

MINUTES

COMMITTEE: Ethics Committee

DATE: March 7, 1996

**7. CHAPTER 1, RULE 4; PROPRIETY OF APPLYING FOR PROBATE WHEN
CAVEAT FILED IN ANOTHER REGISTRY**

The Committee considered a letter from a lawyer who was retained to act for the executor of a will. A caveat has been filed in one Supreme Court registry but no caveat has been filed in the Supreme Court registry where the lawyer customarily files his applications for letters probate. The lawyer's question is whether, under these circumstances, he is obliged to tell the lawyer filing the caveat of his instructions or whether he may make the application for letters probate in a registry where no caveat is filed.

The Committee noted that Section 133 of the *Estate Administration Act* permits a caveat against the granting of probate to be filed in any registry of the Court, and the registrar in whose registry a caveat has been filed has a duty to promptly notify the registrar of the Supreme Court in Victoria, who shall promptly notify all other registrars in the province. It appears, therefore, that the caveat may not have been filed in some registries through inadvertence.

Under these circumstances, the Committee was of the view that it would be sharp practice for the member to apply for letters of administration without notifying the lawyer who filed the caveat of the circumstances in advance of any application.

keywords: //probate//sharp practice//slip//