

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
TESTATORS FAMILY MAINTENANCE LIST**

**S CI [YEAR] [FILE #]**

**IN THE MATTER of Part IV of the *Administration and Probate Act 1958***

**-and-**

**IN THE MATTER of the Will and Estate of -----  
deceased**

**BETWEEN ----- Plaintiff**

**-and-**

**----- Defendant**

**MINUTES OF PROPOSED ORDERS**

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Upon the Plaintiff stating to the Court by his/her Counsel that she/he seeks further provision from the estate to the extent of ----- % of the Estate.

**THE COURT ORDERS AND DIRECTS THAT:**

1. By 4.00 pm. on [ ] the Plaintiff send by prepaid ordinary post to [ ] a notice in the form of the Schedule.
2. The person named in paragraph 1 hereof have leave to apply to be added as a Defendant to the proceeding, provided that any such application is made by summons issued on or before [ ].
3. By 4.00pm on [ ] the Defendant file and serve any affidavits/position statements in opposition to the Plaintiff's claim.
4. By 4.00pm on [ ] the Plaintiff file and serve any affidavits/position statements on which the Plaintiff intends to rely in reply.
5. The parties' affidavits/position statements are to contain representations of relevant existing facts which, to the best of the knowledge and belief of the person making them, are true and correct. Each position statement is to be provided with the objective that:
  - a. it may be relied upon by the opposing parties in entering to negotiations to explore the possibility of compromising the proceeding;
  - b. it is an outline of the anticipated evidence at trial of the person making the statement.

6. 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 be concluded by [            ].

OR

The proceeding is referred to judicial mediation by an Associate Judge or a Judicial Registrar, such mediation to be concluded by [            ].

7. 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.
8. 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.
9. Not more than 14 days and not less than 7 days before the date fixed for:
- a) the mediation of the proceeding; and
  - b) the trial of the proceeding;
- the Defendant (or the executor or administrator, as the case requires) must make, file and serve an Affidavit setting forth the financial position of the Estate so far as it is then known to him or her.
10. The parties shall bring to the mediation and provide to the mediator a calculation of their costs of the proceeding up to and including the mediation.
11. Within 14 days after the date fixed for mediation, the Mediator must notify the TFM Associate in writing whether or not the mediation has concluded.
12. The further hearing of this application for directions is adjourned to [            ].

*Or where the proceeding is ready to be referred for trial directions:*

13. The proceeding is adjourned for further directions at 10.00 am on [            ] before the Judge in Charge of the Testators Family Maintenance List for trial directions and the fixing of a trial date.
14. At that hearing for trial directions, each party (other than a party appearing in person) is to be represented by the legal practitioner who is to represent the party at trial, and that practitioner is to be familiar with the matter. The practitioners (or where the party appears in person, that person) must have knowledge of:
- a. all of the issues involved in the proceeding;
  - b. the number of witnesses to be called and cross-examined;
  - c. the anticipated length of the hearing;
  - d. the dates which are suitable to the practitioners and witnesses for the holding of the trial; and
  - e. an estimate of the costs of the proceeding at that date and the anticipated costs of the matter to the conclusion of the trial.

15. Subject to any order of the Trial Judge, the evidence in chief in this proceeding at trial shall be given *viva voce*.
16. By 4.00 pm. on [ ] the parties shall file an agreed statement of uncontroversial facts. Such an agreed statement shall constitute evidence before the Court of the facts it contains.
17. Each party has liberty to apply.
18. The costs of this application are reserved.

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### Schedule to orders

Dear Sir or Madam,

Re: The Will and Estate of [ ] (Deceased)

Proceeding No: S CI [ ]

In the Supreme Court of Victoria.

We have been directed by the Honourable Associate Justice [ ] of the Supreme Court of Victoria to notify you that a proceeding has been commenced in the Court by [ ] the [ ] of the above-named Deceased, by which [he] / [she] is seeking further provision out of the Estate of the deceased. The proceeding is brought pursuant of Part IV of the *Administration and Probate Act 1958*. We are the solicitors for the Plaintiff.

The proceeding was commenced against [ ], who was the executor named in the Will of the above-named Deceased and to whom Probate of the will has been granted by the Court OR to whom letters of administration were granted by the Court.

If the Court were to order that such provision as the plaintiff claims be made, the effect of that order might be to reduce or extinguish your entitlement as a beneficiary under the Will of the Deceased.

On [ ], the Honourable Associate Justice [ ] ordered that you have leave to apply to be added as a Defendant to the proceeding. Any such application by you must be made by Summons returnable on or before [ ]. The order granting you such leave is paragraph 2 of the Order made on [ ], and a copy of that Order is enclosed herewith for your information.

Copies of any of the documents referred to in the Order, including the Plaintiff's Affidavit and a copy of the Deceased's will, may be inspected by arrangement with the writer.

If you wish to take advantage of your opportunity to apply to be added as a Defendant to the proceeding it is suggested that you seek advice from a solicitor as soon as possible and take to the solicitor this letter and the copy order enclosed herewith.

The Honourable Associate Justice [ ] has authorised us to inform you that, although legal costs incurred by a party to a proceeding of this type are usually allowed by the Court out of the Estate of the Deceased, it is unlikely that more than one set of legal costs of separately represented parties with the same or similar interests will be allowed.

Yours faithfully,