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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE

Introduced By: Senators Lombardi, Conley, and Lynch

Date Introduced: March 03, 2015

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 33-23-1 of the General Laws in Chapter 33-23 entitled "Judicial
2 Review of Probate Court Orders and Decisions" is hereby amended to read as follows:

3 **33-23-1. Filing of claim of appeal, record, and reasons.** -- (a) Any person aggrieved by
4 an order or decree of a probate court (hereinafter "appellant"), may, unless provisions be made to
5 the contrary, appeal to the superior court for the county in which the probate court is established
6 by taking the following procedure:

7 (1) Within twenty (20) days after execution of the order or decree by the probate judge,
8 the appellant shall file in the office of the clerk of the probate court a claim of appeal to the
9 superior court and a request for a certified copy of the claim ~~and the record of the proceedings~~
10 ~~appealed from~~ and shall pay the clerk his or her fees therefor.

11 (2) Within thirty (30) days after the entry of the order or decree, the appellant shall file in
12 the superior court a certified copy of the claim and the reasons of appeal specifically stated, to
13 which reasons the appellant shall be restricted, unless, for cause shown, and with or without
14 terms, the superior court shall allow amendments and additions thereto.

15 (3) The appellant shall file with the probate clerk an affidavit in proof of the filing and
16 docketing of the probate appeal pursuant to the time deadlines set forth in § 33-23-1(a)(2).

17 (b) An appeal under this chapter is not an appeal on error but is to be heard de novo in
18 the superior court. The record of proceedings, including the certified documents and the transcript
19 (if any) from the probate proceedings, may be introduced in the superior court without further

1 authentication. The findings of fact and/or decisions of the probate court may be given as much
2 weight and deference as the superior court deems appropriate, however, the superior court shall
3 not be bound by any such findings or decisions. Nothing herein shall preclude a witness who
4 testified at the probate court proceeding from testifying at the superior court hearing, however,
5 the transcript of such probate court testimony may be used for any evidentiary purpose, consistent
6 with the Rhode Island rules of evidence.

7 (c) The deadline of subsections (a)(1) and (a)(2) of this chapter are jurisdictional and
8 may not be extended by either the probate court or the superior court.

9 (d) Nothing in this chapter shall preclude interested parties in a probate proceeding from
10 stipulating to a probate appeal from the probate court to the superior court and, toward that end,
11 to build a record by agreed statement of facts and otherwise, to fashion on a form of order or
12 decree to preserve or frame issues as the parties desire, and to preserve the status quo ante
13 pending appeal through custodianship of assets or otherwise. Such a stipulated probate appeal
14 shall be governed by, and be subject to, the procedural requirements of this chapter.

15 (e) The executor, administrator, guardian, or other fiduciary, pending a probate appeal,
16 shall annually, or more often as requested by the probate court, file a written report of the status
17 of the appeal.

18 (f) The filing fees payable to the superior court clerk for reasons of appeal in a probate
19 appeal shall be the same as those established from time to time for the filing of a complaint in a
20 civil action.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would remove the requirement that any person aggrieved by an order or decree
2 of a probate court who wishes to appeal must file with the clerk a request for a certified copy of
3 the record of the procedures appealed from.

4 This act would take effect upon passage.

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