

**ADMINISTRATIVE RULES OF THE
NEW SHOREHAM PROBATE COURT**
(Amended – January 18, 2012)

In compliance with Rhode Island General Laws Title 33-22-29, the New Shoreham Probate Court establishes and adopts the following as Administrative Rules of Practice:

ACCOUNTS OF FIDUCIARIES: All Accounts submitted by a Fiduciary must be certified to by the fiduciary and the attorney representing the fiduciary or the Certified Public Accountant who prepared the account, as required by R.I.G.L. 33-14-2.2.

The Court may, in its discretion, require appropriate detail for any accounts filed. Notice of 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 begin on Schedule "A" with the inventory or Schedule "C" balance of the last allowed account.

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.

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

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. 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.

CERTIFICATE OF DESCENT: At or before the hearing on a Final Accounting or an Affidavit of Completed Administration rendered in order to close a Decedent's estate, the Executor or Administrator of the Decedent shall submit an Affidavit to the Probate Court sufficient to support a Certificate of Decent; as well as a proposed Certificate of Descent for issuance by the Probate Court. The Affidavit shall contain the information set forth in RIGL Section 33-9-29.

In the event no real estate or any portion thereof or interest therein is devised or distributed or set out or descends, the Devisee(s), the Heirs, and/or Spouse of the Decedent, or in the event that real estate is transferred during the administration of the Estate, the Executor or Administrator shall submit an

Affidavit to the Probate Court to this effect before such hearing in lieu of the Affidavit described hereinabove.

The Affidavit described in the preceding paragraphs shall be signed by a person who has knowledge of the facts contained therein sufficient to make an Affidavit thereof.

The Executor or Administrator shall cause the Certificate of Descent, where applicable, to be recorded in The Land Evidence Records of each city and town in which real property of the Decedent has been devised, distributed, set out or descended, and shall cause the Estate to pay the required cost of recording each Certificate.

CLAIMS OF CREDITORS: Claims shall be filed in accordance with R.I.G.L.: 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 in compliance with R.I.G.L. 33-11-5.1, relative to 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 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, unless waived in writing. Thereafter or contemporaneously with the Petition, an executed release for the compromised amount shall be filed in the proceeding.

COMMUNICATIONS WITH THE COURT: Ex-parte communications, except for technical, formal and procedural related inquiries, are prohibited.

Written communications in any pending probate matter shall be sent or faxed to New Shoreham Probate Court and not to the private offices of the Clerk and/or Judge.

Requests for continuances must be agreed to by all the parties in the proceedings whether represented or not; otherwise, the court will conduct a hearing, with notice, as to the request.

CONSERVATORS: Pursuant to R.I.G.L., the court will, upon petition filed by the proposed ward, hear requests for conservatorship without medical evidence. Notice and advertisement shall be as set forth in the General Laws. Petitions for the appointment of a conservator by any other person shall follow the statutory scheme for the appointment of an adult guardianship.

COURT SESSIONS: The Court shall be in session every 3rd Wednesday at 3:00 P.M. In the event of inclement weather making travel to the Island not possible, then and in that event, the session shall be rescheduled to a time and location that serves the best interest of the Court. Formal, uncontested matters shall be given priority over contested matters at all sessions. Special hearings

shall be established at the discretion of the Court on any other day. Attorneys shall contact the Probate Clerk who will then confirm the hearing date and time with the Judge.

CUSTODIANSHIPS: The Court may, under certain circumstances, appoint a custodian(s) for a deceased person's estate pursuant to R.I.G.L. 8-9-10. A pending Will or appointment of Administrator is a prerequisite to any appointment for custodian. Notice and/or advertisement for appointment of custodians is discretionary with the Court.

The Court may, in its discretion, and dependent on the terms and conditions under which the appointment is made, allow the Custodian to close the estate by affidavit.

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

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 to a brief. The time for compliance with discovery orders, etc. shall be as 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 RIGL 8-9-17 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 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.

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, results obtained and any other documents, including retainer agreements, and the summary sheet, which may assist the Court in making its decision regarding fees. Assents by all interested parties, if obtained, shall also be submitted.

FEES FOR FIDUCIARIES: In ruling on a petition for approval of fiduciary fees, the Court shall consider, but not require, approval by the beneficiaries/heirs at law or persons entitled to notice in the filing of a petition for guardianship; the same procedures relative to notice, detail, etc., as established for attorney and accountant fees shall apply for fiduciaries.

FOREIGN ORIGINAL PROBATE: Petitions(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, in addition to R.I.G.L. requirements, must be accompanied by an Affidavit from the proposed fiduciary and a certification from the Clerk of the official entity having jurisdiction on the decedent's estate in the state or country of his domicile that no original probate is pending or has been opened in that jurisdiction.

GUARDIANSHIPS: The Court shall appoint a Guardian ad litem each time a petition for guardianship is filed; the attorney for the petitioner shall notify said individual of his/her appointment and provide to that person all relative information concerning the matter.

The Decision Making Assessment Tool and Guardian ad litem report shall be submitted to the Court at least two(2) business days before the matter is to be heard.

The New Shoreham Police shall be notified and requested to provide a criminal background check on the proposed Guardian before the Court will act on the petition. If a criminal record is reported, the Court may approve, deny or allow the petition to be withdrawn without action.

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

In all cases in which a 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 shall be appointed by the Court. 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, notice and advertisement. 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 non-resident ward owning real estate in New Shoreham 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 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, terminating the local probate matter.

MINOR GUARDIANSHIPS: 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 according to R.I.G.L. 33-15.110,11. 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 wherein 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 as ordered by the court upon ex parte miscellaneous petition showing facts and information sufficient to assist the court in determining who shall be served, in lieu of personal service on the proposed ward.

MISCELLANEOUS PETITIONS: In matters wherein no state form is suggested or prescribed, for motions, fee petitions, tax minimization, etc.; parties shall use Miscellaneous Petitions for the filing(s).

NAME CHANGE: For all persons over 18 years old, upon the filing of a petition to change the name and submission of a birth certificate, New Shoreham Police may be notified and may be 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.

For Petitions to change the name of a minor, the named parents on the birth certificate provided to the court, shall both join in the petition to change the name of the minor. If either parent's signature is not obtained, that parent must be notified at least ten (10) days in advance of the hearing regarding the name change, and evidence of said notification shall be provided. If the whereabouts of a parent is unknown, an affidavit stating that a diligent search has been made shall be supplied to the court.

The court shall not require a public notice or publication before approving the name change.

NOTICE: Notice of proceedings in Probate Court shall be as required by RI General Laws.

In matters where the statutes are not specific or are silent, then (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 (after allowance of the Will)
- statutory required entities in guardianships
creditors of decedent and administrative creditors
who have filed claims

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

ORDERS: All orders in contested matters, or as may be requested by the court, shall be reviewed by opposing counsel pursuant to R.I.G.L. 33-22-31 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 miscellaneous petition for instructions.

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 be provided to the court (the appraisal shall not be from the listing or buyer's Realtor in the case of a sale).

RECORD OF PROCEEDINGS: At the request of the Court, or the parties, a record of the proceedings will be made as follows: a stenographer provided, scheduled and paid by the attorneys; an electronic recording of the proceedings, provided by the Court; or both.

RELEASES: The Court, except for extraordinary circumstances, shall 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.

Original paid funeral bills and Notice of Tax clearance from the State Division of Taxation as well as releases from any creditors shall be produced for decedent estates.

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 fact(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 of the guardian from the former ward must be filed.

If a decedent estate or small estate proceeding for 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.

RE-OPENING OF CLOSED ESTATES: Petitions for the re-opening of closed estates shall follow the procedures for an original probate; except that in the case of a testate decedent estate, the beneficiaries as well as the heirs at law shall be provided notice of the hearing. If all the parties entitled to notice do not waive their right to notice, the petition shall also 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; the estate

may close in the statutory manner after qualification and action by the fiduciary appointed herein (without waiting six months); otherwise the R.I.G.L. procedures for creditors' notice, advertisement and duration for an estate being opened for an original probate shall be followed.

REPLACEMENT, REMOVAL OR RESIGNATION OF FIDUCIARIES: 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.

A petition for replacement of a fiduciary because of the death of the fiduciary shall also include a 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.

A fiduciary replaced for cause is required, after citation and hearing, to file an Account of his tenure in said fiduciary capacity; failure to do so may result in contempt proceedings initiated, with appropriate sanctions imposed.

A successor fiduciary, after removal for cause, may be required to, as best as possible, 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.

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.

SEALING OF RECORDS: The Court may, upon request, seal the medical and related records of any parties to probate proceedings.

SMALL ESTATES: Decedent estates whose total assets are fifteen thousand dollars (\$15,000.00) or less as defined in RI General Laws 33-24 may file a petition for Voluntary Informal Executor, pursuant to RI General Laws 33-24.2 or a petition for Voluntary Administration, pursuant to RI General Law 33-24.1.

TAX MINIMIZATION: Petitions regarding tax minimization, pursuant to RI General Laws Title 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.

TRUSTEE REPLACEMENT: Petitions for the replacement, resignation of Trustee in testamentary trusts shall be advertised, with notice sent pursuant to these Administrative rules.

WAIVED MATTERS: All matters to be heard on waiver, except for emergency matters, shall be filed by 12:00 p.m. on the third business day prior to the hearing.

WILL FILING: In cases where there are no assets upon which the Will of a decedent may act, the designated fiduciary or person in possession of the Will shall file the Will with an appropriate affidavit, filing fee, and death certificate, with the court in compliance with RI General Laws.

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

BY ORDER: MICHAEL LENIHAN

Judge

DATE: 01/18/2012

ENTER: 

Clerk

DATE: 1/18/2012

Amended: November 4, 2002
May 5, 2003
January 18, 2012