LOCAL RULES

RUTHERFORD COUNTY PROBATE COURT

IN EFFECT AS OF December, 2014

RULE 1 – SPECIAL PROCEDURES FOR PROBATE MATTERS

1.01 – ATTORNEYS

a. An attorney who files a petition, opens an estate, or who is representing an Interested Party becomes the attorney of record for that party by filing a pleading or notice of appearance and shall remain attorney of record unless and until the Court grants permission to withdraw upon a showing of good cause.

1.02– DEFINITIONS; SERVICE OF PROCESS; NOTICE; INTERESTED PARTIES:

a. "Service of Process": When required by statute, or these Rules, Service of Process shall be effected by service of the Petition and a Summons in conformity with the requirements of T.R.C.P. 4 and due process requirements.

b. "Notice": When required by statute, or these Rules, Notices to all Interested Parties shall be given by mailing, faxing or hand delivery of the required documents to each Interested Party (or their attorney) in conformity with requirements of T.R.C.P. 5. If an Interested Party is a minor or incompetent person, Notice shall also be given to the legal guardian(s) and/or custodial parent(s) of the minor and to the conservator of an adult person. If Interested Parties are under disability and have no custodial parent, legal guardian or conservator, such shall be brought to the Court's attention.

c. "Adversary Proceedings": Adversary Proceedings include but are not limited to Civil Actions as defined under T.R.C.P. 2 and proceedings to remove a fiduciary, surcharge a fiduciary, probate a lost or destroyed will, determine beneficiaries, construe a will, cancel a devise, partition property for the purposes of distribution, determine pretermitted share, and for revocation of probate of a will. Other proceedings may be declared Adversary Proceedings. Adversary Proceedings shall be prepared, discovery conducted, and tried as Civil Actions pursuant to the Tennessee Rules of Civil Procedure, Rules of Evidence and these Local Rules.

d. "Interested Parties": An Interested Party is a person or entity having an interest in a matter before the Court. Depending on the type of estate or matter at issue, an Interested Party may include a spouse, beneficiary, legatee, devisee, creditor, fiduciary, and next of kin. Next of kin are those persons entitled under T.C.A. Sec. 31-2-104 to inherit as if the decedent died intestate.

1. In a decedent's estate, an Interested Party shall include:

a. In a solvent, insolvent or one that may become insolvent testate estate, the surviving spouse and all legatees, devisees and beneficiaries named in the testamentary instrument being offered or admitted to Probate.

b. In a solvent, insolvent or one that may become insolvent testate estate, the surviving spouse and intestate heirs of the decedent as described in T.C.A. 31-1-104.

c. In a solvent, insolvent or one that may become insolvent testate estate, creditors of the decedent whose claims may be adversely affected by a ruling on the matter(s) at issue.

d. In a matter contesting the validity of a testamentary instrument offered or admitted to Probate, the surviving spouse and intestate heirs of the decedent as described in T.C.A. Sec. 31-1-104, all legatees, devisees, and beneficiaries named in the testamentary instrument being offered or admitted to Probate, and any legatees, devisees, and beneficiaries of any preceding testamentary instrument to that being offered or admitted to Probate.

2. In a Conservatorship, Interested Parties include the spouse and next of kin of the respondent and the person(s) who have been primarily responsible for the respondent's person and/or finances.

3. In a Guardianship, Interested Parties include both parties of the minor, the next of kin if both parents are deceased, legal guardians and person(s) primarily responsible for the minor's person and/or finances.

4. In a proceeding to terminate a trust, Interested Parties include current income beneficiaries, remainder beneficiaries of the trust, all fiduciaries and the grantor, if living.

5. Notice and Service of Process need not be served upon an Interested Party who joins in a petition as a Petitioner or who files a sworn waiver or consent.

6. No action of Court shall be set aside due to the failure of an Interested Party to receive Notice unless the Interested Party shall timely appear and show substantial prejudice resulting from the lack of notice and reasonable likelihood of prevailing on the merits.

1.03 - ESTATE OF DECEDENTS:

a. Petitions to Admit Wills to Probate, to Administer Decedent's Estates and Small Estate Affidavits; Petitions to probate testamentary instruments, petitions to administer intestate estates and Affidavits to process Small Estates shall set forth such information as required by T.C.A. Sec. 30-1-117 and these Rules.

1. Furthermore, in a petition to probate a will, codicil or other testamentary instrument, the petition (or small estate affidavit) shall specify in two separately numbered paragraphs (emphasis added) the names, if known, addresses and relationships of:

(a) all legatees and devisees under the testamentary instrument(s)

and

(b) the next of kin/heirs at law who would inherit from the decedent if there were no will, including the surviving spouse (even though not named in the will).

The value of real and personal property to be administered need not be stated if bond is expressly waived and the named executor or alternate executor is willing to serve.

2. Furthermore, in an intestate estate the petition (or small estate affidavit) shall specify the names, and if known, addresses and relationships of the next of kin/heirs at law, including the surviving spouse.

3. Procedures for giving notice to creditors are set forth in T.C.A. Sec. 30-2-306. Specifically, T.C.A. 30-2-306 (d) addresses the duties of the personal representative.

1.04– TRUSTS:

a. Termination of Trust: Petitions to terminate a trust must be heard by the Court. Service of Process shall be given to all Interested Parties who do not join in the petition. The petition shall be verified and set forth facts concerning the creation of the trust, the purpose of the trust, the beneficiaries of the trust and the nature of their beneficial interest, the reasons for the termination of the trust, the appropriate share of each beneficiary who is to share in the proceeds of the trust upon termination, and whether the termination has been agreed upon by all Interested Parties.

b. Other Trust Proceedings: Any ruling that may affect a substantive right of an Interested Party under a trust shall require due process of law prior to the determination of such rights by the Court. Whether motions for instructions, or request for the Court to construe a trust, to determine whether a bequest has lapsed, or to remove or replace a fiduciary, etc. require the filing of a petition with service of process or whether the matter may be attended to routinely upon routine Notice as distinguished from the requirements of Service of Process shall depend on the substantive nature of the underlying rights to be determined.

1.05 - CONSERVATORSHIPS:

a. Petition for Conservatorship: The petition shall be verified and contain the information required by statute and these Rules. Service of Process shall be provided to the respondent as required by statute and petitioner shall additionally provide Notice to all Interested Parties who do not receive notice from the Clerk. The Court will appoint a licensed attorney as the Guardian ad Litem and designate the hearing date.

b. In all matters, it shall be the responsibility of the Court to appoint a Guardian ad Litem, if necessary. If a Guardian ad Litem Is necessary, the Court shall make such appointment after the Petition for appointment of the fiduciary if filed, after the Respondent in the Petition is before the Court, within ten (10) days from the date the Petition for appointment of the fiduciary is filed and otherwise in accordance with the procedures established by T.C.A. Sec. 34-1-107. It shall be the responsibility of the attorney for the Petitioner to secure the appointment of a Guardian ad Litem or the Waiver of such appointment in accordance with the procedures established by T.C.A. Sec. 34-1-107.

In the event that a Guardian ad Litem is to be appointed or in the event that such an appointment is waived by the Court, an Order (in the form required by the Court) shall be submitted to the Court containing the appropriate blanks for the appointment of a Guardian ad Litem and the setting of a hearing.

c. Orders Creating Conservatorship and Awarding Initial Fees: To expedite the issuance of Letters of Conservatorship, counsel for the petitioner may submit two orders, one pertaining to the appointment of the conservator and a second with pertains only to fees.

1.06 - GUARDIANSHIPS:

a. Petition for Guardianship: The petition shall be verified and shall contain the information required by statute and these Rules. Notice shall be provided to all Interested Parties. Unless the petitioner is a parent of the minor or is a court appointed guardian of the person, the Court will appoint a licensed attorney as Guardian ad Litem when applicable and to facilitate such appointment of a Guardian ad Litem. If the petitioner is a parent of the minor or court appointed guardian of the person, the petitioner may set the matter for a hearing prior to the appointment of a Guardian ad Litem; however, if the Court determines at the hearing that the appointment of a Guardian ad Litem may be in the best interest of the minor, the matter shall be set for further hearing following the appointment of a Guardian ad Litem.

b. In all matters, it shall be the responsibility of the court to appoint a Guardian ad Litem, if necessary. If a Guardian ad Litem is necessary, the Court shall make such appointment after the Petition for appointment of the fiduciary is filed, after the Respondent in the Petition is before the Court, within ten (10) days from the date the Petition for appointment of the fiduciary is filed and otherwise in accordance with the procedures established by T.C.A. 34-1-107. It shall be the responsibility of the attorney for the petitioner to secure the appointment of a Guardian ad Litem or the Waiver of such appointment in accordance with the procedures established by T.C.A. Sec. 34-1-107.

In the event that a Guardian ad Litem is to be appointed or in the event that such an appointment is waived by the Court, an Order (in the form required by the Court) shall be submitted to the Court containing the appropriate blanks for the appointment of a Guardian ad Litem and the setting of a hearing.

1.07 - SALE OF REAL ESTATE PROPERTY:

a. Petition to Sell Real Property: Fiduciaries who desire to sell real property of a decedent or ward must file a verified petition to obtain Court approval. However, executors expressly authorized under a will to sell real estate are not required to obtain Court approval.

1. Decedent's Estate: The personal representative must file a verified petition which established that the personal property is insufficient to pay debts and/or costs of administration of the decedent's estate. Service of Process shall be given to all persons who would inherit the real property if not sold and all persons claiming an interest in the real property. Interested Parties shall receive Notice.

2. Conservatorship/Guardianship: The Conservator or Guardian must file a verified petition which establishes that the proposed sale is in the best interest of the ward or is necessary to pay the debts, taxes and/or expenses of the ward. Service of Process shall be given to all persons who have an interest in the real property. Interested Parties shall receive Notice.

3. Listing Agreement: Unless the Court expressly orders otherwise, if a petition to sell the real property of a deceased's estate or of a ward in a conservatorship or guardianship is granted, the order granting the petition shall authorize the fiduciary to market and/or to list the real property for sale by a licensed real estate agent or auctioneer. The auction and/or listing agreement and the resulting contract for the sale of the subject property must expressly state the proposed sale of the property is Subject to Court Approval.

4. Motion to Approve Contract: Once a proposed contract to sell real estate is obtained, a motion must be filed and served pursuant to obtain Court approval. Notice shall be given to all Interested Parties. A copy of the contract shall be attached to the motion along with a report of the assessed value of the property by the County Assessor of Property. The Court may also require one or more professional appraisals of the property. Any proposed contract of sale must be approved by the Court prior to closing.

1.08 - NAME CHANGE:

a. Adult: The verified petition must comply with the statute and shall state the full legal name of the petitioner, all prior names by which the petitioner has been known, the place of residence of the petitioner(s), the birth date, age, social security number of the individual whose name is to be changed, and the State where the original birth certificate was issued. Copies of the original birth certificate, social security card and official photo identification shall be submitted with the petition. The individual whose name is to be changed must appear in Court at the hearing.

b. Minor: The verified petition to change the name of a minor must comply with the statute and be sworn to and signed by both parents and include copies of the original birth

certificates of the child and both parents, photograph of the minor and social security card of the minor, if any. Both parents and the minor must appear in Court. If both parents do not join in the petition or if the identity or location of a parent is unknown, the petition must be specific as to all pertinent facts including all efforts to identify or locate the parent who did not join in the petition. If the father is not identified on the birth certificate, legitimating proceedings must be completed prior to filing of a petition to change name of the minor child. Service of process is required for any parent or guardian who does not joint in the petition. The verified petition must establish by clear and convincing evidence that the proposed name change is in the best interest of the minor.

1.09 - GUARDIAN AD LITEM:

a. The Court will appoint a Guardian ad Litem upon the filing of a petition to appoint a conservator or guardian; provided, however, in proceedings to appoint a guardian, the Court may waive the appointment of a Guardian ad Litem if good cause is shown.

b. The Court may appoint a Guardian ad Litem in matters involving the sale, improvement, or mortgage of any real property in which a minor or other person under disability has an interest; in matters involving the sale or disposition of ward's personal property; in matters involving possible impropriety by a fiduciary; in matters concerning unauthorized encroachments or questionable management of the decedent's estate or a ward's assets under guardianship or conservatorships; in any matter the Court believes to be in the best interest of a minor, absentee, unknown heir or Interested Party or to further the administration of justice.

c. The Guardian ad Litem shall conduct an inquiry and file a report with the Court at least three (3) days prior to the hearing. The report shall contain the information required by statute and these Rules and such additional information the Court may require the Guardian ad Litem deems necessary. Reports are to be brief and to the point unless the complexities of the case require greater detail.

1.10 - SETTING HEARINGS:

a. The Judge's Office will designate available dates for all matters. The Judge's Office may set matters that are reasonably expected to require no more than fifteen (15) minutes on the regular probate docket which is heard on Tuesday through Friday between 8:30 a.m. and 9:00 a.m., excluding holidays, and such other days as designated by the Court.

b. All matters may be set by agreement of counsel, subject to confirmation by the Judge's Office.

c. Notice of the date and time the hearing is set shall be given to all Interested Parties by the attorney who applied for the setting of a hearing. If the hearing is reasonably expected to take more than fifteen (15) minutes, the order shall state the time required for the hearing.

d. If all Interested Parties agree, a matter presently set for hearing between 8:30 a.m. and 9:00 a.m. may be continued. Notice of such a continuance and the new hearing date shall be promptly provided to all Interested Parties by the attorney who requested the continuance and to the Judge's

Office. If all Interested Parties do not agree to the requested continuance, the Court will endeavor to conduct a telephone conference with all Interested Parties to discuss the requested continuance. Such conference may be scheduled with the Judge's Office.

e. In the event that a probate matter is contested or it appears appropriate to counsel for the parties that the Court review pleadings in the Court file prior to a hearing or during a hearing, counsel should notify the Judge's Office upon the setting of the matter for hearing that the Court file needs to be obtained prior to a hearing in the matter.

f. In the event an Exception to Claim is filed with the Clerk of the Court after the creditor deadline to file claims, the Clerk of the Court will enter an Order containing a Notice to all Interested Parties setting the matter for hearing between 8:30 a.m. and 9:00 a.m. Tuesday through Friday, excluding holidays, and such other days as designated by the Court. All other claims may be set for hearing with the Judge's office on Tuesday through Friday at 8:30 a.m., excluding holidays, and such other days as designated by the Court.

g. For good cause shown, the Court may hear any matter, including but not limited to the above matters, without a special setting.

1.11 - PETITIONS FOR ELECTIVE SHARE, YEAR'S SUPPORT, HOMESTEAD, and EXEMPT PROPERTY:

Notice shall be given to the personal representative of the estate, the attorney of record, and all Interested Parties (including creditors if the estate may be insolvent), that the surviving spouse intends to assert a claim for Elective Share, Year's Support, Homestead, and/or Exempt property. If the personal representative is the surviving spouse, an administrator ad litem may be appointed.

1.12 - MOTIONS:

Motions will be heard by the Court in fifteen (15) minute increments between 8:30 a.m. and 9:00 a.m. Tuesday through Friday, excluding holidays, and such other days as designated by the Court. Motions must be in writing. All motions requiring a hearing shall be set by the Judge's Office. Any such rule that provides that motions shall automatically be granted if a written response is not timely filed, shall not apply in matters involving conservatorships, guardianships, fee requests, encroachments upon assets of an estate and other matters for which discretionary review by the Court is appropriate. In all matters which require the discretionary approval of the Court, the Movant should be prepared to present the motion with the anticipation the Court will have questions concerning the matter(s) at issue. The Movant shall verify that the court file has been sent to the Judge.

1.13 - FEES OF FIDUCIARIES AND ATTORNEYS:

a. Court Approval of Fees:

1. Decedent's Estates: In a decedent's estate, and with the exception of instances wherein all residuary beneficiaries of a solvent decedent's estate are competent adults and expressly consent in writing to the specific fee stated in the consent and applications for fees immediately following a hearing in which the Court expressly instructed the applicant(s) to file an application for fees without the necessity of a motion and further hearing, any request for fee shall be presented by Motion,

supported by affidavits and if applicable billing statements and receipts, with appropriate service of all such documents upon Interested Parties.

2. Conservatorships and Guardianships: In conservatorships and guardianships only, any person or party, whether the conservator, guardian, attorney, petitioner, guardian ad litem or whomever, requesting that fees or expenses be charged against or paid by the respondent, ward or their estate, shall obtain approval of the Court prior to payment or receipt of such fee. Any person who pays any such fee out of the funds of a minor, incompetent, respondent or ward in a conservatorship or guardianship without express Court approval may be personally liable for the funds advanced and reasonable and necessary costs, fees and expenses resulting from such unauthorized disbursement.

b. When Motion is Required: In those matters for which a motion is required, motions for fees, expenses and/or costs to be charged against a ward's or decedent's estate or against an adversary party shall be filed and served provided, however, such motions shall not be deemed granted merely because a written response is not filed. If a written response is timely filed, a hearing on the motions shall be conducted. Said hearing shall be set within ten (10) days. If no response if filed, the Movant upon Notice shall set the matter for hearing with the Court's Office between 8:30 a.m. and 9:00 a.m. (each hearing will be allotted 15 minutes) Tuesday through Friday, excluding holidays, and such other days as designated by the Court.

c. When Motion is Not Required – "Fee Application": On certain occasions (with prior direction from the Court), fees and expenses may be applied for without the necessity of filing a motion and docketing the matter for a hearing; nevertheless, in all such situations copies of the fee request and all documents attached thereto shall be served upon all Interested Parties even though no hearing is to be schedule. Specifically, at the conclusion of hearings in which the Court approves a petition to create a conservatorship, guardianship, and in certain other instances expressly directed by the Court, the Court may direct the person and parties who wish to be reimbursed their expenses and paid their reasonable and necessary fees incurred to date, to file a "Fee Application" in lieu of a motion. The Fee Application shall be served upon Interested Parties, along with the supporting documents, with the notice that the Court shall review and act upon the Fee Application without the necessity of a hearing. Unless one is expressly directed by the Court to file a Fee Application in lieu of a motion, all fee and expense requests should be presented by motion with appropriate notice of the proposed hearing date.

d. Form of Motion and Fee Application: The Motion or Fee Application shall state the fee requested, hours worked, hourly rate charged, and total of expenses requested, if any, along with such other facts as may be necessary to support the fees and/or expenses requested. The Motion or Fee Application shall be supported by appropriate affidavits, receipts, if applicable, and billing statement. All billing statements or affidavits shall itemize a brief description of the services rendered, the time expended and date of service, respectively. The person requesting a fee has the burden of proof to establish the reasonableness and necessity of the fee and why such fee and related expenses should be charged against a decedent's estate or ward of a conservatorship or guardianship.

e. Fee Requests in Conservatorships and Guardianships:

1. Initial Request for Fees: Any person or party desiring to have their fees or expenses paid by the respondent/ward shall inform the Court of such request at the hearing wherein the Court either creates or dismisses a conservatorship or guardianship. The Court shall afford sufficient time to present affidavits and billing statements.

2. Interim Request for Fees: When a conservatorship or guardianship is in existence and an interim request for fees is made, such requests shall be presented to the Court by Motion with service on Interested Parties.

3. Final Fee Requests: If a conservatorship or guardianship estate is to be closed, whether the minor has attained majority, the ward is deceased or his/her competency has been restored, all person or parties desiring to have their fees or expenses paid by the respondent/ward or charged against an adverse party shall file a Motion prior to the closing of the estate. Fees and expenses are to be determined and set forth in an order prior to or concurrent with the order closing the estate. Fee Applications and Motions to Set Fees filed after the closing of a conservatorship or guardianship may be barred unless good cause is shown.

g. Fee Requests in Decedent's Estates:

1. Interim Fee Requests: Interim requests for fees shall be presented to the Court by Motion with service on Interested Parties.

2. Final Fee Requests: All persons or parties desiring to have their fees or expenses paid by or charged against the estate shall file a Motion prior to the closing of the estate. All claims for fees and expenses are to be determined and set forth in an order prior to or concurrent with the order closing the estate. Motions to Set Fees filed after the closing of a decedent's estate may be barred unless good cause is shown.

1.14 - ACCOUNTINGS AND CLOSING OF ESTATES:

a. Unless good cause is shown, all estates should be closed within fifteen (15) months from the date that the estate is opened with the Court. Unless the parties deem it necessary, no hearing is required to close an estate. All closing documents required by statute (including, but not limited to, a TennCare Release, State Inheritance Tax Release, and U.S. Estate Tax Release) along with an Order closing the estate and discharging sureties may be filed with the Clerk of the court for approval. If an Order to Close an estate is "Lodged" then the Court will wait 5 days before signing to allow time for objections to be filed.

b. Fiduciaries shall file an initial inventory and thereafter make annual accounts with the Probate Court Clerk until the estate is fully administered and closed. For good cause shown, the Court may extend or shorten the time for filing interim or final accountings. Accountings may be waived by the Court for good cause shown. Furthermore, in decedent's estate accountings may be waived if the decedent's will waives the requirements for the personal representative to make court accountings for the estate, or if all residuary beneficiaries have in writing excused the personal representative from filing all court accountings. The filing of an inventory may be waived in a like manner.

c. Copies of all accountings, interim or final, are to be furnished to all Interested Parties by the personal representative or their attorney of record.

d. Detailed accountings of solvent estates may be waived and the estate closed on receipt and waiver provided all residuary distributes are *sui juris* and acknowledge in writing that the estate has been properly distributed to them, that they file the statement in lieu of a more detailed accounting,

and provided further that the personal representative, after the period for creditors to file claims against the estate has expired, files the required petition or statement with the Probate Court Clerk.

1.15 – Orders and Decrees:

a. Orders which waive bond, inventory or accountings shall expressly set forth the grounds for such waiver.

b. If the basis of a ruling is set forth in an order, such shall be correctly stated without recitation to matters which did not occur or findings which were not made by the Court.

c. All Orders shall state the date the matter was heard (or docketed for hearing) and be presented to the Court within ten (10) days thereafter unless additional time is expressly granted by the Court.

1.16 - INSTRUCTING THE CLERK TO INVEST FUNDS:

The Probate Court Clerk shall invest funds in interest bearing accounts only when there is a specific Order directing them to do so. Such orders should suggest the period of time the funds should be invested. All such orders must contain the full legal name, address and social security number of the person(s) whose funds are being invested. In guardianships, the date of birth and the date the minor shall become eighteen (18) years of age shall be stated in the order.

2.00 - KNOWLEDGE OF THE RULES AND LAW

It shall be the duty of all attorneys and all personal representatives to review, be aware of and comply with these court rules and Tennessee state law and the laws of the United States and their amendments.

APPROVED BY:

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