

Making Rules under the Administration Act, 1908.

LIVERPOOL, Governor.

ORDER IN COUNCIL.

At the Government Buildings, at Wellington, this seventh day of June, 1913.

Present :

THE HONOURABLE W. F. MASSEY PRESIDING IN COUNCIL.

IN pursuance and exercise of the powers and authorities conferred by the fortieth section of the Administration Act, 1908, His Excellency the Governor of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council thereof, and with the concurrence of Their Honours the Judges of the Supreme Court of the said Dominion, doth hereby make the rules contained in the Schedule hereto; and doth declare that the said rules set out in the said Schedule shall come into force and take effect as and from the first day of August, one thousand nine hundred and thirteen.

SCHEDULE.

1. EVERY application to the Court under the provisions of the 20th section of the Administration Act, 1908, for the allowance to the executors, administrators, or trustees of the estate of any deceased person of a commission or percentage shall be made by petition in the form numbered 1 in the Schedule hereto.

2. Every such petition shall set forth the date of the death of the deceased person, and the date of the grant of probate of the will or letters of administration of the estate of such deceased person to the petitioners.

If the petitioners are executors or trustees of the will of the deceased person, a copy of such will, duly verified by affidavit, must be lodged in support of the application.

3. Every such petition shall set forth the name, postal address, and occupation of every person who is or may be affected by such application, and shall show whether such persons are of full age or not. If any of such persons is an infant, the petition must also set forth the names, postal addresses, and occupations of his or her parents and guardians, or of some person or persons standing to such infant *in loco parentis*.

4. Every such petition shall be supported by full and detailed accounts showing clearly the gross amounts realized from the sale, calling-in, and collection of the estate of the deceased person, and all disbursements made and liabilities incurred in connection therewith, and all other information necessary to show clearly the result of the administration of such estate. Where auctioneers, commission agents, brokers, or other agents or servants have been employed in the sale, getting-in, collection, or administration of the estate of the deceased person or of any part of it, it shall not be sufficient for the petitioners to bring into account the net moneys which have been paid over to the petitioners by such auctioneers, commission agents, brokers, or other agents or servants, but the whole of the gross sums received by such auctioneers, commission agents, brokers, or other agents or servants so employed must be brought into account as moneys received by the petitioners, and the sums (if any) deducted by such auctioneers, commission agents, brokers, or other agents or servants from the gross sums so received by them must be shown upon the face of the accounts as disbursements made by the petitioners.

5. Every such petition shall, in addition to the accounts mentioned in the last paragraph, be supported by a statement in writing of the petitioners in the form numbered 2 of the Schedule hereto, so far as the same is applicable to the circumstances of the particular case.

6. In order to enable the Court to ascertain how much of the work connected with the realization, getting-in, and collection of the estate of the deceased person, and the collection of the rents and profits thereof, has been done by the petitioners personally, every such account must be supported by the solicitor's bills of costs, auctioneers' and agents' bills, and all other vouchers for every item of disbursement appearing in such account. Such vouchers must be duly verified by affidavit in the form numbered 3 of the Schedule hereto.

7. Every such petition must aver that the petitioners have not, nor has either or any of them, nor has any partner, relative, or servant of the petitioners, or either or any of them, either directly or indirectly derived any profit, benefit, or advantage from or in connection with the realization or administration of the estate of the deceased person; or if any such profit, benefit, or advantage has been derived by the petitioners, or either or any of them, or by any such person as is hereinbefore mentioned, then such petition shall set forth the full particulars thereof.

8. Every such petition must set forth explicitly the amount which the petitioners pray to be allowed to them out of the estate of the deceased person as a commission or percentage for their pains or trouble, and must show the basis or principle by which the same is arrived at.

9. Every such petition may, at the option of the petitioners, contain such further details as the petitioners may consider necessary or desirable to enable the Court to judge as to the amount of the pains and trouble to which they have been put or which they have incurred.

10. The allegations of fact contained in every such petition, and the accounts and statement required by Rules 4 and 5, must be verified by affidavit of each of the petitioners; but as to any allegation of fact to which the petitioners or any of them shall be unable personally to depose, it shall be sufficient if the petitioners shall as to such allegation depose that they are informed and verily believe that it is true and correct in every particular. As to every such allegation to which none of the petitioners can personally depose, the affidavit of some other person or persons who can personally depose to the truth thereof must be filed in support of the petition. An affidavit of the petitioners verifying the petition generally is insufficient for the purposes of this rule, and shall not be accepted.

11. Subject to the provisions of rules numbered 13 and 14, notice of every application under these rules must be served by the petitioners upon every person who is or may be affected by such application. Such notice shall be in the form numbered 4 in the Schedule hereto. With every such notice there shall be served a copy of the petition and of all accounts, statements, and affidavits required by these rules to be filed in support thereof (but not of the vouchers required by Rule No. 6). Such copy, petition, accounts, statement, and affidavits shall for the purposes of these rules be deemed to be part of such notice.

12. The period to elapse after such notice has been served shall be the same as if the proceeding were by writ to be served upon the persons to whom such notice is required to be given.

13. If any of the persons to whom such notice is required to be given is an infant, such notice shall be given to such infant or to his or her parents or guardians, or to such other person as the Court may appoint upon an *ex parte* application made by the petitioners for such purpose shall direct.

14. The Court may, at its discretion, and subject to such conditions (if any) as it shall think fit, and upon a prior *ex parte* application by the petitioners for such purpose, dispense with notice to any person or persons beyond the Dominion.

15. Unless the Court upon a prior application made by the petitioners *ex parte* for that purpose shall allow some other mode of service, service of all notices required by these rules shall be effected in the like manner as the service of a writ; but the Court may, if it shall so think fit, allow such service to be effected by registered letter or in any manner which the Court may consider sufficient.

16. Any person whose interests are or may be affected by any application made under these rules, or, if such person is a minor, any parent or guardian of any such person, may file affidavits in opposition to such application, and, if such person so desires, shall be heard in person or by counsel in opposition thereto.

17. Unless upon the hearing of such application the Court shall be satisfied that the petitioners are not entitled to any commission or percentage out of the assets of the deceased person, the Court shall refer such application to the Registrar for inquiry and report.

18. The Court may upon the hearing of such application, if requested so to do by any person whose interests are or may be affected by such application, or if any such person is an infant or is absent from the Dominion, then of its own motion, direct that a solicitor to be named by the Court shall attend the proceedings on such application on behalf of the persons whose interests are or may be so affected; and may further direct that the costs and charges of such solicitor shall be paid by the petitioners out of the assets of the deceased person, and shall be allowed to them as a disbursement on the final passing of their accounts.

19. Notice of the Registrar's appointment to proceed with the inquiry directed by Rule No. 16 shall be served upon all such persons, and in like manner and for the like period, before such inquiry as in the circumstances of the particular case notice of the hearing of the petition has been required to be served under the foregoing rules.

20. All persons whose interests are or may be affected by the application shall be entitled to be present, and be heard, and to call witnesses upon the inquiry by the Registrar, and either in person or by solicitor or agent.

21. The evidence of witnesses called on the inquiry before the Registrar shall be taken down in writing by the Registrar