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STATUTORY RULES OF NORTHERN IRELAND

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**1981 No. 225**

County Court Rules (Northern Ireland) 1981

ORDER 46

Grant and revocation of probate and letters of administration

**Commencement of proceedings**

1. Proceedings under Article 15 of the Order shall be commenced by civil bill (in these Rules referred to as a “testamentary civil bill”) in such one of Forms 183 to 187 as is applicable.

**Plaintiff and defendant**

2.—(1) The person who applies for a grant of probate or letters of administration shall be the plaintiff in any proceedings by civil bill in relation thereto.

(2) A person who lodges a caveat against the grant of probate or letters of administration and appears to a warning of such caveat shall be a defendant.

(3) The person applying for the revocation of probate or letters of administration shall be the plaintiff in any proceedings by civil bill in relation thereto and the party against whom the application is made shall be the defendant in such proceedings.

**Parties may be added**

3.—(1) If on the hearing of any civil bill for the grant or revocation of probate or letters of administration, it appears to the judge that any person, not being already a plaintiff or defendant therein, ought to be made a party to the suit, he may adjourn the case and direct that such person shall be made a party thereto by amendment of the civil bill and shall be served with the civil bill.

(2) The judge may direct the mode and manner in which a civil bill is to be served under paragraph (1) and, if he directs substituted service, shall specify when and in what manner such service is to be effected.

**Appearance by next-of-kin**

4. Any of the next-of-kin or any person who would be entitled to a share in the distribution on intestacy of the estate of an alleged testator or intestate may appear at the hearing of a civil bill to which this Order applies though he may not have been made a party or been served with the civil bill, and upon any such appearance the judge may, if he thinks fit, amend the process by making such next-of-kin or person so appearing a defendant.

**Cross suits**

5.—(1) Where—

- (a) a grant of probate or letters of administration with the will annexed is objected to on the ground that there is another will of which probate or letters of administration with the will annexed ought to be granted; or
- (b) a grant of administration, in case of an alleged intestacy, is resisted on the ground that a will exists of which probate or letters of administration with such will annexed ought to be granted;

the party applying for probate or letters of administration and the party so setting up another will or a will shall respectively bring cross civil bill processes which shall be heard.

(2) Cross civil bill processes brought under paragraph (1) shall be heard by the judge at the same sittings and the judge shall decide upon the validity of the will or wills so set up.

(3) The civil bill in a cross process shall be served before the beginning of a period of seven days ending on the entry day for the sittings at which the original process is to be heard.

### **Will set up or relied upon**

6.—(1) No person shall be at liberty to set up or rely upon any will not already proved in common form unless such will, together with all testamentary documents or scripts, shall have been lodged in the Principal or District Registry and a grant of probate or letters of administration in respect thereof applied for.

(2) Where an unproved will is required to be produced at the hearing of any testamentary civil bill, the registrar or district registrar having custody thereof may, on a requisition being lodged with him; forward such will by registered post or deliver the same to the chief clerk at the court where the suit is to be heard.

(3) The chief clerk shall receive and produce such will at the hearing of the suit and at the conclusion of the hearing shall transmit such will by registered post or deliver the same to the registry where the will was originally lodged.

(4) The requisition to produce must be lodged in sufficient time to allow a certified copy of the will to be, made and filed in the registry prior to the posting thereof.

### **Entry of civil bill and lodgment of affidavits**

7.—(1) Rule 3 of Order 8 shall apply to a testamentary civil bill in like manner as it applies to an equity civil bill and, together with the testamentary civil bill and a copy thereof there shall be lodged with the chief clerk—

- (a) a certified copy of the affidavit (the content of which is, subject to anything provided to the contrary by a competent authority, indicated in Form 188) showing that the matter is within the jurisdiction of the court; and
- (b) where the plaintiff seeks to obtain a grant of probate or letters of administration, an affidavit specifying the names and addresses of the next-of-kin and such persons as may be entitled according to the law governing the distribution of intestates estates to any interest in the assets of the alleged testator or intestate named in the civil bill;

and such affidavits shall be kept amongst the records of the court and be produced by the chief clerk at the hearing of the civil bill.

(2) The affidavit under paragraph (1)(a) shall; except as provided in paragraph (3), be conclusive for the purpose of authorising the exercise of the jurisdiction of the court and the grant or revocation of probate or letters of administration in compliance with the decree of the judge, and no grant of probate or letters of administration shall be liable to be recalled, revoked or otherwise impeached by reason that—

- (a) the testator or intestate was not ordinarily resident within the division of the court; or

(b) the gross value of the estate so far as it consisted of property other than land, sworn not to exceed three thousand pounds, did in fact exceed that amount or so far as it consisted of land, sworn not to exceed five hundred pounds in annual value, did in fact exceed that amount in annual value.

(3) Where it is shown to the judge before or at the hearing of the suit that the affidavit under paragraph (1)(a) is inaccurate and that he has not jurisdiction to hear the suit, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the High Court for the grant or revocation and making such order as to the costs of the proceedings in his court as he thinks fit.

### **Records**

8.—(1) All testamentary civil bills shall be entered in the Testamentary Civil Bill Book to be kept by the chief clerk and each such suit shall be entered on a separate page, the two sides or pages of one leaf being allotted and allowed for the entry or copy of the one civil bill and of the proceedings on the hearing thereof.

(2) The chief clerk shall immediately following the entry of the process enter in the Testamentary Civil Bill Book the names of all witnesses examined on the hearing of a testamentary civil bill and shall also record the names of all parties to any written instrument produced at the hearing.

(3) The chief clerk shall record in the Testamentary Civil Bill Book the decree or order of the judge and shall sign and seal such record.

(4) The chief clerk shall, at all reasonable times, produce the Testamentary Civil Bill Book in the Office to any counsel, solicitor or party to the suit and permit them to search and shall give them, on demand, a copy of any entry therein.

### **Certificate of decree and decree**

9.—(1) The certificate of the decree of the judge to be transmitted by the chief clerk to the Principal or District Registry shall be in Form 189.

(2) The decree shall be in Form 190 or 191 or, where the suit is stopped for want of jurisdiction, in Form 192.

### **Where all parties are not present at the hearing**

10. Upon the hearing of any testamentary civil bill, the judge may, whether or not all the parties to the suit are present, proceed to consider the subject-matter of the civil bill and make a decree thereon, or he may adjourn the proceedings from time to time as he thinks fit.

### **Jurisdiction, powers and authority**

11. The judge in any proceedings for the grant or revocation of probate or letters of administration shall, subject to the provisions of the Act and these Rules, have the like jurisdiction, powers and authority to decide the matters at issue and to enforce any decree made therein or any order made in relation thereto as in any ordinary action.

### **Application of rules, practice and forms**

12. The rules, practice and forms in force and used in respect of proceedings other than proceedings for the grant or revocation of probate or letters of administration shall, so far as applicable and subject to the Rules of this Order, apply *mutatis mutandis* to proceedings for the grant or revocation of probate or letters of administration.