 7.

2A.10 Transitional

- (1) A newspaper advertisement published before 2 September 2009 in accordance with Order 2 as in force at the time of that publication is, subject to Rule 2A.03(3), sufficient notice for the purposes of an application to which that newspaper advertisement relates made under this Order.
- (2) In the case of an application under this Order, notice of which was given by newspaper advertisement in accordance with Rule 2.03 as in force at the time of the publication of the advertisement, the affidavit of searches under Rule 2A.05 shall—
 - (a) state the matters required by Rule 2A.05(1)(a);
 - (b) state that the application has been fully advertised and the date of publication in the newspaper; and
 - (c) exhibit the newspaper advertisement advertising the intention to make the application.

**ORDER 3—APPLICATION FOR ADMINISTRATION WITH
WILL ANNEXED**

3.01 Application of Order

This Order applies to an application for a grant of administration with the will annexed of the estate of a deceased person.

3.02 Form of application

(1) An application under this Order shall—

- (a) be made by filing an originating motion in Form 3–3A;
- (b) be entitled "In the matter of the Will and Estate of [*name of deceased*] deceased"; and
- (c) otherwise be made as nearly as possible in the same manner as an application for probate of a will under Order 2A and that Order shall apply to such an application with any necessary modification.

Rule 3.02
(Heading)
substituted by
S.R. No.
18/2009
rule 8(1).

Rule 3.02(1)(c)
amended by
S.R. Nos
18/2009
rule 8(2),
18/2009
rule 13(b).

(2) An applicant pursuant to this Order shall state in his or her affidavit—

- (a) whether the persons entitled to share in the estate are aged 18 years or over and are capable of managing their own affairs; and
- (b) such facts as establish the applicant's right to have the administration.

Rule 3.02(2)
amended by
S.R. No.
18/2009
rule 8(3).

* * * * *

Order 4
(Heading and
rules 4.01–
4.06)
amended by
S.R. No.
18/2009 rule 9,
revoked by
S.R. No.
18/2009
rule 13(a).

r. 4A.01

Order 4A
(Heading
and rules
4A.01–4A.07)
inserted by
S.R. No.
18/2009
rule 10.

**ORDER 4A—APPLICATION FOR ADMINISTRATION UPON
INTESTACY WITH ADVERTISING ON COURT WEBSITE**

Rule 4A.01
inserted by
S.R. No.
18/2009
rule 10.

4A.01 Application of Order

- (1) This Order applies to an application for a grant of administration of the estate of a deceased person upon intestacy.
- (2) Compliance with a provision of Order 4 during the dual advertising system period is, for the purposes of this Order, sufficient compliance with the corresponding provision of this Order.

Rule 4A.02
inserted by
S.R. No.
18/2009
rule 10.

4A.02 Process

An application shall—

- (a) be made by filing an originating motion in Form 3–4AA;
- (b) be entitled "In the matter of the Estate of [*name of deceased*] deceased".

Rule 4A.03
inserted by
S.R. No.
18/2009
rule 10.

4A.03 Notice of intention to apply

- (1) An application shall not be made unless, not less than 14 days before it is made, a notice of the applicant's intention to apply for a grant of administration of the estate of a deceased person upon intestacy has been duly posted on the Court's website.
- (2) The notice shall include—
 - (a) the name and address of the deceased;
 - (b) the name of any person who will apply to the Court for a grant of administration of the estate of the deceased upon intestacy;

- (c) the relationship of the person referred to in paragraph (b) to the deceased;
 - (d) the name and address and the e-mail address (if any) of—
 - (i) the applicant; or
 - (ii) if the application is to be made by a solicitor on the applicant's behalf or by a trustee company under the **Trustee Companies Act 1984**, the solicitor or the trustee company, as the case may be;
 - (e) a statement that 14 days after posting the notice on the Court's website, the applicant intends to apply for a grant of administration of that estate.
- (3) If the Registrar is not satisfied that the notice is sufficient advertisement of the applicant's intention, the Registrar may require a further notice to be given as the Registrar may direct.

4A.04 Application supported by affidavit

- (1) The application shall be supported by an affidavit in accordance with this Rule.
- (2) An affidavit under this Rule—
 - (a) shall be made by the applicant and, if the applicant is a corporation, by its secretary or other proper officer;
 - (b) shall state—
 - (i) that the applicant (if a natural person) is aged 18 years or over;
 - (ii) that the deceased died intestate leaving property in Victoria;
 - (iii) the date of death of the deceased;
 - (iv) the marital status of the deceased;

Rule 4A.04
inserted by
S.R. No.
18/2009
rule 10.

- (v) if the deceased died on or after 8 November 2001 and before 1 December 2008, whether (having regard in particular to the matters referred to in section 275(2) of the **Property Law Act 1958** as in force at the date of death) the deceased left a domestic partner and, if so, the facts and circumstances relied upon to establish that;

Note

Item 1 of Schedule 1 to the **Statute Law Amendment (Relationships) Act 2001** commenced on 8 November 2001 and amended the **Administration and Probate Act 1958** to include domestic partners.

- (vi) if the deceased died on or after 1 December 2008, whether the deceased left a domestic partner within the meaning of the **Relationships Act 2008** and, if so, the facts and circumstances relied upon to establish that and whether the domestic partner was a registered domestic partner or an unregistered domestic partner within the meaning of the **Administration and Probate Act 1958**;
- (vii) what relatives or next of kin survived the deceased so far as known and so far as material in law to the right to share in his or her property;
- (viii) the name, address and occupation of every person entitled to administer the estate in priority to the applicant;
- (ix) such facts as establish the applicant's right to have the administration;

-
- (x) that the applicant has carefully enquired as to the existence of a will;
 - (xi) that no other application has been made by the applicant for a grant of probate or administration in respect of the estate of the deceased person or details of each such other application and its result;
- (c) shall contain an undertaking that if the applicant obtains administration—
- (i) the applicant will well and truly collect and administer the estate of the deceased according to law and, if so required by the Court, deliver up the grant to the Court; and
 - (ii) if the Court or the Registrar requires, the applicant will make and file, or cause to be made and filed, a true and just account of the administration of the estate; and
- (d) shall exhibit—
- (i) a certified copy of the death registration of the deceased given by the Registrar of Births, Deaths and Marriages or an equivalent certificate, satisfactory to the Registrar, given or issued by a competent authority or person; and
 - (ii) so far as the Registrar requires, an inventory of assets of the estate of the deceased in Victoria and elsewhere setting out the gross value of all known assets distinguishing between real and personal property and a statement of the known liabilities of the deceased as at the date of death.

r. 4A.05

- (3) An applicant may comply with paragraph (2)(d)(i) by exhibiting to the affidavit a photocopy of a certified copy of the death registration or its equivalent.
- (4) A photocopy exhibited under paragraph (3) shall be certified as a true copy by the person before whom the affidavit is sworn.
- (5) An applicant unable to comply with paragraph (2)(d)(i) may submit other evidence of the death of the deceased to justify an inference or a presumption of death.
- (6) All exhibits to the affidavit shall be filed with the affidavit.

Rule 4A.05
inserted by
S.R. No.
18/2009
rule 10.

4A.05 Affidavit of searches

Rule 2A.05 applies with any necessary modification to an application for administration of an estate.

Rule 4A.06
inserted by
S.R. No.
18/2009
rule 10.

4A.06 Application by creditor

An application for administration by a creditor shall also be supported by an affidavit in which the applicant shall state—

- (a) that the applicant is a creditor of the deceased;
- (b) the amount of the debt due to the applicant from the deceased;
- (c) the particulars of the debt together with such evidence proving the debt as may be appropriate.

Rule 4A.07
inserted by
S.R. No.
18/2009
rule 10.

4A.07 Transitional

- (1) A newspaper advertisement published before 2 September 2009 in accordance with Order 4 as in force at the time of that publication is, subject to Rule 2A.03(3), sufficient notice for the purposes of an application to which that

newspaper advertisement relates made under this Order.

- (2) In the case of an application, notice of which was given by newspaper advertisement in accordance with Rule 4.03 as in force at the time of the publication of that advertisement, the affidavit of searches under Rule 4A.05 shall—
 - (a) state the matters required by Rule 2A.05(1)(a) with any necessary modification for an application for administration of an estate;
 - (b) state that the application has been fully advertised and the date of publication in the newspaper; and
 - (c) exhibit the newspaper advertisement advertising the intention to make the application.

ORDER 5—SPECIAL FORMS OF APPLICATION

5.01 Grant during minority

- (1) A grant of administration to a guardian (including a natural guardian) of a minor may be made for the use and benefit of the minor during minority subject to any limitations or conditions as the Court or the Registrar thinks fit.
- (2) A minor aged 12 years or over may elect a guardian and in other cases a guardian may be assigned by the Court or the Registrar.
- (3) The Registrar shall not assign a guardian unless satisfied by evidence on affidavit that the proposed guardian is ready and able to undertake the guardianship and—
 - (a) that the proposed guardian is de facto next of kin of the minor; or

-
- (b) that the de facto next of kin of the minor consents to the assignment of the proposed guardian.
- (4) Upon application for administration by a guardian other than a natural guardian evidence of his election or assignment shall be produced.
- (5) If there are minors in a family both over and under the age of 12 years, an elected guardian may act for all the minors without special assignment.

5.02 Peculiar circumstances

An application for a grant of representation under peculiar circumstances not expressly referred to in these Rules shall, with any necessary modification, be made upon grounds and in circumstances and upon materials that have been previously acted upon by the Court.

5.03 Deceased citizens of U.S.A.

- (1) On an application to the Court for a grant of administration, if it appears that the deceased person—
- (a) was a citizen of the United States of America; and
 - (b) died in Victoria without leaving any executor or known next of kin in Victoria—
- the applicant shall give notice of the application to the Chief Consular Officer of the United States of America in Victoria.
- (2) The Chief Consular Officer has the right to appear personally or by delegate in any proceeding relating to the application for a grant and to be heard in the interests of any next of kin or creditors who may be in the United States of America or be citizens of that country until they are otherwise represented.

- (3) This Rule gives effect to clause III of a Convention between the United Kingdom and the United States of America relative to the disposal of real and personal property signed at Washington on 2 March 1899, and acceded to by the Commonwealth on 3 April 1902.

ORDER 6—RULES FOR ALL APPLICATIONS FOR PROBATE OR ADMINISTRATION

6.01 Joint representation

A grant of representation may be made to 2 or more persons jointly.

6.02 Delay

If more than 3 years after the date of death of the deceased—

- (a) an application for a grant of representation is made for the first time; or
- (b) an application for administration of the unadministered estate of a deceased person is made—

the delay in making application shall be explained by affidavit.

6.03 Account

- (1) The Court or the Registrar may at any time require an executor or administrator to file a true and just account in Form 3–6AA, verified by affidavit, of the administration of the estate.
- (2) The account shall contain full particulars of receipts, disbursements, all assets and liabilities (including assets and liabilities not known at the date of the application for probate or administration) and particulars of distribution of all assets.

- (3) If an executor or administrator fails to file the account, the Registrar may apply by summons to the Court and the Court may remove the executor or administrator or make such other order as it thinks fit.

6.04 Urgent cases

The Registrar may give priority to an application shown by affidavit to be urgent.

6.05 Beneficial interest of the Crown

In any application in which it appears before a grant of representation is made that the Crown is or may be beneficially interested in the estate, the Registrar or the Court may direct that—

- (a) the applicant give notice to the Victorian Government Solicitor;
- (b) no grant be made until the elapse of a specified time after the notice is given.

6.06 Further affidavits

The Registrar may, as he thinks fit, require any further evidence relating to an application.

6.07 Notice requesting Registrar to notify of making of grant

- (1) A person who intends to make a claim against an estate under Part IV of the Act may require the Registrar by filing a notice in Form 3–6A to notify him of the making of a grant.
- (2) A notice may be filed at any time after the death of the deceased and before a grant is made.
- (3) As soon as practicable after the making of a grant the Registrar shall give notice in Form 3–6B to every person who under paragraph (1) has given a notice in Form 3–6A that has not lapsed.

- (4) Twelve months after the date of filing the notice under paragraph (1) the Registrar shall notify in writing (at the address in the notice) the person who lodged the notice that unless the notice is renewed within 21 days of the Registrar's notification the original notice will lapse and, if not renewed, the notice will lapse.

6.08 Authentication of orders

- (1) An order (other than an order under Order 10) in a proceeding to which these Rules apply shall—
- (a) be in the form of the general form of order in Form 60C of Chapter I with any necessary modification; and
 - (b) be authenticated—
 - (i) by the Registrar on request; or
 - (ii) in accordance with directions given by the Registrar.
- (2) If within 3 months after the making of an order for a grant of representation the person who obtained the order has not requested its authentication, any other person having a claim may apply for administration.
- (3) If an application is made under paragraph (2) the order for the grant shall not be authenticated without leave of a Judge of the Court.
- (4) An application for leave shall be made on notice to the second applicant.

Rule 6.08(3)
amended by
S.R. No.
100/2008
rule 19(1)(a).

6.09 Substituted administrator to furnish guarantee

- (1) An order under section 34 of the Act may contain a condition requiring the substituted administrator to provide a guarantee from one or more sureties.

-
- (2) The guarantee shall be for such amount as the Court thinks fit and shall contain an undertaking that the surety or sureties will make good any loss (not exceeding the sworn value of the estate) which any person interested in the estate may suffer as a consequence of a breach of duty by the administrator.
 - (3) A copy of such an order shall be attached to the grant of representation and reference to the making of the order and its nature shall be indorsed on the grant.

6.10 Discontinuance of application

- (1) Subject to paragraph (2), an applicant may discontinue an application for a grant of representation at any time by filing a notice to that effect.
- (2) In any case in which a caveat has been lodged and has not expired or been withdrawn, an applicant may discontinue an application for a grant of representation at any time—
 - (a) by filing a notice to that effect indorsed with the consent of the caveator; or
 - (b) if the application is referred to the Court, on such terms as the Court thinks fit.

ORDER 7—SURETIES

7.01 When required

- (1) The power under this Rule may be exercised if application is made for a grant of administration—
 - (a) to a creditor of the deceased or the legal personal representative of a creditor applying in that capacity;
 - (b) to a person having no immediate beneficial interest in the estate of the deceased;

-
- (c) to an attorney of a person entitled to a grant of administration;
 - (d) to the use and benefit of a minor or of some person incapable of managing his own affairs;
 - (e) to any person who appears to the Court or the Registrar to be resident outside the State of Victoria;
 - (f) to collect and preserve the assets of the deceased (being a grant formerly described as a grant *ad colligenda bona*);
 - (g) to bring or defend a proceeding (being a grant formerly described as a grant *ad litem*);
 - (h) under section 20, 22 or 24 of the Act; or
 - (i) in any other case where the Court or the Registrar considers that there are special circumstances making it desirable to act under paragraph (2).
- (2) The Court or the Registrar may require—
- (a) a guarantee under section 57 of the Act;
 - (b) that the application be made jointly by two or more persons; or
 - (c) that the application be made by a trustee company authorised under section 6 or 7 of the **Trustee Companies Act 1984** to carry on business as a trustee company.

7.02 Form of guarantee

A guarantee shall be in Form 3–7A and in such amount as the Court or the Registrar directs.

7.03 Affidavit of justification

- (1) A surety shall justify by affidavit in Form 3–7B the guarantee given.

- (2) If a surety is a natural person, the affidavit of justification shall give particulars of and the value of the property of the surety and particulars of and the value of the surety's debts and liabilities.
- (3) A surety which is a corporation shall make an affidavit by its proper officer.
- (4) An affidavit on behalf of a corporation which is a surety shall contain sufficient information of the financial position of the corporation to satisfy the Registrar that it has sufficient assets to meet any claim under the guarantee.
- (5) The Registrar may accept an affidavit of justification from a corporation at least once each year instead of requiring an affidavit in every case in which that corporation is a surety.

7.04 Leave to sue on guarantee

- (1) An application for leave to sue on a guarantee under section 57(3) or 84(3) of the Act shall be made by originating motion.
- (2) A copy of the originating motion shall be served on the administrator, the surety and any co-surety.

ORDER 8—CAVEATS

8.01 Caveat

A caveat shall be in Form 3–8A and shall be signed and dated by the caveator or his solicitor.

8.02 Registrar to give notice of caveat

If there is a caveat against the making of a grant of representation, the Registrar—

- (a) shall give notice of the caveat to an applicant for the grant; and
- (b) shall give notice to the caveator of an application for the grant.

8.03 Expiry of caveat

- (1) Subject to this Rule, a caveat shall expire 6 months after the date it is lodged.
- (2) Subject to paragraph (3), if the Registrar gives notice to a caveator under Rule 8.02(b), the caveat shall expire 30 days after the notice is given.
- (3) A caveat shall not expire by reason of paragraph (2) if—
 - (a) within the period referred to in paragraph (2), the caveator serves on the applicant and files with the Registrar a statement of the grounds of his objection to the making of the grant; or
 - (b) a Judge of the Court otherwise orders.

Rule 8.03(3)(b)
amended by
S.R. No.
100/2008
rule 19(1)(b).

8.04 Withdrawal of caveat

- (1) A caveat may be withdrawn by filing a notice of withdrawal in Form 3–8B.
- (2) A notice of withdrawal may be filed—
 - (a) at any time before an application for a grant has been made; or
 - (b) at any time thereafter with the consent of the applicant for the grant.

8.05 Fresh caveat

- (1) Subject to this Rule, a fresh caveat may be lodged before or after the expiry of an earlier caveat.
- (2) If a caveat has expired by reason of the operation of Rule 8.03(2) or an order of a Judge of the Court under Rule 8.03(3)(b), a fresh caveat shall be taken not to relate to the application of which the Registrar gave notice to the caveator under Rule 8.02(b).

Rule 8.05(2)
amended by
S.R. No.
100/2008
rule 19(1)(c).

8.06 Grounds of caveator's objection

- (1) Where a grant is sought in relation to a will (including a document intended to be a will), the grounds of objection may be stated as follows—
 - (a) that there is a later will or act of revocation and the date thereof;
 - (b) that the will was not executed by the testator;
 - (c) that the will was not executed in conformity with the **Wills Act 1958** or the **Wills Act 1997** and specifying the relevant section;
 - (d) that the document of which probate is being sought was not executed in conformity with the **Wills Act 1958** or the **Wills Act 1997** and was not intended by the deceased to be his or her will;
 - (e) that the testator lacked testamentary capacity—
 - (i) during the period shortly before and at the time of execution;
 - (ii) existing before that period and due to insanity or imbecility of which the symptoms first manifested themselves at a date to be set out; or
 - (f) that the testator acted under undue influence specifying the person exercising that influence.
- (2) Where a grant is sought as upon an intestacy, the grounds of objection may be stated as follows—
 - (a) that a will exists and the date thereof;
 - (b) that the applicant for the grant does not have the capacity or stand in the relationship in which he seeks administration;

- (c) that the caveator or some other person seeking administration has a better right, stating the nature of the right; or
 - (d) that the proposed administrator is disqualified, stating the reason for the disqualification.
- (3) The caveator shall specify any ground of objection not included in those set out in paragraphs (1) and (2).
- (4) Unless the Court otherwise orders, the caveator shall not rely on any ground of objection of which notice has not been given in accordance with this Rule.

8.07 Summons for directions

- (1) Within 7 days after the filing of a statement of the grounds of objection, the caveator shall apply to a Judge of the Court for directions. Rule 8.07(1)
amended by
S.R. No.
100/2008
rule 19(1)(d).
- (2) If the caveator fails to apply under paragraph (1), the applicant for the grant may apply to a Judge of the Court for directions. Rule 8.07(2)
amended by
S.R. No.
100/2008
rule 19(1)(d).
- (3) An application for directions shall be made by summons and the day for hearing named in the summons shall not be less than 7 days after the day it is filed.
- (4) The summons shall be served—
- (a) if the application is made by the caveator, on the applicant for the grant;
 - (b) if the application is made by the applicant for the grant, on the caveator.

Rule 8.08
amended by
S.R. No.
100/2008
rule 19(1)(e).

8.08 Directions

On the application for directions, any directions may be given relating to the application for the grant as the Judge of the Court thinks fit including directions for—

- (a) making the caveator a defendant to the application for the grant and amending the title of the proceeding accordingly;
- (b) the joinder of any other person as a party;
- (c) the filing and service of particulars of the grounds of the caveator's objection;
- (d) the filing and service of pleadings;
- (e) discovery;
- (f) the filing and service of affidavits—

and any other direction for the conduct of the proceeding which the Judge of the Court thinks conducive to its effective, complete, prompt and economical determination.

ORDER 9—COSTS

9.01 Basic charges

Subject to this Order, the professional charges which may be paid and allowed out of the estate of a deceased person to a solicitor in obtaining a grant of representation or the re-sealing in Victoria of a grant made in another jurisdiction shall be as set out in Appendix 3–A.

9.02 Agency

If a grant of representation is obtained by a solicitor who has no office within 50 kilometres of the south-east corner of William Street and Lonsdale Street in Melbourne and who employs a solicitor as agent an additional charge of \$84 may be made.

9.03 Other charges

A solicitor may also charge—

- (a) any fees, charges or expenses reasonably incurred;
- (b) for special or unusual work.

ORDER 10—COMMISSION TO EXECUTORS, ADMINISTRATORS AND TRUSTEES

10.01 Application of Order

This Order applies to applications under section 65 of the Act.

10.02 Process

An application—

- (a) shall be made by filing a summons in Form 3–10A and an affidavit in Form 3–10B; and
- (b) may be heard and determined by an Associate Judge.

Rule 10.02(b)
amended by
S.R. No.
100/2008
rule 19(1)(f).

10.03 15 months' account to be filed

Before making an application under Rule 10.02 an applicant shall have filed an account referred to in Rule 6.03.

10.04 Consent to acceptance of account

A beneficiary of an estate or a surety to a guarantee provided by an administrator may at any time consent, by filing a consent in Form 3–10C, to the hearing and determination of an application without notice to him and to acceptance by the Court of an account filed under Rule 10.03 as true and correct.

10.05 Notice requiring notification of application

- (1) Any person who—
 - (a) is a beneficiary or claims an interest in the estate of any deceased person; or
 - (b) purports to act on behalf of a beneficiary or claimant who is a person under a disability or resident out of the jurisdiction—may at any time file a notice requiring that he be notified of an application in respect of the estate.
- (2) A notice under paragraph (1) shall be in Form 3–10D.

10.06 Directions

Rule 10.06(1)
amended by
S.R. No.
100/2008
rule 19(1)(g)(i).

- (1) An Associate Judge shall appoint a date and time for the giving of directions relating to the application and shall cause the applicant to be notified in writing accordingly.
- (2) Directions may include directions for—
 - (a) service of the summons and any affidavit;
 - (b) the filing of a notice of address for service by a person served;
 - (c) the filing and service of any notice of objection;
 - (d) the nomination of solicitors to act for persons under a disability who are beneficiaries;
 - (e) the nomination of solicitors to act for members of a class of beneficiaries;
 - (f) the filing of a further and better account or a supplementary account;
 - (g) the verification of an account or the vouching of any item in an account;
 - (h) the filing of any further affidavit;

- (i) the scheme of distribution of the money and assets of the estate or trust still remaining in the estate or trust;
 - (j) if there are assets outside Victoria, an undertaking by the applicant not to take out of those assets any commission (whether in accordance with an allowance by any court or authority outside Victoria or otherwise) in excess of the commission allowed by the Court, without the leave of the Court;
 - (k) the hearing of the application.
- (3) In giving directions the Associate Judge shall consider any consent filed under Rule 10.04 and any notice filed under Rule 10.05.

Rule 10.06(3)
amended by
S.R. No.
100/2008
rule 19(1)(g)(ii).

10.07 Objection to application

A person who wishes to object to an application shall file an affidavit.

10.08 Right to be heard

Unless the Court otherwise orders, no person other than the applicant and a person who has filed a notice of address for service shall be entitled to be heard on the application.

10.09 Fixing of commission or percentage

If the Court allows the application, it shall specify the amount of commission or the percentage allowed.

10.10 Costs

The costs of the applicant and of any other person of and incidental to the application shall be in the discretion of the Court and may be allowed out of the estate or trust fund.

10.11 Liberty to apply

If the Court allows the application, the applicant, or his legal personal representative, or the executor, administrator or trustee for the time being of the estate being administered, has liberty to apply from time to time and the rules with respect to the making of an application apply with any necessary modification.

10.12 Form of order

An order allowing commission shall be in Form 3–10E.

ORDER 11—REVOCATION

11.01 Application of Order

This Order applies to an application for revocation of a grant of representation.

11.02 Process

An application for revocation shall be made by summons in the proceeding in which the grant was made.

ORDER 12—RECTIFICATION

12.01 Application of Order

This Order applies to an application, pursuant to section 31 of the **Wills Act 1997**, for rectification of a will.

12.02 Process

- (1) An application for an order under section 31(1) of the **Wills Act 1997** shall be made by summons filed in the proceeding in which the grant of representation was made.
- (2) The application shall be supported by an affidavit setting out the facts upon which the applicant relies to show that the will does not carry out the

testator's intentions either because of a clerical error or because the will does not give effect to the testator's instructions.

Form 3-1A

FORMS

RULE 1.07(3)

FORM 3-1A

GENERAL FORM OF HEADING IF NO DEFENDANT

In the Supreme Court of Victoria in its Probate Jurisdiction

20 No.

In the matter of the *Will/*Will and Estate/*Estate of [*name of deceased*]
deceased

Application by:

AB

[*title of document*]

Plaintiff

**delete if inapplicable*

RULE 1.07(3)

FORM 3-1B

GENERAL FORM OF HEADING IF BETWEEN PARTIES

In the Supreme Court of Victoria in its Probate Jurisdiction

20 No.

In the matter of the *Will/*Will and Estate/*Estate of [*name of deceased*]
deceased

Between—

AB
and
CD

Plaintiff

Defendant

[*title of document*]

**delete if inapplicable*

*

*

*

*

*

Form 3-2A
revoked by
S.R. No.
18/2009
rule 13(c).

Form 3-2AA

Form 3-2AA
inserted by
S.R. No.
18/2009
rule 11.

RULE 2A.02

FORM 3-2AA

ORIGINATING MOTION FOR GRANT OF PROBATE

[heading in accordance with Form 3-1A and Rule 2A.02(b)]

This is an application by the abovenamed plaintiff for the grant by this Honourable Court of probate of the will dated [and the codicil dated] of the abovenamed deceased.

Particulars of this application are as follows:

(1) *of the deceased*

Surname:

Given names:

In the will [and codicil] called:

Last residential address:

Last known occupation:

Date and place of birth:

Date and place of death:

(2) *of the plaintiff*

Surname:

Given names:

In the will [and codicil] called:

Residential address:

Occupation:

Relationship to deceased:

This application is made by the plaintiff as *[executor or as the case may be]*.

[Further particulars of the application are as follows:]

[Signed by plaintiff or Solicitor]

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-2B

* * * * *

**Form 3-2B
revoked by
S.R. No.
18/2009
rule 13(c).**

Form 3-3A

RULE 3.02(1)(a)

FORM 3-3A

**ORIGINATING MOTION FOR GRANT OF ADMINISTRATION
WITH WILL ANNEXED**

[heading in accordance with Form 3-1A and Rule 3.02(1)(b)]

This is an application by the abovenamed plaintiff for the grant by this Honourable Court of administration of the estate of the abovenamed deceased with the Will dated [] [and the Codicil dated []] annexed.

Particulars of this application are as follows:

(1) *of the deceased*

Surname:

Given names:

In the will [and codicil] called:

Last residential address:

Last known occupation:

Date and place of birth:

Date and place of death:

(2) *of the plaintiff*

Surname:

Given names:

In the will [and codicil] called:

Residential address:

Occupation:

Relationship to deceased:

This application is made by the plaintiff as [beneficiary *or as the case may be*].

[Further particulars of the application are as follows:]

[Signed by plaintiff or Solicitor]

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-4A

* * * * *

Form 3-4A
revoked by
S.R. No.
18/2009
rule 13(c).

Form 3-4AA

Form 3-4AA
inserted by
S.R. No.
18/2009
rule 12.

RULE 4A.02(a)

FORM 3-4AA

**ORIGINATING MOTION FOR GRANT OF ADMINISTRATION
UPON INTESTACY**

[heading in accordance with Form 3-1A and Rule 4A.02(b)]

This is an application by the abovenamed plaintiff for the grant by this Honourable Court of administration of the estate of the abovenamed deceased, who died intestate.

Particulars of this application are as follows:

(1) *of the deceased*

Surname:

Given names:

Last residential address:

Last known occupation:

Date and place of birth:

Date and place of death:

(2) *of the plaintiff*

Surname:

Given names:

Residential address:

Occupation:

Relationship to deceased:

This application is made by the plaintiff as [**next of kin/*domestic partner/*creditor or as the case may be*].

[Further particulars of the application are as follows:]

[Signed by plaintiff or Solicitor]

*delete if not applicable

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-4B

* * * * *

**Form 3-4B
revoked by
S.R. No.
18/2009
rule 13(c).**

Form 3-6AA

RULE 6.03(1)

FORM 3-6AA

ADMINISTRATION ACCOUNT

[heading in accordance with Form 3-1A or 3-1B (as is appropriate)]

THE ACCOUNT of the administration of the estate of the above-named deceased by the Executor *[or Administrator]* to the *[insert date]*, filed pursuant to Rule 6.03(1).

PART A

CORPUS ACCOUNT

<i>Number of item</i>	<i>Date</i>	<i>Particulars</i>		<i>\$. c.</i>
		<i>Receipts</i>		
		Total ..		\$
		<i>Disbursements</i>	<i>\$. c.</i>	
		Balance ..		
		Totals .. \$		

PART B
INCOME ACCOUNT

[Set out Receipts, Disbursements and Balance as in Part A.]

PART C
PORTION OF ESTATE DISTRIBUTED IN SPECIE

[Set out briefly, with particulars of value.]

PART D
**PORTION OF ESTATE RETAINED OR REMAINING
UNCOLLECTED**

[Set out briefly, with particulars of value.]

PART E
**STATEMENT OF MONEYS AND SECURITIES HELD BY THE
EXECUTOR [or ADMINISTRATOR]**

*[Set out particulars of moneys now in hand and investments made since date
of death.]*

Dated

Signature of Executor [Administrator].

RULE 6.07(1)

FORM 3-6A

REQUEST FOR NOTICE OF MAKING OF GRANT

In the Supreme Court of Victoria in its Probate Jurisdiction

In the matter of [*full name*] deceased

and

In the matter of a proposed application under Part IV of the **Administration and Probate Act 1958** in which—

AB

will be the plaintiff

To the Registrar of Probates:

Take notice that the proposed plaintiff intends to make an application under Part IV of the **Administration and Probate Act 1958** for provision or for further provision out of the estate of the abovenamed deceased. Accordingly, you are required to give notice to the proposed plaintiff of the making of any grant of representation in relation to the will or estate of the abovenamed deceased.

Particulars of the deceased

Surname:

Given names:

In the Will called:

Last residential address:

Last known occupation:

Date and place of birth:

Date and place of death:

Particulars of the proposed plaintiff

Surname:

Given names:

Occupation:

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-6A

Residential address:

Relationship to the deceased:

Address for service:

Date:

[Signed by proposed plaintiff or Solicitor]

Form 3-6B

RULE 6.07(3)

FORM 3-6B

NOTICE OF MAKING OF GRANT

[heading as in Form 3-6A]

To *[name of proposed plaintiff]*

[address for service]

Take notice that a grant of representation in relation to the will *[or estate]* of the abovenamed deceased has been made as follows:

Nature of grant:

Date of making:

Made upon the application of:

Address of applicant:

Relationship of applicant to deceased:

[Signed]

Registrar of Probates

RULE 7.02

FORM 3-7A

SURETY'S GUARANTEE

[*heading in accordance with Form 3-1A or 3-1B (as is appropriate)*]

WHEREAS _____ late of _____
died on _____ day of _____ 20____

AND WHEREAS _____ of _____
("the administrator") is the intended administrator of his estate.

NOW THEREFORE

1. I*, _____ of _____

hereby guarantee that I will when lawfully required to do so 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 of his duty—

- (a) well and truly to collect and administer the estate of the deceased according to law and, if so required by the Court, deliver up the grant to the Court;
- (b) if the Court or the Registrar requires, to make and file or cause to be made and filed a true and just account of the administration of the estate.

2. The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect my 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 but my total liability shall not in any event exceed the sum of \$ _____.

DATED:

SIGNED SEALED AND DELIVERED

by the abovenamed

in the presence of

[THE COMMON SEAL of _____ was
hereunto affixed in the presence of _____]

**If made by more than one, this guarantee should be made jointly and severally*

RULE 7.03

FORM 3-7B

AFFIDAVIT OF JUSTIFICATION

[*heading in accordance with Form 3-1A or 3-1B (as is appropriate)*]

I, _____ of _____ in Victoria,
[*occupation*] make oath and say that—

1. I am over 18 years of age and under no legal disability.
2. After payment of all my debts and liabilities I am well and truly worth in real and personal property [or *as the case may be*] not less than the sum of \$*
3. Particulars of my property and the values thereof are as follows:

[NOTE—*In setting out the property realty must be distinguished from personalty, and a separate gross value for each particular parcel or item thereof must be stated.*

- (a) *When realty, the allotment, parish, street, etc. the area of land, whether there are buildings on the land, should be stated with sufficient accuracy to identify the land.*
- (b) *When personalty, the following particulars should be given, for example—*
 - (1) *Description of lease and number of years to run.*
 - (2) *Number of shares in bank, building society, trading company etc.*
 - (3) *Money on deposit or current account, giving name and address of bank, society etc.*
 - (4) *Money lent on mortgage and registered number of same.*
 - (5) *Household furniture and where kept.*
 - (6) *Stock in trade of a business and premises wherein kept.*
 - (7) *Farming implements, &c, where kept, and grain, quantity and where stored.*
 - (8) *Policy of life insurance, number of years in force with surrender value, and age of the life assured at time of making this affidavit.*
 - (9) *Live stock, number and kind and where depastured or kept.*
 - (10) *Good book debts only.*

Cash in hand and depreciating assets such as furniture and motor vehicles are generally not accepted nor are persons who can only justify to life insurance or superannuation policies.].

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-7B

-
4. Particulars of my debts and liabilities are as follows:
[*Set out particulars*].
5. That I am not surety in any other matter [*or if a surety in any other matter state in what matter and to what amount*].

Sworn *etc.*

**The gross value at which property of deceased was sworn.*

Form 3-8A

RULE 8.01

FORM 3-8A

CAVEAT

In the Supreme Court of Victoria in its Probate Jurisdiction

In the matter of [*full name*] deceased

AB

Caveator

CAVEAT

To the Registrar of Probates:

Let nothing be done in relation to the will [or estate] of the abovenamed deceased without giving notice to the abovenamed caveator, particulars of whom, and of the deceased, are given below.

Particulars of the deceased

Surname:

Given names:

In the Will called:

Last residential address:

Last known occupation:

Date and place of birth:

Date and place of death:

Particulars of caveator

Surname:

Given names:

Occupation:

Residential address:

Relationship to the deceased:

Address for service:

Date:

[*Signed by caveator or Solicitor*]

RULE 8.04

FORM 3-8B

NOTICE OF WITHDRAWAL OF CAVEAT

In the Supreme Court of Victoria in its Probate Jurisdiction

In the matter of [*full name*] deceased

AB

Caveator

WITHDRAWAL OF CAVEAT

To the Registrar of Probates:

The caveat dated [e.g. 5 September, 20] filed on my behalf is withdrawn.

Date:

[*Signed by caveator or Solicitor*]

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-10A

Form 3-10A
amended by
S.R. No.
100/2008
rule 19(2)(a).

RULE 10.02

FORM 3-10A

SUMMONS

In the Supreme Court of Victoria in its Probate Jurisdiction

20 No.

In the matter of the *Will/*Will and Estate/*Estate of [*name of deceased*]
deceased

Application by:

AB

Applicant

SUMMONS

The applicant, who is the executor [*or administrator*] of the will [*or estate*] of the abovenamed deceased, seeks an order that commission or percentage of the estate be allowed to the applicant for the pains and trouble of the applicant in administering the estate.

The application will be heard by an Associate Judge on a date to be fixed by the Court.

**delete if inapplicable*

Date:

RULE 10.02

FORM 3-10B

AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMISSION

[heading as in summons]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMISSION

I, *[full name]*, make oath and say:

1. I am the executor *[or administrator]* to whom probate of the Will *[or Letters of Administration of the Estate]* of the abovenamed deceased who died *[intestate]* on the day of 20 were granted on the day of 20 .
2. A true and just account of the administration of the estate of the deceased as to receipts and disbursements up to the day of 20 has been deposited in the office of the Registrar of Probates in accordance with Rule 6.03 of Chapter III of the Rules of the Supreme Court.
3. A statement of the assets and liabilities in the estate is exhibited and marked "A".
4. Except as set out in the statement referred to in paragraph 3, to the best of my knowledge, information and belief the deceased was not at the time of his death—
 - (a) entitled to any debt or sum of money due to him from me on any account whatsoever; or
 - (b) possessed of any real or personal estate whatsoever.
5. To the best of my knowledge, information and belief the account referred to in paragraph 2 sets out a full account of—
 - (a) the corpus of the real and personal estate of the deceased;
 - (b) the rents, profits and income of the estate which have come to my hands or to the hands of any person by my order or authority or for my use;
 - (c) the times when, the names of the persons from whom and on what account the assets referred to in paragraphs (a) and (b) have been received;
 - (d) the distribution in specie of, and the disbursements, allowances and payments made by me on account of the corpus or in respect of the rents, profits and income and the times when, the names of the persons to whom, and the

purposes for which distribution, disbursements, allowances and payments were made.

6. To the best of my knowledge and belief except as appears in the account referred to in paragraph 2—
 - (a) I have not nor has any other person by my order or authority or for my use possessed, received or got in any part of the corpus, rents, profits and income of the estate of the deceased nor any money in respect thereof;
 - (b) the account does not contain any item of disbursement, allowance or payment other than as has actually been disbursed, allowed or paid on account of the corpus or in respect of the rents, profits and income.
7. Particulars of the real and personal estate of the deceased retained or remaining uncollected at the date thereof are set out in the account referred to in paragraph 2. At that date there was no other part of the estate outstanding or undisposed of. The real and personal estate and all moneys derived from the realisation of the estate of the deceased and all investments made from the estate now held by me as executor [*or administrator*] are vested in me and are under my sole control.
8. All debts and liabilities, funeral and testamentary expenses and probate and estate duties payable or owing by the estate have been paid or discharged [except].
9. The balance of the estate now in my hands as executor [*or administrator*] and available for distribution as disclosed by the account consists of real estate of the value of \$ and personal estate and money of the value of \$.
10. The assets of the estate were situated in .
11. It is proposed to distribute the balance of the estate now in my hands as executor [*or administrator*] as follows:

(Set out shortly the proposed division of balance [*or in accordance with the provisions of the Will*]).
12.
 - (1) The name, address and age of each beneficiary affected by this application for commission are as follows:
 - (2) The names and addresses of the sureties to the guarantees are as follows:
 - (3) The consent in writing of all such beneficiaries and sureties (other than [*insert names*]) to the acceptance of the account as true and correct and to the consideration of the application without notice to them is exhibited and marked "B".

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-10B

-
13. No previous application for the allowance of commission in respect of the estate has been made [or *as the case may be*].
 14. I have incurred the following pains and trouble in the administration of the estate [*set out fully*].
 15. I request that commission or percentage be allowed for my pains and trouble in the administration of the said estate.

SWORN etc.

NOTE: If more than one person is applying for commission, this affidavit should be modified accordingly and be made by all applicants jointly and severally.

Form 3-10C

RULE 10.04

FORM 3-10C

CONSENT

I, _____ of _____ being a person beneficially interested in the estate of _____ deceased hereby consent to the acceptance by the Court of the account of _____ the executor [*or* administrator] of his administration of the deceased's estate filed in the office of the Registrar of Probates on [*date*] as being prima facie true and correct [*insert where desired*] and consent to consideration of the application of the executor [*or* administrator] for the allowance of commission proceeding without service on me of a copy of the summons and notice of the hearing of the application].

Date:

[*Signed*]

RULE 10.05(2)

FORM 3-10D

**REQUEST FOR NOTIFICATION OF APPLICATION FOR
COMMISSION**

In the Supreme Court of Victoria in its Probate Jurisdiction

20 No.

In the matter of the *Will/*Will and Estate/*Estate of [*name of deceased*]
deceased

REQUEST FOR NOTIFICATION OF APPLICATION FOR COMMISSION

To the Registrar of Probates

Take notice that I of [on behalf of
a minor *or* a person resident outside Victoria] being a beneficiary under the
will [*or* a person claiming an interest as [*state relationship or particulars of
interest*] in the estate] of the abovenamed deceased require notice of any
application under Order 10 of Chapter III of the Rules of the Supreme Court
for the allowance of commission to the executor [*or* administrator] of the will
or estate to be given to me at the address for service set out above.

Date:

[*Signed*]

**delete if inapplicable*

Supreme Court (Administration and Probate) Rules 2004
S.R. No. 54/2004

Form 3-10E

Form 3-10E
amended by
S.R. No.
100/2008
rule 19(2)(b).

RULE 10.12

FORM 3-10E

ORDER

In the Supreme Court of Victoria in its Probate Jurisdiction

20 No.

In the matter of the *Will/*Will and Estate/*Estate of [*name of deceased*]
deceased

ORDER

Associate Judge:

Date made:

How obtained: By summons dated [*e.g.* 9 November 20]
filed on behalf of

Attendance:

Other matters:

The Court orders:

That commission is allowed to [*full name*] being the executor [*or*
administrator] of the abovenamed deceased as follows:

On corpus receipts:	\$	
Percentage thereof		\$
On property dealt with pursuant to devise or legacy or in specie:	\$	
Percentage thereof		\$
On income receipts:	\$	
Percentage thereof		\$
		<hr/>
	Total	<hr/>

Costs of application paid at \$

Date authenticated:

[*Registrar*]

**delete if inapplicable*

RULE 9.01

APPENDIX 3-A

<i>Where gross value of Estate does not exceed</i>	<i>Remuneration chargeable</i>
\$	\$
10 000	213.00
12 000	246.00
14 000	283.00
16 000	318.00
18 000	354.00
20 000	391.00
30 000	425.00
40 000	463.00
50 000	499.00
60 000	535.00
70 000	572.00
80 000	608.00
90 000	644.00
100 000	680.00
Where estate left exceeds \$100 000	\$680 plus \$35 for every \$50 000 or part thereof by which the estate exceeds \$100 000.

Sch.

SCHEDULE

RULE 1.03(2)

REVOKED STATUTORY RULES

<i>S.R No.</i>	<i>Title</i>
97/1994	Chapter III of the Rules of the Supreme Court, the Supreme Court (Administration and Probate) Rules 1994
140/1996	Supreme Court (Chapter III Amendment No. 1) Rules 1996
99/1997	Supreme Court (Chapter III Amendment No. 2) Rules 1997
72/1998	Supreme Court (Chapter III Amendment No. 3) Rules 1998
98/2000	Supreme Court (Chapter III Amendment No. 4) Rules 2000
113/2001	Supreme Court (Chapter III Amendment No. 5) Rules 2001
129/2001	Supreme Court (Chapter III Amendment No. 6) Rules 2001
38/2002	Supreme Court (Chapter III Amendment No. 7) Rules 2002
32/2004	Supreme Court (Chapter III Amendment No. 8) Rules 2004

Dated: 27 May 2004

M. L. WARREN, *C.J.*

JOHN WINNEKE, *P.*

W. F. ORMISTON, *J.A.*

STEPHEN CHARLES, *J.A.*

J. M. BATT, *J.A.*

PETER BUCHANAN, *J.A.*

ALEX CHERNOV, *J.A.*

F. H. R. VINCENT, *J.A.*

G. M. EAMES, *J.A.*

P. D. CUMMINS, *J.*

T. H. SMITH, *J.*

JOHN COLDREY, *J.*

DAVID BYRNE, *J.*
D. L. HARPER, *J.*
PHILIP MANDIE, *J.*
MURRAY B. KELLAM, *J.*
BERNARD D. BONGIORNO, *J.*
D. J. HABERSBERGER, *J.*
R. S. OSBORN, *J.*
GEOFFREY NETTLE, *J.*
JULIE DODDS-STREETON, *J.*
R. F. REDLICH, *J.*
K. WILLIAMS, *J.*
STUART MORRIS, *J.*
STEPHEN KAYE, *J.*
SIMON P. WHELAN, *J.*

ENDNOTES

1. General Information

The Supreme Court (Administration and Probate) Rules 2004, S.R. No. 54/2004 were made on 27 May 2004 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986, the **Administration and Probate Act 1958**, No. 6191/1958 and all other enabling powers and came into operation on 15 June 2004: rule 1.03(1).

The Supreme Court (Administration and Probate) Rules 2004 will sunset 10 years after the day of making on 27 May 2014 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Supreme Court (Administration and Probate) Rules 2004 by statutory rules, subordinate instruments and Acts.

Supreme Court (Associate Judges Amendment) Rules 2008, S.R. No. 100/2008

Date of Making: 28.8.08

Date of Commencement: Rules 17–19 on 17.12.08: rule 3

Supreme Court (Chapter III Amendment No. 1) Rules 2009, S.R. No. 18/2009

Date of Making: 26.2.09

Date of Commencement: Rules 5–12 on 2.3.09: rule 3(1); rule 13 on 2.9.09:
rule 3(2)

Supreme Court (Associate Judges Amendment) Rules 2009, S.R. No. 44/2009

Date of Making: 30.4.09

Date of Commencement: Rule 13 on 4.5.09: rule 3

Endnotes

3. Explanatory Details

No entries at date of publication.