

RULE 65 – ADMINISTRATION OF ESTATES (CONTENTIOUS)

Interpretation

- (1) In this rule "probate action" means an action for the grant of probate of the will of, or grant of administration of the estate of, a deceased person, or for the revocation of a grant or for an order pronouncing for or against the validity of an alleged testamentary paper, but does not include a proceeding governed by Rule 64.

Dispute as to the validity of a testamentary paper

- (2) In an action where the validity of a testamentary paper is questioned, all persons having an interest in upholding or disputing its validity shall be joined as defendants.

Commencement of action

- (3) A probate action shall be commenced by statement of claim and shall contain a statement of the interest of the plaintiff and of each defendant in the estate of the deceased.

Parties

- (4) Each person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate or grant of administration must be made a party to any action for revocation of the grant, and by leave of the court, a person interested in the estate, but not named as a defendant, may enter an appearance and defend the action as though the person were a defendant.

Action for revocation of grant

- (5) In an action for the revocation of a grant of probate or administration,
 - (a) if the action is commenced by a person to whom the grant was made, the person shall lodge the grant with the clerk within 7 days after the issue of the statement of claim, or
 - (b) if a defendant to the action has the grant in his or her possession or control, the defendant shall lodge it with the clerk within 7 days after the service of the statement of claim upon him or her,

and the person to whom the grant was issued shall not act under it without leave of the court.

Failure to lodge grant on action for revocation

- (6) Where a person fails to comply with subrule (5), any person may issue a subpoena in Form 89 calling on the person to bring the grant into the registry, and a person

against whom the subpoena is issued shall not take any step in the action without leave of the court until the person has complied with the citation.

Failure to enter appearance

- (7) Rule 17 does not apply to a probate action, and if a defendant fails to enter an appearance within the time allowed, the plaintiff may proceed with the action.

Counterclaim

- (8) A defendant to a probate action who alleges that he or she has a claim or is entitled to relief in respect of a matter relating to the grant of probate or administration shall deliver a counterclaim in respect of that claim or relief.

Failure to serve statement of claim

- (9) Where the plaintiff fails to serve a statement of claim, a defendant may file and deliver a counterclaim.

Defence limited to proof of will

- (10) In a probate action, a statement of defence may state that the defendant merely requires that the will be proved in court and that the defendant only intends to cross-examine the witnesses produced in support of the will. In that event the defendant is not liable for costs, unless the court determines that there was no reasonable ground for requiring that the will be proved in court.

Order for discontinuance or dismissal

- (11) At any stage of a probate action the court may order the action to be discontinued or dismissed, and may order that a grant of probate or administration be made to the person entitled.

Compromise

- (12) No probate action shall be compromised without leave of the court.