

Local Rules Governing

Warren Probate Court

Morphis A. Jamiel, Judge

Julie A. Coelho, Clerk

WARREN PROBATE COURT

INFORMATION FOR GUARDIANS AND CONSERVATORS

To help perform your duties properly, described below are the general duties and obligations of a guardian and conservator.

If you have been appointed guardian of the person, you have charge of the respondent's person and respondent is known as a ward. If you have been appointed guardian over the estate, you have charge of the ward's property. If you have been appointed both guardian of the person and guardian of the estate, you have charge of both respondent's person and property. Your authority as guardian may be limited by the order appointing you. Consult your attorney as to the extent of your authority.

As guardian of the person, you have the duty to take charge of the person of the ward and to provide for the ward's care, treatment, habitation, education, supported maintenance; and the powers and duties shall include (a) assuring that the ward resides in the best and least restrictive setting reasonably available; (b) assuring that the ward receives medical care and other services that are needed; (c) promoting and protecting the care, comfort, safety, health, and welfare of the ward; and (d) providing required

consents on behalf of the ward. You will be required to file a personal status report annually concerning the care, welfare, and placement of your ward.

As guardian of the estate, or conservator, you must take possession of your ward's property to the extent authorized by the court. The property, income, and bank accounts should be kept separate from your own funds and must be placed in trust in your name as guardian for the ward. You must invest the ward's funds according to law and you are personally liable for imprudent or unauthorized investments. You may only spend the ward's funds for purposes authorized by statute or court order. You may apply for an order of continuing support and maintenance authorizing you to spend a budgeted sum each month for the ward. You will be required to file annual accountings called an account, showing in detail all receipts and expenditures occurring during the preceding year. Each entry must be explained and each expenditure must be authorized by statute or court order. You may not sell, trade, lease, mortgage, transfer or discard your ward's property without court approval, even though the ward may be your child or other relative.

In the event the ward dies or you or the ward move from one address to another, you have a duty to notify the court in writing of such death or new address and telephone number as soon as possible.

If you fail to perform any of your duties as guardian, or conservator, you are liable to be removed and be held personally liable for any loss or damage sustained by the ward by reason of your failure. You are under a duty, at all times, to act in the best interests of you ward, and to avoid conflicts of interest which impair your ability so to act.

In certain cases, expenses of bond and other costs may be saved placing funds in restricted deposits and/or securing waiver of filing the annual

accounts. Consult your attorney.

With court approval, a guardian or conservator may use the ward's funds to pay for your attorney's services. If only limited funds or public assistance (SSI) is available, you may qualify for free legal aid.

When the ward owns real property and/or you as the Guardian want to lease, mortgage or sell the ward's real property, such a petition must be brought before the Probate Court and the Court must give notice by advertisement once a week for at least two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first of any hearing dates contained in such notice § 33-22-11 and § 33-22-8.

I do hereby state that I do understand the duties and responsibilities as stated above.

Signature: _____

Date: _____

TOWN OF WARREN

PROBATE COURT

RULES OF PRACTICE AND PROCEDURE

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

COURT SESSIONS – Sessions will convene at 9:30 A.M. on the second and fourth Thursday of each month unless that day is a legal holiday. Court sessions are held at the Warren Town Hall, 514 Main Street in the Town Council Chambers, second floor. The court reserves the right to meet on a different day at a different place for contested matters.

COURT CALENDAR – Counselors are required to sign the docket sheet in the Town Clerk's Office on the day of the court session; the Clerk's Office is open at 9:00 A.M. The Calendar will be called at 9:30 A.M. The formal

matters will be heard initially and in order of sign-in. Matters requiring a hearing will be heard in order following the formal matters.

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

FILING FEES/DEADLINE – No matter will be heard unless and until all fees currently due have been paid. Checks should be payable to the “Town of Warren.” Matters requiring advertising should be filed and the necessary fees paid not later than the previous Friday of the week of publication. Publication will be in the Wednesday edition of the Warren Times Gazette three times prior to the hearing. All matters on waiver should be filed 48 hours prior to the hearing date. The Probate Court reserves the right to set matters on waiver for another hearing date if the court docket exceeds its usual petitions. In case of an emergency, the Probate Judge should be contacted directly.

ELECTRONIC RECORDINGS–

A. Electronic recordings of any court proceeding will be made by the Court at every session and pursuant to § 33-22-19.1. However, parties are advised not to rely upon this method and are further advised to have court proceedings before their own authorized court stenographer at their own expense.

B. The Probate Court shall, upon written request, permit parties to produce written transcriptions from electronic tape recordings made by the court. Copies of tapes will be available for \$35.00 per transcript.

C. Electronic tape recordings of hearings will be kept in accordance with the record retention schedule as set forth under RIGL §8-9-7.

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. A

with copy of each decision must be sent to all interested parties.

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 or easily ascertainable creditors § 33-11-5.1.

CERTIFICATION OF CHARGES – No account will be accepted by the Probate Court Clerk unless accompanied by a certification of attorney and Fiduciary 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.

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 14 days prior to the hearing. Notice shall be given by advertisement once a week for at least two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first of any hearing dates contained in such notice, in a newspaper printed in English and published in the Warren Times Gazette or in the Providence Journal having general circulation § 33-22-11. In the case of limited guardians and guardians, notice shall be reduced to five days or in the case of temporary guardians a shorter period is approved by the Court upon motion by the petitioning party.

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 has been filed and is signed by a licensed physician and has been presented to the Court at least three days before the hearing date. All DMATS are to be SEALED in compliance with HIPPA REGULATIONS

GUARDIANS 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 this list. All Guardian ad litem reports must be submitted at least 3 days before

hearing date, on the standard form provided in § 33-15-47. Fees for Guardians ad litem shall be limited to a maximum of \$150.00 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 submit your name, qualifications and malpractice declaration sheet to Warren Probate Clerk.

RULES OF EVIDENCE – In all contested matters, the Rhode Island Rules of Evidence shall be applied. Parties may stipulate to certain facts as may be agreed upon.

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 § 33-9-1. Every Guardian shall do so within 30 days of his/her appointment § 33-15-19. Parties unable to submit inventories within the required times should petition the Court for an extension of time.

AFFIDAVITS OF COMPLETE ADMINISTRATION – No Affidavit of Complete Administration will be accepted without original releases of legatees including the fiduciary. Originals of paid funeral bill and inheritance tax discharge, claim releases, certification that notice has been given to all known or easily located creditors, **devise and descent certificate to be dated and returned for recording pursuant to 33-9-29 and a recorded copy is required to be filed with this estate or an Affidavit stating that the decedent did not own real estate** and current payment of fees must also be submitted. Affidavits of Complete Administration and Voluntary Informal Estate Affidavits will not appear on the court docket but will be handled administratively within the Probate Clerk's office.

ATTORNEY/FIDUCIARY FEES – Affidavits 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, which are merely administrative or

clerical.

FORMS – Use of State wide forms when available now required. All petitions, motions and forms when ever substituted must contain accurate information.

CHANGE OF NAME – A criminal record check through the Police Department will be conducted for all persons petitioning for a name change. If there is a criminal record, the Probate Judge will exercise discretion as to the name change on a case-by-case basis. Notice must be given to natural parent when a change of name is requested for a minor.

PROBATE JUDGE – Pursuant to the Warren Charter §7.01, the sitting Probate Judge shall hear all cases. In case of sickness, absence from the Town or other disability or ineligibility of the judge of the probate court to serve, the Town solicitor, shall perform the duties of said judge during the sickness, absence or other inability or ineligibility of said judge. The acts of said acting judge in the performance of said duties shall have the same effect as if performed by said judge.

ACCOUNTS OF FIDUCIARIES – All Accounts submitted by a Fiduciary must be certified by the fiduciary and the attorney representing the fiduciary, or the Certified Public Accountant who prepared the account, as required by § 33-14-2.2.

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

A devise and descent certificate to be dated and returned for recording pursuant to R.I.G.L. 33-9-29 and a recorded copy is required to be filed with this estate or an Affidavit stating that the decedent did not own real estate.

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

ALLOWANCE TO FAMILIES – Petitions for allowance of support to families shall be advertised, with written notice or waiver to interested parties as set forth herein; the inventory for the estate must be filed before any hearing thereon.

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 (s) is canceled or a new fiduciary is appointed.

CERTIFICATES OF APPOINTMENT, etc. – If there is no activity in a Probate matter for two (2) years from the qualification of a fiduciary, requests for certificate of appointments or exemplified copies of records, shall be made ex-parte to the Court by a miscellaneous petition; after hearing thereon, the Court may authorize said requests.

CLAIMS OF CREDITORS– Claims shall be filed in accordance with §33-11-5 the court will not on its own initiative deems a claim filed out of time or rejects 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 §33-11-5.1.

If a creditor agrees to accept less than the amount of the claim filed and if the Executor is **not authorized** by the decedent to compromise or settle claims and for all Administrations and Guardianships, a Miscellaneous Petition for compromise shall be filed and heard by the court.

Notice of the hearing shall be given by regular mail at least ten (10) days before the hearing to all interested parties or their counsel, unless waived in writing. Thereafter or contemporaneously with the petition, an executed release for the compromised amount shall be filed in the proceeding.

CONTINUANCES – 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 request. The court reserves the right to deny the request for continuances in extreme circumstances.

CONSERVATORS – Pursuant to §33-15-44 the court will, upon petition **filed by the proposed ward**, 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.

DISCOVERY – Rule 26 through Rule 37 of Superior Court (“Rules for Discovery”) are hereby adopted as the Warren Probate Court rules, in those cases where any interested party has requested discovery pursuant to § 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, record, 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. 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 § 8-9-17 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.

MINOR GUARDIANSHIP – 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 § 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.

In those cases wherein 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 showing facts and information sufficient to assist the court in determining who shall be served, in lieu of personal service on the proposed ward.

MISCELLANEOUS PETITIONS –In matters wherein no State form is suggested or prescribed, for motions, fee petitions, tax minimization, etc; parties shall use Miscellaneous Petition for the filing(s).

NOTICE – Notice of proceedings in Probate Court shall be as required by §33-22-3.

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 the counsel**.

Notice maybe waived by the parties by submission of waiver.

Interested parties are:

Heirs- at- law for administrations.

Beneficiaries for testate proceedings (after allowance of the Will).

Statutory required entities in guardianships creditors of decedent, and administrative creditors who have filed claims.

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

REOPENING OF CLOSED ESTATES – Petitions for the reopening of closed estate shall follow the procedures for an original probate; except that in the case of a testate decedent estate, 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 procedures for creditor's notice, advertisement and duration for an estate being opened for an original probate shall be followed.

REPLACEMENT, REMOVAL OR RESIGNATION OF FIDUCIARIES – A petition for resignation of a fiduciary who has qualified for which **no inventory** has been previously filed 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.

A petition for replacement of a fiduciary because of the death of the fiduciary shall also include a certified copy of the fiduciary's death certificate; the successor fiduciary shall, as best as possible, file a Final Account for the previous fiduciary; if no expenditures were made the previous fiduciary and an inventory indicates no personal estate, an Affidavit attesting to these facts shall be submitted with the Account.

A fiduciary replaced for cause is required, after citation and hearing, to file an Account of his/her tenure in said fiduciary capacity; failure to do so may result in contempt proceedings initiated, with appropriate sanctions imposed.

A successor fiduciary, after removal for cause, may be required to, as best as possible, to file a Final Account for the replaced fiduciary, without relieving the replaced fiduciary of any liability or duty to the estate or to the court.

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.

SEALING OF RECORDS – The Court may, upon request, seal the medical and related records of any parties to Probate Proceedings.

SMALL ESTATE – Decedent estates whose total assets are fifteen thousand dollars (\$15,000.00) or less as defined in § 33-24 may file a petition for Voluntary Informal Executor, pursuant to § 33-24.2 or a petition for Voluntary Administration, pursuant to § 33-24.1.

TAX MINIMIZATION- Petitions regarding tax minimization, pursuant to § 33-15-37.1, require advertising and notice to all interested parties or their counsel by regular mail at least ten (10) days before the hearing, unless

waived by all interested parties.

MOTIONS – An application to the Court for an Order shall be by Motion. A Motion other than one made during a trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

APPEARANCE, WITHDRAWAL, AND EXCUSAL OF ATTORNEY –

(a) *Appearance.* The attorney for an estate or any party in a Probate Court action shall forthwith file his or her appearance in writing with the clerk of the Court wherein the action is pending.

(b) *Withdrawal.* (1) By motion. An attorney who has appeared on behalf of any person in a Probate Court action may not withdraw unless he or she first obtains the consent of the Court. All withdrawals shall be made upon Motion with notice to all parties involved. A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append to his or her motion the last known address of his or her client, which shall be the official address to which notices may be sent. A Motion to withdraw shall be accompanied by an affidavit setting forth facts showing the military status of his or her client. If it appears that the client is in the military service of the United States, as defined in the “Soldiers and Sailors” Civil Relief Act of 1940, and any amendments thereto, the Motion shall not be granted unless the client consents therein in writing or another attorney appears of records as counsel at the time of such withdrawal.

(2) *By stipulation.* Where a client for whom an attorney has filed an entry of appearance is desirous of substituting new counsel a stipulation may be entered pursuant to which the first counsel withdraws his or her entry and replacement counsel enters his or her appearance. Such a stipulation shall not be entered where the substitution of counsel shall be cited by the client as a justification for delay in proceedings.

(c) *Excusal.* No attorney shall be excused from attendance upon the Warren Probate Court except upon application to the Judge, and such excuse from attendance shall be granted on such terms and conditions as the Court may

set. In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, a Judge shall take such action, without notice, as shall appear reasonable in the circumstances.

ENTERED:

PER ORDER:

Morphis A. Jamiel, Judge

Julie A. Coelho, Clerk