



STATE OF CONNECTICUT

OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

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**Probate Court Rules of Procedure  
Advisory Committee  
Meeting Minutes**

Thursday, September 9, 2021  
3:00 p.m.

Office of the Probate Court Administrator  
186 Newington Road  
West Hartford, CT  
and via Webex videoconference

The meeting was convened at 3:05 p.m. by Judge Beverly K. Streit-Kefalas, Probate Court Administrator and Chair.

Other members in attendance: Judge Kathleen N. Maxham, Judge Steven M. Zelman (retired), Attorney Mary M. Ackerly, Attorney Douglas R. Brown, Attorney Caitlin Calder, Attorney Greta E. Solomon, Attorney Heather L. Dostaler, Judge Peter C. Barrett, Professor Jeffrey A. Cooper, Attorney Christopher J. Hug, Judge John J. McGrath, Jr., Judge Robert A. Randich, Attorney James Dougherty, Ms. Suzette Threet, Attorney Andrew S. Knott, Attorney Melissa Nixon, Attorney Evan C. Brunetti and Attorney Eric H. Rothauser

Members not present: Mr. Stephen A. Pedneault, CPA, CFE, CFF, FCPA, Judge Brian T. Mahon (Retired), Attorney Carmine P. Perri and Attorney Gabriella G. Kiniry

**Remarks of the Chair**

Judge Streit-Kefalas welcomed committee members and thanked them for their work on the subcommittees.

**Discussion of drafts of proposed rules**  
Subcommittee I – Rules for All Case Types

Judge Kathleen N. Maxham, Chair of Subcommittee I, highlighted the rule changes

recommended by Subcommittee I. The following draft rules generated discussion:

*Rule 36(c) Fiduciary Accounting: General Provisions*

This new paragraph is intended to clarify that failure to strictly comply would not be a *per se* breach of fiduciary duty. Alternate language as follows was suggested:

(c) When considering whether the fiduciary has satisfied the requirements of subsection (a), the court shall consider the totality of the circumstances, the extent of compliance and whether the fiduciary made good faith efforts to comply.

The editing committee will review the provision to determine whether to make further changes to the new provision.

*Rule 13.9 Guardian ad litem fees and expenses*

The committee questioned how the new proposed rule 13.9 differs from rule 39. The Subcommittee explained rule 39 is applicable only to attorneys and fiduciaries. The new rule addresses fees of guardians ad litem who may be misconstrued as being a fiduciary and having fiduciary responsibilities. In addition, *Hayward v. Plant* is the governing law over attorney and fiduciary fees but not fees for guardians ad litem. The committee agreed that rule 13 was the proper placement for the rule which allows flexibility while still providing structure.

Subcommittee II – Rules for Hearings

Judge Peter C. Barrett, Chair of Subcommittee II, highlighted the rule changes recommended by Subcommittee II. The following draft rules generated discussion:

*Rule 66.1 When participation by electronic means permitted*

The committee inquired as to whether the revisions contemplated a hybrid type of hearing in which some parties would participate in person and others would participate by electronic means and also whether the request needs to be in writing. The rule is intended to provide flexibility to the court in balancing the needs of the parties and best practice is to have a request in writing. The editing committee will consider adding “by law” after “Unless otherwise prohibited”.

Subcommittee III – Rules for Specific Case Types

Judge Robert A. Randich, Chair of Subcommittee III, highlighted the rule changes recommended by Subcommittee III. The following draft rules generated discussion:

*Rule 31.3 Valuation of property for nontaxable estates*

Members of the committee questioned who would sign the affidavit regarding the statement of value of a decedent’s interest in an entity and whether the affidavit could be signed under penalty of false statement rather than notarized. The intent of the rule is for the fiduciary to sign the affidavit and provide the process used to reach the purported fair market value. The editing committee will review the provision to determine whether the affidavit must be notarized or if signing under penalty of false statement would be sufficient.

**Next Steps**

The consensus of the committee is in favor of the proposed revisions, with further consideration of the issues discussed during the meeting. The editing committee (Judge Streit-Kefalas and Attorneys Brunetti, Dostaler, Rothauser and David Biklen) will work on refining the language and ensuring consistency with existing provisions. After final review by this committee, a public hearing will be conducted on the proposed revisions. In accordance with Public Act 21-104, sec. 15, the hearing will be conducted by a panel of three sitting Probate Court Judges. Judge Streit-Kefalas intends to designate Judges Barrett, Maxham and Randich to the panel since they were the chairpersons for the subcommittees. After the public hearing to be held in November 2021, Judge Streit-Kefalas will present the proposed rules to the judges of the Supreme Court for adoption and promulgation.

**Adjournment**

The meeting was adjourned at 4:29 p.m.