

Practice Note No 5 of 2011

Probate List

Introduction

- 1 This Practice Note is intended to establish a Probate List whereby matters will be allocated to a specialist judge at first instance. By establishing the Probate List the Court aims to reduce delays, provide consistency, facilitate expedition of cases and reduce the cost of litigation.
- 2 The Probate List (“the List”) will provide specialist administrative handling of probate matters and will provide an increased ability to track the proceedings.
- 3 A reference in this Practice Note to the rules shall be taken as a reference to the *Supreme Court (Administration and Probate) Rules 2004* unless stated otherwise.
- 4 A reference in this Practice Note to the Registrar is taken to be a reference to the Registrar or an Assistant Registrar of Probates.
- 5 The List will commence operation on 1 July 2011 (“the commencement date”).

Management

- 6 The List will be managed by the Hon. Justice Habersberger.

Inclusion in the List

- 7 The following matters are appropriate for inclusion in the List:
 - (a) applications for grants of representation which are referred by the Registrar to a Judge;
 - (b) caveat matters where a summons for directions has been filed pursuant to Rule 8.07;
 - (c) applications for limited grants formerly dealt with by the Judge in the Practice Court, for example, ad colligendum bona, ad litem or pendente lite.;
 - (d) applications for revocation of grants of representation;
 - (e) applications for rectification of a will;
 - (f) matters in which a party seeks construction of a will;

- (g) other matters arising under the *Administration and Probate Act 1958*, excluding matters arising under Part IV (family provision cases);
- (h) other matters arising under the *Wills Act 1997*;
- (i) such other matters which in the opinion of the Court ought to be included in the List.

8 The following matters will not be entered into the List:

- (a) applications for grants of representation which are not referred by the Registrar to a Judge;
- (b) matters arising under Part IV of the *Administration and Probate Act 1958*; and
- (c) applications relating to commission under Order 10.

9 All proceedings appropriate for inclusion in the List pursuant to paragraph 7 of this Practice Note are to be included in the List. Applications in such proceedings will no longer be heard by the Judge in the Practice Court, unless paragraph 20 of this Practice Note applies.

10 In addition to the usual endorsements, the following documents should be endorsed "Probate List":

- (a) all documents, including the originating process, filed in proceedings appropriate for entry in the List, which are issued after the commencement date;
- (b) all documents filed in matters which are referred by the Registrar to a Judge after the commencement date; and
- (c) all documents filed after the commencement date in existing proceedings appropriate for entry in the List or in existing matters referred by the Registrar to a Judge.

11 No additional fees are payable for the inclusion of proceedings in the List.

General Conduct of Proceedings

12 Until further notice, directions days for the List will be held every Thursday.

13 Summonses for directions for matters within the List are to be made returnable before the Judge in Charge of the List on a directions day.

- 14 Where the Registrar refers a matter to a Judge the matter will be listed on a directions day and the Registrar will notify the parties of that date.
- 15 Practitioners are encouraged to prepare draft orders for all hearings in the List.
- 16 Emailed draft orders should be provided in Word format to the Associate to the Judge in Charge of the List to expedite the authentication process.
- 17 Matters by consent will be dealt with by the Judge in Charge on the papers without the attendance of the parties or caveators. Practitioners will be expected to provide minutes of consent orders to the Associate to the Judge in Charge of the List no later than 4.30 pm on the day which is two days before the matter is listed. If there are any difficulties with the proposed consent orders the practitioners may be required to attend Court on the directions day.
- 18 It will be expected that routine/standard directions will be dealt with by consent on the papers. Unnecessary attendance at Court may result in orders depriving practitioners or parties of costs or costs orders against practitioners or parties.
- 19 The Judge in Charge will make such orders as are necessary for the conduct of proceedings in the List and will where possible hear and determine both interlocutory applications and substantive proceedings.

Urgent applications

- 20 If a party wishes to bring an urgent application they should contact the Associate to the Judge in Charge of the List who will either provide a hearing time before the Judge in Charge or make arrangements for the matter to be referred to the Judge in the Practice Court.

Inquiries

- 21 Inquiries in relation to the List can be directed to the Registrar.

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