

CENTRAL FALLS PROBATE COURT ADMINISTRATIVE RULES

Pursuant to RIGL §33-22-29 the Probate Court of the City of Central Falls hereby establishes the following local administrative rules:

- 1) COURT SESSIONS**-Probate Court are held on the 4th Monday of each month at 2:00 p.m. in the City Hall, City Council Chambers, at 580 Broad Street, Central Falls, Rhode Island, or on such other date as the Court shall deem necessary.
- 2) CONTESTED MATTERS**-Special sessions of the Probate Court will be scheduled as reasonably necessary to hear contested matters which cannot be completed during regular court sessions. No additional fees or charges will be made for special sessions RIGL §33-22-30
- 3) ELECTRONIC RECORDINGS**
 - a) Electronic recordings of any court proceedings will be made by the court at the request of the Probate Judge or any party thereto by an electronic devise § 33-22-19-1. No other devises will be permitted in the courtroom. Parties may, however, have court proceedings transcribed by the authorized court clerk.
 - b) Upon request of any party, the court will obtain official written transcriptions of electronic recordings of any portion of hearings or testimony requested by a party, upon payment of the estimated cost thereof in advance.
 - c) Electronic recordings of hearings will be kept by the Probate Court until updated or superseded.
- 4) FILING FEES/ DEADLINE**-No matter will be heard unless and until all fees currently due have been paid. Cash is accepted and checks should be payable to the "City of Central Falls".
- 5) ADVERTISEMENT/NOTICE**- Matters requiring advertising should be filed and the necessary fees paid no later than the previous Wednesday of the week of publication. Publication will be in the Saturday edition of the Pawtucket Times, two times prior to the hearing. All matters on waiver should be filed 48 hours prior to the hearing date. The Probate Court reserves the right to set matters on waiver for another hearing date if the court docket exceeds its usual petitions. In case of emergency, the Probate Judge should be contacted directly.
- 6) PROBATE JUDGE**- Pursuant to the City of Central Falls Charter-Section 14-47, the sitting Probate Judge shall hear all cases. In case of sickness, absence from the city or other disability or ineligibility of the judge of the probate court to serve, the Mayor may appoint the city solicitor, and if the city solicitor shall be unable to serve, then the Mayor may appoint any member of the bar of the State of Rhode Island to perform the duties of said judge during the absence or other inability or ineligibility of said judge. The acts of said acting judge in the performance of said duties shall have the same effect as if performed by said judge. The designation by the Mayor shall be in writing and shall be recorded in the records of the Probate Court and shall be conclusive evidence of the necessity of such appointment.

7) AFFIDAVITS OF COMPLETE ADMINISTRATION-No affidavit of complete administration will be accepted without original releases of legatees including the fiduciary. Originals of paid funeral bill and inheritance tax discharge, claim releases, certification that notice has been given to all known or easily located creditors, devise and descent certificate to be dated and returned for recording pursuant to RIGL §33-9-29 and a recorded copy is required to be filed with this and a recorded copy is required to be filed with this estate or an affidavit stating that the decedent did not own real estate and current payment of fees must also be submitted. Affidavits of complete administration and voluntary informal estate affidavits will not appear on the court docket but will be handled administratively within the probate clerk's office.

8) FORMS-Use of state wide forms are required. Forms may be obtained by visiting the RI Secretary of State website. All petitions, motions and forms whenever submitted must contain accurate information.

9) CHANGE OF NAME-A criminal record check through the State of RI Attorney General's will be conducted for all persons petitioning for a name change. If there is a criminal record, the Probate Judge will exercise discretion as to the name change on a case-by-case basis. Notice must be given to natural parent when a change of name is requested for a minor.

10) ACCOUNTS OF FIDUCIARIES-All accounts submitted by a fiduciary must be certified by the fiduciary and the attorney representing the fiduciary. as required by RIGL §33-14-2.2.

The court may, in its discretion, require appropriate detail for any accounts filed. Notice of the 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 to the last allowed account.

Accounts showing proceeds from the sale of real estate shall be accompanied by the HUD settlement sheet. A devise and descent certificate to be dated and returned for recording pursuant to

RIGL §33-9-29 and a recorded copy is required to be filed with this estate or an affidavit stating that the decedent did not own real estate.

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 the sale of real estate. Notice to interested parties shall be as stated herein.

11) ALLOWANCE TO FAMILIES-Petitions for allowance of the 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,

12) CERTIFICATES OF APPOINTMENT-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 of records, shall be made ex-parte to the court by a miscellaneous petition; after hearing thereon, the court may authorize said requests.

13) 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 rejects 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 RIGL §33-11-5.1.

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.

14) CONTINUANCES-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. The court reserves the right to deny the request for continuances in extreme circumstances.

15) CONSERVATORS-Pursuant to RIGL §33-15-44 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.

16) DISCOVERY-Rule 26 through Rule 37 of Superior Court (“Rules for Discovery”) are hereby adopted as the Central Falls Probate court rules, in those cases where any interested party has requested discovery pursuant to RIGL §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, record, etc.) shall not be submitted to the court except when they are being offered as evidence during a trial to 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 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, to 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 in lieu of live testimony.

17) MINOR GUARDIANSHIP-Provisions of service on the proposed ward with a citation and copy of the petition and notice to parents, children or next to kin shall be according to RIGL §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 meeting.

In those cases, wherein one part is deceased and credible evidence supporting the death is submitted and the surviving parent is petitioning for the appointment of a guardian or waives

18) COURT DECISIONS-All decisions, orders and decrees of the Probate Court shall be reduced to a written order or decree presented at the time the hearing, or by the prevailing party within a reasonable time thereafter. §33-22-31.

19) NOTICE TO CREDITORS-No first and final accountings, and no certificates of completed administration will be accepted by the Probate Court without an affidavit by the Fiduciary certifying that notice has been given to all known and easily ascertainable creditors RIGL §33-11-5.1.

20) CERTIFICATION OF CHARGES-No accountings will be accepted by the Probate Court clerk unless accompanied by a certification by the Attorney for the estate substantially in the form set forth in section RIGL §33-14-2.2 or copies of the front sides of all checks or other documents evidencing charges, losses, or payments set forth in said account. The Probate Judge may demand additional evidence RIGL §33-14-2.

21) GUARDIANSHIPS-No petition for limited guardian, guardian, or temporary guardian, will be heard by the Probate Court unless notice has been given to the prospective ward at least fourteen days prior to the hearing in the case of limited guardians and guardians or five days in case of temporary guardians, unless a shorter period is ordered by the Court upon motion by the petitioning party. Original birth certificates shall be submitted with all minor guardianships.

22) DECISIONS MAKING ASSESSMENT TOOLS-No Petition for the appointment of a limited guardian will be considered by the Probate Court unless a decision making assessment tool, signed by a licensed physician, has been presented to the Court at least three days before the hearing thereof. RIGL §33-15-4.

23) GUARDIANS AD LITEM-Guardians ad Litem in limited guardianships shall be selected by the Probate Court. All Guardian ad Litem reports must be submitted on the standard form provided for in RIGL § 33-15-47. Fees for guardian ad litem will be limited to \$800.00 unless additional fees are authorized by the Probate Judge for cause shown.

24) RULES OF EVIDENCE-In all contested matters the Rhode Island Rules of Evidence shall be applied; provided, however, that this section shall not prohibit parties from stipulating or waiving the requirements of the rules of evidence as to any particular matter RIGL §33-22-19.2.

25) INVENTORIES-Every Administrator and Executor shall within ninety days after his or her appointment return to the Probate Court, under oath, a true inventory of all of the personal property of the deceased in accordance with Section RIGL §33-9-1. Every guardian shall do so within thirty days of his or her appointment.

26) MISCELLANEOUS PETITIONS-In matters wherein no State form is suggested or prescribed, for motions, fee petitions. Tax minimization, etc.; parties shall use miscellaneous petition for the filing(s).

27) NOTICE- Notice of proceedings in Probate Court shall be as required by 33-22-3. 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 the counsel. Notice maybe waived by the parties by submission of waiver. 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.

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

28) 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 evidence by a new bond in the increased amount, and not by a rider. A consolidation of bonds may be allowed at the discretion of the court

29) REOPENING OF CLOSED ESTATES-Petitions for the reopening of closed estate shall 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 proved to justify the reopening of the estate, including, but now 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 not 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 procedures for creditor's notice, advertisement and duration for an estate being opened for an original probate shall be followed.

30) ATTORNEY/FIDUCIARY FEES-Affidavits of time spent, work done and hourly rate for attorneys and fiduciaries are required as part of the accounting. Forms are available on the Secretary of State's website and in the Probate Clerk's office. 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.

31) REPLACEMENT, REMOVAL OR RESIGNATION OF FIDUCIARIES-A petition for resignation of a fiduciary who has qualified for which no inventory 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 certified 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 the previous fiduciary and an inventory indicates no personal estate, and 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/her tenure in said fiduciary capacity; failure to do so may result in contemp proceedings initiated, with appropriate sanctions imposed.

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

32) SEALING OF RECORDS-The court may, upon request, seal the medical and related records of any parties to probate proceedings.

33) SMALL ESTATE-Decedent estates whose total assets are fifteen thousand dollars (\$15,000.00) or less as defined in RIGL §33-24 may file a petition for voluntary informal executor, pursuant to RIGL §33-24.2 or a petition for voluntary administration, pursuant to RIGL §33-24.1

34) TAX MINIMIZATION-Petitions regarding tax minimization, pursuant to RIGL §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.

35) MOTIONS-An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief of order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice to the hearing of the motion.

36) APPEARANCE, WITHDRAWAL, AND EXCUSAL OR 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) 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 mad 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 Refief Act of 1940, and any amendments thereto, the motion shall not be granted unless the client consents therein in writing or another attorney appears of record as counsel at the time of such withdrawal.

(2) *By Stipulation*- Where a client for whom an attorney has filed an entry of appearance is desirous of substituting new counsel a new stipulation maybe entered pursuant to which the first counsel withdraws his or her entry and replacement counsel enters his or her appearance. Such a stipulation shall not be entered where the substitution of counsel shall be sited by the client of a justification for delay and proceedings. (c) *Excusal*-No attorney shall be excused from attendance upon the Central Falls Probate Court except upon application to the Judge, and such excused from attendance shall be granted on such terms and conditions as the court may set. In case of the sudden illness of the attorney, or the attorney's absence from the hearing for some other imperative and unforeseen cause, a judge shall take action, without notice, that shall appear reasonable in the circumstances

Requirements for inventories will be strictly enforced. Parties unable to submit inventories within the required times must petition the Court for an extension of time.

These rules shall take effect for all matters filed on and after

12/19/2017

DATE



BRUCE D. SAWYER, ESQ.
PROBATE JUDGE