

**PROBATE COURT OF THE TOWN OF TIVERTON**  
**ADMINISTRATIVE RULES**

Pursuant to Rhode Island General Laws §33-22-29 the Probate Court of the Town of Tiverton hereby establishes and adopts the following local administrative rules:

1. **Accounts of Fiduciaries.** All accounts submitted shall be in accordance with R.I. General Laws §33-14-2. Accounts begin on Schedule A with the Inventory or Schedule C balance of the last allowed account. Accounts showing proceeds from the sale of real estate shall be accompanied by an executed HUD-1 settlement statement.

All expenditures shown on Schedule B shall be accompanied by cancelled checks or other documentation evidencing charges, losses or payments, arranged and submitted in the same order as set forth in the account, unless the fiduciary is represented by an attorney, in which case a Certification of Accounting in accordance with R.I.G.L. §33-14-2.2 may be filed in place of the documentation. This only applies to decedents' estates and a certification of accounting may not be used for guardianships. The Court may require additional evidence where necessary.

In addition to advertising, notice of hearing on the approval of the account shall be sent to all interested parties or their counsel, unless notice is waived by said parties. A copy of the account shall be sent with this notice.

2. **Affidavits of Completed Administration.** No Affidavit of Completed Administration will be accepted without original releases of legatees including the fiduciary, (if he or she is a legatee), a copy of the paid funeral bill and inheritance tax discharge, and evidence regarding releases of any claims. Affidavits of Completed Administration and Small Estate Affidavits will not appear on the court docket but will be handled administratively within the Probate Clerk's office.

3. **Attorneys/Fiduciaries Fees.** Attorneys and fiduciaries seeking approval of fees for services rendered shall show proof that they have notified all interested parties of their application for approval. Itemization of all fees and expenses shall be required by the Court.

4. **Change of Name Petitions.** In all cases where an adult wishes to change his or her name, a criminal records check shall be conducted by the Tiverton Police Department. In cases in

which an adult seeks to change the name of a minor child, notice to both natural parents shall be given by certified mail or service by sheriff or constable, at least ten (10) days prior to the hearing.

5. **Claims of Creditors.** Claims shall be filed in accordance with Rhode Island General Laws. The Court will not on its own initiative deem a claim filed out of time or reject Claims 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 showing compliance with R.I.G.L. §33-11-5.1, relative to notice to creditors and the R.I. Department of Human Services.

6. **Communication with the Court.** Ex-parte communications in any contested matter are prohibited. Written communications in any pending probate matter shall be sent or faxed to the Town Clerk, Town Hall, Tiverton, Rhode Island.

7. **Court sessions.** Sessions will convene at 8:30 A.M. on the first Friday of each month unless that day is a legal holiday, in which case the session shall be held on the second Friday of that month. Special sessions to hear emergency or contested matters may be scheduled from time to time by the Court. Other schedule changes are published in the legal advertising section of the Sakonnet Times. All Court sessions will be held at the Town Hall, 343 Highland Road, Tiverton, Rhode Island.

8. **Court calendar.** Cases will be heard in the order in which they are received and placed on the court docket, with the exception of contested matters, which are generally heard at the end of the session.

9. **Custodianships.** The Court may, under certain circumstances, appoint a custodian for a decedent's estate pursuant to R.I.G.L. §8-9-10. A petition to probate a will or appointment of an Administrator is a prerequisite to any appointment of a custodian. Notice and/or advertisement for appointment of a custodian is in the discretion of the Court.

The Court may, in its discretion, and depending on the terms and conditions under which the appointment is made, allow the custodian to close an estate by affidavit in a form acceptable to the Court.

10. **Death Certificates.** In addition to the requirements of R.I.G.L. §33-22-2, whenever an petition shall be filed for the probate of a will or for the first grant of original or ancillary administration in this Court, the petitioner shall file a certified copy of the death certificate. The Court, in its discretion, may hold a hearing on the petition without the filing of the certificate, but no letters testamentary or letters of administration will be issued until the certificate is filed.

Pursuant to Rhode Island law, all death certificates are closed records and therefore they are sealed. A death certificate may be unsealed and made available to an interested party, including title examiners, for good cause, upon request to the Clerk. The unsealing of a death certificate shall be done in the discretion of the Clerk.

11. **Discovery.** Rules 26 through 37 of the Superior Court Rules of Civil Procedure are hereby adopted by the Tiverton Probate Court as they apply to discovery. Leave to take discovery may be requested by motion of any party to a proceeding. Original discovery materials (depositions, interrogatories, requests for production and responses, etc.) shall not be submitted to the Court.

12. **Fees for Attorneys and Accountants.** A Court hearing, with notice as set forth in these rules, is required for all petitions for attorney and accountant fees in any estate for which any account is submitted. Petitions for fees shall be accompanied by, but not limited to, documents indicating hours spent, the nature of the work provided, the name or identity of the person in the firms who performed the particular task, the results obtained and any other documents, including retainer agreements. Petitions for fees shall be submitted on the statewide form unless otherwise ordered.

13. **Filing fees and other Court costs.** No matter will be heard unless and until all fees currently due have been paid. Matters requiring advertisement must be filed and the necessary fees paid not later than the third Monday next prior to the date of hearing.

14. **Foreign Original Probate.** Petitions for 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, in addition to the requirements of the

Rhode Island General Laws, must be accompanied by an Affidavit from the proposed fiduciary that no original probate is pending or has been opened in that jurisdiction.

15. **Forms.** Use of statewide forms or copies thereof are mandatory. They may be found on the State of Rhode Island website: ri.gov.

16. **Guardianships.** No petition for limited guardian or guardian will be heard by the Probate Court unless notice has been given to the prospective ward at least fourteen (14) days prior to the hearing as required by R.I.G.L. §33-15-17.1.

In addition notice must be given to the respective ward's spouse, children and heirs at law as defined in R.I.G.L. §33-1-1. (See R.I.G.L. §33-15-17.1(e)). An affidavit of compliance with this section shall be filed by the petitioner.

No petition for the appointment of a limited guardian or guardian will be considered unless a Decision Making Assessment Tool, completed and signed by a licensed physician, has been presented to the Court at least three days before the hearing date.

In order to release an adult from guardianship proceedings, a Decision Making Assessment Tool shall be submitted by the ward's treating physician evidencing the facts(s) that a guardian is no longer required; in addition, if the guardianship was for the estate of the ward, a Final Account from the Guardian or a release from the ward must be filed.

17. **Guardians Ad Litem.** Upon the filing of a petition for the appointment of a limited guardian, temporary guardian or guardian, the Court shall appoint a Guardian ad Litem who shall comply with his/her duties under Rhode Island General Laws and submit a report to the Court at the hearing on the petition (see R.I.G.L. §33-15-7.)

Guardians ad litem shall be appointed from a list of qualified individuals maintained by the Clerk. All fees for services rendered by guardians ad litem shall be approved by the Court and be in accordance with R.I.G.L. §33-15-7(h).

18. **Inventories.** Every administrator or executor shall within ninety (90) days after his/her appointment return to the Probate Court, under oath, a true inventory of all the personal property of the decedent, in accordance with R.I.G.L. §33-9-1.

Every guardian shall do so within thirty (30) days of his/her appointment (see §33-15-19). Parties unable to submit inventories within the required times may petition the Court for an extension of time.

19. **Minor Guardianships.** Provisions for service on the proposed ward shall be in accordance with R.I.G.L. §33-15.1-10 and 11. Appropriate affidavits and evidence of service on the proposed ward in compliance with the statutes shall be submitted at or prior to the hearing.

In those cases where one parent is deceased and credible evidence supporting the death is submitted, and the surviving parent is petitioning for the appointment of a guardian or waives notice, no additional next of kin of the ward need be notified.

Service on wards twelve (12) and under shall be ordered by the court in determining who shall be served, in lieu of personal service on the proposed ward.

20. **Miscellaneous Petitions.** In matters where no statewide form is provided, parties shall use the Miscellaneous Petition form that is available online, or a pleading in similar form.

21. **Notice.** Notice of proceedings in Probate Court shall be as required by Rhode Island 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 an appropriate waiver.

Interested parties are all heirs at law for administration petitions, all heirs and beneficiaries named in a proposed will, and statutory required entities in guardianships, creditors of decedent and administrative creditors who have filed claims.

Appropriate certification shall be provided to the court indicating compliance with the notice requirements.

22. **Orders.** Every decision of the Probate Court shall be reduced to a written order or decree which shall be executed by the Probate Judge, and entered by the Probate Clerk. However, orders or decrees will not be processed or issued until bonds ordered by the Court have been posted.

Where applicable, proposed orders shall be submitted to

opposing counsel pursuant to R.I.G.L. §33-22-31 before entry. If no objection is filed to the proposed order within the statutory period, the order shall thereafter enter; objections to orders shall be set down for hearing by means of a miscellaneous petition.

23. **Petitions for Sale or Mortgage of Real Estate.** Before a petition for sale is granted, a copy of any purchase and sale shall be provided to the court; for either a sale or mortgage, an appraisal from an independent source may be required by the Court.

24. **Recording of Proceedings.** At the request of any of the parties, an electronic recording of the proceedings will be made by the Clerk. Any party may, at his or her own expense, have court proceedings transcribed by an authorized court stenographer. No photographs, films or videos, or live broadcasts, of court proceedings will be allowed without the prior approval of the Probate Judge.

25. **Releases.** The Court shall, except in extraordinary circumstances, require a release from any individuals or entities entitled to all or a portion of any estate, whether the estate is closed through a Final Account or by an Affidavit of Complete Administration.

Paid funeral bills and Notice of Tax clearance from the Division of Taxation (originals) as well as releases from any creditors, shall be produced for decedent estates.

If an account for a decedent estate or a deceased ward under guardianship is not required by law because there are no assets remaining in the estate, the Guardian shall provide evidence that the funeral bill is paid along with his/her Final Account and an original death certificate.

26. **Removal or Replacement of Fiduciary for Cause.** Pursuant to R.I.G.L. §33-18-2, a complaint may be made by any interested party for the removal of a fiduciary. A citation, embodying the substance of the complaint, along with a copy of the complaint, shall be served on the fiduciary or his/her attorney of record in accordance with R.I.G.L. §33-18-3.

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 at 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 in accordance with R.I.G.L. §33-22-3. An Affidavit of Compliance with this requirement shall be filed by the petitioner.

Any fiduciary removed or replaced for cause is required to file an inventory and a Final Account for the entire period of his/her appointment, unless otherwise ordered.

If an executor or administrator neglects or fails to file an Inventory and a Final Account, without reasonable cause, the probate court may decree that he or she is guilty of unfaithful administration of the estate under R.I.G.L. §33-17-17. An action may be brought upon the bond of the executor or administrator by an interested party.

In the event a fiduciary fails to file, the successor fiduciary may be required to file an inventory and Final Account for the period of time the replaced fiduciary served as such. This does not relieve the replaced fiduciary of any liability or duty to the estate or to the Court.

A 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.

If the 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.

The successor fiduciary shall, as best as possible, file and 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.

27. **Reopening of closed estates.** Petitions for the reopening of closed estates shall follow the procedure for an original probate, except that in the case of a decedent who died testate, the beneficiaries as well as the heirs at law shall be given notice of the probate hearing. If all the parties entitled to notice do not waive their right to notice, the petition shall be advertised. A Miscellaneous Petition shall be used to initiate the matter.

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.

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 and the estate is reopened. The estate may be closed in the statutory manner after qualification and action by the fiduciary appointed herein (without waiting six months); otherwise, the procedures set forth in the Rhode Island General Laws for creditor's notice, advertisement and duration for an estate being opened for an original probate shall be followed.

28. **Resignation of Fiduciaries.** A fiduciary may file a petition for permission to resign. The petition shall state the reasons for the resignation and may request the appointment of a substituted or successor fiduciary already named. 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 an interested person, appoint a substitute or successor fiduciary. (R.I.G.L. §33-18-4 and R.I.G.L. §33-18-5.)

A petition for permission to resign must be accompanied by an inventory and a final account. In the event there never were 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 has settled his or her accounts with the Court.

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

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



30. **Sealing of Records.** The Court, may, upon request, seal the medical and related records of any parties to any proceedings before the Court. Once sealed a record may only be made available to an interested person by order of the Court.

31. **Small Estates.** Decedent estates whose total assets are fifteen thousand dollars (\$15,000.00) or less, may file a Petition for Voluntary Informal Executor or Administrator, pursuant to R.I.G.L. §33-24.1 and §33-24.2 on the applicable statewide forms.

32. **Special Sessions.** The Court may grant special sessions in its discretion in certain contested matters requiring lengthy testimony and/or evidentiary hearings and in exigent matters which cannot wait until the Court's regularly scheduled hearing date.

33. **Tax Minimization.** Petitions regarding tax minimization, pursuant to R.I.G.L. §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.

34. **Trustee Replacement.** Petitions for the replacement, resignation of a trustee of a testamentary trust shall be advertised, with notice sent to all interested parties.

35. **Will filing.** In cases where there are no assets on which the will of a decedent may act upon the designated fiduciary or person in possession of the will shall file the will with an appropriate affidavit and filing fee with the Court.

36. **Withdrawal from cases and excuses of attorneys.** No attorney appearing in a case will be allowed to withdraw without the consent of the Court, except when another attorney enters an appearance simultaneously with the withdrawal, or the previously represented party enters his/her appearance pro se.

All withdrawals shall be upon motion with reasonable notice to the party represented. A motion shall not be granted unless the withdrawing attorney files with the Probate Clerk the last known address of his/her client and an affidavit that he/she has given notice of the motion to withdraw to the client.

An attorney's request to be excused from attendance at any Court session shall be made by motion, served upon all

interested parties or their attorney of record. The motion shall state the basis for the excusal, and shall be granted or denied in the discretion of the Court.

37. These rules shall be effective as of August 1, 2015.

**Enter:**

**So Ordered:**

Nancy L. Mello  
Clerk of Probate Court

Richard P. D'Addario  
Judge of Probate Court