

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN ITS PROBATE JURISDICTION
TRUSTS, EQUITY AND PROBATE LIST

S XXX 20XX XXXXX

IN THE MATTER of the will and estate of NAME, deceased

BETWEEN:

FULL NAME Plaintiff/s

- and -

FULL NAME Caveator/s

GENERAL FORM OF ORDER

JUDICIAL REGISTRAR:

DATE MADE:

ORIGINATING PROCESS: Originating motion filed [date] and **summons for caveat directions** filed [date]

HOW OBTAINED: On return of the summons for caveat directions

ATTENDANCE: No appearances; orders made on the papers pursuant to r 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015 (the Rules)*

OTHER MATTERS:

- A. [Name] (the **deceased**) died on [date of death] leaving a **will** dated [date].
- B. In this proceeding, the plaintiff seeks a **grant** of [insert type of grant]
- C. The caveator objects to the making of the grant.
- D. The parties are responsible for ensuring that the mediator is provided with copies of the position papers which are to be served (but not filed) pursuant to these orders.
- E. In these orders, a reference to the 'Chapter III Rules' is a reference to the *Supreme Court (Administration and Probate) Rules 2023*.
- F. This order is signed by the Judicial Registrar pursuant to r 60.02(1) of the *Rules*.

THE COURT ORDERS BY CONSENT THAT:

1. The caveator be added as a defendant to the proceeding and the heading to the proceeding be amended accordingly.
2. Pursuant to s 42(1)(d) of the *Civil Procedure Act 2010*, by 4 pm on [2 weeks],
 - (a) the defendant, if at that time legally represented, file and serve a proper basis certification in respect of the allegations of fact contained in the grounds of objection / amended grounds of objection; and
 - (b) the plaintiff, if at that time legally represented, file and serve a proper basis certification in respect of the claim for a grant of representation in this proceeding.
3. Pursuant to r 8.08(a)(v) of the *Chapter III Rules*, by 4 pm on [6 weeks] the parties shall discover by providing access to or copies of the following:
 - (a) all medical or like reports records or documents (including hospital and nursing home records) concerning or relating to the testamentary capacity of the deceased at the time of execution of the will;
 - (b) all testamentary documents, including but not limited to, anything in the nature of instructions, drafts, or amendments, executed or to be executed by the deceased whether in writing or otherwise;
 - (c) solicitor's file of the deceased, including but not limited to, will and any previous will;
 - (d) documents pertaining to the application, including but not limited to, the plaintiff being the proper person to bring the application; and
 - (e) any documents that are critical to the resolution of the dispute pursuant to s 26 of the *Civil Procedure Act 2010*,

which are or have been in their possession power custody or control or which were in the possession power custody or control of the deceased at the time of death.

4. The parties are hereby authorised to obtain access to all medical reports records or documents relating to the testamentary capacity of the deceased, and shall, if necessary, provide written authority to the other's solicitors to obtain access to all medical reports relating to the testamentary capacity of the deceased.
5. Subject to any order of the trial judge, the evidence in chief in this proceeding at trial be given *viva voce*.
6. By 4 pm on [8 weeks], the defendant serve (but not file) any position paper upon which they seek to rely.

7. By 4 pm on [10 weeks], the plaintiff serve (but not file) any position paper upon which they seek to rely.
8. Pursuant to r 50.07 of the *Rules*, the proceeding is referred to mediation by a mediator appointed by agreement between the parties, failing such agreement to a mediator appointed by the Court, and such mediation to be concluded by 4 pm on [14 weeks].
9. The mediation shall be attended by those persons who have ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement, and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.
10. No later than 14 days after the conclusion of the mediation, the mediator must notify the Trusts, Equity and Probate List in writing at tep@supcourt.vic.gov.au as to whether or not the mediation has concluded.
11. The costs of the mediation in the first instance will be paid equally by the parties, but otherwise those costs are reserved to the trial judge.
12. The hearing listed for [date] is vacated and the proceeding is adjourned to the Trusts, Equity and Probate at 10:30 am on [insert directions date at least 4 weeks post mediation].
13. Liberty to apply.
14. Costs reserved.

DATE AUTHENTICATED:

Lawyers for the plaintiff

Lawyers for the caveator