

Probate Court of the City of Warwick

Administrative Local Rules

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

COURT SESSIONS: In an effort to expedite the hearing process and to reduce the time spent waiting for hearing, the Probate Court of the City of Warwick will meet each and every **Thursday (except legal holidays, court holidays and (if applicable) the fifth Thursday of the month) at 8:00am** for any petitions that are on waiver.

All non-advertised petitions must be on the Clerk's desk no later than the Friday prior to any and all hearings.

All advertised petitions will be heard on the first and third Thursday of the month at 9:00am. The petitions must be on the Clerk's desk one month prior to the hearing date.

Any 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.

Any party requesting a recordation of any proceeding pursuant to RIGL 33-22-19.1 shall make said request in writing to the clerk at least 7 days in advance of said hearing date.

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 Section 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 Warwick ; 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).

ADULT CHANGE OF NAME: A criminal record check through the Criminal Division of the Rhode Island Department of Attorney General must be provided by the day of the hearing. In addition, an Affidavit executed by the petitioner stating that the applicant requesting the name change does not have a criminal record outside the State of Rhode Island.

A recent original birth certificate is required when filing for a change of name.

If there is a criminal record, the Probate Judge will exercise discretion as to the name change on a case-by-case basis.

JUVENILE CHANGE OF NAME: For Petitions to change the name of a minor, the matter shall be referred to the Rhode Island Family Court which has exclusive jurisdiction to so act.

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. 93-9-1. Every Guardian shall do so within 30 days of his/her appointment, R.I.G.L. 93-15-19. Parties unable to submit inventories within the required times should petition the Court for an extension of time.

FILING OF ANNUAL AND FINAL ACCOUNTS: In a decedent's estate, a notice must be sent to the fiduciary, heirs-at-law, and/or beneficiaries of the will, claimants and all attorneys who have entered their appearance.

For a final account in the decedent's estate a receipted funeral bill, a notice of No Tax Due from the RI Division of Taxation, releases from all claimants and releases from all beneficiaries/heirs, an affidavit of no real property or a recorded certificate of devise/descent (RIGL 33-9-29) and Fiduciary's affidavit regarding notice to creditors and OHHS (RIGL 33-11-502) must be filed.

For a final account in a guardianship estate, releases from all claimants, executor of decedent's estate or from ward (who has reached the age of majority or otherwise deemed competent).

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

CERTIFICATION OF ACCOUNTS: 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. 93-14-2.2. Said Certification of Account must be signed by the fiduciary and the attorney representing the fiduciary.

AFFIDAVITS OF COMPLETE ADMINISTRATION: Filing of affidavit of complete administration must include a receipted funeral bill, a Notice of No Tax Due from the Division of Taxation, any and all claim releases, releases of Heirs and Beneficiaries, . Additionally, pursuant to 33-3-14, an affidavit of no real property or a recorded certificate of devise/descent (33-9-29) and notice to creditors and OHHS (RIGL33-11-5.2) must also be filed.

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. The Court must approve all fees paid to attorneys/fiduciaries by way of approval of an Application for Approval.

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.

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. To be placed on the Guardian ad litem list, anyone may submit their name, qualifications and malpractice declaration sheet to Warwick Probate Clerk.

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. 533-15-47. 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.

MISCELLANEOUS PETITIONS OR MOTIONS: A certification must be included at the bottom of the petition that reads as follows: "I hereby certify that a copy of the within _____ was forwarded by first class U.S. Mail, postage prepaid, to the following individuals:"

Notice must be given to attorneys of record, heirs-at-law in administration, beneficiaries in estates with wills; in guardianship estates, a notice to all parties to be notified under the status of the original proceedings and attorneys of record.

FORMS: Use of Statewide forms when available are 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>.

FILINGS:

Administration Petitions - A copy of the court decree shall be recorded in the Land Evidence records where the property owned by the decedent is located with proof of the recording filed with the Warwick Probate Court.

Petitions to Probate or Administrator an Estate: A copy of the Family Court Final Judgment shall be required for any divorced decedent. If a Final Decree is not available, the Court may consider alternative evidence to establish that the parties were granted a final divorce.

Proof of death shall be required for a widow or a widower.

PETITION FOR SALE OF REAL ESTATE: Any petition to sell real estate that is not consented to by any and all heirs and beneficiaries shall be accompanied by a certified appraisal (not a statement produced by a listing or selling broker).

A purchase and sales agreement must also be filed with the petition if it is available, otherwise it must be filed by the date of the hearing.

Additional appraisals may be required depending on the nature of the transaction.

In addition to the aforementioned notice, there shall be notice provided to any joint owners of real estate to which the petition applies.

PETITION FOR SALE OF PERSONALITY: An appraisal done by a licensed appraiser must be filed with the petition. Any agreement to purchase items must be filed with the petition.

In addition to the aforementioned notice, there shall be notice provided to any joint owners of real estate to which the petition applies.

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 the 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.

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. 93-22-11 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. 93-22-3.

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.

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. 533-22-3.

D. Termination

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

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 —

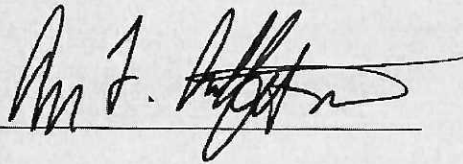
(1) By motion. An attorney who has appeared on behalf of any person in a Probate Court action may not withdraw unless he or she first obtains the consent of the Court. All withdrawals shall be made upon Motion with notice to all parties involved. A motion to withdraw shall not be granted unless the attorney 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.

(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.

C. Excusal - No attorney shall be excused from attendance upon the Warwick 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.

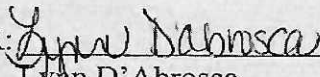
THE PROBATE COURT RESERVES THE RIGHT TO SUPPLEMENT, ADD TO OR AMEND THESE RULES.

ENTER: _____



Anthony F. Amalfetano
Probate Judge
City of Warwick

BY ORDER: _____



Lynn D'Abrosca
City Clerk