

SMITHFIELD PROBATE COURT

ADMINISTRATIVE RULES

Pursuant to RIGL 33-22-29, the Probate Court of the Town of Smithfield hereby establishes the following local administrative rules:

1. COURT SESSIONS – Sessions will normally convene at 9:00 A.M. on the first Thursday of each month unless that day is a legal holiday. Court sessions are held in the Town Council Chambers, second floor, at the Town Hall, 64 Farnum Pike. The Court reserves the right to meet on a different day as necessary.

2. COURT CALENDAR – Counselors are requested to sign the docket in the Town Clerk's office on the morning of the court session; the Clerk's office is open at 8:30 A.M. Cases are heard in the sign-in order (first come, first served) with the exception of contested matters; contested matters are heard at the end of the session.

3. CONTESTED MATTERS – Special sessions of the Probate Court will be scheduled as reasonably necessary to hear contested matters that cannot be completed during regular court sessions by the Probate Judge. There will be no additional fees or charges for special sessions (§ 33-22-30).

4. FILING FEES/DEADLINE – No matter will be heard unless and until all fees currently due have been paid. Checks should be payable to "Smithfield Probate Court". Matters requiring advertising should be filed and the necessary fees paid not later than the previous Wednesday of the week of publication. Publication will be in the Tuesday edition of the Pro-Jo Legals Section two times prior to the hearing. All matters on waiver should be filed at least 48 hours prior to the hearing date.

5. 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 electronic tape recording (§ 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 request a duplicate tape from the probate session when recorded by the Probate Clerk. Copies of tapes will be processed and made available at a fee dependent upon labor and recording time.

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 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 the case of temporary guardians unless a shorter period is approved by the Court upon motion by the petitioning party. Any party proposed to serve as the Guardian must provide a recent BCI Report from the RI Attorney General's Office.

10. DECISION MAKING ASSESSMENT TOOLS –No petition for the appointment of a limited guardian, temporary guardian or guardian will be heard by the Probate Court unless a Decision Making Assessment Tool (report), signed by a licensed physician, has been presented to the Court at least three days before the hearing date.

11. GUARDIAN AD LITEM – An attorney, who shall serve as a Guardian 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 court list. All Guardian ad litem reports must be submitted on the standard form provided in RIGL 33-15-47. Fees for an attorney serving as the Guardian Ad Litem shall be limited to the State-mandated stipend of \$400.00, unless the Probate Judge, for cause shown, authorizes additional fees. The attorney serving as the ward's Guardian ad litem must furnish an itemized bill for the Judge's signature. If you would like to be placed on the Guardian ad litem list, you should forward your resume and/or credentials to the Probate Clerk for the Judge's review, consideration, and approval.

12. 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).

13. 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 and real estate property of the deceased, in accordance with RIGL 33-9-1. Every Guardian shall do so within 30 days of his/her appointment. If zero assets, the Guardian of the estate (and person) will provide the inventory report showing an incoming zero balance (§ 33-15-19). Parties unable to submit inventories within the required times should petition the Court for an extension of time.

14. 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 will not appear on the court docket but will be handled administratively within the Probate Clerk's office.

15. 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 fiduciaries are not entitled to bill their professional rate on work done as fiduciary for matters that are merely administrative or clerical.

16. FORMS – Use of State-wide forms is mandatory.

17. CHANGE OF NAME – A criminal record check through the Department of Attorney General is required 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. The Court shall defer petitions for minors in cases where all surviving parents have not signed the petition to the Family Court for jurisdictional purposes.

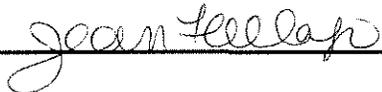
18. PROBATE JUDGE – Pursuant to Section 15-1-2 Acting Judge of Probate, of the Charter of the Town of Smithfield, whenever the Judge of Probate Court is a party or interested in any proceeding about to be heard in Court, or is absent or unable to perform the duties, or there is a vacancy in such office, duties shall be temporarily performed by the Town Solicitor, or any assistant Town Solicitor. The fact of any such interest, absence, inability or vacancy shall be recorded in the records of the Probate Court.

Entered By Order:

Carol A. Aquilante, CMC, Probate Clerk

Attorney Jean Fallago, Probate Judge

Authorized on Thursday, April 2, 2015 by Smithfield Probate
Judge Fallago



Signature

Amended: May 24, 2004 (Rule #12 Commissioners deleted, § 33-11-16)

Amended: July 16, 2007 (Rule #15 Change of Name for minors)

Amended: March 9, 2009 (Rule #11 Guardians Ad Litem, fee)

Amended: October 5, 2009 (Rule #17 Change of Name)

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