

Town of Johnston Probate Court

LOCAL RULES OF PRACTICE AND PROCEDURE

Pursuant to RIGL 33-22.29, the Probate Court of the Town of Johnston hereby establishes the following local administrative rules (which are not exclusive but in conjunction with Title 33 of the Rhode Island General Law (RIGL)):

1. **Court Sessions**- Sessions will convene at 8:15A.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 different day(s) and time(s) if necessary and as noticed.
2. **Court Calendar**- Attorneys and Pro-Se litigants 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 (RIGL 33-22-30). 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(s) 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 wavier should be filed at least 48 hours prior to the hearing date, unless permission is granted by the Probate Judge.

All pleadings, motions, legal memorandum and other filings must be submitted to the Probate Clerk at least one (1) week prior to any hearing date.

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, (RIGL 33-22-19.1). However, parties are advised to not rely upon this method and

are further advised to have court proceedings transcribed by authorized court stenographers at their own expense. Any party who has scheduled a stenographer will be responsible for the payment and shall notify the Court and opposing counsel with forty-eight (48) hours prior to the hearing. The party requesting a stenographer shall provide a copy of the transcript to the Court.

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 Decisions:** 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 or within a reasonable time thereafter, with notice to opposing Counsel or Pro-Se litigant; and, if objection is made it shall set forth the reasons, and submitted within seven (7) days after the mailing with the original being filed in the Clerk's Office, and a hearing shall be requested by the party objecting, with notice to all parties. For all purposes, the effective date of an order or decree is the date executed by the Probate Judge and not the date of hearing (RIGL 33-22-31).

7. **Rules of Evidence:** In all matters, the Rhode Island Rules of Evidence shall apply. However, this section shall not prohibit parties from stipulating or waiving the Rules of Evidence as to any particular matter (RIGL 33-22-19.2).

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 (RIGL 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 RIGL 33.14-2.2. There will be no exceptions, The Probate Judge may request additional evidence (RIGL 33-14-2).

9. **Guardianships-** No petition for limited guardian or guardianship will be heard by the Probate Court unless proper notice have been given to the prospective ward at least fourteen (14) days prior to the hearing, and in the case of temporary at least five (5) days in the case of temporary guardians unless a shorter or extended period is approved by the Court upon motion by the petitioning party. (RIGL 33-15-17.1)

A criminal record check through the Department of Attorney General's Bureau of Criminal Identification (BCI) will be conducted for all proposed guardians.

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 (3) days before the hearing date. All DMATs are to be sealed in compliance with HIPPA Regulations.

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 list. All Guardian Ad Litem reports must be submitted on the standard form provided in RIGL 33-15-47. 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. 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.

Guardian Ad Litem reports must be filed with the Court as least one (1) week prior to the initial hearing date;

12. **Inventories-** Every Administrator or Executor shall within ninety (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 RIGL 33-9-1.

Every Guardian shall do so within 30 days of his/her appointment, RIGL 33-15-19. Parties unable to submit inventories within the required times should petition the Court for an extension of time.

13. **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. (See stateside probate form).

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

14. **Attorneys/Fiduciaries Fees-** Affidavit of time spent, work done and hourly rate for attorneys and fiduciaries are required as part of the accounting. Attorneys functioning as fiduciary for matters which are merely administrative or clerical cannot charge regular attorney hourly rate;

15. **Petitions for Sale of Real Estate:** All petitions for sale of real estate must be accompanied by a copy of a certified appraisal (fair market value or and comparable without certified appraisal is not acceptable).

16. **Petitions for Sale of Personal Property:** must be accompanied with evidence of the market value of said items (certified appraisal is preferable);

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


18. **Notices:** All petitions require notices to parties, and must be submitted to the court by affidavit signed by sender listing the notified heirs and interested parties (the term “ heirs” is not acceptable);

Notice to the Department of Health, when required, shall be in accordance with RIGL 33-11-5.2 – and the sender shall sign an affidavit that such has been done and submit to the Court.

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

20. **Legal Advice:** Under no circumstances is the Clerk’s Office allowed to give legal advise or guidance in the preparation of probate forms and the like.

By Order:



PRISCILLA FACHA DIMAIO

Probate Judge

Dated: 01/31/2023