

LOCAL ADMINISTRATIVE RULES OF THE CUMBERLAND PROBATE COURT

Pursuant to **R.I.G.L. §33-22-29** the Probate Court of the Town of Cumberland hereby establishes the following local administrative rules:

1) COURT SESSIONS: The sessions of the Probate Court are held on the second Thursday of each month at 9:30 a.m. and at other dates as scheduled by the Probate Judge in the Town Hall, Town Council Chambers, at 45 Broad Street, Cumberland, Rhode Island. Please confirm dates with Probate Clerk at 728-2400 Ext 154 before assigning matters.

2) COURT CALENDAR: Cases assigned for hearing at any Court session will be heard in the following order:

Formal Matters
Nominal Matters
Contested Matters

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. No additional fees or charges will be made for special sessions. (**R.I.G.L. § 33- 22-30**).

4) LOST WILLS: In case an original Will is lost, on proof of loss, the copy may be proved in the same manner as provided for in **R.I.G.L. § 33-7-24**.

5) RECORD OF PROCEEDINGS: At the request of the Court, or the parties, a record of the proceedings will be made as follows: a stenographer provided, scheduled and paid by the attorneys; an electronic recording of the proceedings, provided by the Court; or both. **R.I.G.L. § 33-22-19.1**

a) The Probate Court Clerk shall, upon request, permit parties to produce written transcriptions from electronic recordings at no additional cost. Copies of electronic recordings will be made available to parties for \$5.00 per recording.

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 for a period of one year only, and will be destroyed thereafter.

6) COURT DECISIONS: All decision, orders and decrees 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. (**R.I. G. L. § 33-22-31**).

7) NOTICE TO CREDITORS AND DOCUMENTS REQUIRED

TO CLOSE ESTATE: No First and Final Accountings, and no Certificates of Completed Administration will be accepted by the Probate Court without:

- a. Original paid funeral bill
- b. Affidavit by the fiduciary certifying that notice has been given to all known and easily ascertainable creditors. (**R.I.G.L. § 33-11-5.1**)

- c. Affidavit of no real property, or recorded certificate of devise and descent.
- d. Released from all claims.
- e. Releases from all heirs (Amount paid or \$1.00 and other valuable consideration).
- f. Inventory must have been filed.
- g. Payment of Court fee.
- h. All pending petitions must have been resolved.

8) ACCOUNTS OF FIDUCIARIES: All Accounts submitted by a Fiduciary must be certified to by the fiduciary and the attorney representing the fiduciary, or the Certified Public Accountant who prepared the account as required by **R.I.G.L. §33-14-2.2**

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

Accounts showing proceeds from the sale of real estate shall be accompanied by the HUD settlement sheet.

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

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 33-9-1**. Every guardian shall do so within thirty days of his or her appointment. The guardian inventory must include any interest in real estate.

9) ADOPTION OF ADULTS: A petition for adoption of an adult (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**) A notice of the hearing shall be given by regular mail at least ten (10) days before the hearing to: 1) the spouse of the prospective adoptive parent and 2) the adoptee's parent or parents if alive. (If alive, it is recommended that the birth parent(s) sign a waiver or assent to the Petition). The **Petitioner** (Adopter or Adoptee) must be a resident of **Cumberland**; 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).

10) ALLOWANCE TO FAMILIES: Petitions for allowance of support to families are heard by the Court, with written notice or waiver to all interested parties as defined within these rules or by statute; the inventory for the estate must be filed before any hearing. The petition shall contain an itemization of expenses requested to be allowed.

11) 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 evidenced by a new bond in the increased amount, and not by rider. A consolidation of bonds may be allowed at the discretion of the Court.

The same bonding company shall be used in all proceedings of a particular estate, unless the prior bond is cancelled, a new fiduciary is appointed, or the original surety company withdraws from Rhode Island, or ceases to be in the bond business. A successor surety company shall comply with all applicable laws of the state of Rhode Island and rules of the Department of Business Regulation.

12) CERTIFICATES OF APPOINTMENTS: etc.: If there is no activity in a Probate matter for two (2) years from the qualification of a fiduciary, request for certificate of appointments or exemplified copies of records shall be made **ex parte** to the Court by a miscellaneous petition and an affidavit of all heirs; after hearing thereon, the Court may authorize said requests.

Certificates will only be issued to named fiduciaries and attorneys for fiduciaries.

13) CLAIMS OF CREDITORS: Claims shall be filed in accordance with **R.I.G.L. 33-11** et al; the Court **will not on its own initiative** deem a claim filed out of time or reject 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 **R.I.G.L. §33-11-5.1**, relative to notice to creditors in a form or similar form attached hereto as **EXHIBIT I**.

If a creditor agrees to accept less than the amount of the claim filed; an executed release for the compromised amount shall be filed in the proceeding before the estate can be closed.

Commissioners appointed by the Court to hear disallowed claims pursuant to **R.I.G.L. §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 for the claimant and the estate cannot agree on a Commissioner, selection will be made by the Probate Judge. Commissioner's fee shall be paid by the parties with approval of the Court.

14) COMMUNICATIONS WITH THE COURT: **Ex parte** communications, except for technical, formal and procedural related inquiries **are prohibited** in all contested matters.

Written communications in any pending probate matter shall be mailed or faxed to Cumberland Probate Court and **not** to the private office of the Judge.

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 granting of said request.

15) CONSERVATORS: Pursuant to **R.I.G.L. § 33-15-44**, the Court will, upon petition **filed by the proposed ward** or his or her relatives or friends, 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. **R.I.G.L. § 33-15-45**

16) CONTINUANCES OF HEARINGS: Hearings in all cases may be continued by agreement of the interested parties; if **R.I.G.L. 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, etc.). In the event the parties cannot agree as to a continuance, the Court shall schedule a hearing to determine whether a matter shall be continued, with notice to all interested parties; **ex parte** continuance shall not be granted, unless there are extenuating circumstances.

17) CUSTODIANSHIPS: The Court may, under certain circumstances, appoint Custodian(s) for a deceased person's estate pursuant to **R.I.G.L. § 8-9-10**. It is necessary that a petition for the allowance of a Will or for the appointment of Administrator be filed prior to any appointment for Custodian. Notice and/or advertisement for appointment of Custodians are 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 in a form or similar form to that attached hereto as **Exhibit II**.

18) DISCOVERY: R.I.G.L. §33-22-19.2 Hearings in probate Courts – Evidence and discovery shall be applicable for all hearings in Probate Court.

Rule 26 through Rule 37 of Superior Court ("Rules for Discovery") are hereby adopted

as the Cumberland Probate Court rules, in those cases where any interested party has requested discovery pursuant to **R.I.G.L. § 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, records, etc.) **shall not** be submitted to the Court except when they are being offered as evidence during a trial of the matter **or** as exhibits to a brief or in a pre-trial hearing. The time for compliance with discovery orders, etc. shall be as the **Superior Court Rules**, unless a different schedule is agreed to by the parties or established with leave of Court for just cause and after hearing thereon.

Proceedings under **R.I.G.L. § 8-9-18** shall, upon request for and approval of Citation, and after service on the party to testify, 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 thereto. Written interrogatories may be submitted by the inquiring party, in lieu of live testimony.

19) FEES FOR ATTORNEYS AND ACCOUNTANTS: 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 shall be accompanied by, but not limited to, documents indicating hours spent, the nature of the work provided, results obtained and any other documents, including retainer agreements, and the summary sheet as set out in **Exhibit III** attached hereto, which may assist the Court in making its decision regarding fees. Assents by all interested parties, if obtained, shall also be submitted.

20) 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, detain, etc. as established for attorney and accountant fees shall apply for fiduciaries.

21) FOREIGN ORIGINAL PROBATE: Petition(s) for the allowance of a Foreign Will 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. § 33-7-18 and § 33-7-22** 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.

22) FORMS: The Cumberland Probate Court shall only accept forms approved and established on the official web page of the **RHODE ISLAND SECRETARY OF STATE** **or** as may be promulgated by this Court. All forms shall be typewritten to be accepted by the Court.

23) GUARDIANSHIPS – The Court shall, from its revolving list of interested and qualified individuals, appoint a Guardian ad litem each time a petition for guardianship is filed; the attorney for the petitioner shall notify said individual of their appointment and provide to that person all relative information concerning the matter.

The Decision Making Assessment Tool signed by a licensed physician and Guardian ad litem report shall be submitted to the Court at least three (3) business days before the matter is to be heard, along with a background check and certificate issued by the State BCI Division of the Attorney General's office in Cranston, Rhode Island.

R.I.G.L. § 33-15-4 The proposed guardian shall, subsequent to their appointment, submit an affidavit in form or similar to that set out on **EXHIBIT IV** herein attesting to their knowledge of their duties and other statutory requirements.

In all cases in which a guardian of the estate is appointed, except in those cases when a disinterested third party is appointed guardian of the ward's estate **or** the expense of the independent appraiser would, in the Court's discretion, outweigh the benefit so obtained, an independent appraiser may be appointed by the Court from its rotating list. The guardian or his/her attorney shall notify the individual so appointed, and provide all pertinent information relative to said appointment.

If the ward possessed an interest in any real estate in Rhode Island, a certified copy of the appointment of the guardian must be recorded in the Land Evidence Records of each city or town.

Replacement guardians in an existing guardianship shall re-file the legislative mandated guardianship petitions and comply with the statutory requirements for service and notice; advertisement of the petition for replacement guardian is not required. The requirement for an updated decision making assessment tool and/or report from a guardian ad litem shall be at the discretion of the Court, depending on the facts and circumstances of each case whenever a replacement guardian is requested.

24) GUARDIANS AT LITEM - Guardians at Litem shall be appointed by the Court with the approval of the Probate Judge. All Guardian ad Litem reports must be submitted on the standard form provided for in **R.I.G.L. § 33-15-47**. Fees for Guardians at Litem will be limited to \$400.00 unless additional fees are authorized by the Probate Judge for cause shown.

The Decision Making Assessment Tool signed by a licensed physician and Guardian ad litem report shall be submitted to the Court at least three (3) business days before the matter is to be heard.

R.I.G.L. §33-15-4 the proposed guardian shall, subsequent to their appointment, submit an affidavit in form or similar to that set out on **Exhibit IV** herein attesting to their knowledge of their duties and other statutory requirements.

In all cases in which a guardian of the estate is appointed, except in those cases when a disinterested third party is appointed guardian of the ward's estate **or** the expense of the independent appraiser would, in the Court's discretion, outweigh the benefit so obtained, an independent appraiser may be appointed by the Court from its rotating list. The guardian or his/her attorney shall notify the individual so appointed, and provide all pertinent information relative to said appointment.

If the ward possessed an interest in any real estate in Rhode Island a certified copy of the appointment of the Guardian must be recorded in the Land Evidence Records of each city or town.

Foreign guardians of the estate nonresident ward owning real estate or other property in Cumberland shall follow the mandates of **R.I.G.L. § 33-19-27**; a Miscellaneous Petition shall be filed, with appropriate notice advertising and after hearing and approval thereon, the **R.I.G.L.** procedures and Administrative Rules set forth herein for the sale or mortgage of real estate or property shall be followed. Thereafter, an Account of the transaction shall be filed with the Court, and upon allowance thereof, the net proceeds from the sale of the real estate shall be delivered to the foreign guardian of the estate, as evidenced by his/her receipt, and an order shall enter from this Court terminating the local probate matter.

Commencing on **January 1, 2016**, the **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act R.I.G.L. § 33-15.2-101-504** shall be effective, and establishes the procedure for the appointment of a **Guardian for Health Care, Residence, Relationships and Finance** when there are issues regarding residency and the like.

Affidavit of "poverty" in order to be qualified for a Good Samaritan guardian: A person petitioning under **R.I.G.L. § 33-15-4.1** for a Good Samaritan guardian must file an affidavit to the probate Court. The affidavit must state that the proposed ward has insufficient funds to pay for the services of a guardian and that such an appointment would be in the best interests of the individual or whom the guardianship is proposed. It may be in any form that includes the reasons for the waiver of filing fees.

Affidavit for appointment as a Good Samaritan guardian: Pursuant to **R.I.G.L. § 33-15-4.1**, a person filing for appointment as a Good Samaritan guardian shall file a guardianship petition with the probate Court. He or she must also file an affidavit of his or her qualifications to serve as a Good Samaritan guardian. Example of a form for such affidavit is attached hereto as **EXHIBIT V**.

25) MINOR GUARDIANSHIPS: 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

according to **R.I.G.L. § 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 hearing. The nominated Guardian shall go to the BCI Division of the Attorney General's office in Cranston, Rhode Island for a background check and certificate to be filed with the Court prior to hearing.

In those cases where one parent is deceased and credible evidence supporting the death is submitted and the surviving parent is petitioning for the appointment of a guardian or waives notice, no additional next of kin of the ward need be notified.

Service on **wards twelve (12) and under** shall be 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.

26) MISCELLANEOUS PETITIONS: In matters wherein no **State form** is suggested or prescribed by statute, for motions, fee petitions, tax minimization, etc.; parties shall use Miscellaneous Petitions for the filing(s).

27) NAME CHANGES: For all persons over 18 years old, upon the filing of a petition to change the name and submission of a birth certificate. The petitioner shall go to the State BCI Division of the Attorney General's office in Cranston, Rhode Island for a background check and certificate before the Court will act on the petition. If a criminal record is reported, the Court may approve, deny or allow the petition be withdrawn without action as the circumstances dictate.

For Petitions to change the name of a minor, the matter shall be referred to the **Rhode Island Family Court** which has exclusive jurisdiction to so act.

28) NOTICE: Notice of proceedings in Probate Court shall be as required by **R.I.G.L. § 33-22-3**

1-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 their counsel**. Notice may be waived by the parties by submission of waiver.

Interested parties (or their counsel) are:

- heirs at law for administrations
- beneficiaries for testate proceedings
- statutory required entities in guardianships
- creditors of decedent and administrative creditors who have filed claims.

2-Notice of the commencement of a decedent estate, with a copy of the death certificate, shall be provided to the **State of Rhode Island Department of Health and Human Services** for all decedent estates pursuant to **RHODE ISLAND GENERAL LAWS**, with evidence of same provided the Court **at the hearing** for allowance of a will or appointment of an Administrator.

Appropriate **certification** shall be provided to the Court and counsel indicating compliance of the **notice requirements**.

29) ORDERS: All orders in contested matters, or as may be requested by the Court, shall be reviewed by opposing counsel pursuant to **R.I.G.L. § 33-22-31** before entry. If no objection is filed within the statutory period, the order shall thereafter enter; objections to orders shall be set for hearing by means of a miscellaneous petition for instructions within the statutory time frame.

30) PETITION FOR SALE OR MORTGAGE OF REAL ESTATE: Before a petition for sale is granted, a copy of the Purchase and Sales agreement shall be provided to the Court; for either a sale or mortgage, an appraisal from an independent source shall also be provided to the Court (the appraisal shall not be from the listing or buyer's Realtor in the case of a sale).

31) REAL ESTATE OWNED BY DECEDENT: The duly appointed fiduciary is requested to file along with the inventory of the personality owned by the decedent, a listing of any real estate owned by the decedents individually or as a Tenant in Common in the State of Rhode Island. This listing shall include the property address, Assessor's Plat and Lot Number or a copy of the deed into the decedent and shall be kept in the probate file. **No appraisal or statement of value is required but may be submitted by the fiduciary.**

32) 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. **R.I.G.L. § 33-22-19.2**

33) RELEASES: The Court, except for **extraordinary circumstances shown**, shall require a release from any individuals or entities entitled to all or a portion of any estate, whether the estate is closed through a **Final Account** or by an **Affidavit of Complete Administration**.

Paid funeral bills and Notice of Tax clearance from the **State Division of Taxation (originals preferred)** as well as releases from any creditors shall be produced for decedent estates.

Final accounts for guardianships shall include a release from the ward if living or any successor guardian as may be duly appointed. If the ward is deceased, a release shall be executed by the fiduciary for his/her decedent estate, provided one is required to be opened.

If a decedent estate or small estate proceeding for a deceased ward under guardianship is not required by law because there are no assets remaining in the estate, the Guardian shall provide evidence that the funeral bill is paid along with his Final Account and an original death certificate.

In order to release an adult from guardianship proceedings, a Decision Making Assessment Tool shall be submitted by the ward's treating physician evidencing the fact(s) that a guardian is no longer required; in addition, if the guardianship was for the estate of the ward, a Final Account from the Guardian and/or a release of the guardian from the former ward must be filed with the Court.

34) REMOVAL OR REPLACEMENT OF FIDUCIARY FOR CAUSE:

(a) Commencement of Action and Hearing

Pursuant to **R.I.G.L. § 33-18-3**, a complaint shall be made by any interested party for the removal of a fiduciary. A Citation, embodying the substance of the complaint, or a copy of the complaint annexed, shall be served to the fiduciary.

(b) Hearing, Advertisement, and Notice

A hearing shall be scheduled for the removal of the fiduciary. The petitioner shall give notice by advertisement pursuant to **R.I.G.L. §33-22-11** for least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those interested persons by mailing to them by regular mail a notice of the hearing and a copy of the petition at least ten (10) days before the scheduled hearing. **R.I.G.L. § 33-22-3.**

(c) Failure to file Inventory and Final Accounting

Any fiduciary removed or replaced is required to file an inventory and a Final Account of his tenure in said fiduciary capacity. Failure to do so may result in contempt proceedings with appropriated sanctions imposed (fine, Court filing, disorderly conduct charges) report to the **Office of the RI Attorney General, Department of Elderly Affairs or RI Supreme Court Disciplinary Counsel.**

If an executor or administrator (not guardians) neglect or fail to file an inventory and a Final Account, without reasonable cause, the probate Court may, after hearing and notice to the fiduciary, decree that he or she is guilty of unfaithful administration of estate under **R.I.G.L. § 33-17-17**. An action may be brought upon the bond of the executor or administrator in the name of the probate Court by any interested party in the matter.

In the event that the said fiduciary above fails to file, the successor fiduciary may be required, as best as possible, to file an inventory and a Final Account for the replaced fiduciary. This **does not** relieve replaced fiduciary of any liability or duty to the estate or to the Court.

(d) Responsibilities

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.

35) REPLACEMENT OF FIDUCIARY DUE TO DEATH:

(a) Commencement of Action

If a petition for replacement of a fiduciary is due to the death of the fiduciary, the petition shall include a copy of the fiduciary's death certificate.

(b) Final Accounting

The successor fiduciary shall, as best as possible, file an inventory and a Final Account for the previous fiduciary. If no expenditures were made by the previous fiduciary and an inventory indicates no personal estate, an affidavit attesting to these facts shall be submitted with the Final Account.

(c) Notice and hearing

A hearing shall be scheduled for the replacement of the fiduciary. The petitioner shall give notice by advertisement pursuant to **R.I.G.L. § 33-22-11** for at least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those interested persons by mailing to them by regular mail a notice of the hearing and a copy of the petition at least (10) days before the scheduled hearing. **R.I.G.L. § 33-22-3**.

(d) Responsibilities

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.

36) REOPENING OF CLOSED ESTATES:

A-Procedures to reopen an estate (wills or administrations) without Court approval when the newly discovered assets total five thousand dollars (**\$5,000.00**) or less
R.I.G.L. § 33-14-13

1- The fiduciary(s) or survivor of them who filed the Final Account of the estate or Affidavit of Complete Administration shall file with the probate Court where the estate was originally filed an affidavit listing the newly discovered asset(s) and its fair market value, together with a statement of the proposed distribution of the asset(s) or funds received as a result of the sale of said asset(s). the affidavit shall be accompanied with a filing fee in the amount of **\$39.00** Exhibit VI for Affidavit form.

2- Upon making said filings, the fiduciary(s) shall forthwith send notice of the filing of the affidavit and statement of proposed distribution of asset(s) with a copy of each, by regular mail to the heirs at law for administrations and to the beneficiaries under the provisions of a will. The notice shall also contain the date the request for reopening was filed with the probate Court and the right that the recipient of the notice has to file an objection to the proposed distribution with the probate Court within (30) days of its filing with the probate Court and that if no objection(s) is filed, the fiduciary shall dispose the asset(s) as proposed.

3- Objection(s) to the distribution by heirs at law, beneficiaries must be filed with the Court pursuant to the statute, with a copy mailed to the fiduciary; (failure to send a copy to the fiduciary is not statutorily mandated, so that the fiduciary must verify that no objection(s) has been timely filed, per the statute, with the Court clerk.

4- Hearings on objections will be scheduled by the Court or as agreed to by the parties. *All Notice(s) herein may be waived by the beneficiaries or heirs at law pursuant to R.I.G.L. § 33-22-5 regarding waiver of notice by interested parties.

5- The probate Court shall, after the expiration of 30 days from the filing date, if no objections be filed to the fiduciary(s) affidavit or if all beneficiaries/heirs at law, as the case may be, waive the 30 day notice in writing, issue a Certificate of Re-opening of Estate without a Court hearing or if an objection is filed a certificate of distribution based on its order after hearing, to the fiduciary(s) consistent with the fiduciary(s) first affidavit or its order after hearing of objections to the affidavit.

6- The fiduciary, after completion of the distribution per its statement or per any order of the probate Court, shall file a second affidavit with the Court, providing the names and addresses of

the persons receiving the asset(s) and the value or amount received and attesting that the estate has now been finalized. **Exhibit VII for affidavit form.**

B-Procedures for the **reopening of closed estate over Five thousand (\$5,000.00) Dollars** shall follow the procedures for an original probate, including the statutory filing fee; **except** that in the case of a Testate decedent estate, the beneficiaries under the provisions of the will rather than the heirs at law shall be provided notice of the hearing. Notice shall be pursuant to **R.I.G.L. § 33-22-3**, except for parties who statutorily waive notice. No advertisement is required unless ordered by the Court.

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. A supplemental inventory listing the newly discovered assets shall be filed.

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 via **final account or affidavit of complete administration** after qualification and action by the fiduciary appointed herein (**without waiting six months**) and with appropriate releases; otherwise, the Court, upon petition for instructions, shall determine the means and method of finalization of the estate pursuant to the applicable statutes which may include advertisement and creditor's notice and a six (6) month waiting period from the issuance of the qualification of the fiduciary for the new probate.

37) RESIGNATION OF FIDUCIARIES:

(a) Commencement of Action

A fiduciary may file a petition to resign. The petition shall state the reasons for the resignation and may request the appointment of a substituted or successor fiduciary. When a fiduciary resigns, and there is no substituted or successor fiduciary already named, the Court may, on its own initiative or on petition filed by any interested person, appoint a substituted or successor fiduciary. (**R.I.G.L. § 33-18-4, and R.I.G.L. § 33-18-5**)

(b) Final Accounting

A petition for resignation of a fiduciary 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.

Pursuant to **R.I.G.L. § 33-18-4**, no resignation shall be accepted until the fiduciary settled his or her accounts with the Court.

(c) Hearing, Advertisement, and Notice

A hearing shall be scheduled. The petitioner shall give notice by advertisement pursuant to **R.I.G.L. §33-22-11** for least fourteen (14) days, once a week after the hearing is scheduled. In addition, the petitioner shall give notice to those interested persons by mailing to them by regular mail a notice of hearing and a copy of the petition at least ten (10) days before the scheduled hearing, **R.I.G.L. § 33-22-3**.

(d) Termination

Resignation of a fiduciary does not terminate the appointment of the fiduciary until the Court enters an order accepting the resignation.

38) SEALING OF RECORDS: The Court may, upon request and Court order, seal the medical and financial related records as well as settlement details of any parties to Probate Proceedings.

39) SMALL ESTATES: Decedent estates whose total assets are fifteen thousand dollars (**\$15,000.00**) or less as defined in **R.I.G.L. § 33-24** may file a petition for Voluntary Informal Executor, pursuant to **R.I.G.L. § 33-24.2** or a petition for Voluntary Administration, pursuant to **R.I.G.L. § 33-24.1** and utilize the forms suggested on **Exhibit VIII and IX** herein or facsimiles thereto.

40) TAX MINIMIZATION: Petitions regarding tax minimization, pursuant to **R.I.G.L. § 33-15-37.1** require notice to all interested parties and the State of Rhode Island Division of Human Services or their counsel by regular mail at least ten (10) days before the hearing, unless waived by all interested parties or at the direction of the Court.

41) TRUSTEE REPLACEMENT: Petitions for the replacement or resignation of Trustee shall be heard with **notice** sent pursuant to these Administrative Rules,

NB: The underlying probate estate must be open.

42) WAIVED MATTERS: All matters to be heard on waiver, except for emergency matters, are requested to be filed at least two (2) days prior to their hearing.

43) WILL FILING: In cases where there are no assets upon which the Will of a decedent may act upon, the designated fiduciary or person in possession of the Will shall file the Will with an appropriate affidavit and filing fee as may be applicable with the Court in order that the **RHODE ISLAND GENERAL LAWS** be complied with using an affidavit comparable to **Exhibit X** herein.

44) WITHDRAWAL FROM CASES AND EXCUSES OF ATTORNEYS:

(A) Withdrawal of Attorney

No attorney appearing in any case will be allowed to withdraw without consent of the Court, except when another attorney enters an appearance at the time of such withdrawal or the person previously represented by the withdrawing attorney formerly enters his/her appearance pro-se with his/her address.

All withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the probate clerk the last known address of his/her client. The address on file for the client shall be the official address to which notices shall be sent.

(b) Excuse from attendance

An attorney's request to be excused from Probate Court shall be made by motion. The motion shall be served upon the attorney of record of any interested parties or pro-se parties for all matters the moving attorney is scheduled to attend during the time that the request is made for; the motion shall contain the following:

- (1) Period of time for which the excuse is requested.
- (2) The reason upon which the request is based.
(only confidential personal matters may be made privately)
- (3) The estate name and number and the name of each attorney of record for each of the interested parties or pro-se individuals in the cases down for hearing.
- (4) A certification that the movant has served a copy of the petition on each attorney of

record or pro-se for those cases assigned during the period for which the excused is sought.

(5) Where the movant has active probate cases, but nothing assigned for hearing during the period for which the excuse is sought, a representation of that fact shall be made.

(6) No excused for attendance shall be granted unless the movant does not have assigned probate cases pending within 14 days of the proposed order.

(c) Illness or absence of attorney

In case of sudden illness of an attorney, or the attorney's absence from Court as a result of other imperative and unforeseen cause, the Court shall take such action, without notice, as shall appear reasonable under the circumstances.

The Probate Court reserves the right to **supplement, add to or amend** these Rules.

These Rules shall take effect for all matters filed on and after February 14, 2019.

BY ORDER: _____

Probate Clerk

ENTER: _____

Joseph J. Roszkowski, Esquire
Probate Judge of the Probate Court
Of the Town of Cumberland, R.I.

EXHIBIT I

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

**PROBATE COURT
TOWN OF CUMBERLAND**

ESTATE OF:

PROBATE NO.:

**FIDUCIARY'S AFFIDAVIT OF NOTICE TO CREDITORS AND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**R.I.G.L. § 33-11-5.2
R.I.G.L. § 40-8-15**

The undersigned, the duly appointed
(title of fiduciary)
for the above estate do/does on oath depose and say:

FIRST: (a) Notice of the commencement of the estate was mailed to all known or reasonably ascertainable creditors of the estate, as well as to the Executive Office of Health and Human Services when the decedent was fifty-five (55) years or older, or that (b) no such notice was required to be mailed because the estate had no known or reasonable ascertainable creditors and the decedent was under the age of fifty-five (55);

SECOND: That all known claims of creditors have been satisfied or denied by me/us in said fiduciary capacity;

THIRD: That any claims filed herein and denied by me/us have been compromised or adjudicated in this Court, Superior Court or District Court; or in the alternative, the Statutory period for appellate action for claims denied by me/us has expired as evidenced by Certificate from the appropriate Court Clerk attached hereto and made a part hereof.

IN WITNESS WHEREOF, the undersigned has/have executed this document this day of _____, 201___.

Subscribed and sworn to me this _____ day of _____, 201___.

Notary Public

EXHIBIT II

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

PROBATE COURT
TOWN OF CUMBERLAND

ESTATE OF:

NO.:

CUSTODIAN'S AFFIDAVIT

That such appointment was sought in order that the deponent might have the charge and care of the personal property of the decedent until letters testamentary, of administration were granted;

That the personal property of the decedent has been preserved intact:

That all fees and incidental expenses connected with his/ her duties as custodian have been personally advanced by the deponent pending reimbursement in his/ her account as such executor/ administrator where he/ she will be charged with the gross amount of the personal estate of the decedent shown by his/ her inventory as such fiduciary filed in due course; and

That in as much as there is no basis for an account as such Custodian, he/ she filed this affidavit in lieu thereof, this day of

Subscribed and sworn to before me by the above Custodian

Notary Public

EXHIBIT III



State of Rhode Island and Providence Plantations
Probate Court

APR 19 1988

APPLICATION FOR APPROVAL OF FIDUCIARY'S AND ATTORNEY'S FEES

RIGL 9-14-25 & RIGL 33-14-8

STATE OF RHODE ISLAND

County of

Select County

Estate of

Alias

PROBATE COURT OF THE

City or Town of Select City or Town

No.

THE

ACCOUNT

(number of account)

Name of Attorney:

Bar #

Name and Title of Fiduciary:

Detail any special problems and difficulties presented:

Total Hours of Fiduciary:

Hourly Rate:

Total Hours of Attorney:

Hourly Rate:

PLEASE ATTACH ITEMIZED TIME SHEET**DECREE****Fiduciaries' Fees****Attorneys' Fees**

Amount Requested: \$

Amount Requested: \$

Amount Approved: \$

Amount Approved: \$

Entered:

Probate
JudgeSignature of
Probate Judge

Date

PROBATE JUDGE SIGN HERE

EXHIBIT IV

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

PROBATE COURT
TOWN OF CUMBERLAND

ESTATE OF:

PROBATE NO.:

(Full Age Limited Guardianship)

AFFIDAVIT

_____, being the Proposed Guardian in the above-entitled matter,
under oath depose and say as follows:

1. That I have never been convicted of a felony offense;
2. That I have the ability to obtain a corporate surety bond to insure my fidelity in handling the assets of the Ward as may be ordered by the Probate Court;
3. That I am familiar with the duties of a Guardian of the Person and/or Guardian of the Estate in Rhode Island and will, to the best of my ability, perform these duties for the well-being of the Ward;
4. That I will provide the Court with an Annual Status Report on the physical condition of the Ward and if I am the Guardian of the Estate, I will file annual accounts with the court, unless excused from doing so;
5. That I will keep the Court informed of my current address.

IN WITNESS WHEREOF, I have set my hand and seal this ____ day of

_____, 20____.

Signature

Subscribed and sworn to before me on this ____ day of _____, 20____.

NOTARY PUBLIC

EXHIBIT V

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

**PROBATE COURT
TOWN OF CUMBERLAND**

ESTATE OF:

PROBATE NO.:

(Full Age Limited Guardianship)

AFFIDAVIT for Prospective Good Samaritan Guardian

I, _____ being duly sworn do hereby depose under oath as follows:

1. My name is _____, and my occupation is _____,
I am employed at _____;

2. My experiences relating to the care of the Ward includes:

3. That I am willing to serve as a Limited Guardian pursuant to R.I.G.L a Good Samaritan
Guardian pursuant to R.I.G.L. § 33-15-4.1;

4. If appointed as a Limited Good Samaritan Guardian, I agree that I will not seek any fees
or monetary compensation for such services.

5. That I will keep the Court informed of my current address.

Name

Signature

Subscribed and sworn to before me as to the truth of the facts above by

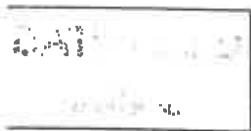
who resides in _____, on this ____ day of
_____, 20____.

Notary Public

Print Name

EXHIBIT VI

State of Rhode Island and Providence Plantations
Probate Court



AFFIDAVIT OF NEWLY DISCOVERED ASSETS \$5,000.00 OR LESS AND STATEMENT OF PROPOSED DISTRIBUTION

RIGL 33-14-13

STATE OF RHODE ISLAND

County of

Select County

Estate of

Alias

PROBATE COURT OF THE

City or Town of Select City or Town

No. _____

Fiduciary:

Fiduciary

Title of
Fiduciary

Street
Address

State

Zip Code

Email

Phone
Number

Co-Fiduciary

Title of
Co-Fiduciary

Street
Address

State

Zip Code

Email

Phone
Number

Represents as follows:

1. Subsequent to the closing of the above estate on _____ (MM/DD/YYYY) the formerly appointed and qualified fiduciary(ies) has/have discovered the following asset(s), collectively having a value of \$5,000.00 or less:

Describe Asset(s)

Actual Current Value

\$

\$

\$

\$

\$

\$

\$

Total \$

2. Your petitioner(s) avers and states that the assets will be distributed to the beneficiaries under the decedent's will or if this was an administration proceeding, to the heirs at law as follows:

Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$

3. Petitioner further avers that a copy of this petition, along with the date it was filed with the court, with notice that the above have 30 days from that date to file an objection with this court (copy to fiduciary) to the proposed distribution, has been provided to the beneficiaries under Will, if applicable, or to the heirs at law if this is an administration proceeding.

4. Notice has been given pursuant to RIGL 33-14-13(a)(2) and (a)(3) to the following persons:

Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$
Heir at Law	Relationship	Amount
Address		\$

Fiduciaries: To the best of my knowledge or belief, the statement(s) contained within this document are truthful and accurate.

Signature of Fiduciary	FIDUCIARY SIGN HERE	Date
Signature of Fiduciary	FIDUCIARY SIGN HERE	Date

Notary:

Name of Notary	State	County
----------------	-------	--------

On _____ day of _____, 20_____, the petitioner, known to me or proved through satisfactory evidence, signed the document in my presence and swore or affirmed the statement(s) in the document is/are truthful and accurate.

Signature of Notary	NOTARY SIGN HERE	Date
---------------------	------------------	------

Commission ID#	Commission Expiration Date	Notary Seal	
----------------	----------------------------	-------------	--

PETITION FOR VOLUNTARY INFORMAL EXECUTOR
RIGL 33-24-2

DATE FILED

For
Court Use Only

STATE OF RHODE ISLAND

County of **Select County**

Estate of _____

Alias _____

PROBATE COURT OF THE
City or Town of **Select City or Town**

No. _____

Respectfully represents:

Name of
Deceased _____

Date of Death
(Died Testate) _____

Address: _____

Petitioner:

Name _____

Relationship to
Deceased _____

Street _____

Address _____

City/Town _____

State _____

Zip
Code _____

Phone
Number _____

does on oath affirm, attest, and say that:

1. He/She is of full age and legal capacity. (An executor or alternate executor may reside outside the State of Rhode Island. All other petitioners must be residents of Rhode Island pursuant to RIGL 33-24-2(A).)

2. That more than thirty (30) days have passed since the death and that no Petition for Probate of the Will has been filed in the city or town in which the Deceased resided.

3. The following persons would inherit under the provisions of Rhode Island General Laws 33-1-1 et seq. in case of Intestacy.

Name _____ Relationship _____ Address _____

4. Attached to this affidavit and made a part of it is a schedule of all assets owned by the deceased as of his/her date of death, with the value as of date of death listed, and that said assets consist of personal property only and does not exceed \$15,000.00 in value, exclusive of all tangible personal property.

5. The deceased owned no real estate at the time of their death.

6. That pursuant to the original Last Will and Codicils, if any, filed herewith, the following beneficiaries would take under its provisions:

Name _____ Address _____

SCHEDULE OF PERSONAL PROPERTY TITLED SOLELY IN DECEASED'S NAME

Description of Assets

(Not to exceed \$15,000.00. No real estate or tangible personal property.)

Value

Total (Not to exceed \$15,000.00)

EXHIBIT IX



State of Rhode Island and Providence Plantations
Probate Court

PETITION FOR VOLUNTARY INFORMAL ADMINISTRATOR

RIGL 33-24-1

STATE OF RHODE ISLAND

County of Select County

Estate of _____

Alias _____

PROBATE COURT OF THE

City or Town of Select City or Town

No. _____

Respectfully represents:

Name of
Deceased _____

Date of Death
(Died Intestate) _____

Address: _____

Petitioner:

Name _____

Relationship to
Deceased _____

Street _____

Address _____

City/Town _____

State _____

Zip
Code _____

Phone
Number _____

does on oath affirm, attest, and say that:

1. He/She is of full age and legal capacity, and a resident of the State of Rhode Island.
2. That more than thirty (30) days have passed since the death and that no Petition for Probate of the Will has been filed in the city or town in which the Deceased resided.
3. The following persons would inherit under the provisions of RIGL 33-1-1 in case of intestacy.

Name _____ Relationship _____ Address _____

4. Attached to this affidavit and made a part of it is a schedule of all assets owned by the Deceased as of his/her date of death, with the value as of date of death listed, and that said assets consist of personal property only and does not exceed \$15,000.00 in value, exclusive of all tangible personal property.

5. The Deceased owned no real estate at the time of their death.

6. That the undersigned will act as Voluntary Informal Administrator(s) for the Deceased and will administer the Estate according to law and apply the proceeds of the Estate in conformity with the provisions of RIGL 33-24-1(e), including the payment of the funeral bill.

In Witness Whereof I/we sign this petition on the

day of _____

(day)

(month)

(year)

Name of Affiant	Signature of Affiant			AFFIANT SIGN HERE
Street Address				
City/Town	State	Zip Code	Phone Number	
Name of Affiant	Signature of Affiant			AFFIANT SIGN HERE
Street Address				
City/Town	State	Zip Code	Phone Number	
Notary:				
Name of Notary	State	County		
On _____ day of _____, 20_____, the petitioner, known to me or proved through satisfactory evidence, signed the document in my presence and swore or affirmed the statements in the documents are truthful and accurate.	NOTARY SIGN HERE			Date
Signature of Notary Public				
Commission ID#	Commission Expiration Date	Notary Seal		
Reviewed and approved:				
Probate Judge				Date
Signature of Probate Judge	PROBATE JUDGE SIGN HERE			
Certified:				
Probate Clerk				Date
Signature of Probate Clerk	PROBATE CLERK SIGN HERE			

SCHEDULE OF PERSONAL PROPERTY TITLED SOLELY IN DECEASED'S NAME

Description of Assets

(Not to exceed \$15,000.00. No real estate or tangible personal property.)

Value

Total (Not to exceed \$15,000.00)

EXHIBIT X

State of Rhode Island and Providence Plantations



Probate Court

PETITION TO FILE WILL WITH NO ASSETS

RIGL 33-7-5

DATE FILED

File
Court Clerk

STATE OF RHODE ISLAND

County of Select County

Estate of _____

Alias _____

PROBATE COURT OF THE

City or Town of Select City or Town

No. _____

Petitioner:

Name _____

Relationship to
Deceased _____

Street Address _____

City/Town _____

State _____

Zip
Code _____

Phone
Number _____

I, being duly sworn, upon my oath depose and say:

That I am: a relative a friend other: _____

of the late: _____ who died a resident of _____

(name of Deceased)

(town of residence)

(date of death)

1. That upon his/her death, the deceased left a Last Will and Testament dated _____, attached hereto. That under Paragraph _____, of said Last Will and Testament, I am named Executor/Executrix of the estate: that there are no assets which require Probate Administration under the terms of the late _____'s Last Will and Testament.

2. The funeral bill for the deceased, attached hereto, was paid in full on: _____

3. The decedent left the following heirs at law:

Name of
Heir At Law _____

Relationship to
Deceased _____

Street Address _____

City/Town _____

State _____

Zip
Code _____

Phone
Number _____

Additional heirs at law and beneficiaries must be listed on page 1A.

4. Said Will is presented to the Probate Court of the city/town of Select City or Town for filing pursuant to the provisions of RIGL 33-7-5 and the affiant has received **NO NOTICE** of any probate proceedings or of the issuance of letters testamentary or letters of administration regarding the estate of the decedent.

Petitioner: To the best of my knowledge or belief, the statement(s) contained within this document are truthful and accurate.

Signature of
Petitioner _____

PETITIONER SIGN HERE

Date _____

Notary:

Name of Notary _____

State _____

County _____

On _____ day of _____, 20_____, the petitioner, known to me or proved through satisfactory evidence, signed the document in my presence and swore or affirmed the statement(s) in the documents is/are truthful and accurate.

Signature of Notary Public _____

NOTARY SIGN HERE

Date _____

Commission ID# _____

Commission Expiration Date _____

Notary Seal _____

Filed and recorded on _____

(MM/DD/YYYY) only: **NO ACTION TAKEN**

Probate Clerk
Name _____

Date _____

Probate Clerk
Signature _____

PROBATE CLERK SIGN HERE

Probate Seal _____

Deceased left the following surviving spouse and heirs at law:

(Indicate any minors or incompetents.)

NAME

RELATIONSHIP

ADDRESS

You may provide additional attachments, if necessary.