

ADMINISTRATIVE RULES AND RULES OF PRACTICE OF THE PORTSMOUTH PROBATE COURT OF THE TOWN OF PORTSMOUTH

In compliance with Rhode Island General Laws Title [§33-22-29](#), the Portsmouth 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.

Accounts showing proceeds from the sale of real estate shall be accompanied by the HUD settlement sheet.

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.

ADOPTION OF ADULTS: A petition for adoption of an adult (18 years of age or older) shall be filed with the Probate Court. All petitions for adoption shall be advertised. 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.

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.

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

CERTIFICATES OF APPOINTMENT, etc.: If there is no activity in a Probate matter for two (2) years from the qualification of a fiduciary, requests for certificate of appointments or exemplified copies or records, shall be made **ex-parte** to the Court by a miscellaneous petition; after hearing thereon, the Court may authorize said requests.

CLAIMS OF CREDITORS: Claims shall be filed in accordance with RIGL; 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 in a form or similar form. 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.

CLAIMS OF THE EXECUTOR OR ADMINISTRATOR AGAINST THE ESTATE:

Pursuant to R.I.G.L. [§33-11-4](#), any claims of the executor or administrator against the estate of the deceased shall be filed with the probate court setting forth the nature and approximate amount of the claim, the name and address of the claimant and his or her attorney.

A hearing shall be scheduled. The petitioner shall give notice of the hearing 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 the beneficiaries of the estate 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](#)).

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

Written communications in any pending probate matter shall be sent or emailed to Portsmouth Probate Court.

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.

CONTINUANCES OF HEARINGS: Hearings in all cases may be continued by agreement of the interested parties, if R.I.G.L. Title 33 or 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). In the event the parties cannot agree to a continuance, the court shall schedule a hearing to determine whether a matter shall be continued.

COURT SESSIONS: The Court shall be in session the second Tuesday of every month starting at 8:30 AM. Until that day's docket is complete; special hearings shall be established at the discretion of the Court on any other day. Formal, uncontested matters shall be given a priority over contested matters at all sessions. Court sessions may be cancelled or postponed at the discretion of 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 of 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 in a form.

DISCOVERY: [Rule 26 through Rule 37](#) of Superior Court ("Rules for Discovery") are hereby adopted as the Portsmouth 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 **R.I.G.L. [§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, which may assist the Court in making its decision regarding fees. Assents by all interested parties, if obtained, shall also be submitted, and are encouraged.

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: Petition(s) for the allowance of a Foreign Will or for the appointment of an Administrator of an out-of-state decedent filed as an original Probate for a non-resident of Rhode Island, in addition to R.I.G.L. requirements, must be accompanied by an Affidavit from the proposed fiduciary and an exemplified copy or 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.

FORMS: Forms for use in the Court are printed and furnished by the [Secretary of State](#) and by the Court.

GUARDIANSHIPS: The Court shall appoint Guardian ad litem each time a petition for guardianship is filed and a separate petition for appointment as Guardian ad litem; the attorney for the petitioner shall notify said individual of their appointment and provide to that person all relative information concerning the matter. Portsmouth Police shall be notified and requested to provide a criminal background check before the Court will act on the petition.

The Decision-Making Assessment Tool and Guardian ad litem report shall be submitted to the Court at least three (3) business days before the matter is to be heard. The proposed guardian shall, subsequent to their appointment, submit an affidavit in form or similar herein attesting to their knowledge of their duties and other statutory requirements.

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 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 Portsmouth 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.

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 with 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.

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.

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. [§33-15.1-10](#), [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, parties shall use Miscellaneous Petitions for the filing(s).

NAME CHANGES: For all persons over 18 years old, upon the filing of a petition to change the name and submission of a birth certificate, You get criminal background check([BCI](#)) from the RI Ag's office in Cranston. More information may be found on their website. 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.

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 advanced of the hearing regarding the name change, and evidence of said notification shall be provided. If the whereabouts of a parent is unknown, the name change shall be advertised by the Petitioner for three consecutive weeks in a newspaper distributed in the Town or City of his/her last known address.

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

- 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. For non-surety bond to be filed, consent must be given in writing by the heirs.

REAL ESTATE OWNED BY DECEDENT: The duly appointed fiduciary is requested to file along with the inventory of the personally owned by the decedent, a listing of any real estate owned by the decedents individually or as a Tenant in Common in the State of Rhode Island. This listing shall include the property address, Assessors Plat and Lot number or a copy of the deed into the decedent and shall be kept in the probate file.

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.

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

Final accounts for guardianships shall include a release from the ward if living, or if the ward dies, from the fiduciary for his/her decedent estate.

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 Final Account and an original death certificate.

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 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. (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.

If an executor or administrator (not guardians) neglect or fail to file an inventory and 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.

In the event that the said fiduciary above fail 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 of duty to the estate or 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.

REPLACEMENT OF FIDUCIARY:

- (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 those 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 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. (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.

REOPENING OF CLOSED ESTATES: Petitions for the reopening 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 creditor's notice, advertisement and duration for an estate being opened for an original probate shall be followed.

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 petition filed by an 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 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. (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.

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 R.I. General Laws [§33-24](#) may file a petition for Voluntary Informal Executor, pursuant to R.I. General Laws [§33-24.2](#) or a petition for Voluntary Administration, pursuant to R.I. General Law [33-24.1](#) and utilize the statewide form PC-1.8 or PC-1.9. Filing must include proper petition, certified copy of Death Certificate, paid funeral bill, waivers/consent from the heirs or notice to heirs by regular mail.

TAX MINIMIZATION: Petitions regarding tax minimization, pursuant to Rhode Island 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 at least two (2) days prior to their hearing.

WILL FILING: In cases where there are no assets upon 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 in order that the R.I. General Laws be complied with using an affidavit.

WITHDRAWAL FROM CASES AND ABSENCE OF ATTORNEYS:

(a) Withdrawal of Attorney: No attorney appearing in any case will be allowed to withdraw without consent of the court, except when another attorney enters an appearance at the time of such withdrawal or the person previously represented by the withdrawing attorney formally enters his/her appearance pro-se with his/her address.

All withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the probate clerk the last known address of his or her client. The address on file for the client shall be the official address to which notices shall be sent.

(b) Illness or Absence of Attorney: In case of sudden illness of an attorney, or The attorney's absence from court as a result of other imperative and unforeseen cause, the court shall take such action, without notice, as shall appear reasonable under the circumstances.

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