

TOWN OF EXETER, RI

Lynn M. Hawkins, CMC

Town Clerk
Council Clerk
Probate Clerk

675 Ten Rod Road
Exeter, R.I. 02822
Ph: (401) 294-3891
Fax: (401) 295-1248
clerk@town.exeter.ri.us

TOWN OF EXETER PROBATE COURT

RULES OF PRACTICE AND PROCEDURE

Pursuant to R.I.G.L. 33-22-29, the Probate Court (hereinafter referred to as the "Court") of the Town of Exeter hereby establishes the following local administrative rules:

1. COURT SESSIONS:

Court will normally convene at 2:00 p.m. on the fourth Monday of each month. Court sessions will be held in Town Council Chambers, at the Exeter Clerk's Office, 675 Ten Rod Road, Exeter. The Court reserves the right to convene on a different day and to grant special court sessions as it deems necessary and appropriate. The Exeter Probate Judge presides over all Court sessions. If the Probate Judge has a conflict of interest relative to a probate matter or is absent, disabled, or disqualified from serving as Probate Judge, the Deputy Probate Judge, as appointed by the Exeter Town Council, shall serve as Probate Judge.

2. COURT DOCKET/SIGN-IN SHEETS:

Prior to each Court session, the Probate Clerk will prepare a docket of the cases and matters to be heard. Typically, Probates of Wills, Petitions for Administration, and Name Changes are heard first. Contested matters are heard at the end of the Court session. Administrative actions are dealt with after the Probate Session has been concluded. The Court docket will be posted to the Town of Exeter Website the business day prior to the Court session and made available the day of the Court session. The Probate Judge will generally follow the order of the docket but reserves the right to amend the order as he or she deems necessary and appropriate. Upon arrival to the Court session, all parties who wish to address the Probate Court shall sign the sign-in sheet made available by the Probate Clerk.

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. There are no additional fees or charges for special sessions (R.I.G.L. 33-22-30).

4. PETITIONS GENERALLY/FILING FEES:

Regarding petitions generally, refer to R.I.G.L., Chapter 33, Probate Practice and Procedure. Use of Statewide forms for all petitions is mandatory. Refer to Rhode Island Secretary of State's website, Probate Forms. All forms must be completed in full. Required documentation and fees must accompany all petitions upon filing. Town of Exeter Probate fees can be found on the Town's website, under Town Clerk, Probate. Payment of the fees will be accepted in cash or check made payable to the "Town of Exeter." Petitions that are not complete, do not include the required documentation, and/or do not include the fee will not be accepted.

5. FILING DEADLINES:

Petitions requiring advertising must be filed with the Probate Clerk no later than the first day of the month of the Court session. Publication will be in The Standard Times two times prior to the Court session. Matters on waiver or matters that do not require advertising must be filed with the Probate Clerk no later than the Wednesday preceding the Court session. All other filings (pleadings, memoranda, etc.) must be filed with the Probate Clerk no later than the Friday preceding the Court session.

6. LEGAL ADVICE/DISCLOSURE:

It is prohibitive by law for the Probate Judge or Probate Clerk to provide legal advice pertaining to Probate matters. Likewise, the Probate Judge and Probate Clerk are prohibited from assisting parties in the completion of Probate forms. All parties are encouraged to seek legal representation. Those persons appearing before the Probate Court without legal representation (i.e., appearing Pro SE) do so at their own risk and responsibility. The Probate Court is a court of law. Fiduciary duties are defined and regulated by State statute (R.I.G.L. 33 et. seq.). All decisions, orders, decrees, and judgments are legally binding, shall be available in writing promptly, and effective the date of execution, unless otherwise noted. If an order or decree is not available for execution at the time of the hearing, the Probate Judge will require the prevailing party to mail such form to all interested parties via regular mail. Not receiving objection within seven days after mailing, the prevailing party will file the original

thereof, with certification of notice of mailing, with the Probate Clerk for execution.

7. GENERAL NOTICE:

In matters where the statutes are not specific or silent, 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 (after allowance of Will); statutory required entities in guardianships; and creditors of decedent who have filed claims. Appropriate certification shall be provided to the Court indicating compliance of the notice requirements.

8. ELECTRONIC RECORDINGS:

Electronic recordings of Court sessions will be made by the Probate Clerk at the request of the Probate Judge or any party thereto by electronic tape recording (R.I.G.L. 33-22-19.1). Parties may, at their own expense, have the court sessions transcribed by an authorized court stenographer.

9. COURT DECISIONS/ORDERS:

Every decision/order of the Exeter 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). All orders in contested matters shall be reviewed by opposing counsel before entry. If no objection is filed within the statutory period, the order shall be entered. Objections to orders shall be set for hearing by means of miscellaneous petition.

10. CLAIMS TO CREDITORS:

Claims shall be filed in accordance with RIGL 33-11. The Court will not on its own initiative deem a claim filed out of time or reject claims without a hearing.

11. NOTICE TO CREDITORS:

No First and Final Account and no Affidavit of Complete Administration will be accepted by the Exeter Probate Court without an 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).

12. ALLOWANCE TO FAMILIES:

Petitions for allowances of support to families shall be advertised with written notice or waiver to interested parties. The Inventory for the estate must be filed before any hearing.

13. FEES FOR ATTORNEYS AND ACCOUNTANTS:

A Court hearing is required for all petitions for attorney and accountant fees in any estate for which an 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 any other document which may assist the Court in making its decision regarding fees. Assents by all interested parties, if obtained, shall also be submitted.

14. 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. Regarding guardianships, the same procedures relative to notice, detail etc. as established for attorney and accountant fees shall apply for fiduciaries.

15. BONDS:

In any Probate case requiring a bond with corporate surety, no riders or amendments shall be accepted by the Exeter Probate 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.

16. CERTIFICATION OF ACCOUNTING:

No Account will be accepted by the Probate Court Clerk unless accompanied by a certification from the attorney of record for the estate substantially in the form set forth in R.I.G.L. 33-14-2.2. There will be no exceptions. The Probate Judge may request additional evidence (R.I.G.L. 33-14-2).

17. GUARDIANSHIPS:

No petition for limited guardian, guardian or temporary guardian will be heard by the Exeter 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.

18. DECISION MAKING ASSESSMENT TOOLS (DMAT):

No petition for the appointment of a limited guardian, temporary guardian or guardian will be heard by the Exeter Probate Court unless a Decision Making Assessment Tool (DMAT), initial assessment signed by a licensed physician, has been presented to the Court.

19. 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 Exeter Probate Court will appoint from the court list. All Guardian ad litem reports must be submitted on the standard form provided in R.I.G.L. 33-15-47. Fees for Guardians ad Litem shall be limited to a maximum of \$800.00, unless the Probate Judge for cause shown authorizes additional fees. The Guardian ad Litem must furnish an itemized bill.

20. 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 (R.I.G.L. 33-22-19.2).

21. INVENTORIES:

Every Administrator or Executor shall within 90 days after his/her appointment return to the Exeter Probate Court, signed under oath, a true inventory of all the personal property of the deceased, in accordance with R.I.G.L. 33-9-1. Every Guardian shall do so within 30 days of his/her appointment (R.I.G.L. 33-15-19). Parties unable to submit inventories within the required times should petition the Court for an extension. The filing of the Inventory shall be carried over each month until the Inventory is filed and fees paid (if applicable).

22. CERTIFICATES OF APPOINTMENT:

If there is no activity in a Probate matter for one year from the qualification of a fiduciary, requests for certificate of appointment or exemplified copies of records shall be made to the Exeter Probate Court by a miscellaneous petition. After hearing thereon, the Court may authorize said requests.

23. 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 be provided to the Court (appraisal shall not be from the listing or buyer's Realtor in the case of sale).

24. AFFIDAVITS OF COMPLETE ADMINISTRATION:

No Affidavit of Complete Administration will be accepted without original releases of legatees, including fiduciary, 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 be handled administratively and no hearing will be required.

25. REOPENING OF CLOSED ESTATES:

Petitions for the reopening of closed estates shall follow the procedures for an original Probate of Will or Administration. 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 be advertised. A Miscellaneous Petition shall be used to initiate the matter.

26. 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 death of the fiduciary, shall also include a 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 by 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 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.

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

28. CHANGE OF NAME:

A criminal record check through the Rhode Island State Police or Exeter Town Sergeant will be conducted for all persons petitioning for a name change. If there is a criminal record, the Probate Judge will exercise his/her discretion as to the name change on a case-by-case basis. Petitioner is responsible for any fee.

29. SEALING OF RECORDS:

The Court may, upon request, seal the medical and related records of any parties to Probate proceedings.

30. 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 the appropriate affidavit and filing fee with the Court in order that the Rhode Island General Laws be complied with.

31. EFFECTIVE DATE:

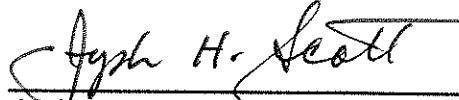
The Town of Exeter Probate Locals Rules of Practice and Procedure will take effect immediately upon adoption.

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

Suggestions for modifications or additions to these rules by attorneys or parties to the proceedings of the Exeter Probate Court are encouraged.

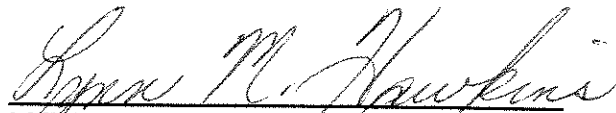
Adopted this 1st day of October, 2018.

By Order:



JOSEPH H. SCOTT, ESQ.
Exeter Probate Judge

Entered:



LYNN M. HAWKINS, CMC
Exeter Probate Clerk