



Probate Court of the City of Cranston Administrative Rules

Pursuant to the provisions of R.I.G.L. Section 33-22-29, the Probate Court of the City of Cranston adopts the following Administrative Rules:

1. Court Sessions

Court Sessions –Probate Court will hold sessions on the second and fourth Thursday of each month at 9 a.m. Matters on waiver and name changes will be heard first. Court Sessions are held in the City Council Chambers, 3rd floor, City Hall, 869 Park Avenue, Cranston, R.I.

2. Court Calendar

Attorneys and interested parties must sign the docket sheet provided by the Clerk on the morning of the session. The sign in sheet will be available starting at 0730 hrs and all matters will be heard in sign-in order, with the exception of contested matters, which are heard at the end of the session.

3. Recordings of Proceedings

- a. All court proceedings will be electronically recorded by the Court. Parties may have court proceedings recorded by stenographic means by an authorized court reporter at their own expense. (R.I.G.L. Section 33-22-19.1)
- b. The Probate Court shall, upon written request, permit parties to produce at their own expense, written transcriptions from the Court's recordings; copies of court recordings will be available for \$35 per hearing from the Probate Clerk.

4. Forms

All matters filed with the Court must be on the statewide forms which are available from the RI Secretary of State's website.

5. Filing Deadlines

Advertised matters must be filed by Wednesday of the week preceding the 1st publication date. Publications will appear in the Wednesday edition of the Providence Journal, two (2) times prior to the date of the hearing. All matters waiving advertisement must be filed at least 48 hours prior to the hearing date.

6. Contested Matters

Contested Matters – Special sessions of the Probate Court will be scheduled for hearing of contested matters which cannot be heard during regular court sessions, at the discretion of the Court. The Court will require, at least seven (7) days before the scheduled hearing, a prehearing memorandum setting forth a brief summary of your argument, the number of witnesses who will testify, a summary of their testimony, a list of exhibits to be marked and introduced into evidence, facts and exhibits stipulated to and citations of cases relied upon to support your position. Copies of all documents are to be provided to the Court and opposing counsel.

7. Notice of Contested Matters

Notice in Contested matters shall be a **minimum** of ten (10) days. Appropriate certification shall be provided to the court and counsel indicating compliance with the notice requirements of this rule and Title 33 of the R.I. General Laws. Notice may be waived by agreement of all the parties.

8. Continuances

Hearings in all cases may be continued by agreement of the interested parties. Request for continuances must be agreed to by all attorneys of record in the form of a stipulation. If RIGL 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).

9. Inventories

Every Administrator and Executor shall, within ninety (90) days after his or 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. Section 33-15-9. If a Fiduciary is unable to submit an inventory within the prescribed time, he or she shall petition the Probate Court for an extension of time.

Guardian's inventory must be filed within thirty (30) days of appointment. RIGL 33-15-19.

10. Certification of Accounts

No account of a Fiduciary will be accepted by the Court unless a Certification of Accounting, in the form set forth in R.I.G.L. Section 33-14-2.2, signed by the fiduciary and the attorney representing the fiduciary is submitted with the account.

11. Notice to Creditors and Executive Office of Health & Human Services:

No Final Account or Affidavit of Completed Administration will be allowed or accepted unless an Affidavit is submitted by the fiduciary certifying that notice has been given to all known or easily ascertainable creditors and the Executive Office of Health and Human Services (R.I.G.L. 33-11-5.1 and 33-11-5.2).

12. Affidavit of Completed Administration:

No Affidavit of Completed Administration will be accepted without original releases of all legatees, a copy of the paid funeral bill, a statement of No Tax Due or a paid tax bill from the RI State Division of Taxation, releases of claims, a **recorded** Certificate of devise & descent or an Affidavit of no real property and an affidavit in accordance with Rule 11 (see above).

13. Attorney and Fiduciary Fees

A Court hearing, with notice as required by statute, is required for all petitions for attorney and fiduciary fees in any estate for which **any Account is submitted**. Petitions for fees shall be accompanied by an itemization of hours and nature of work provided, including retainer agreements, if any, and any other documentation which will assist the Court in rendering a decision on the fee petition. Assents by all interested parties, if obtained, shall also be submitted.

14. Rules of Evidence:

In all contested matters the Rhode Island Rules of Evidence shall be applied. This rule shall not prohibit parties from stipulating or waiving the requirements of the Rules of Evidence in a particular matter (R.I.G.L. Section 33-22-19.2)

15. Court Orders or Decrees:

If an Order or Decree is not available for execution at the time of hearing, the prevailing party shall submit a proposed Order or Decree to counsel for all parties in accordance with R.I.G.L. Section 33-22-31. If no objection is filed in accordance with R.I.G.L. Section 33-22-31 the Order or Decree shall be entered by the Court after seven (7) days.

16. Petitions for Sale of Real Estate:

An appraisal by an independent appraiser (not a realtor involved in the transaction) must be filed with the Petition to Sell Real Estate. A signed Purchase and Sales Agreement should be submitted with the Petition to Sell Real Estate if available, or at some point prior to the hearing if it is not available at the time of filing. The Court will not hear petitions for sale of real estate without a purchase and sales agreement. All Petitions must be advertised pursuant to RIGL 33-22-7.

17. Adult Name Change:

Any person eighteen (18) years of age or older who files a Change of Name petition with the Court, must submit a BCI check from the State of Rhode Island Attorney General's Office and which is dated no later than 60 days from the date of the Change of Name petition. Petitioners must appear in person at the scheduled hearing in order for the Change of Name petition to be heard and processed.

18. Name Change of a Minor:

Name Change of Minor – A petition to change the name of a minor must be signed by the parents listed on the birth certificate. The petition must be signed and notarized. If a parent listed on the birth certificate does not sign the petition, the matter must be filed with the Family Court.

19. Adult Adoptions:

A Petition for Adult Adoption (for persons eighteen (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§ 5-101)

The Petitioner(s) (Adopter or Adoptee) must be a resident of **Cranston**; 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)

20. Guardianships:

No Petition for Limited Guardianship or Guardianship shall be heard by the Probate Court unless notice has been given to the prospective Ward at least fourteen (14) days prior to the scheduled hearing of the petition. No petition for Temporary Guardianship shall be heard unless it is accompanied by a Petition for Limited Guardianship or Guardianship and notice has been given to the prospective Ward at least five (5) days prior to the scheduled hearing of the petition unless a shorter period is authorized or ordered by the Court.

21. Minor Guardianships:

All persons petitioning to be made Guardian of a minor (a person under eighteen (18) years of age) , with the exception of natural or adoptive parents, will provide a BCI check dated not more than sixty (60) days before the date of the assigned hearing.

All petitions shall have notarized signatures from the parents listed on the birth certificate, in order to be heard in the Probate Court. 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 accordance with R.I.G.L. § 33-15.1-10 and 33-15.1-11.

In cases where one parent is deceased, death certificate shall be required, and the surviving parent is petitioning for the appointment of a guardian and/or waives notice, no additional next of kin of the ward need be notified.

Service on wards twelve (12) and under shall be pursuant to RIGL 33-15.1-11 or as ordered by the court upon ex parte miscellaneous petition, heard on the day the matter is initially scheduled, showing facts and information sufficient to assist the court in determining who, if anyone, shall be served, in lieu of personal service on the proposed ward.

A Department of Children and their Families home study may be required by the Court based on the circumstances and facts.

22. Decision Making Assessment Tool:

No Petition for Limited Guardianship or Guardianship will be considered by the Probate Court, unless a Decision Making Assessment Tool, which has been completed by a **physician** who has examined the prospective Ward, is filed with the Court not less than three (3) business days prior to the scheduled hearing date. A Petition for Temporary Guardian shall not be considered unless it is accompanied by a Petition for Limited Guardianship or Guardianship and the above referenced Decision Making Assessment Tool.

23. Small Estates:

Petitions for Voluntary Informal Administration (R.I.G.L Section 33-24-1) and Petitions for Voluntary Informal Executor (R.I.G.L. Section 33-24-2) will not appear on the Court docket, but will be reviewed and processed administratively by the Probate Court. Documentation of assets and their value must be provided to the Court, and authorization shall be limited to the stated assets.

24. Certificates of Appointment:

If there is no activity in a Probate matter for two (2) years from the date of qualification of a fiduciary, request for certificates of appointment or exemplified copies of records shall be made **ex-parte** to the Court by a Miscellaneous Petition; said petitions will not appear on the Court docket, but will be reviewed and processed administratively by the Probate Court. Certificates will only be issued to named fiduciaries and attorneys for fiduciaries.

25. 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.

26. Fees for Attorneys and Accounts:

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 must be accompanied by documentation itemizing hours spent, the nature of the work provided 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.

27. 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.

28. 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 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.

29. Reopening of Closed Estates and Administrations

Petitions for the reopening of closed estates shall follow the procedures for an original probate. 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.

30. Reopening of Closed Estates and Administrations for Assets under \$5,000

Newly discovered assets totaling less than \$5,000.00 shall be administered in accordance with RIGL 33-14-13.

31. Viewing of Court Records

All documents filed with the Court are considered public record, with the exception of death and birth certificates (which cannot be copied or otherwise reproduced) and matters that have been officially sealed by the Court. Individuals must request the specific Court file they wish to review and may only view one record at a time, in full view of the Court staff and cannot be removed from the area. All files must be signed for on a ledger maintained by the Probate Clerk for that purpose and no documents may be removed from any file, for any purpose, except by the Court Staff.

ENTER:

PER ORDER:

George M. Cappello, Esquire 2/6/2019
Probate Judge

Maria Medeiros Wall, JD 2/6/2019
Clerk of the Probate Court