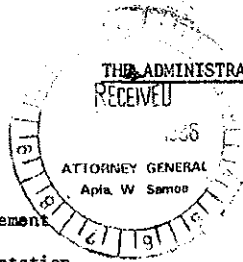


1980/2

WESTERN SAMOA

THE ADMINISTRATION (PROCEDURE) RULES 1980



Analysis

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His Highness, Malietoa Tanumafili II, Head of State

At the Government House at Apia this... day of... 1980.

PURSUANT to the Administration Act 1975 the Head of State, acting by and with the advice of Cabinet and with the concurrence of the Rules Committee constituted by and under section 40 of the Judicature Ordinance 1961, hereby makes the following rules:-

RULES

1. Title - These rules may be cited as the Administration (Procedure) Rules 1980.
2. Commencement - These rules shall come into force on the 1st day of January 1980 and shall apply to -
 - (a) Any proceedings commenced on or after that day; and
 - (b) Any steps taken on or after that day in respect of any proceedings commenced before that day.

3. Interpretation - In these rules unless the context otherwise requires, -
"Act" means the Administration Act 1975:

"Administration" includes probate of the will of a deceased person, and of

letters of administration of the estate of a deceased person granted with or without a will annexed; and in the case of the Public Trustee, includes an order to administer, and an election to administer:

"Court" means the Supreme Court of Western Samoa and includes a Judge of that Court:

"Registrar" means the Registrar of the Supreme Court of Western Samoa.

4. Form of proceedings - (1) All administration proceedings of a non-contentious nature shall be commenced by way of motion ex parte in Form 1, supported by affidavit.

(2) All administration proceedings of a contentious nature shall be commenced by notice of motion in Form 2, supported by affidavit.

(3) In all contentious administration proceedings the evidence-in-chief of all witnesses to be called by the parties to the proceedings shall, as far as practicable, be committed to writing in affidavit form and filed in Court and copies thereof served upon all other interested parties at least 3 clear days prior to the hearing of such proceedings.

5. Form of affidavit on probate application - Subject to the provisions of section 45 of the Public Trust Office Act 1975, the affidavit set out in Form 3 shall be followed as nearly as the circumstances of the case will permit, in every application for probate.

6. Form of probate - Probate of the will of any deceased person may be granted in Form 4.

7. Form of affidavit on application for letters of administration - Subject to the provisions of section 45 of the Public Trust Office Act 1975, the form of affidavit set out in Form 5 shall be followed as nearly as the circumstances of the case will permit, in every application for letters of administration.

8. Form of letters of administration on intestacy - Letters of administration of the estate of an intestate deceased person may be granted by the Court in Form 6.

9. Form of letters of administration with will annexed - Letters of administration with will annexed may be granted by the Court in Form 7.

10. Security by administrator - (1) Every person to whom a grant of letters of administration is made shall furnish security to the Court for the due administration of the estate in respect of which the grant is made by the execution of an administration bond.

(2) The administration bond shall be in Form 8.

(3) Where the administrator appointed by the Court is the Public Trustee, the provisions of this rule shall have no application.

11. Priority among applicants for administration - (1) Where any person dies intestate as to any real or personal estate, the order of priority for entitlement to a grant of administration among the next-of-kin of the deceased shall, unless the Court in special circumstances otherwise directs be as follows:-

- (a) The surviving spouse of the deceased:
- (b) The issue of the deceased who have attained the age of 21 years:
- (c) The parents of the deceased:
- (d) The brothers and sisters of the deceased, whether of the whole blood or of half-blood:
- (e) The grand-parents of the deceased:
- (f) The uncles and aunts of the deceased, being brothers and sisters (whether of the whole or of half-blood) of a parent of the deceased:
- (g) Any other person.

(2) Where letters of administration are applied for by one or some of the next-of-kin only, there being another or other next-of-kin equally entitled thereto, proof must be given by affidavit that notice of the application has been given to such next-of-kin, or the consent in writing of such next-of-kin duly verified by affidavit must be filed with the Court:

Provided however that the Court may in its discretion dispense with that notice or consent in respect of such of the next-of-kin as are at the time of the application beyond the jurisdiction of the Court.

12. Grant of administration to attorney - Where the person entitled to a grant of probate or letters of administration resides out of Western Samoa, the Court may make the grant in favour of his attorney acting under a power of attorney.

13. Caveat against grant of administration - A caveat against the grant of administration in terms of section 30 of the Act may be in Form 9.

14. Executor or administrator to file accounts - (1) Every executor or administrator of the estate of a deceased person shall within such period as the Court on application may direct, file with the Registrar a full and proper account in writing, verified by affidavit, of his administration of the estate.

(2) Failure by an executor or administrator to comply with the direction of the Court to file an account within the period appointed or within such further period as the Court may by further order allow, shall constitute a contempt of Court.

15. Proceedings for resealing of foreign grant - (1) Where any probate or letters of administration granted by any competent Court in any other country requires to be resealed in Western Samoa, application for resealing shall be made by way of motion ex parte in Form 10 and verified by affidavit which may be in Form 11, and shall be filed in Court at the same time as the foreign probate or letters of administration is produced to and a copy thereof is deposited with the Registrar in terms of section 39 of the Act.

(2) Where a resealing of letters of administration in terms of paragraph (1) hereof is applied for, the person to whom the grant was made shall furnish security to the Court in accordance with Rule 10 of these rules unless the Court in its discretion orders otherwise.

16. Notice of resealing of foreign grant - Notice of the resealing of any probate or letters of administration in terms of section 39 of the Act shall be sent by the Registrar to the Court from which the grant issued.

17. Exemplification of grant in Western Samoa - Exemplification of a grant of administration in Western Samoa shall be in Form 12.

18. Notice of revocation of grant in Western Samoa - Where intimation has been received of the resealing by a Court in any other country of probate or letters of administration granted by the Supreme Court of Western Samoa or of any exemplification thereof, notice of any revocation or variation in the grant ordered by the Supreme Court of Western Samoa shall be sent to the Court by the authority of which the grant or exemplification was resealed.

19. Application of rules of Supreme Court - In matters for which no specific provision is made in these rules in respect of probate and administration proceedings, the general provisions of the rules providing for the service, setting down and conduct of actions before the Supreme Court, as far as they are applicable and with the necessary modifications shall apply.

SCHEDULE

Form 1

Rule 4:

MOTION FOR PROBATE OR LETTERS OF ADMINISTRATION

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT.....

IN THE ESTATE OF A.B. of.....
Merchant, deceased.

Mr.....of Counsel for the applicant to move before the Honourable
The Chief Justice at his Chambers, Supreme Court House,.....on the
.....day of.....19...at.....a.m. for an order that probate of
the will (and codicil) of the said deceased (or for an order that letters of
administration of the estate, effects and credits of the said deceased) be
granted to C.D., the executor in the said will (or codicil) named (or the
widow or one of the next-of-kin as the case may be of the said deceased).

D A T E D at.....this.....day of.....19.....

.....
Solicitor for Applicant

CERTIFIED pursuant to the Rules of Court to be correct.

.....
Solicitor for Applicant

Form 2

Rule 4:

NOTICE OF MOTION

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT.....

IN THE ESTATE OF A.B. of.....
Merchant, deceased.

TAKE NOTICE that on.....day, the.....day of.....19.....at
.....a.m. Counsel for the applicant will move this Honourable Court at
.....for an order that (here follows description of the order sought)
and for such further or other order as in the circumstances may appear just
upon the grounds (here follows the grounds relied upon).

D A T E D at.....this.....day of.....19.....

.....
Solicitor for Applicant

TO: The Registrar of the Supreme Court at.....

AND TO:

This Notice of Motion is filed by.....of.....
Solicitor for the Applicant whose address for service is at.....

Form 3

AFFIDAVIT TO LEAD GRANT OF PROBATE OF WILL

/Heading as in Form No. 1 herein/

I, of, make oath and say as follows:-

1. THAT I knew..... of....., now deceased when alive, and that the said..... was resident or was domiciled at..... within this judicial district, and that the nearest Registry Office of this Court to the place where the said..... resided or was domiciled is at.....

2. THAT the said..... died at..... on or about the..... day of..... 19....., as I am able to depose from having seen him die /or from having seen his dead body after death, or from having been present at his funeral, or from having been present at an inquest upon his body, or as the case may be, showing in every case the deponent's means of knowledge/.

3. THAT I believe the written /or typewritten, or partly printed and partly written, as the case may be/ document(s) now produced, bearing date the..... day of..... 19..... (and the..... day of..... 19..... respectively), to be the last will and testament (and codicil) of the said deceased, and that I am the executor /or the surviving executor/ /or one of the executors/ therein named /or in the said codicil named/ /or therein according to the tenor thereof named, as the case may be/.

4. THAT I will faithfully execute the said will (and codicil) by paying the debts and legacies of the said deceased so far as the property will extend and the law binds, and will whenever ordered so to do after the grant of probate to me file in this Court and verify by affidavit a true, full, and perfect inventory of all the estate, effects, and credits of the said deceased which shall have come into my hands, possession, or knowledge, and also a full, distinct, and proper account of my execution of the will (and codicil) which shall set forth the dates and particulars of all receipts and disbursements and show which of the same are, in my opinion, on account of capital and on account of income respectively.

5. THAT according to my knowledge and belief, the estate and effects of the said deceased in respect of which probate is sought to be obtained are under the value of \$.....

SWORN at..... this.....)
day of..... 19.....)
before me:)

.....
A Solicitor of the Supreme
Court of Western Samoa

Form 4

PROBATE

/Heading as in Form No. 1 herein/

BE IT KNOWN TO ALL MEN that on this... day of..... 19....., the last will and testament /and codicil thereto/ of..... deceased, who died on or about the... day of..... 19....., a copy of which will /and codicil/ is hereunto annexed, has been exhibited, read, and proved before /the

Honourable..... a Judge of the Supreme Court of.....
and administration of the estate, effects and credits of the deceased has
been and is hereby granted to....., the executor in the
said will and testament named /or in the said codicil named/, being first
sworn faithfully to execute the said will /and codicil/ by paying the debts
and legacies of the deceased as far as the property will extend and the law
binds, and whenever ordered so to do to file in this Court and verify by the
affidavit a true, full, and perfect inventory of all the estate, effects, and
credits of the said deceased which shall have come into his hands, possession,
or knowledge and also a full, distinct, and proper account of his execution of
the will /and codicil/.

Form 5

Rule 7:

AFFIDAVIT TO LEAD GRANT OF ADMINISTRATION TO WIDOW
OR WIDOWER

IN THE SUPREME COURT OF WESTERN SAMOA

.....Registry

IN THE ESTATE OF

.....
of.....
deceased.

I,.....of.....in Western Samoa, make
oath and say as follows:-

1. THAT I knew.....of....., now
deceased, when alive, and that the said.....was resident or
was domiciled at.....within this judicial district and that the
nearest Registry Office of this Court to the place where the said.....
resided or was domiciled is at.....

2. THAT the said.....died at....., on or
about the.....day of.....19....., as I am able to depose from
having seen him die /or from having seen his dead body after death, or from
having been present at an inquest upon his body, or from having been present
at his funeral, or as the case may be, showing in every case the deponent's
means of knowledge/.

3. THAT the said deceased was my lawful husband /or wife/ and that
the said deceased left him /or her/ surviving me, this deponent, his lawful
widow /or widower/ and /state number of children/ children - that is to say:
/Here set out the names of the children and their ages/.

4. THAT the said deceased had never been married prior to his /or her/
marriage with me, this deponent; /or as the case may require/ that the said
deceased was at the time of his /or her/ marriage with me, this deponent, a
widower /or widow/; and that he /or she/ left him /or her/ surviving by his
/or her/ former marriage /state number of children/ children - that is to say:
/Here state the names of the children and their ages/.

5. THAT since the death of the said deceased I have had access to
his /or her/ papers and repositories; and that I have searched diligently
therein for any will or testamentary writing made or signed by the said
deceased; and that I have been unable to find any such will or testamentary
writing.

6. THAT I have made inquiry of /the Solicitor who acted for the said
deceased during his (or her) lifetime, and of the bankers with whom he (or
she) banked, and of/ all persons likely to know if the said deceased had made
or signed any will or testamentary writing, and I have been unable to learn
that the said deceased ever made or signed any such will or testamentary
writing.

7. THAT I do verily believe that the said deceased died intestate, and I am his widow /or her widower, as the case may be/.

8. THAT to the best of my knowledge, information, and belief, the estate, effects, and credits of the said deceased to be administered by me are under the value of \$.....

9. THAT I will well and faithfully administer the estate of the said deceased, and will whenever ordered so to do after the grant of letters of administration to me file in this Court and verify by affidavit a true, full, and perfect inventory of all the estate, effects, and credits of the said deceased which shall have come into my hands, possession, or knowledge and also a full, distinct, and proper account of my administration of the estate which shall set forth the dates and particulars of all receipts and disbursements, and show which of the same are, in my opinion, on account of capital and on account of income respectively.

SWORN at.....this)
.....day of.....)
19.....before me:)

.....
A Solicitor of the Supreme Court
of Western Samoa

Form 6

Rule 8:

LETTERS OF ADMINISTRATION WITHOUT WILL

/Ileading as in Form No. 1 herein/

To.....widow /or widower/ /or next-of-kin/ of.....
deceased /or as the case may be/:

WHEREAS the said.....departed this life intestate on or about the
....day of.....19..... YOU ARE THEREFORE fully empowered and
authorised by these presents to administer the estate, effects, and credits
of the said deceased, and to demand and recover whatever debts may belong to
his estate and pay whatever debts the said deceased did owe, so far as such
estate, effects, and credits extend: You having been already sworn well and
faithfully to administer the same and whenever ordered so to do to file in this
Court and verify by affidavit a true, full, and perfect inventory of all the
estate, effects, and credits of the said deceased which shall come into your
hands, possession, or knowledge and also a full, distinct, and proper account
of your administration of the estate and you are therefore by these presents
constituted administratrix /or administrator/ of all the estate, effects, and
credits of the said deceased.

G I V E N under the Seal of the Supreme Court of Western Samoa at.....
This.....day of.....19.....

Form 7

Rule 9:

LETTERS OF ADMINISTRATION WITH WILL ANNEXED

/Ileading as in Form No. 1 herein/

To.....widow /or widower, or next-of-kin/, of.....
deceased /or as the case may be/:

WHEREAS the said.....departed this life on or about the
.....day of.....19....., leaving a will, which has been
duly proved in this Court:

AND WHEREAS the executors named in the will have not applied for probate
/or no executor is named in that will, or as the case may be, stating the
circumstances giving rise to a grant of letters of administration with will
annexed; You are therefore fully empowered and authorised by these presents
to administer the estate, effects, and credits of the said deceased, and to
demand and recover whatever debts may belong to his estate, and pay whatever
debts the said deceased did owe and also the legacies contained in the said
will, so far as such estate effects, and credits extend: you having been
already sworn well and faithfully to execute the said will, and whenever
ordered so to do to file in this Court and verify by affidavit a true, full,
and perfect inventory of all the estate, effects, and credits of the said
deceased which shall have come into your hands, possession, or knowledge and
also a full, distinct, and proper account of your execution of the will.
And you are therefore by these presents constituted administratrix /or
administrator with the will annexed of all the estate, effects, and credits
of the said deceased.

G I V E N under the Seal of the Supreme Court of Western Samoa at.....
this.....day of.....19.....

Form 8

Rule 10:

ADMINISTRATION BOND

/Heading as in Form No. 1 herein/

KNOW ALL MEN, by these presents, that we.....of.....
are held and firmly bound unto the Registrar of the Supreme Court in the
sum of \$....., for which payment well and truly to be made to the
said....., Registrar for the time being, we do and each of us
both bind ourselves and each of us, and the executors and administrators of
us and each of us, jointly and severally, firmly by these presents:

D A T E D this.....day of.....19.....

WHEREAS by order of this Court of the.....day of.....19.....,
it is ordered that letters of administration of the estate, effects, and
credits of....., deceased, be granted to the said.....
on his giving security for the due administration thereof:

AND WHEREAShas sworn that to the best of his
/or her/ knowledge, information, and belief the said estate, effects, and
credits are under the value of \$.....:

NOW, the condition of the above-written bond is that if the above-bounden
administrator /or administratrix/ well and faithfully administers the estate
/or in the case of administration with will annexed, executes the will/ of
the said deceased, and whenever ordered so to do files in this Court and
verifies by affidavit a true, full, and perfect inventory of all the estate,
effects, and credits of the said deceased which shall have come into his
/or her/ hands, possession, or knowledge, and also a full, distinct, and
proper account of his /or her/ administration of the estate /or, in the case
of administration with will annexed, execution of the will then this bond
shall be void and of no effect, but otherwise shall remain in full force.

D A T E D at.....this.....day of.....19.....

SIGNED by the above-named)
In the presence of:) /Signature/.....

/Name/.....
/Address/.....
/Occupation/.....

Form 9

Rule 13:

CAVEAT

/Heading as in Form No. 1 herein/

LET NOTHING be done in the will /or goods/ of....., late of
.....in Western Samoa, deceased, without notice to
....., Solicitors for.....of.....
having interest /or the widow, or a creditor of the deceased/.

.....
Solicitor for:

THIS caveat is lodged by.....of.....,
Solicitor for.....whose address for service is at the office
of Messrs....., Solicitors, No....., Street.....

Form 10

Rule 15:

MOTION FOR RESEALING OF GRANT OF ADMINISTRATION

/Heading as in Form No. 1 herein/

Mr.....of Counsel for the applicant to move before the Honourable
The Chief Justice at his Chambers, Supreme Court House,....., on the
.....day of.....19....., at.....a.m. for an order that probate
of the will of the said deceased (or letters of administration of the estate
of the said deceased) granted by the.....Court of.....
at.....on the.....day of.....19.....to the applicant be
resealed by this Court upon the grounds (Here follows the grounds relied
upon).

D A T E D at.....this.....day of.....19.....

.....
Solicitor for Applicant

Form 11

Rule 15:

AFFIDAVIT TO SUPPORT MOTION FOR RESEALING

/Heading as in Form No. 1 herein/

I, C.D. of....., Married Woman, make oath and say:

1. THAT I am the executor named in the last will of.....
deceased, who died at.....on the.....day of.....19.....
(or that I am the widow of the.....deceased who died at

.....on the.....day of.....19.....).

2. THAT probate of the said deceased's will (or that letters of administration of the estate of the said deceased) was granted to me by theCourt of.....at.....on the.....day of.....19.....

3. THAT the said deceased at the time of his death was seized of certain real and/or personal property situated in Western Samoa which according to my knowledge and belief is under the value of \$.....and was indebted in Western Samoa in the sum of \$.....

4. THAT a resealing of the said grant of probate (or letters of administration) in Western Samoa is necessary to enable me to complete the administration of the estate of the said deceased.

5. THAT produced herewith is a sealed copy of the said grant of probate (or letters of administration) issued to me by the.....Court of.....at.....together with a copy thereof for deposit in this Court.

SWORN at.....this)
.....day of.....19.....)
before me:)

Form 12

Rule 17:

EXEMPLIFICATION OF PROBATE

IN THE SUPREME COURT OF WESTERN SAMOA

.....Registry

IN THE ESTATE OF

.....
of.....
deceased.


BE IT KNOWN TO ALL MEN that upon search being made in the Registry Office of the Supreme Court of Western Samoa,....., to which Court all matters concerning the granting and revoking of probate and letters of administration of deceased persons within Western Samoa are committed, it appears that on the.....day of.....19....., probate of the will of....., late of.....in Western Samoa who died at.....on or about the.....day of.....19..... and had at the time of his /or her/ death a fixed place of abode at.....aforesaid within Western Samoa was granted to....., the executor in the said will and testament named, and was on the.....day of.....19.....issued by the said Court to the said.....which probate now remains on record in the said Court. The true tenor of the said probate is in the words following, to wit:

/Here follows probate and will/

IN THE FAITH AND TESTIMONY WHEREOF, I....., Registrar of the Supreme Court of Western Samoa aforesaid, have caused these letters testimonial to issue and be sealed with the Seal of the said Supreme Court.

G I V E N at.....aforesaid as to the time of the aforesaid search and sealing of these presents this.....day of.....19.....

.....
Registrar


Malietoa Tanumafili II.
Head of State

Issued under the authority of the Regulations Ordinance 1953.
Date of Notification in the Western Samoa Gazette:
These rules are administered by the Department of Justice.