

LOCAL ADMINISTRATIVE RULES OF THE TOWN OF NORTH SMITHFIELD PROBATE COURT

In compliance with Rhode Island General Laws §33-22-29, the North Smithfield Probate Court establishes and adopts the following as the Local Administrative Rules.

1. COURT SESSIONS/TIME AND LOCATION

Sessions will convene at 1:00 P.M. on the first Wednesday of every month. Court sessions are held at North Smithfield Town Hall, Council Chambers 83 Green Street, North Smithfield, RI.

2. COURT DOCKET SHEET:

a. Prior to the commencement of the Court session a docket sheet will be provided by the Clerk. Attorneys and non-represented parties are required to sign the docket sheet including their name and the name of the matter coming before the Court.

b. The matters will be called at 1:00 P.M in the order in which they appear on the docket sheet. The Court will hear the formal matters first. Contested matters requiring a hearing may be held in the Court's discretion until the end of the calendar.

c. If no continuance has been duly requested, a matter that has been scheduled for hearing and not having been signed in on the docket sheet and with no interested party appearing will be passed. In matters that have been passed, statutory notice of any subsequent hearing date shall be re-issued including advertisement or as the case may be new waivers shall be executed for the next hearing date. Costs of notice shall be paid by the Petitioner or moving party.

3. CONTINUANCES OF HEARINGS:

a. Hearings in all cases may be continued by agreement of all the interested parties.

b. In the event the parties cannot agree as to a continuance, the court shall schedule a special session to determine whether a matter shall be continued.

4. ATTORNEY APPEARANCE AND WITHDRAWAL:

a. BY MOTION:

An attorney who has appeared on behalf of any person in this Court may not withdraw their appearance unless he or she first obtains the consent of the Court. All withdrawals shall be made upon motion with notice by regular mail to all parties involved except that notice to the party or parties represented shall be by regular and certified mail, return receipt requested.

A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append to his or her motion:

The last known address of his or her client, which shall be the official address to which notices may be sent;

An affidavit setting forth facts showing the military status of his or her client. If it appears that the client is in the military service of the United States, as defined in the "Service Members Civil Relief Act", and any amendments thereto.

b. BY STIPULATION:

An attorney who has appeared on behalf of any person in this Court may alternatively withdraw their appearance through the execution of a stipulation whereby the first counsel withdraws his or her entry and replacement counsel enters his or her appearance. Such a stipulation shall not be entered where the substitution of counsel shall be cited by the client as a justification for delay in proceedings.

5. COMMUNICATIONS WITH THE COURT:

- a. Ex-parte communications, except for technical, formal and procedural related inquiries, are prohibited.
- b. Written communications in any pending probate matter shall be delivered to the Clerk of Court and not to the private law offices of the Judge unless the Judge otherwise requests.

6. INTERESTED PARTIES

As used in these Rules an "interested party" includes:

- a. Heirs at law and legatees in administration or testate proceedings;
- b. Named beneficiaries;
- c. Guardians;
- d. Creditors of the ward or decedent and administrative creditors who have filed a claim.
- e. Any other person who has filed an appearance and claims an interest in the estate or result of a proceeding.

7. NOTICE

Notice of proceedings in Probate Court shall be as required by Rhode Island General Laws.

In matters where the law is not specific or silent, ten (10) days written notice by regular mail to the last known address shall be given to all interested parties.

- a. When permitted by law notice may be waived by the parties by submission of waiver.
- b. Appropriate certification shall be provided to the court and counsel indicating compliance of the notice requirements.
- c. The Court may order additional notice as it deems necessary to insure that all persons entitled to be heard are provided due notice.

8. MOTIONS

An application to the Court for an Order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

9. ORDERS

All written orders in contested matters, or written orders as maybe requested by the Court, shall be prepared by the prevailing party and reviewed by opposing counsel before entry. If no objection is filed within the statutory period, the order shall thereafter enter. Objections to orders shall be set for hearing by means of a Petition for Instructions.

10. RECORD OF PROCEEDINGS/ELECTRONIC RECORDINGS/REPRODUCTION/CUSTODY

A. Electronic recording/written transcripts:

- i. Electronic recordings of all court hearings will be made by the Court at every session pursuant to § 33-22-19.1. However, any interested party may have the court proceedings privately recorded and/or transcribed by a court stenographer at the party's own expense. No Court authorization or order is required to make a private recording or transcription.
- ii. The private recording or transcript shall not be deemed part of the record of proceedings unless admitted by the Court into evidence as an exhibit, ordered by the Court or stipulated to by the parties. Nothing herein shall preclude an interested party from purchasing the transcript from the stenographer. No party shall be required to make a private recording or transcript in order to take an appeal to superior court.

B. Written Transcripts/record on appeal/copies:

- i. The Probate Clerk shall, if requested, assist a party to produce a written or typed transcript in the event an appeal is claimed. The appellant shall be responsible for all transcription costs. The Probate Clerk, upon request, shall provide the appellant's stenographer with reasonable accommodations to transcribe the original electronic recording at the town offices or the Clerk may provide a true copy of the electronic recording for transcription off site.
- ii. A true copy of the Probate Court's electronic recordings of a proceeding are available for \$35.00.
- iii. Copies of any relevant documents and exhibits shall be made at the Probate Clerk's Office. The cost of such copies shall be paid by the requesting party.

C. Custody and Control of Records:

Physical possession of all original case files including documents, exhibits and the original electronic recordings shall always remain in the custody, control and safekeeping of the Probate Clerk unless otherwise ordered by the Superior Court. Electronic recordings of hearings will be kept by the Probate Court for a period of one (1) year after the hearing has been concluded and thereafter may be destroyed.

11. ACCOUNTS OF FIDUCIARIES:

- a. All Accounts submitted by a fiduciary must be certified by the fiduciary and the attorney representing the fiduciary as required by R.I. Gen. Laws§ 33-14-2.2.
- b. The Court may, in its discretion, require additional detail for any accounts filed.
- c. Notice of hearing for accounts, in addition to advertising, shall be given by regular mail at least ten (10) days before the date set for hearing to all interested parties unless notice is waived by a party.
- d. Accounts showing proceeds from the sale of real estate shall be accompanied by that portion of the current form HUD closing disclosure settlement sheet that concerns or pertains the estate transaction only.
- e. Accounts are to include copies of relevant bank statements and other supporting documents.
- f. An amended account, if submitted after the original account is advertised, shall not be re-advertised unless the original advertisement was not correct in its description of the account, i.e. failed to indicate the account was a final account or was an account for the proceeds from sale of real estate. Notice to interested parties shall be as stated herein.

12. ADOPTION OF ADULTS:

a. Petitions for Adult adoptions (persons at least eighteen years old) will only be permitted for the purpose of establishing a parent and child relationship between the adopter and adoptee.

b. A notice of the hearing shall be given by regular mail at least ten (10) days before the hearing to the spouse of the prospective adoptive parent and the adoptee's parent or parents if alive.

13. ALLOWANCE TO FAMILIES:

The inventory for the estate must be filed at least ten (10) days prior to hearing any Allowance of Support.

14. BONDS:

b. In any probate case requiring a bond with corporate surety, no riders or amendments shall be accepted by the Court unless the rider or amendment is issued to correct an error in date or other administrative matter in the original bond, or to add an additional fiduciary to the existing bond. Increases in bond amounts shall be evidenced by a new bond in the increased amount, and not by rider. A consolidation of bonds may be allowed at the discretion of the Court.

c. The same bonding company shall be used in all proceedings of a particular estate, unless the prior bond is cancelled, a new fiduciary is appointed, or the original surety company withdraws from Rhode Island, or ceases to be in the bond business. A successor surety company shall comply with all applicable laws of the state of Rhode Island and rules of the Department of Business Regulation.

15. CERTIFICATES OF APPOINTMENT:

a. If there is no activity in a probate matter for a period of two (2) years from the qualification of a fiduciary, requests for certificate of appointments or exemplified copies of records may be made ex-parte to the Court by a miscellaneous petition; after consideration thereon, the Court may authorize said requests by Court order.

b. Certificates will only be issued to named fiduciaries and attorneys for fiduciaries.

16. CLAIMS OF CREDITORS/AFFIDAVIT OF NOTICE/HEARINGS:

a. Claims shall be filed in accordance with R.I. Gen. Laws §33-11-4. The Court will not on its own initiative deem a claim filed out of time or reject claims without a hearing.

b. If a creditor agrees to accept less than the amount of the claim filed and if the fiduciary is not authorized to compromise or settle claims, a Miscellaneous Petition for Compromise shall be filed and heard by the Court.

c. No final accounts or affidavits of complete administration will be allowed or accepted unless an affidavit of notice is submitted by the fiduciary in substantial compliance with R.I. Gen. Laws §33-11-5.2. The Affidavit of Notice shall also state the date the notice to the creditor(s) was mailed and the date the notice to OHHS was mailed pursuant to §40-8-15.

d. Notice of Hearing on a Motion to Determine a Disallowed Claim or Petition to File a Late Claim shall be given by regular mail at least ten (10) days before the court hearing to all interested parties unless notice is waived by said parties.

17. DEATH CERTIFICATE

The Court, in its discretion, may hold a hearing on said petition without the filing of said certificate, but no letters testamentary or no letters of administration will be granted until said certificate is filed

18. CONTESTED MATTERS/RULES OF PROCEDURE

A. RULES OF PROCEDURE: In all contested matters the R.I. Superior Court Rules of Procedure shall apply. The Probate Court may limit the scope of discovery to what it deems to be relevant to the contested issue and may shorten or enlarge deadlines as warranted by the circumstances. If requested by any interested party, a scheduling order may be issued in order to advance the full and fair conduct of the contested issue. Original discovery materials (depositions, interrogations and answers thereto, records, etc.) shall not be submitted to the Court except when they are being offered as evidence during a trial of the matter or as exhibits in support of a motion or other filing..

B. RULES OF EVIDENCE: In all contested matters the Rhode Island Rules of Evidence adopted by the R.I. Supreme Court shall be applied. Parties may stipulate or waive the requirements of the Rules of Evidence as to any particular matter.

19. UNCONTESTED MATTERS/RULES OF EVIDENCE

In any uncontested matter or matter on waiver, the Rhode Island Rules of Evidence will be used as a guide for the admission or exclusion of evidence.

20. FEES FOR ATTORNEYS AND ACCOUNTANTS:

A hearing is required for all petitions for approval of attorney and accountant fees. Petitions for fees shall be accompanied by, but not limited to, documents indicating hours spent, the nature of the work provided, results obtained and any other documents which may assist the Court in making its decision regarding the fairness and reasonability of the fees. Assents by all

interested parties, if obtained, may be submitted and shall be considered but such assents shall not be finally determinative.

21. FEES FOR FIDUCIARIES:

A hearing is required for all petitions for approval of fiduciary fees. Petitions for fees shall be accompanied by, but not limited to, documents indicating hours spent, the nature of the work provided, results obtained and any other documents which may assist the Court in making its decision regarding the fairness and reasonability of the fees. Assents by all interested parties, if obtained, may be submitted and shall be considered but such assents shall not be finally determinative.

22. FILING FEES/DEADLINE:

No matter will be heard unless and until all fees currently due have been paid. Matters requiring advertising should be filed and the necessary fees paid not later than the previous Wednesday of the week of publication.

23. FOREIGN ORIGINAL PROBATE:

Petition(s) for the allowance of a Foreign Will or for the appointment of an Administrator of an out of state decedent filed as an original Probate for a non-resident of Rhode Island, must be accompanied by an affidavit from the person filing the petition confirming that no original probate is pending or has been opened in any other jurisdiction.

24. FORMS:

Parties must use the probate forms developed for statewide use whenever practicable. Such forms in their current version may be found on the R.I. Secretary of State Website. In matters wherein no state form is suggested or prescribed, a Miscellaneous Petition may be used or a form similar in format to a pleading or motion filed in superior court will be acceptable.

25. GUARDIANSHIPS:

a. The Court shall, from its revolving list of interested and qualified individuals, appoint a Guardian Ad Litem each time a petition for guardianship is filed; the Clerk of Probate shall notify said individual of their appointment and provide to that person all relative information concerning the matter. The Clerk shall also provide notice of the Guardian Ad Litem appointment to the Petitioner and any other interested party. For good cause shown the interested parties may stipulate to designating a Guardian Ad Litem with Court approval.

b. The Decision Making Assessment Tool (DMAT) and Guardian ad litem report shall be submitted to the Court at least three (3) business days prior to the hearing date before the matter is to be heard.

c. Whenever practicable, proof of notice/service of process to the proposed ward shall also be filed at least three (3) business days prior to the hearing date.

d. In all cases in which a guardian of the estate is appointed, an independent appraiser may be appointed by the court in its discretion depending on the facts and circumstances of the case.

26. INVENTORIES

Statutory requirements for inventories will be strictly enforced. Fiduciaries unable to submit inventories within the required times must petition the Court for an extension of time.

27. NAME CHANGES:

a. ADULT: For all persons over 18 years old, upon the filing of a petition to change the name and submission of a birth certificate and photo ID, the North Smithfield Police shall be notified and requested to provide a criminal background check before the Court will act on the petition. If a criminal record is reported, the Court may approve, deny or allow the petition be withdrawn without action.

b. MINOR: For Petitions to change the name of a minor, the named parents on the birth certificate provided to the Court, shall provide photo ID's and shall both join in the petition to change the name of the minor.

In cases involving minors having no father listed on the birth record, only changes of the given name or non-material corrections shall be heard; otherwise the matter shall be referred to the Rhode Island Family Court.

28. NOTARY SIGNATURES

The signature of the notary must include the printed name of the notary and the date their commission expires.

29. PETITION FOR SALE OR MORTGAGE OF REAL ESTATE

A petition for sale or mortgage of real estate shall include a copy of the fully executed purchase and sales agreement. If the proposed sale or mortgage involves an interested party as a purchaser or mortgagee an appraisal from an independent, duly licensed appraiser shall also be included with the petition. An appraisal from the listing or buyer's real estate agent may be accepted by the court if it is shown that the property was placed on the open and public market and actively marketed to and eventually contracted for sale to a disinterested party. The court may otherwise require an appraisal from an independent duly licensed appraiser as the court deems necessary whether for a petition for sale or mortgage.

30. REAL ESTATE OWNED BY DECEDENT:

The duly appointed fiduciary is requested to file along with the inventory of the personally owned by the decedent, a listing of any real estate owned by the decedents individually or as a tenant in common in the State of Rhode Island. This listing should include the property address, tax assessor plat and lot number or a copy of the deed into the decedent.

31. RELEASES/CLOSING ESTATE/DEATH OF WARD:

Prior to closing an estate by an Affidavit of Complete Administration, a release from all individuals or entities entitled to all or a portion of any estate is required.

All other documents including paid funeral bills, Estate Tax Release and all other documents required by Rhode Island law shall also be duly filed prior to closure.

Final accounts shall be promptly filed upon death of a ward.

32. RESIGNATION, REPLACEMENT, OR REMOVAL OF FIDUCIARIES:

a. RESIGNATION: A petition for resignation of a fiduciary who has qualified for which no inventory has been previously filed must be accompanied by an inventory and a final account. In the event there were never any assets in the estate, the fiduciary shall also include an affidavit attesting to this fact. The resignation of a fiduciary is not effective until entry of an Order allowing the resignation.

When a fiduciary resigns and there is no substituted or successor fiduciary already named, the court may, on its own initiative or on petition filed by any interested person, appoint a substituted or successor fiduciary

b. DEATH OF FIDUCIARY: A petition for replacement of a fiduciary because of the death of the fiduciary shall also include a certified copy of the fiduciary's death certificate; the successor fiduciary shall, as best as possible, file a Final Account for the previous fiduciary; if no expenditures were made by the previous fiduciary and an inventory indicates no personal estate, an Affidavit attesting to these facts shall be submitted with the Account.

c. REMOVAL FOR CAUSE: A fiduciary removed for cause is required, after citation and hearing, to file an Account of his/her tenure in said fiduciary capacity; failure to do so may result in contempt proceedings initiated, with appropriate sanctions imposed.

After a fiduciary's removal for cause, a successor fiduciary may be required to, as best as possible, to file a Final Account for the replaced fiduciary, without relieving the

replaced fiduciary of any liability or duty to the estate or to the court.

d. Any successor fiduciary shall not be responsible to or liable to the estate as a result of the actions of a prior fiduciary or for the replaced fiduciary's account.

33. SEALING OF RECORDS:

- d. The Court may, upon request, or of its own initiative, seal the medical or other records of any decedent or ward or other party to the proceedings that are considered private and confidential under state or federal law.
- e. Records may only be unsealed upon motion and hearing.
- f. Any records held under seal shall be kept in the court file in a sealed envelope and labeled. "SEALED RECORDS, COURT ORDER REQUIRED TO BE OPENED".

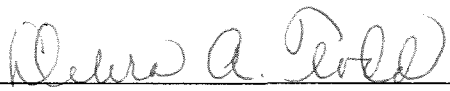
34. SPECIAL SESSIONS

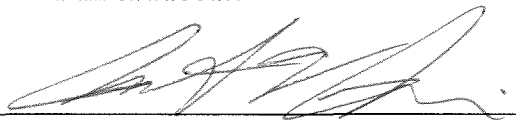
- g. The Court will grant special sessions as reasonably necessary to hear contested matters which requires lengthy testimony and/or evidentiary hearings and exigent matters which cannot wait until the Court's regularly scheduled hearing date. Otherwise, the Court will also consider scheduling a special session when the circumstances of a matter require. In any special session, proper notice shall be given to all interested parties.

35. TAX MINIMIZATION:

- h. Petitions regarding tax minimization, pursuant to R.I. Gen. Laws §33-15-37.1, require advertising and notice to all interested parties or their counsel by regular mail at least ten (10) days before the hearing, unless waived by all interested parties.

These Local Administrative Rules are effective as of June 1, 2018

BY ORDER: 
Clerk of Probate

ENTER: 
Robert V Rossi, Probate Judge