

2014 -- S 2569

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LC003902  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PROBATE COURT - APPEALS

Introduced By: Senators Lombardi, and McCaffrey

Date Introduced: February 27, 2014

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 record~~ and the reasons of appeal specifically  
13 stated, to which reasons the appellant shall be restricted, unless, for cause shown, and with or  
14 without 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 section 33-23-1(a)(2).

17 ~~(b) For purposes of this chapter, the "record of the proceedings appealed from" shall~~  
18 ~~include copies of documents filed with the probate court and full exhibits entered into evidence~~  
19 ~~by the probate court as certified by the probate clerk which are relevant to the claim of appeal and~~

1 ~~the transcript (if any) of all relevant evidentiary probate court proceedings. The appellant and the~~  
2 ~~appointed fiduciary may stipulate to the content of the record of proceedings from the probate~~  
3 ~~clerk and may stipulate to the supplementation of the record of proceedings in the superior court.~~  
4 ~~Without such stipulation, the appellant must timely file all relevant filings, exhibits and~~  
5 ~~transcripts with the reasons of appeal in the superior court.~~

6 ~~(c) If the appellant ordered the transcript or tape recording as the case may be from the~~  
7 ~~probate clerk within the twenty (20) day deadline of subsection (a)(1) and the transcript is~~  
8 ~~unavailable for filing within the thirty (30) day deadline of subsection (a)(2), the superior court on~~  
9 ~~appellant's motion shall grant an extension of such additional time reasonably necessary to~~  
10 ~~complete the record.~~

11 (d) (b) An appeal under this chapter is not an appeal on error but is to be heard de novo  
12 in the superior court. The record of proceedings, including the certified documents and the  
13 transcript (if any) from the probate proceedings, may be introduced in the superior court without  
14 further authentication. The findings of fact and/or decisions of the probate court may be given as  
15 much weight and deference as the superior court deems appropriate, however, the superior court  
16 shall not be bound by any such findings or decisions. Nothing herein shall preclude a witness who  
17 testified at the probate court proceeding from testifying at the superior court hearing, however,  
18 the transcript of such probate court testimony may be used for any evidentiary purpose, consistent  
19 with the Rhode Island rules of evidence.

20 (e) (c) The deadline of subsections (a)(1) and (a)(2) of this chapter are jurisdictional and  
21 may not be extended by either the probate court or the superior court, ~~except for purposes of~~  
22 ~~extending the time to file the transcript under subsection (c).~~

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

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

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

1           ~~(i) The fee charged by the probate clerk for the record of proceedings shall include the~~  
2 ~~reasonable copying costs, transcription costs, (if any), and the costs of transmitting the record.~~  
3 ~~The probate clerk need not transmit the record unless and until all costs therefor are paid in full.~~

4           ~~(j) Whenever a transcript or the production of a transcript is requested or referred to in~~  
5 ~~title 33, the moving party shall, pursuant to the provisions of section 33-22-19.1, be responsible~~  
6 ~~for the production of any payment for said transcript, and nothing contained herein shall require~~  
7 ~~the probate court or the probate clerk to make arrangements for or advance the costs of the same.~~

8           SECTION 2. Section 33-23-12 of the General Laws in Chapter 33-23 entitled "Judicial  
9 Review of Probate Court Orders and Decisions" is hereby repealed.

10           ~~**33-23-12. Failure to perfect or prosecute appeal.** -- If an appellant, having timely filed~~  
11 ~~his or her reasons for appeal, fails to perfect his or her appeal by filing in the superior court all~~  
12 ~~relevant filings, exhibits and transcripts constituting the certified record of the probate court~~  
13 ~~proceedings within the time allowed by law the superior court, on motion of any person~~  
14 ~~interested, shall affirm the decree or order appealed from or make such other order or decree as~~  
15 ~~justice may require.~~

16           SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PROBATE COURT - APPEALS

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- 1           This act would remove the existing probate court appellate requirement that an appellant
- 2 file with the superior court all relevant probate court filings, exhibits and transcripts.
- 3           This act would take effect upon passage.

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