

# Town of Johnston Probate Court

## RULES OF PRACTICE AND PROCEDURE

Pursuant to RLIGL 33-32-23, the Probate Court of the Town of Johnston hereby establishes the following local administrative rules:

1. **Court Sessions-** Sessions will normally convene at 8:15 a.m., on the second and fourth Tuesday on each month. Court sessions are held at the Johnston Municipal Court, 1600 Atwood Avenue, Johnston, Rhode Island. The Court reserves the right to meet on a different day if necessary.
2. **Court Calendar-** Counselors are requested to sign the docket at the court prior to the Court session.
3. **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 by the Probate Judge. There will be no additional fees or charges for special sessions (33-20-30). The Probate Judge, after conference with the parties concerned, may set discovery limits and time tables for hearing.
4. **Filing Fees/Documentation/Deadline-**No matter will be heard unless and until all fees currently due have been paid and the proper documents have been filed. Copies of vital records must be certified copies, photocopies of vital records are not accepted. Checks should be payable to the "Town of Johnston". Matters requiring advertising should be filed and the necessary fees paid not later than the previous Thursday of the week of publication. Publication will be in the Providence Journal prior to the hearing pursuant to Rhode Island General Laws, as amended. All matters on waiver should be filed at least 48 hours prior to the hearing date, unless permission is granted by the Probate Judge.

### **5. Electronic Recordings**

a. Electronic recordings of any court proceedings will be made by the Court at the request of either the Probate Judge or any party thereto, by electronic tape recording, provided that any party making a request make said request within three (3) days prior to the hearing, (33-22-19.1). However, parties may have court proceedings transcribed by authorized court stenographers at their own expense.

b. The Probate Court shall upon written request permit parties to produce written transcriptions from electronic tape recordings. Copies of tapes will be available for \$35.00 per tape.

c. Electronic tape recordings of hearings will be kept in accordance with the records retention schedule.

6. **Court Sessions**- Every decision of the Probate court shall be reduced to a written order or decree presented at the time of the hearing or by the prevailing party within a reasonable time thereafter (33-22-31).

7. **Notice to Creditors**- No First and Final Account and no Affidavit of Complete 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 (33-11-5.1),

8. **Certification of Charges**- No Account will be accepted by the Probate Court Clerk unless accompanied by a certification from the attorney for the estate substantially in the form set forth in 33.14-2.2. There will be no exceptions, The Probate Judge may request additional evidence (33-14-2).

9. **Guardianships**- No petition for limited guardian, guardian or temporary guardian will be heard by the Probate Court unless notice have been given to the prospective ward at least 14 days prior to the heating in the case of limited guardians and guardians or five days in the case of temporary guardians unless a shorter period is approved by the Court upon motion by the petitioning party.

10. **Decision Making Assessment Tools**- No petition for the appointment of a limited guardian, temporary guardian or guardian will be considered by the Probate Court unless a Decision Making Assessment Tool, initial assessment signed by a licensed physician, has been presented to the Court at least three days before the hearing date.

11. **Guardian 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. The Probate Court will appoint from the Mitt list. All Guardian Ad Litem reports must be submitted on the standard from provided in RIGL 33-15-47. Fees for Guardians Ad Litem shall be limited to a maximum of \$450.00 unless additional fees are authorized by the Probate Judge for cause shown. Guardian Ad Litem must furnish an itemized bill. If you would like to be placed on the Guardian Ad Litem list, you should send a letter of request to the Probate Clerk.

12. **Commissioners**- Commissioners appointed by the Court to hear disallowed claims pursuant to RTGL 33-11-16 shall be selected by agreement of the attorneys for the claimant and the estate with the approval of the Probate Judge, In the event that attorneys cannot agree on a Commissioner, selection will be made by the Probate Judge.

13. **Rules of Evidence**- In all contested matters, the Rhode Island Rules of Evidence shall be applied, however, this section shall not prohibit parties from stipulating or waiving the requirements of the Rules of Evidence as to any particular matter (33-22-19.2).

14. **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 MU 33-94. Every Guardian shall do so within 30 days of his/her appointment (334549). Parties unable to submit inventories within the required times should petition the Court for an extension of time.

15. **Affidavits of Complete Administration-** No Affidavit of Complete Administration will be accepted without original releases of legatees including fiduciary, if legatee, copies of paid funeral bill and inheritance tax discharge, claim releases, certification that notice has been given to all known or easily located creditors, and current payment of fees. Affidavits of Complete Administration and Small Estate Affidavits will not appear on the court docket but will be handled administratively within the Probate Clerk's Office,

16. **Attorneys/Fiduciaries Fees-** Affidavit of time spent, work done and hourly rate for attorneys and fiduciaries are required as part of the accounting; forms are available in the Probate Clerk's Office. Attorneys functioning as fiduciary for matters which are merely administrative or clerical.

17. **Forms-** Use of statewide forms is mandatory.

18. **Change of Name-** A criminal record check through the Rhode Island Attorney General's Office will be conducted for all persons petitioning for a name change. If there is a criminal record, the Probate Judge will exercise his discretion as to the name change on a case by case basis.

By Order:

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Priscilla Facha DiMaio,  
Probate Judge