

TOWN OF WEST WARWICK PROBATE COURT

ADMINISTRATIVE RULES

Pursuant to RIGL §33-22-29, the Probate Court of the Town of West Warwick hereby establishes and adopts the following Administrative Rules:

1. **COURT SESSIONS:** Sessions will normally convene at 9:30 am on the first and third Wednesday each month, unless that day is a legal holiday. Court sessions are held in the Town Council Chambers, 1170 Main Street, West Warwick, Rhode Island. The Court reserves the right to meet on a different day and time as necessary.

2. **COURT CALENDAR:** Attorneys are requested to sign the docket in the Town Clerk's Office on the morning of the session. The Clerk's Office is open at 8:30 am. Formal and uncontested matters are heard in the sign-in-order (first come, first served). Contested matters are heard at the end of the calendar.

3. **SPECIAL SESSIONS:** Special sessions of the Probate Court will be scheduled as reasonably necessary to hear contested matters which cannot be completed during regular court sessions by the Probate Judge. There are no additional fees or charges for special sessions (RIGL §33-22-30).

4. **FILING FEES/DEADLINES:** No matter will be scheduled for hearing unless and until all required documents have been filed and all filing/advertising fees have been paid in full. Checks for fees should be made payable to the "Town of West Warwick." Matters requiring advertising must be filed and necessary fees paid not later than the close of business on the Wednesday prior to the week of publication. Publication will be in the Tuesday edition of the *Kent County Daily Times* the number of times required by statute.

All matters on waiver must be filed not later than the close of business on the Thursday prior to the hearing date. The Court reserves the right to set matters on waiver for another hearing date if the Court docket exceeds its usual number of petitions.

All pleadings, motions, legal memorandum and other filings must be submitted to the Probate Clerk at least three (3) days prior to the hearing date.

5. ELECTRONIC RECORDINGS:

(A) Electronic recording of any court proceedings will be made by the Court at the request of the Probate Judge or any party thereto by electronic tape recording (RIGL §33-22-19.1). However, parties are advised not to rely upon this method and are further advised to have court proceedings transcribed by authorized court stenographers at their own expense. Any party wishing a stenographer will be responsible for the payment of said stenographer and shall notify the Court and opposing counsel at least 24 hours prior to the hearing. The party requesting a stenographer shall provide a copy of the transcript to the Court.

(B) The Probate Court shall upon written request permit parties to produce written transcriptions from electronic tape recordings. Copies of tapes will be available for the cost of \$5.00 per tape.

(C) Electronic tape recordings of hearings will be kept in accordance with the records retention schedule.

6. COURT DECISIONS: Every decision of the Probate Court shall be reduced to a written order or decree. If a form of order or decree is not available for execution by the Probate Judge at the time of the hearing, the prevailing party shall submit a proposed form of order or decree within a reasonable time thereafter. The proposed form of order or decree shall be sent by regular mail to all parties who have entered an appearance in the matter. Absent written objection setting forth the reason for such objection within seven (7) days after mailing, the prevailing party shall file the original thereof with the Probate Clerk. For all purposes, the effective date of an order or decree is the date executed by the Probate Judge and not the date of hearing (RIGL §33-22-31).

7. RULES OF EVIDENCE: In all contested matters, the Rhode Island Rules of Evidence shall be applied. However, this section shall not prohibit parties from stipulating to or waiving the Rules of Evidence as to any particular matter (RIGL §33-22-19.2).

8. FORMS: The use of state-wide forms are mandatory.

9. MISCELLANEOUS PETITIONS: In matters where no state-wide form is suggested or prescribed, for e.g. Motions, Fee Petitions, Tax Minimization, etc., parties shall use Miscellaneous Petition (PC-10.5) for the filing(s).

10. **NOTICE TO CREDITORS:** Within a reasonable time after qualification, the personal representative shall send to all known or reasonably ascertainable creditors of the decedent notice of the commencement of the decedent's estate. The personal representative shall promptly thereafter submit an affidavit to the Probate Clerk indicating compliance with the requirements of RIGL §33-11-5.1 (a). The personal representative shall attach to the affidavit a copy of the notice sent.

11. **NOTICE TO DEPARTMENT OF HEALTH AND HUMAN SERVICES:** In all cases where the decedent was 55 years or older at the time of death, the personal representative shall send notice of the commencement of the decedent's estate to the Executive Office of the R.I. Department of Health and Human Services within a reasonable time after qualification. The personal representative shall thereafter submit an affidavit to the Probate Clerk indicating compliance with the requirements of RIGL §33-11-5.1(c). The personal representative shall attach to the affidavit a copy of the notice sent.

12. **NOTICE:** Notice of proceedings in Probate Court shall be as required by RIGL §33-22-3.

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

- A) Heirs-at-law for Administrations.
- B) Beneficiaries for Testate proceedings (after allowance of the Will).
- C) Statutory required entities in Guardianships, creditors of decedent, and administrative creditors who have filed claims.

13. **INVENTORIES:** Every Administrator or Executor shall within 90 days after his/her appointment return to the Court, under oath, a true inventory of all the personal property of the deceased (RIGL §33-9-1). Every Guardian shall do so within 30 days of his/her appointment (RIGL §33-15-19). Parties unable to submit inventories within the required times should petition the Court for an extension of time.

14. **DISCOVERY:** Rules 26 through 37 of the RI Superior Court Rules of Civil Procedure are hereby adopted by this Court as its Rules of Discovery in those cases where an interested party has requested discovery pursuant to RIGL §8-9-17.

Discovery rules may be expanded upon leave of court with appropriate notice to all parties.

Original discovery materials (depositions, interrogatories, requests for production and answers/documents in response thereto) 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 or memorandum of law. The time for compliance with discovery requests shall be the same as in the Superior Court Rules of Civil Procedure, 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 RIGL §8-9-18 shall, upon request for and approval of Citation, and after service on the party to testify, be conducted under oath and shall be limited in scope as set for 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 propounded by the inquiring party *in lieu* of live testimony.

15. GUARDIANSHIPS: No Petition for Appointment of Limited Guardian or Guardian will be heard by the Court unless notice has been given to the prospective ward at least fourteen (14) days prior to hearing or five (5) days in the case of a Temporary Guardian, unless a shorter period of time is approved by the Court upon motion by the petitioning party (RIGL §33-15-17.1).

A criminal record check through the RI Department of Attorney General (Bureau of Criminal Investigation) will be conducted of all proposed Guardians.

16. DECISION MAKING ASSESSMENT TOOL: No Petition for Appointment of Limited Guardian, Guardian or Temporary Guardian will be considered by the Court unless a Decision-Making Assessment Tool (DMAT), or the equivalent as determined by the Probate Judge, has been filed and is signed by a licensed physician, and has been presented to the Court at least three (3) days before the hearing date. All DMATS are to be SEALED in compliance with HIPPA Regulations.

17. GUARDIAN AD LITEM: Guardians ad litem shall be appointed from a list of qualified individuals approved by the Probate Judge and maintained by the Probate Clerk. The Court will appoint from the list. All Guardian ad litem reports must be submitted on the standard form provided in RIGL §33-15-47. Fees for Guardians ad litem will be limited to a maximum of \$800 unless additional fees are

authorized by the Probate Judge for good cause shown. Guardians ad litem must furnish an itemized bill.

18. CLAIMS OF CREDITORS: Claims shall be filed in accordance with RIGL §33-11-5. The Court will not on its own initiative deem a claim filed out-of-time or reject a claim without a hearing.

No Final Accounts or Affidavits of Complete Administration will be allowed or accepted unless an affidavit has been submitted by the fiduciary in compliance with RIGL §33-11-5.1(a).

If a creditor agrees to accept less than the amount of the claim filed and the Executor is not authorized under the terms of the Will to compromise or settle claims and for all Administrations and Guardianships, a Miscellaneous Petition for Compromise shall be filed and heard by the Court. Notice of the hearing shall be given by regular mail at least ten (10) days before the hearing to all interested parties or their counsel. Thereafter or contemporaneously with the Petition, an executed release for the compromised amount shall be filed in the proceeding.

19. PETITIONS FOR SALE OF REAL ESTATE: All Petitions for Sale of Real Estate must be accompanied by a copy of the signed Purchase and Sales Agreement along with an appraisal from an independent source (not a realtor involved in the transaction). Letters from brokers or appraisers as to the fair market value of real estate are not acceptable. An appraisal with comparable sales is required.

20. CHANGE OF NAME: A criminal record check through the RI Department of Attorney General (Bureau of Criminal Identification) is required of all persons petitioning for a name change. If there is a criminal record, the Court will exercise its discretion as to the name change on a case-by-case basis. If a criminal record is reported, the Court may approve, deny or allow the petition to be withdrawn without action.

21. CERTIFICATE OF DEVISE AND DESCENT: Prior to the acceptance of the Final Account or Affidavit of Complete Administration, the fiduciary shall submit to the Court an Affidavit of No Real Property (PC-10.13) or a duly recorded Certificate of Devise and Descent (PC-10.6). The documents shall be signed by the fiduciary (RIGL §33-3-14).

22. ACCOUNTS OF FIDUCIARIES: All accounts submitted by a fiduciary must be certified by the fiduciary and the attorney representing the fiduciary as is required by RIGL §33-14-2.2. (See PC-7.2) The Court in its discretion may require additional detail for any accounts filed. (RIGL §33-14-2)

In addition to advertising, notice for the hearing on accounts shall be sent by regular mail to all interested parties at least ten (10) days before the date of hearing.

Accounts showing proceeds from the sale of real estate shall be accompanied by a copy of the HUD-1 Settlement Statement.

23. ATTORNEYS FEES/FIDUCIARIES FEES: Affidavits of time spent, work done and hourly rate for attorneys and fiduciaries are required as part of accounts. Attorneys functioning as fiduciaries are not entitled to bill their professional rate on work done as fiduciary for matters which are merely administrative or clerical.

24. AFFIDAVIT OF COMPLETE ADMINISTRATION: No Affidavits of Complete Administration will be accepted by the Probate Clerk without all of the following:

- A) Original releases of all legatees, including the fiduciary;
- B) Original of paid receipt for decedent's funeral bill;
- C) Claim releases;
- D) Affidavit of Notice to Creditors (RIGL §33-11-5.1);
- E) Affidavit of Notice to RI Department of Health and Human Services (if decedent was 55 years or older at time of his/her death) (RIGL §33-11-5.1 (c));
- F) Original of Certificate of No Tax Due from R.I. Division of Taxation;
- G) Recorded copy of Certificate of Devise and Descent (PC-10.6) or Affidavit of No Real Property (PC-10.13); and
- H) Filing fee.

Affidavits of Complete Administration do not appear on the docket, but are handled administratively within the Office of Probate Clerk.

25. FIDUCIARY'S FINAL ACCOUNT: No Final Account of a fiduciary in a probate matter will be accepted by the Probate Clerk without all of the following:

- A) Original releases of all legatees, including the fiduciary;
- B) Original of paid receipt for decedent's funeral bill;
- C) Claim releases;
- D) Affidavit of Notice to Creditors (RIGL §33-11-5.1)
- E) Affidavit of Notice to RI Department of Health and Human Services (if decedent was 55 years or older at time of his/her death) (RIGL §33-11-5.1 (c));
- F) Recorded copy of Certificate of Devise and Descent (PC-10.6) or Affidavit of No Real Property (PC-10.13);
- G) Original of Certificate of No Tax Due form R.I. Division of Taxation;
- H) Application for Approval of Attorneys/Fiduciary Fees;
- I) Certification of Accounting (PC-7.2); and
- J) Advertising fee.

26. SMALL ESTATE PETITIONS: Decedent estates whose assets, as defined in RIGL §33-24, total \$15,000.00 or less may file a Petition for Voluntary Informal Administrator, pursuant to RIGL §33-24.1 or a Petition for Voluntary Executor, pursuant to RIGL §33-24.2. The Court requires a paid receipt for the decedent's funeral bill to be filed with the Petition. For good cause shown, the Court will allow said paid receipt to be filed within 30 days of granting the petition. Small Estate Petitions do not appear on the docket, but are handled administratively within the Office of Probate Clerk.

27. SEALING OF RECORDS: The Court may, upon request made by motion, seal the medical records and related records of any party to probate proceedings.

28. CONTINUANCES: Requests for continuances must be agreed to by all the parties in the proceedings whether represented by counsel or not; otherwise, the Court will conduct a hearing, with notice, on the request.

29. LEGAL ADVICE: Petitioners, respondents and parties of interest are strongly advised to seek legal representation. Those appearing before the Court without representation do so at their own risk and responsibility. The Probate Judge, Probate Clerk and the staff of the Town Clerk's Office are prohibited from giving any legal advice or assisting in the preparation of probate forms. The Court directs all parties to RIGL §33-1-1 *et seq.* for further information concerning


practice and procedure in the Probate Court. Probate forms are available online at the RI Secretary of State's website: www.sos.ri.gov/library/probate.

30. The Court reserves the right to supplement, add to or amend these Rules.

31. These Rules shall be effective upon the date of entry of this Order.

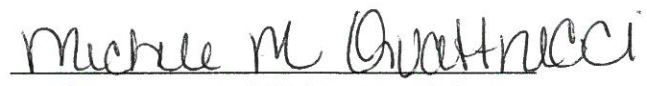
ENTERED as an ORDER of this Court this 23rd day of October, 2018.

ENTER:



BRENDA CARCIERI
PROBATE JUDGE

BY ORDER:



MICHELE M. QUATTRUCCI
PROBATE CLERK

10.23.18