



NORTHERN IRELAND

**COURT
SERVICE**

PROBATE OFFICE

CAVEATS, WARNINGS APPEARANCES & CITATIONS

**Non-Contentious
Probate Business
Notes**

June 2009

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

Preface

The notes and the example documents in this booklet give initial informal help with the preparation of documents which needed in non-contentious probate business involving caveats, warnings to caveats, appearances to warnings and other related applications. The contents do not cover every type of circumstance but should give a good basis from which to work.

The procedures for business using these documents are primarily set out in Rule 43 of the Rules of the Supreme Court (Northern Ireland) 1980. The established textbooks which include “Probate Practice Notes” by Margaret Aiken, “Succession Law in Northern Ireland” by Sheena Grattan and “Tristram & Coote’s Probate Practice” may provide more details if needed.

Fee amounts shown in this booklet are those set by the relevant Supreme (Non-Contentious Probate) Fees (Amendment) Order (Northern Ireland) 2007 which came into operation on 24 September 2007. The fees may be subject to change by any further Orders coming into effect at later dates. Fees are payable to “Northern Ireland Court Service”.

The original text of this booklet in electronic format is available online through the Probate page of the Court Service website.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

Caveat

Enter Caveat
Extend Caveat

Warning

Warning to Caveator

Appearance

Appearance to Warning

Disposal of Caveats, Warnings and Appearances

Withdraw Caveat
Application for Certificate of Non-Appearance
Application to Withdraw Caveat, Warning and Appearance on Consent (for Sidebar Order)
Summons for Directions

Order 97 Rule 43 of the Rules of the Supreme Court (Northern Ireland) 1980

Citation

Order 97 Rules 44 - 47 of the Rules of the Supreme Court (Northern Ireland) 1980

ICOS Reference Number

When a Caveat is entered a reference number is allocated to it by ICOS (Integrated Court Operations System). Any documents entered subsequently in the proceedings related to the Caveat should show the Caveat's ICOS reference number at the top of the first page of the document.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

CAVEAT

A Caveat (on Form 4) may be entered in accordance with the appropriate Rule - RSC Order 97 Rule 43.

- Only one Caveator to be named on a Caveat
- Original Caveat and two copies thereof are required.
- Fee of £75.00 is payable on entering a new Caveat.
- Caveat unless withdrawn remains in force for 6 months from date of entry.
- A current Caveat may be extended within one month of its expiry date by written request.
- Fee of £50.00 is payable to extend an existing Caveat.

Form 4
Caveat
(O. 97, r. 43(2))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

Let no grant be sealed in the estate of,
(full name of the deceased person)

late of deceased,
(full postal address of the deceased person)

who died on the day of 20

at

without notice to me,
(full name of the caveator - in block capitals)

of,
(full postal address of the caveator)

in the County of having interest.

Dated this day of

Signed;

Address for Service

.....

(add address for service within this jurisdiction if the caveator's address given above is outside Northern Ireland)

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

WARNING TO CAVEATOR

A Warning to Caveator (on Form 5) may be entered in accordance with the appropriate Rule - RSC Order 97 Rule 43.

- Show the ICOS reference number of Caveat on the Warning form.
- Original Warning and two copies thereof are required.
- Fee of £50.00 is payable.

Form 5
Warning to Caveator
(O. 97, r. 43(8))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

In the estate of, Deceased
late of

To
of
a party who has entered a caveat in the estate of Deceased.

You are hereby warned within 8 days after service hereof upon you, inclusive of the date of such service, -

(1) to enter an appearance either in person or by your solicitor, at the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast, setting forth what interest you have in the estate of the above-named
ofdeceased
contrary to that of the party at whose instance this warning is issued;

or

(2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions by the Master.

And take notice that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the day of 20.....

Master

Issued at the instance of

.....

.....

[Here set out the name and instance (including the date of the will, if any under which the interest arises) of the party warning, the name of his solicitor and the address for service within the jurisdiction. If the party warning is acting in person, this must be stated.]

Signed:

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

APPEARANCE TO WARNING

An Appearance to Warning (on Form 6) may be entered in accordance with the appropriate Rule - RSC Order 97 Rule 43.

- Show the ICOS reference number of Caveat on the Appearance form.
- Original Warning and two copies thereof required.
- No fee payable.

Form 6
Appearance to Warning
(O. 97, r. 43(10))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

In the estate of Deceased

Enter an appearance for

(the Caveator)

in this matter.

.....

.....

.....

(Here set out the interest of caveator stating the date of the will, if any, under which such interest arises.)

Dated the day of 20

Signed

(Solicitor or in person)

whose address for service is :

.....

.....

.....

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

DISPOSAL OF CAVEAT, WARNING AND APPEARANCE

The following steps may be taken to disposal of caveats, warnings and appearances in certain circumstances.

Document(s) entered	Method of disposal
Caveat only	On written request by caveator to withdraw caveat, with copies of the caveat as issued out of the Office.
Caveat, Warning but not served	On written request by caveator to withdraw caveat, with copies of the warning as issued out of the Office.
Caveat, Warning served	On written request by caveator to withdraw caveat, and caveator must give notice of withdrawal forthwith to the person who warned it.
Caveat, Warning, No Appearance	Application for Certificate of Non-Appearance by affidavit of service.
Caveat, Warning, Appearance	With consent, application for discontinuance of proceedings leading to a Sidebar Order.
Caveat, Warning, Appearance	With no consent, application to Master by summons for Directions.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

CERTIFICATE OF NON-APPEARANCE

A Certificate of Non-Appearance may be applied for to dispose of a Caveat and Warning where no Appearance to Warning has been entered within the time period allowed for in the appropriate Rule

- RSC Order 97 Rule 43

- Application is by affidavit.
- Show the ICOS reference number of Caveat on the Affidavit.
- No fee payable

Example Affidavit

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

I *(insert name)*, *(insert occupation)*, of *(insert address)*, aged 18 years and upwards, do hereby make Oath and say as follows: -

1. *(give details of caveat entered)*
2. *(give details of warning entered)*
3. *(give details of service of warning on caveator and on their legal representative)*
4. *(give details of the search for any appearance entered)*

Prayer for issue of Certificate of Non-Appearance

Save as where otherwise appears I depose to the foregoing facts from within my own personal knowledge.

Sworn at *(insert place)*
by *(insert name of deponent)*
this day of 20 , *(insert date)*
before me
a Solicitor/Commissioner empowered to administer
Oaths for the Supreme Court of Judicature
in Northern Ireland.

.....
(signature of deponent)

.....
Solicitor / Commissioner

This Affidavit was filed on behalf of the above named by
(insert name of Solicitors), of *(insert address)*.

Solicitor's Reference:

Following the issue of the Certificate of Non-Appearance a copy of it will be sent to the lodging solicitors.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

CERTIFICATE OF NON-APPEARANCE

Reference to the Certificate of Non-Appearance should be included in the Oath document prepared subsequently for the application for the grant of representation in this estate. A copy of the Certificate of Non-Appearance should be included with the documents lodged in the application.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

SIDEBAR ORDER

Reference to the Sidebar Order should be included in the Oath document prepared subsequently for the application for the grant of representation in this estate. A copy of the Sidebar Order should be included with the documents lodged in the application.

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

SUMMONS FOR DIRECTIONS

An application by Summons for Directions may be issued in accordance with the appropriate Rule - RSC Order 97 Rule 43.

- Show the ICOS reference number of Caveat on the Summons.
- Original Summons and Affidavit and two copies thereof required.
- Fee of £115.00 is payable.

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of *(Insert name of Caveator)*,
for Directions pursuant to **Order 97 Rule 43 (11) of the Rules of the Supreme Court
(Northern Ireland) 1980.**

Dated this day of 20 *(insert date)*.

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

Solicitor's Reference:

To:
(Insert names and address of persons to be served with Summons).

CAVEATS, WARNINGS, APPEARANCES & CITATIONS

SUMMONS FOR DIRECTIONS

Example Affidavit

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

I (*insert name*), (*insert occupation*), of (*insert address*), aged 18 years and upwards, do hereby make Oath and say as follows: -

1. (*give facts of caveat entered*)
2. (*give facts of warning entered*)
3. (*give facts of service of warning on caveator and on their legal representative*)
4. (*give facts of appearance(s) entered*)
5. (*give facts of matter(s) to be resolved*)

Prayer for Directions

Save as where otherwise appears I depose to the foregoing facts from within my own personal knowledge.

Sworn at (*insert place*)
by (*insert name of deponent*)
this day of 20 , (*insert date*)
before me
a Solicitor/Commissioner empowered to administer
Oaths for the Supreme Court of Judicature
in Northern Ireland.

.....
(*signature of deponent*)

.....
Solicitor / Commissioner

This Affidavit was filed on behalf of the above named by
(*insert name of Solicitors*), of (*insert address*).

Solicitor's Reference:

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged in that application.

Order 97 rule 43 of the Rules of the Supreme Court (Northern Ireland) 1980

Caveats

43.—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat either personally or by his solicitor in the Office or where the lodging of caveats is branch office business at the appropriate branch office.

(2) A caveat shall be in Form No.4 and where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.

(3) Except as otherwise provided by this rule, a caveat shall remain in force for six months, beginning with the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(4) Where a caveator within the last month of a period of six months prescribed by paragraph (3) of this rule or of any additional period of six months prescribed by this paragraph, lodges at the Office or branch office in which the caveat was entered a written application for its extension, the caveat shall (except as otherwise provided by paragraphs (9), (12) and (14) of this rule) remain in force for an additional period of six months.

(5) (a) The Master shall, immediately upon a caveat being lodged in the Office, send notice thereof to the appropriate circuit registrar if it is alleged that the deceased resided at the time of his death, or if he is known to have had a fixed place of abode at the time of his death, within the jurisdiction of the branch office;

(b) The circuit registrar shall, immediately upon a caveat being lodged in a branch office, send a copy thereof to the Master and shall state the day on which the same was lodged.

(6) The Master shall maintain an index of caveats entered in the Office or any branch office and on receiving an application for a grant in the Office, or a notice of an application for a grant made in a branch office he shall cause the index to be searched and shall notify the appropriate circuit registrar in the event of a caveat having been entered against the sealing of a grant for which application has been made in a branch office.

(7) The Master or circuit registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall affect any grant sealed on the day on which the caveat has been lodged.

(8) A caveat may be warned by the issue from the Office of a warning in Form No.5 at the instance of any person interested (in this rule called “the person warning”) which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(9) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Office or branch office at which it was entered and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph 12 of this rule, enter an appearance in Form No.6 in the Office and make an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of the form of appearance.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph (12) of this rule, issue and serve a summons for directions, which shall be returnable before the Master.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Office an affidavit showing that the warning was duly served and obtain a certificate of non-appearance and thereupon the caveat shall cease to have effect.

(13) Upon the commencement of a probate action the Master shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Master by order made on summons otherwise directs-

- (a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (9) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;
- (b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under Article 6 of the Order) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under paragraph (13) of this rule, shall cease to have effect.

(15) Except with the leave of the Master, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or (14) of this rule.

(16) In this rule "grant" includes a grant made by any Court outside Northern Ireland which is produced for resealing by the High Court.

[E.r. 44]

CITATION

Citations may be issued for various reasons – see RSC Order 97 rules 44, 45.46 and 47.

Rule 44 - Citation

Rule 45 - Citation to accept or refuse to take a grant

Rule 46 - Citation to propound a will

Rule 47 - Citation to bring in a grant

The most common reason for issuing a citation is to force an executor either to take out a grant or refuse to take out a grant. If the cited executor refuses to take out a grant another appropriate person may be allowed to take out the grant.

A citation may only be lodged when a caveat is in force.

DOCUMENTS REQUIRED

1. **Citation** – Original and two copies

The citation should include the following -

- a. all relevant names
- b. an address for service on the citor within the jurisdiction (i.e. Northern Ireland)
- c. the date
- d. details and dates of wills and codicils - these should be stated as concisely as possible and should be in chronological order
- e. the interest of the citor
- f. all the facts of the case

2. **Affidavit** in support of facts stated in the citation.

An affidavit must be filed verifying each of the facts in the citation.

(The affidavit is sworn by the citor or in special circumstances the affidavit may be sworn by the solicitor acting for the citor).

3. **Fee** of £115.00

4. **Will (and any Codicil(s))**

If the citor holds a Will, this should also be lodged with the application.

CITATION

Citations must be served personally. If personal service cannot be effected the citor should make application by affidavit to the Master for substituted service.

There is no provision preventing service of a citation out of the jurisdiction. If the party cited has an agent in this jurisdiction that agent should also be served with a copy of the citation. The time allowed for entering an appearance should include the extra days appropriate to the country of the citor and the total days allowed should be shown on the citation.

For more details about citation proceedings, including the proceedings subsequent to the service of the citation, refer to:

“Probate Practice Notes” - *Chapter 15*

“Succession Law in Northern Ireland” - *Chapter 11.86 - 11.95 Citations*

“Tristram & Coote’s Probate Practice” - *Chapter 24 - Citations*

The Oath prepared for a grant of representation after a citation should include appropriate details about the citation and the subsequent proceedings.

APPEARANCE TO CITATION

Form 6
Appearance to Citation
(O. 97, r. 44(6))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

Citation dated the day of 20

Enter an appearance for
(*person cited*)

in this matter.

.....
.....
.....
.....

(Here set out the interest of person cited stating the date of the will, if any, under which such interest arises.)

Dated the day of 20

Signed
(*Solicitor or in person*)

whose address for service is :

.....
.....
.....

Order 97 rules 44 - 48 of the Rules of the Supreme Court (Northern Ireland) 1980

Citation

44.—(1) Every citation shall issue from the Office and shall be settled by the Master before being issued.

(2). Every averment in a citation, and such other information as the Master may require, shall be verified by an Affidavit sworn by the person issuing the citation (hereinafter called “the citor”) or, if there are two or more citors, by one of them:

Provided that the Master may in special circumstances accept an Affidavit sworn by the citor’s solicitor.

(3) The citor shall enter a Caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Master, on cause shown by Affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the Office or a branch office before the citation is issued, except where the will is not in the citor’s possession and the Master is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of Rule 45 or paragraph (2)(a) of Rule 46, enter an appearance in the Office in Form 5 and make an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of the form of appearance.

[E.r. 45]

Citation to accept or refuse to take a grant

45.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance if any person interested in the estate at any time after the expiration of six months from the death of the deceased;

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex-parte to the Master for an Order for a grant on filing an Affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may-

- (a) In the case of a citation under paragraph (1) of this rule apply to the Master for an Order for a grant to himself.
- (b) In the case of a citation under paragraph (2) of this rule, apply to the Master for an Order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
- (c) In the case of a citation under paragraph (3) of this rule, apply to the Master by Summons (which shall be served on the person cited) for an Order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the Summons.

(6) An application under the last foregoing paragraph shall be supported by an Affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance, but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may-

- (a) In the case of a citation under paragraph (1) of this rule, apply by Summons to the Master for an Order for a grant to himself;
- (b) In the case of a citation under paragraph (2) of this rule, apply by Summons to the Master for an Order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule;
- (c) In the case of a citation under paragraph (3) of this rule, apply by summons to the Master for an Order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the Summons,

and the Summons shall be served on the person cited.

[E.r. 45]

Citation to propound a Will

46.—(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

- (2) If the time limited for appearance has expired, the citor may-
 - (a) in the case where no person cited has entered an appearance, apply to the Master for an Order for a grant as if the will were invalid;
 - (b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to the Master by Summons (which shall be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a) above.

[E.r. 46]

Citation to bring in a grant

47. A citation against the person to whom probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Office the probate or letters of administration, as the case may be, may be issued on the application of any person applying for the revocation or amendment of the grant or who desires to compel proof of the will in solemn form. Service out of jurisdiction of a citation under this rule is permissible but only with the leave of the Court.

[*E.r.* 47]

Address for service

48. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

[*E.r.* 48]