



RULES OF PROBATE PROCEDURES

COMMONWEALTH SUPERIOR COURT

EFFECTIVE DATE JULY 15, 1996

**RULES OF PROBATE PROCEDURES
FOR THE COMMONWEALTH SUPERIOR COURT**

I. GENERAL PROVISIONS

**Rule 1
SCOPE**

These rules are to be used in conjunction with the Code and are designed to provide a procedure for the efficient probate of an estate with notice to all interested persons so that upon closing of the estate a fair and proper distribution according to law is affected.

**Rule 2
CONSTRUCTION**

These rules are to be construed with existing and any future legislative enactments regarding the succession of property whether testate or intestate.

ARTICLE II. PROCEDURE FOR PROBATE OF WILLS

**Rule 3
FILING WILL WITH THE CLERK**

The custodian of a will within thirty (30) days after being informed that the maker thereof is dead, shall deliver the same to the Clerk of the Commonwealth Superior Court, or to the executor named therein. The Court may order the production of a will upon the filing of a petition.

**Rule 4
WHO MAY PETITION FOR PROBATE**

Any executor, devisees or legatees named in the will, or any other person interested in the estate may, at any time after the death of the testator, petition the Court to have the will proved, whether the same be in writing or nuncupative, or customary, in his possession or not, lost or destroyed, or beyond the jurisdiction of the Commonwealth.

**Rule 5
ALLEGATIONS IN PETITION**

A petition for probate of a will must state:

(1) The name and date and place of death of the decedent and the residency at the death of the decedent;

(2) Whether the person named as executor consents to act or renounces his right to letters testamentary;

(3) The names, ages, and residences of the heirs, devisees, and legatees of the decedent, so far as known to the petitioner;

(4) The character and estimated value of the property of the estate, the amount and nature of debts of the deceased, and the identity, last known addresses or whereabouts of the creditors of the deceased then known or reasonably ascertainable by the petitioner;

(5) The name of the person for whom letters testamentary are prayed;

(6) A statement of the contents of the will if it is a customary, nuncupative, lost, or destroyed will.

(7) Such other information available which will enable the probate to be expedited.

Rule 6 NOTICE OF HEARING ON PETITION

When the petition is filed, the clerk of the court shall set the same for hearing by the Court upon some day not less than ten (10) days thereafter. The petitioner shall:

(1) Prepare the notice of hearing;

(2) Cause the notice of hearing to be served personally upon or mailed to the heirs of the testator and the devisees and legatees named in the will at least ten (10) days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing;

(3) Cause the notice of hearing to be published in a newspaper published in the Commonwealth at least once, said publication to be at least five days before the hearing;

(4) File with the Court before the hearing affidavits proving compliance with this Rule 6.

Rule 7 PROCEDURE AT HEARING

At the hearing, proof of the will shall be submitted or if contested any testimony or documents may be submitted to the court to disprove the will or to prove any other will of the decedent. The Court shall make such orders as it finds are applicable under the circumstances.

Rule 8 APPOINTMENT OF EXECUTOR

If a will is proven to the satisfaction of the Court and pursuant to law, the Court shall appoint an executor, set bond if the Court deems this necessary and issue letters testamentary to the executor.

Rule 9
FILING OF INVENTORY OF ESTATE

The executor shall, within 60 days of his appointment, file an inventory of the estate which shall include the character, location, and known or estimated value of the items. If real property, the inventory shall include a property description.

Rule 10
OTHER DUTIES OF EXECUTOR

The executor must take into his possession all the estate of the decedent and collect all debts due the decedent or to the estate. If the decedent was in business the executor shall petition the court for instructions. The executor shall pay debts of the decedent or the estate only after obtaining the Court's consent. No sale or other disposition of estate property will be done without Court order. The executor shall safeguard the assets of the estate and deposit all cash in an interest bearing account if feasible.

The executor shall do such other acts as are necessary to carry out his fiduciary duties subject to such instructions and orders as the Court may issue.

The executor shall review the records of the Recorder's Office and the files of the Clerk of Court of the Superior Court to ascertain if there are any prior or pending probate or civil matters which are in conflict or contrary to any proposed decree of distribution. If there are any, the executor shall bring the matter to the probate court's attention at the earliest possible time by filing a written statement of the matters found.

Rule 11
CREDITOR CLAIMS

The notice required to be published pursuant to Rule 6(3) shall include a notice to creditors of the decedent or his estate that they must file their claims with the Clerk of Courts within 60 days of the first publication of said notice.

In addition to notice by publication, the executor shall, within 20 days of the executor's appointment, give notice by personal delivery, or by mail to the last known address, to each creditor for whom the whereabouts or last known address is known as listed in the petition filed under Rule 5, as well as any other creditor of the deceased whose identity, whereabouts, and address is known to or reasonably ascertainable by the executor at that time.

Notice by mail shall be sent by first class, certified mail, return receipt requested. The executor shall file a certificate of delivery or mailing in accordance with this section, together with Post Office receipts if available provided that notice shall be considered complete notwithstanding the notice may have been returned undeliverable, address changed, or for similar reasons by the Post Office or the receipt shall have been signed by a person other than the creditor.

The personally delivered or mailed notice shall advise the creditor that claims must be filed no later than 60 days after the date of first publication as above provided, and that any claims not presented within such times shall be forever barred.

The executor may approve or disapprove any claims and the Court may set such hearing on the claim or claims as it deems necessary and set such priority of payment as is consistent with justice and the efficient and expeditious closing of the estate.

Rule 12
FINAL DISTRIBUTION

When 70 days have elapsed after the appointment of the executor and the estate is ready to be closed, the executor shall petition the Court for a decree of final distribution. The petition shall include:

- a. Statement as to the condition and status of the estate;
- b. An accounting of assets received, expenditures made and receipts during administration;
- c. List of assets on hand for distribution;
- d. Proposed distribution;
- e. Any claims for fees, attorney fees or costs;
- f. Such other information that will assist the Court in determining if distribution should be made.

The petition will be set down for hearing at which time the Court shall make such orders as are necessary to close the estate or to prepare the estate further so that it can be closed. Notice of said hearing and a copy of the petition shall be given at least five (5) days prior to the hearing to any person who has filed a request therefor.

Rule 13
DISCHARGE

Upon the satisfactory compliance with the Court orders and after final distribution and filing of receipts for same, the executor may be discharged and any bond exonerated.

ARTICLE III. PROCEDURE FOR INTESTATE ESTATES

Rule 14
WHO MAY PETITION FOR LETTERS OF ADMINISTRATION

Any person who is a resident of the Commonwealth and over 18 years of age may petition for Letters of Administration.

Rule 15
ALLEGATIONS IN PETITION

A petition for Letters of Administration must state:

- a. The name and date and place of death of the decedent and the residence at death of the decedent; and that petitioner knows of no will left by decedent;
- b. The relationship, if any, of the petitioner to the decedent;

- c. The interest, if any, of the petitioner in the estate of the decedent;
 - d. The names, ages, and residence of the heirs of the decedent so far as known to the petitioner;
 - e. The character and estimated value of the property of the estate;
 - f. The name of the person for whom letters of administration are prayed;
- and
- g. Such other information available which will enable the probate to be expedited.

Rule 16
NOTICE OF HEARING ON PETITION

When the petition is filed, the Clerk of the Court shall set the same for hearing by the Court upon some day not less than ten (10) days thereafter. The petitioner shall:

1. Prepare the Notice of Hearing;
2. Cause the Notice of Hearing to be personally served upon or mailed to the heirs of the decedent at least ten (10) days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing; Provided, however, that notice of hearing may be waived by any heir by filing with the court an affidavit which acknowledges the contents of the petition and waives notice of hearing.
3. Cause the Notice of Hearing to be published in a newspaper published in the Commonwealth at least once; said publication to be at least five (5) days before the hearing;
4. File with the Court before the hearing, affidavits proving compliance with this Rule 16.

Rule 17
PROCEDURE AT HEARING

At the hearing, the Court will hear from the petitioner and any heirs or other interested parties as to facilitate the appointment of an administrator and to determine the heirs of the decedent. The Court shall make such orders as it finds are applicable under the circumstances.

Rule 18
APPOINTMENT OF ADMINISTRATOR

The Court shall appoint an administrator for the estate who under the circumstances will best be able to administer the estate. Letters of administration shall be issued and bond may be required by the Court.

Rule 19
FILING OF INVENTORY OF ESTATE

The administrator shall file an inventory the same as is required of an executor in Rule 9 of these rules.

Rule 20
OTHER DUTIES OF ADMINISTRATOR

The administrator shall comply with the requirements and directions encompassed in Rule 10 of these rules.

Rule 21
CREDITOR CLAIMS

Creditor claims shall be handled and processed in the same manner as is prescribed in Rule 11 of these rules.

Rule 22
FINAL DISTRIBUTION

When 70 days have elapsed after the appointment of the administrator and the estate is ready to be closed, the administrator shall petition the Court for a decree of final distribution. The petition shall include all of that information required in Rule 12 of these Rules and shall be set down for hearing at which time the Court shall make such orders as are necessary to close the estate or to prepare the estate further so that it can be closed. Notice of said hearing and a copy of the petition shall be given at least five (5) days prior to the hearing to any person who has filed a request therefore.

Rule 23
DISCHARGE

Upon the satisfactory compliance with the Court orders and after final distribution and filing of receipts for same, the administrator may be discharged and any bond exonerated.

ARTICLE IV. SUMMARY ADMINISTRATION

Rule 24
FILING PETITION

Any estate subject to the provisions of law for settlement of estates of limited value shall be processed according to such law.

ARTICLE V. GUARDIANSHIP

Rule 25 GUARDIAN AD LITEM

(a) In those cases where the plaintiff is a minor or person of unsound mind, at the time the complaint is filed there shall also be submitted a motion to appoint a guardian ad litem. The motion will indicate the basis of the lawsuit, the need for a guardian ad litem, the relationship of the proposed guardian to the plaintiff and such other information as will assist the court in making a proper Order. The motion may be granted ex parte if, in the court's discretion, it appears that the interest of the plaintiff will be protected by the proposed guardian. Counsel shall also submit a proposed Order appointing the guardian ad litem.

(b) In those cases where the defendant is a minor or person of unsound mind or in any other proceedings where it appears that the interests of a minor or person of an unsound mind need to be protected and there is no guardian appointed for such person, the plaintiff shall file a motion to appoint a guardian within 20 days after determining that such person needs or requires a guardian. The motion shall be served on the proposed ward and the spouse, parents and children. But if none of those relatives are alive, then the ward's adult siblings at least ten (10) days before the motion is set for hearing. The motion shall be accompanied by an affidavit which shall set forth the factual basis for the need of a guardian, any proposed guardian, the known spouse, parents and children or if none, the siblings of the ward and their addresses and such other information as will assist the court in making a determination.

The proposed ward may appear and defend the motion and call such witnesses as he or she desires.

Should it appear to the court that a guardian ad litem is required, it will issue an order specifying the person appointed as guardian and such other specifics as may be required.

Rule 26 APPOINTMENT OF GENERAL GUARDIAN FOR MINORS

(a) A verified petition to appoint a general guardian for a minor shall be filed containing the following information:

1. Name, birthdate, and residence of the minor;
2. The name, age, and relationship of the proposed guardian;
3. The reason why a guardianship is needed;
4. The assets and nature of the assets, if any, that need to be protected for the minor;
5. Who has current custody of the minor;
6. The names and addresses of parents, adult siblings and grandparents;

7. Proposed conduct of the guardianship including what the proposed guardian intends to do with the assets of the minor;

8. Such other information as will assist the court in making its determination.

(b) Along with the petition, the petitioner shall file an order prescribing notice which shall include:

1. Personal service or service by registered or certified mail, return receipt requested of a notice on all living parents, grandparents and adult siblings of the minor as well as the person or persons having custody of the minor if they are not already included.

2. Posting of a notice at the courthouse for a period of ten (10) days.

3. Publication of a notice, once before the hearing, in a newspaper of general circulation published in the Commonwealth.

(c) The Notice referred to in paragraph (b) above shall set forth the time, place, and purpose of the hearing and a copy will be attached to the order prescribing notice.

(d) At the hearing, the court will be guided by what appears to be for the best interest of the child and if the child is of sufficient age to form an intelligent preference, the court may consider that preference in determining the question. In addition, the need for a bond or other protection for the minor will be determined at said hearing should a guardian be appointed. The court shall make such orders as are necessary under the circumstances to carry out the purposes of the guardianship.

Rule 27
APPOINTMENT OF GUARDIAN FOR INSANE OR INCOMPETENT PERSON

a. Any relative or friend may file a verified petition alleging that a person is insane or incompetent and shall:

(1) Set forth the names and addresses, as far as they are known to the petitioner, of the spouse, parents and children of the alleged insane or incompetent person residing in the Commonwealth. If none of those persons are alive, then the petition shall set forth the name and addresses of the adult siblings of the alleged insane or incompetent person;

(2) Specify the need for the guardianship as well as a general statement of the assets, and nature of same, belonging to the proposed ward;

(3) The relationship or connection of the petitioner to the proposed ward;

(4) State such other information as will assist the court in making its determination.

b. The petitioner shall also prepare an order setting the time, date, and place of hearing and which shall direct the alleged insane or incompetent person to appear. Said order shall be personally served on the alleged insane or incompetent person at least ten (10) days before the hearing.

c. Notice of the hearing and nature of proceedings shall be personally served or mailed at least ten (10) days before such hearing date to each of such relatives as indicated above of the alleged insane or incompetent person. Any relative or friend of the alleged insane or incompetent person may appear and oppose the petition.

d. The alleged insane or incompetent person must be produced at the hearing unless satisfactory proof by affidavit or testimony of a duly licensed physician, surgeon, or medical officer shows that he is unable to attend because of physical inability. Except that, if the alleged insane or incompetent person is a patient at a hospital in the Commonwealth, an affidavit of the medical director of the hospital to the effect that such patient is unable to attend, shall be prima facie evidence of that fact.

ARTICLE VI. MISCELLANEOUS RULES

Rule 28 CITATION

These rules may be known and cited as The Commonwealth Rules of Probate Procedures. (Com. R. Pro.)