



Probate Court of the City of Pawtucket Administrative Rules

EFFECTIVE JULY 22, 2019

Pursuant to R.I.G.L. §33-22-29, the Probate Court of the City of Pawtucket hereby establishes the following Administrative Rules, as amended:

1. **COURT SESSIONS** – Sessions will convene at 2:00 P.M. on the first, second and third Wednesday of each month unless that date is a legal holiday. Court sessions are held at the Pawtucket City Hall, 137 Roosevelt Avenue in the City Council Chambers, third floor. The Court reserves the right to meet on a different day at a different place for contested matters.
2. **COURT CALENDAR** – Counselors and pro-se litigants are required to sign the docket sheet in the City Clerk's Office on the day of the court session; the Clerk's Office is open at 8:30 A.M. The Calendar will be called at 2:00 P.M. The formal matters will be heard initially and in order of sign-in. Matters requiring a hearing or extended Court time will be heard following the formal matters.
3. **CONTESTED MATTERS** – Special sessions of the Probate Court, which cannot be completed during regular court sessions by the Probate Judge, will be scheduled as necessary for contested matters. There will be no additional fees or charges for special sessions (see R.I.G.L. §33-22-30).
4. **FILING FEES / DEADLINE** – No matter will be heard unless and until all fees currently due have been paid. Checks should be made payable to the "City of Pawtucket". Matters requiring advertising should be filed and the necessary fees paid not later than the previous Wednesday of the week of publication. Publication will be by advertisement once per week for at least two weeks, the first advertisement to be published at least 14 days before the first of any hearing dates contained in the notice, in a newspaper printed in English and published in the county or in a Providence newspaper having general circulation (R.I.G.L. §33-22-11). All matters on waiver should be filed 48 hours prior to the hearing date. The Probate Court reserves the right to set matters on waiver for another hearing date if the court docket exceeds its usual petitions. In case of emergency, the Probate Judge should be contacted directly. The Probate Judge may be reached at her office (401-722-0800) or by email (cris@mcburneylawri.com).

5. **ELECTRONIC RECORDINGS –**

A. Electronic recordings of any court proceeding will be made by the Court at every session and pursuant to R.I.G.L. §33-22-19.1. However, parties are advised not to rely upon this method. Parties may have Court proceedings recording using their own authorized court stenographer at their own expense.

B. The Probate Court shall, upon written request, permit parties to produce written transcriptions from electronic tape recordings made by the court in the office of the Probate Clerk. Copies of court recordings will be available for \$35.00 per hearing from the Probate Clerk.

C. Electronic tape recordings of the hearings will be kept in accordance with the record retention schedule as set forth under R.I.G.L. §8-9-7.

6. **COURT DECISIONS –** Every decision of the Probate Court shall be reduced to a written order or decree presented at the time of the hearing or by the prevailing party within a reasonable time thereafter pursuant to R.I.G.L. §33-22-31. A copy of each decision, order and decree must be sent to all interested parties. All certifications and signatures of attorneys must be affixed to each order, decree or decision prior to submission of the Probate Court.

7. **NOTICE TO CREDITORS –** No First and Final Account and no Affidavit of Complete Administration will be accepted by the Probate Court without an affidavit by the fiduciary certifying that notice has been given to all known or easily ascertainable creditors, pursuant to R.I.G.L. §33-11-5.1. In addition, in all cases where the decedent was fifty-five (55) years or older at the time of death, the personal representatives shall give notice as required by §33-11-5.1(c), to the Executive Office of Health and Human Services in accordance with R.I.G.L. §40-8-15.

8. **CERTIFICATION OF ACCOUNTS –**

A. No Account will be accepted by the Probate Clerk unless accompanied by a Certification of Attorney for the estate in the form set forth in R.I.G.L. §33-14-2.2. Said Certification of Account must be signed by the fiduciary and the attorney representing the fiduciary.

B. The Court may the order additional documentation to support any entries in Schedules A, B and C of the Account.

9. **GUARDIANSHIP –** No petition for limited guardianship, guardian or temporary guardian will be heard by the Probate Court unless notice has been given to the respondent at least 14 days prior to the hearing. Notice shall be given by advertisement once a week for at least two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first of any hearing dates contained in such notice, in a newspaper printed in English and published in the county or in a Providence newspaper having general circulation, R.I.G.L. §33-22-11. All birth certificates filed must be certified, translated if necessary, and may not be more than one year old.

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 attorney for the petitioner shall notify said individual of their appointment and provide to that person all relative information concerning the matter.

The Decision Making Assessment Tool (“DMAT”) shall be submitted to the Court when filing the Petition for Guardianship.

The Guardian ad litem report shall be submitted at least three business days before the matter is to be heard.

The proposed guardian shall, subsequent to their appointment, submit an affidavit attesting to their knowledge of their duties and other statutory requirements.

In all cases in which a guardian of the estate is appointed, except in those cases when a disinterested third party is appointed guardian of the ward’s estate or the expense of the independent appraiser would, in the court’s discretion, outweigh the benefit so obtained, an independent appraiser may be appointed by the Court from its rotating list. The guardian or his/her attorney shall notify the individual so appointed and provide all pertinent information relative to said appointment.

Replacement guardians in an existing guardianship shall re-file the legislative mandated guardianship petitions and comply with the statutory requirements for service and notice; advertisement of the petition for replacement guardian is not required. The requirement for an updated decision making assessment tool and/or report from a guardian ad litem shall be at the discretion of the court, depending on the facts and circumstances of each case whenever a replacement guardian is requested.

Foreign guardians of the estate of a nonresident ward owning real estate or other property in Pawtucket shall follow the mandates of R.I.G.L. 33-19-27; a Miscellaneous Petition shall be filed, with appropriate notice and advertising and after hearing and approval thereon, the R.I.G.L. procedures and Administrative Rules set forth herein for the sale or mortgage of real estate or property shall be followed. Thereafter, an Account of the transaction shall be filed with the court, and upon allowance thereof, the net proceeds from the sale of the real estate shall be delivered to the foreign guardian of the estate, as evidenced by his / her receipt, and an order shall enter from this court terminating the local probate matter.

Commencing on January 1, 2016, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act R.I.G.L. §33-15.2-101- 504 shall be effective, replacing in whole or in part as is applicable, this section of the Rules and establishes the procedure for the appointment of a **Guardian for Health Care, Residence, Relationships and Finance** when there are issues regarding residency and the like.

Affidavit of “poverty” in order to be qualified for a Good Samaritan guardian:
A person petitioning under R.I.G.L. § 33-15-4.1 for a Good Samaritan guardian must file an affidavit to the probate court. The affidavit must state that the proposed ward has insufficient

funds to pay for the services of a guardian and that such an appointment would be in the best interests of the individual or whom the guardianship is proposed. It may be in any form that includes the reasons for the waiver of filing fees.

Affidavit for appointment as a Good Samaritan guardian: Pursuant to R.I.G.L. § 33-15-4.1, a person filing for appointment as a Good Samaritan guardian shall file a guardianship petition with the probate court. He or she must also file an affidavit of his or her qualifications to serve as a Good Samaritan guardian.

10. **DECISION MAKING ASSESSMENT TOOLS** – No petition for the appointment of a limited guardian, temporary guardian or guardian will be considered by the Probate Court unless a Decision Making Assessment Tool (“DMAT”) has been filed and is signed by a licensed physician and has been presented to the Court at the time of filing. All DMATS are to be SEALED in compliance with HIPAA regulations.

11. **MINOR GUARDIANSHIPS -**

A. All persons petitioning to be made Guardian of a minor (a person under eighteen (18) years of age), with the exception of natural or adoptive parents, will provide a BCI / NCIS check dated not more than sixty (60) days before the date of the assigned hearing. Certified copies of birth certificates for the minor child may not be more than one year old.

B. All petitions shall have notarized signatures from the parents listed in the birth certificate, in order to be heard in the Probate Court. Provisions for service on the proposed ward with a citation and copy of the petition and notice to parents, children or next of kin shall be in accordance with R.I.G.L. §33-15.1-10 and §33-15.1-11.

C. In cases where one parent is deceased, death certificate shall be required, and the surviving parent is petitioning for the appointment of a guardian and/or waives notice, no additional next of kin of the ward need be notified.

D. Service on wards age twelve (12) and under shall be pursuant to R.I.G.L. §33-15.1-11, or as ordered by the Court upon ex parte miscellaneous petition, heard on the date the matter is initially scheduled, showing facts and information sufficient to assist the Court in determining who, if anyone, shall be served, in lieu of personal service on the proposed ward.

E. A Department of Children and their Families home study may be required by the Court based on the circumstances and facts.

12. **TEMPORARY GUARDIANSHIPS** – In the event of an extreme emergency, a Petition for Temporary Guardianship may be filed along with the Decision Making Assessment Tool. The Probate Judge must be contacted in order to schedule an earlier hearing date and decide on notice requirements. The Probate Clerk shall provide information on the nature of the emergency and the attorney representing the Guardianship estate may contact the Probate Judge directly.

13. **GUARDIANS AD LITEM** – Guardians ad litem shall be appointed from a list of qualified individuals kept in the office of the Probate Clerk and approved by the Probate Judge. The Probate Court will appoint from this list. All Guardian ad litem reports must be submitted on the standard form provided in R.I.G.L. §33-15-47. Fees for Guardians ad litem shall be limited to a maximum of \$800.00 unless additional fees are authorized by the Probate Judge for cause shown. Guardians ad litem must furnish an itemized bill. To be placed on the Guardian ad litem list, anyone may submit their name, qualifications and malpractice declaration sheet to Pawtucket Probate Clerk.

14. **RULES OF EVIDENCE** - In all contested matters, the Rhode Island Rules of Evidence shall be applied. Parties may stipulate to certain facts as may be agreed upon.

15. **DISCOVERY** – Rule 26 through Rule 37 of the Superior Court Rules are hereby adopted as the Pawtucket Probate Court rules in those cases where any interested party has requested discovery pursuant to R.I.G.L. §8-9-17. Discovery may be expanded upon leave of the Court with appropriate notice to the other party(s).

Original discovery materials (depositions, interrogatories 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 to a brief. The time for compliance with discovery orders, etc. shall be as contained in the Superior Court Rules, unless a different schedule is agreed to by the parties or established with leave of court for just cause and after hearing thereon.

Proceedings under R.I.G.L. §8-9-17 shall, upon request for and approval of Citation, and after service on the party to testify, be concluded under oath and shall be limited in scope as set forth in the statute. No other witnesses shall be allowed to testify at said hearing other than the party so served, unless agreed upon by all the parties thereto. Written interrogatories may be submitted by the inquiring party, in lieu of live testimony.

16. **INVENTORIES** – Every Administrator or Executor shall within 90 days after his/her appointment return to the Probate Court, under oath, a true inventory of all the personal property of the deceased, in accordance with R.I.G.L. §33-9-1. Every Guardian shall do so within 30 days of his/her appointment, R.I.G.L. §33-15-19. Parties unable to submit inventories within the required times should petition the Court for an extension of time.

17. **AFFIDAVITS OF COMPLETE ADMINISTRATION** – No Affidavit of Complete Administration will be accepted without the following documents:

- a) original releases of legatees including the fiduciary;
- b) an original of paid funeral bill;
- c) an original inheritance tax discharge;
- d) claim releases;
- e) certification that notice has been given to all known or easily located creditors;
- f) **devise and descent certificate to be dated and returned for recording pursuant to 33-9-29 and a recorded copy is required to**

be filed with this estate, OR an Affidavit stating that the decedent did not own real estate;

- g) current payment of fees must also be submitted; and
- h) proof of notice to EOHHS if the decedent was 55 years or older at the time of death.

Affidavits of Complete Administration will not appear on the court docket but will be handled administratively within the Probate Clerk's office.

18. **ATTORNEY/FIDUCIARY FEES** – An Affidavit, signed by counsel or fiduciary and notarized, must accompany all petitions for fees. It must contain information regarding the time spent, work done and hourly rate for the attorney or the fiduciary. Forms are available online at <http://sos.ri.gov/divisions/Business-Portal/forms/probate-forms>. An Attorney who is also the named fiduciary is not entitled to bill their professional rate on work done as fiduciary for such matters which are merely administrative or clerical.

19. **FORMS** – Use of Statewide forms when available is required. All petitions, motions and forms whenever substituted must contain accurate information. Forms are available to be downloaded from the Rhode Island Secretary of State's website at <http://sos.ri.gov/divisions/Business-Portal/forms/probate-forms>.

20. **CHANGE OF NAME** – A criminal record check through the Police Department will be conducted for all persons petitioning for a name change. If there is a criminal record, the Probate Judge will exercise discretion as to the name change on a case-by-case basis.

An original birth certificate if required when filing for a change of name. The birth certificate must be recent (i.e. not more than one year old). If a birth certificate is older, the Court will exercise its discretion, upon good cause, in allowing an older birth certificate to be filed.

21. **ACTING PROBATE JUDGE** – Pursuant to the Pawtucket Charter §2-500, the sitting Probate Judge shall hear all cases. In case of a conflict, sickness, absence from the city or other disability or ineligibility of the judge to serve, the mayor may appoint the city solicitor. The acts of said acting judge in the performance of said duties shall have the same effect as if performed by the Probate Judge.

22. **ACCOUNTS OF FIDUCIARIES** – All Accounts submitted by a Fiduciary must be certified by the fiduciary and the attorney representing the fiduciary, or the Certified Public Accountant who prepared the account, as required by § 33-14-2.2. Said Accounts are to be filed on a yearly basis.

The Court may, in its discretion, require appropriate detail for **any** accounts filed. Notice of the hearing for accounts, **in addition** to advertising, shall be given by regular mail at least ten (10) days before the court hearing of the account to all interested parties or their counsel, unless notice is waived by said parties.

Accounts must begin with the amount listed in the Inventory on Schedule A, or if there was a prior approved Account, Schedule A must include the balance of the amount allowed in the prior Account.

Accounts showing proceeds from the sale of real estate shall be accompanied by the Certificate of Disclosure settlement sheet reflecting disposition of sale proceeds.

A devise and descent certificate to be dated and returned for recording pursuant to R.I.G.L. 33-9-29 and a recorded copy is required to be filed with this estate or an Affidavit stating that the decedent did not own real estate.

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 the sale of real estate. Notice to interested parties shall be as stated herein.

Along with the Final Account, a Certificate of Accounting must be filed.

23. **ALLOWANCE TO FAMILIES** – Petitions for allowance of support to families shall be advertised, with written notice or waiver from interested parties as set forth herein; the inventory for the estate must be filed before any hearing thereon.

24. **BONDS** – 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. If the Court ordered an increase in bond amounts, a new bond in the increased amount must be submitted. The Court will not accept a rider. Consolidation of bonds may be allowed at the discretion of the court.

The same bonding company shall be used in all proceedings of a particular estate, unless the prior bond is canceled or a new fiduciary is appointed.

25. **CERTIFICATES OF APPOINTMENT** – Certificate of Appointments are issued solely by the Probate Court. Additional copies are also available for a fee. If a Certificate of Appointment is lost, the Court may exercise its discretion on reissuance of the Certificate of Appointment when significant time between the appointment and the request for a new Certificate of Appointment has elapsed.

26. **CLAIMS OF CREDITORS**– Claims shall be filed in accordance with R.I.G.L. §33-11-5. The Court will not on its own initiative deem a claim filed out of time or reject any claim without a hearing. No Final Accounts or Affidavits of Complete Administration will be allowed or accepted unless an affidavit is submitted by or on behalf of the fiduciary in compliance with R.I.G.L. §33-11-5.1 containing notice to creditors.

If a creditor agrees to accept less than the amount of the claim filed and if the Executor is **not authorized** by the decedent to compromise or settle claims for all Administrations and

Guardianships, a Miscellaneous Petition to Compromise shall be filed, advertised and heard by the court.

27. **CONTINUANCES OF HEARINGS** – Hearings in all cases may be continued by agreement of the interested parties; if R.I.G.L. Title 33 of Title 8 provides for specific notice and/or service prior to a hearing, then these requirements must be complied with for any continuances (i.e. service on proposed wards in Guardianships; notice to interested parties, etc.). In the event the parties cannot agree as to a continuance, the Court shall schedule a hearing to determine whether a matter shall be continued, with notice to all interested parties; ex-parte continuances shall not be granted, unless there are extenuating circumstances.

28. **CONSERVATORS** – Pursuant to R.I.G.L. §33-15-44 the court will, upon petition **filed by the proposed ward**, hear requests for conservatorship without medical evidence. All petitions for Conservators shall require notice and shall be advertised. Petitions for the appointment of a conservator by any other person shall follow the statutory scheme for the appointment of an adult guardianship.

29. **NOTICE** – Notice of proceedings in Probate Court shall be as required by R.I. General Laws.

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

Notice may be waived by the parties by submission of waiver.

Interested parties (or their counsel) are:

- heirs at law for administrations
- beneficiaries for testate proceedings
- statutory required entities in guardianships creditors of decedent and administrative creditors who have filed claims.

Notice of the commencement of a decedent estate, with a copy of the death certificate, shall be provided to the **State of Rhode Island Department of Health and Human Services** for all decedent estates pursuant to **RHODE ISLAND GENERAL LAWS**, with evidence of same provided the court at the hearing for allowance of a will or appointment of an Administrator.

Appropriate certification shall be provided to the court and counsel indicating compliance of the notice requirements.

30. **REMOVAL OR REPLACEMENT OF FIDUCIARY FOR CAUSE -**

A. Commencement of Action and Hearing

Pursuant to R.I.G.L § 33-18-3, a complaint shall be made by any interested party for the removal of a fiduciary. A citation, embodying the substance of the complaint, or a copy of the complaint annexed, shall be served to the fiduciary.

B. Hearing, Advertisement, and Notice

A hearing shall be scheduled for the removal of the fiduciary. The petitioner shall give notice by advertisement pursuant to R.I.G.L. § 33-22-11 for least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those interested persons by mailing to them by regular mail a notice of the hearing and a copy of the petition at least ten (10) days before the scheduled hearing. R.I.G.L. § 33-22-3.

C. Failure to file Inventory and Final Accounting

Any fiduciary removed or replaced for cause is required to file an inventory and a Final Account of his tenure in said fiduciary capacity. Failure to do so may result in contempt proceedings with appropriated sanctions imposed (fine, court filing, disorderly conduct charges) report to the **Office of the RI Attorney General, Department of Elderly Affairs or RI Supreme Court Disciplinary Counsel.**

If an executor or administrator (not guardians) neglect or fail to file an inventory and a Final Account, without reasonable cause, the probate court may, after hearing and notice to the fiduciary, decree that he or she is guilty of unfaithful administration of estate under R.I.G.L. §33-17-17. An action may be brought upon the bond of the executor or administrator in the name of the probate court by any interested party in the matter.

In the event that the said fiduciary above fails to file, the successor fiduciary may be required, as best as possible, to file an inventory and a Final Account for the replaced fiduciary. This **does not** relieve replaced fiduciary of any liability or duty to the estate or to the court.

D. Responsibilities

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.

31. **REPLACEMENT OF FIDUCIARY DUE TO DEATH –**

A. Commencement of Action

If a petition for replacement of a fiduciary is due to the death of the fiduciary, the petition shall include a copy of the fiduciary's death certificate.

B. Final Accounting

The successor fiduciary shall, as best as possible, file an inventory and 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 Final Account.

C. Notice and hearing

A hearing shall be scheduled for the replacement of the fiduciary. The petitioner shall give notice by advertisement pursuant to R.I.G.L. §33-22-11 for least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those

interested persons by mailing to them by regular mail a notice of the hearing and a copy of the petition at least ten (10) days before the scheduled hearing. R.I.G.L. §33-22-3.

D. Responsibilities

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.

32. **REOPENING OF CLOSED ESTATES -**

A. Procedures to reopen an estate (wills or administrations) **without court approval** when the newly discovered assets total five thousand dollars (**\$5000.00**) or less R.I.G.L. § 33-14-13:

- 1) The fiduciary(s) or survivor of them who filed the final account of the estate or affidavit of complete administration shall file with the probate court where the estate was originally filed an affidavit listing the newly discovered asset(s) and its fair market value, **together with** a statement of the proposed distribution of the asset(s) or funds received as a result of the sale of said asset(s). The affidavit shall be accompanied with a filing fee in the amount of **\$39.00**.
- 2) Upon making said filings, the fiduciary(s) **shall forthwith send notice** of the filing of the affidavit and statement of proposed distribution of asset(s) with **copy of each**, by regular mail to the heirs at law for administrations and to the beneficiaries under the provisions of a will. The notice shall also **contain the date the request for reopening was filed with the probate court** and the **right that the recipient of the notice has to file an objection** to the proposed distribution with the probate court **within thirty (30) days of its filing** with the probate court and that if no objection(s) is filed, the fiduciary shall dispose the asset(s) as proposed.
- 3) Objection(s) to the distribution by heirs at law/ beneficiaries **must be filed** with the court pursuant to the statute, with a copy mailed to the fiduciary; (failure to send a copy to the fiduciary **is not statutorily mandated**, so that the fiduciary must verify that no objection(s) has been timely filed, per the statute, with the court clerk.
- 4) Hearings on objections will be scheduled by the court **or** as agreed to by the parties. ***All Notice(s) herein may be waived by the beneficiaries or heirs at law pursuant to R.I.G.L.** regarding waiver of notice by interested parties.
- 5) The probate court shall, after the expiration of 30 days from the filing date, if no objections be filed to the fiduciary(s) affidavit **or** if all beneficiaries/heirs at law, as the case may be, waive the 30 day notice in writing, issue a Certificate of Re-opening of Estate without a court hearing **or** if an objection is filed a certificate of distribution based on its order after hearing, to the

fiduciary(s) consistent with the fiduciary(s) first affidavit or its order after hearing of objections to the affidavit;

- 6) The fiduciary, after completion of the distribution per its statement or per any order of the probate court, **shall file a second affidavit with the court**, providing the names and addresses of the persons receiving the asset(s) and the value or amount received and attesting that the estate has now been finalized.

B. Procedures for the **reopening of closed estates over Five Thousand (\$5000.00) Dollars** shall follow the procedures for an original probate, including the statutory filing fee; **except** that in the case of a Testate decedent estate, the beneficiaries under the provisions of the will rather than the heirs at law shall be provided notice of the hearing. Notice shall be pursuant to R.I.G.L. §33-22-3, except for parties who statutorily waive notice. No advertisement is required unless ordered by the court.

At the hearing on the petition, evidence shall be provided to justify the reopening of the estate, including, but not limited to affidavits, testimony, documents, etc. A supplemental inventory listing the newly discovered assets shall be filed.

If there was **no finding of insolvency of the original estate** and all known or ascertainable creditors were notified and/or paid originally, there is no **requirement** for an advertised creditors notice if the petition is granted; the estate may close via **final account or affidavit of complete administration** after qualification and action by the fiduciary appointed herein (**without waiting six months**) and with appropriate releases; otherwise, the court, upon petition for instructions, shall determine the means and method of finalization of the estate pursuant to the applicable statutes which may include advertisement and creditor's notice and a six (6) month waiting period from the issuance of the qualification of the fiduciary for the new probate.

33. RESIGNATION OF FIDUCIARIES –

A. Commencement of Action

A fiduciary may file a petition to resign. The petition shall state the reasons for the resignation and may request the appointment of a substituted or successor fiduciary. 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. (R.I.G.L § 33-18-4, and R.I.G.L § 33-18-5.)

B. Final Accounting

A petition for resignation of a fiduciary 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.

Pursuant to R.I.G.L § 33-18-4, no resignation shall be accepted until the fiduciary settled his or her accounts with the court.

C. Hearing, Advertisement, and Notice.

A hearing shall be scheduled. The petitioner shall give notice by advertisement pursuant to R.I.G.L. §33-22-11 for least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those interested persons by mailing to them by regular mail a notice of the hearing and a copy of the petition at least ten (10) days before the scheduled hearing. R.I.G.L. §33-22-3.

D. Termination

Resignation of a fiduciary does not terminate the appointment of the fiduciary until the court enters an order accepting the resignation.

32. **SEALING OF RECORDS** – The Court will seal the medical records and social security numbers of all parties to Probate Proceedings. The Court may, upon request, seal settlement documents in Petitions to Compromise and Settle Claims.

33. **SMALL ESTATE** – Decedent estates whose total assets are fifteen thousand dollars (\$15,000.00) or less as defined in R.I.G.L. §33-24 may file a petition for Voluntary Informal Executor, pursuant to R.I.G.L. §33-24.2 or a petition for Voluntary Administration, pursuant to R.I.G.L. §33-24.1. The court requires a paid funeral receipt upon filing of petition or with good cause within 30 days of granting said Petition.

34. **TAX MINIMIZATION** – Petitions regarding tax minimization, pursuant to R.I.G.L. §33-15-37.1 require 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 or at the direction of the court.

35. **APPEARANCE, WITHDRAWAL, AND EXCUSAL OF ATTORNEY** –

A. *Appearance.* The attorney for an estate or any party in a Probate Court action shall forthwith file his or her appearance in writing with the clerk of the Court wherein the action is pending.

B. *Withdrawal* –

(1) *By motion.* An attorney who has appeared on behalf of any person in a Probate Court action may not withdraw unless he or she first obtains the consent of the Court. All withdrawals shall be made upon Motion with notice to all parties involved. 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. A Motion to withdraw shall be accompanied by 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 “Soldiers and Sailors” Civil Relief Act of 1940, and any amendments thereto, the Motion shall not be granted unless the client consents therein in writing or another attorney appears of records as counsel at the time of such withdrawal.

(2) *By stipulation.* Where a client for whom an attorney has filed an entry of appearance is desirous of substituting new counsel a stipulation may be entered pursuant to which 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.

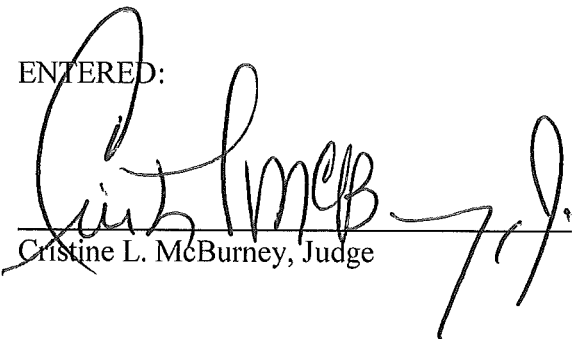
C. *Excusal* - No attorney shall be excused from attendance upon the Pawtucket Probate Court except upon application to the Judge, and such excuse from attendance shall be granted on such terms and conditions as the Court may set. In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, a Judge shall take such action, without notice, as shall appear reasonable in the circumstances.

36. **ADOPTION OF ADULTS** – A petition for adoption of an adult (18 years of age or older) shall be filed with the Probate Court. A hearing shall be scheduled. Adult adoptions will only be permitted for the purpose of establishing a parent and child relationship between the adopter and adoptee. (See *In Re Jones*, 122 R.I. 716 (R.I. 1980) and Uniform Adoption Act §5-101) A notice of the hearing shall be given by regular mail at least ten (10) days before the hearing to: 1.) the spouse of the prospective adoptive parent and 2.) the adoptee's parent or parents if alive. (If alive, it is recommended that the birth parent(s) sign a waiver or assent to the Petition). The Petitioner (Adopter or Adoptee) must be a resident of Pawtucket; two (2) forms of identification for Adopter and Adoptee must be presented in addition to the Adoptee's birth certificate (original provided and copied by the court).

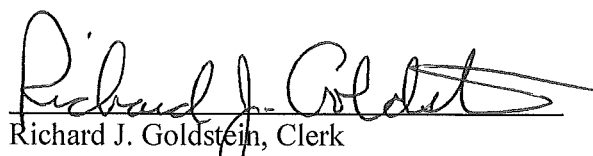
37. **PETITION FOR SALE OR MORTGAGE OF REAL ESTATE** – Before a petition for sale is granted, a copy of the purchase and sales agreement shall be provided to the court; for either a sale or mortgage, an appraisal from an independent source shall also be provided to the court (the appraisal shall not be from the listing or buyer's Realtor in the case of a sale).

ENTERED as an Order this 22nd day of July 2019.

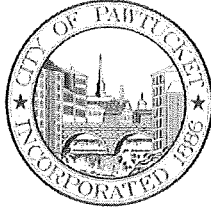
ENTERED:


Cristine L. McBurney, Judge

PER ORDER:


Richard J. Goldstein, Clerk

Revised July 2019



PAWTUCKET PROBATE COURT

INFORMATION FOR GUARDIANS AND CONSERVATORS

To help perform your duties properly, described below are the general duties and obligations of a guardian and conservator.

- 1) You have been appointed guardian of the person, you have charge of the respondent's person and respondent is known as a ward. If you have been appointed guardian over the estate, you have charge of the ward's property including the ward's finances. If you have been appointed both guardian of the person and guardian of the estate, you have charge of both respondent's person and property/finances. Your authority as guardian may be limited by the order appointing you. Consult your attorney as to the extent of your authority.
- 2) As guardian of the person, you have the duty to take charge of the person of the ward and to provide for the ward's care, treatment, residence and education. The powers and duties shall include (a) assuring that the ward resides in the best and least restrictive setting reasonably available; (b) assuring that the ward receives medical care and other services that are needed; (c) promoting and protecting the care, comfort, safety, health, and welfare of the ward; and (d) providing required consents on behalf of the ward. You will be required to file a personal status report annually concerning the care, welfare, and placement of your ward (see attached form).
- 3) As guardian of the estate, or conservator, you must take possession of your ward's property and finances to the extent authorized by the court. The property, income, and bank accounts must always be kept separate from your own funds and must be placed in trust in your name AS GUARDIAN FOR THE WARD. You must invest the ward's funds according to law and you are personally liable for imprudent or

unauthorized investments. You may only spend the ward's funds for purposes authorized by statute or court order, or solely for the benefit of the ward. You may apply for an order of continuing support and maintenance authorizing you to spend a budgeted sum each month for the ward. You will be required to file annual accountings called an **ACCOUNT**, showing in detail all receipts and expenditures occurring during the preceding year. Each entry must be explained, and each expenditure must be authorized by statute or court order. You may not sell, trade, lease, mortgage, transfer or discard your ward's property without court approval, even though the ward may be your child or other relative.

- 4) You must always keep the Probate Court and your attorney advised of any changes in your address, phone number and email address. If the ward changes address, you must let the Probate Court know in your Annual Status Report.
- 5) In the event the ward dies or you or the ward move from one address to another, you have a duty to notify the court in writing of such death or new address and telephone number as soon as possible.
- 6) If you fail to perform any of your duties as guardian, or conservator, you are liable to be removed and be held personally liable for any loss or damage sustained by the ward by reason of your failure. You are under a duty, at all times, to act in the best interests of you ward, and to avoid conflicts of interest which impair your ability so to act.
- 7) In certain cases, expenses of bond and other costs may be saved placing funds in restricted deposits and/or securing waiver of filing the annual accounts. Consult your attorney.
- 8) With court approval, a guardian or conservator may use the ward's funds to pay for your attorney's services. If only limited funds or public assistance (SSI) is available, you may qualify for free legal aid.
- 9) When the ward owns real property and/or you as the Guardian want to lease, mortgage or sell the ward's real property, such a petition must be brought before the Probate Court and the Court must give notice by advertisement once a week for at least two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first of any hearing dates contained in such notice § 33-22-11 and § 33-22-8.

I have reviewed the information provided herein this _____ day of _____, 20____.

Guardian:

(Witness)

(Signature)

(Print name)

(Address)

(Contact Number)