

Probate Court Rules Advisory Committee

Meeting Minutes

Thursday, June 21, 2018

Office of the Probate Court Administrator
186 Newington Road
West Hartford, Connecticut

The meeting was convened at 3:14 p.m. by Judge Paul Knierim, Probate Court Administrator and Chair.

Other members in attendance: Attorney Bonnie Bennet, Attorney Douglas Brown, Professor Jeffrey Cooper (by phone), Attorney Heather Dostaler, Ms. Suzette Farrar-Threet, Attorney Paul Hudon, Attorney Christopher Hug, Judge Beverly Streit-Kefalas, Judge Robert Killian, Attorney Greta Solomon and Judge Claire Twerdy.

Also in attendance: Attorney David Biklen, Committee Reporter.

Members not in attendance: Attorney Molly Ackerly, Mary Ann Champney, Judge Michael Darby, Judge Gerald Fox, Jr., Attorney Thomas Gaffey, Attorney Karen Gano, Attorney Patricia Kaplan, Attorney Gabriella Kiniry, Attorney Andrew Knott, Judge Brian Mahon, Judge John McGrath, Mr. Stephen Pedneault, Attorney Carmine Perri, and Judge Steven Zelman.

Remarks of the Chair

Judge Knierim welcomed committee members and thanked them for their work on the subcommittees.

Before turning to a discussion of the draft rules, Judge Knierim gave a progress report on the Probate Court eFiling project. Parties and attorneys will be able to use the eFiling system to file documents, send copies of documents to other parties, view court files and pay probate fees through the internet. PCA has selected a vendor to build the system through a competitive bid process. The project plan is to go live statewide in July of 2019.

Subcommittee I has worked on drafting revisions to the rules in anticipation of the eFiling system. The eFiling system should be mandatory for attorneys and optional for parties. Due to the highly personal nature of Probate Court matters, only parties and attorneys will be able to view court files online. The general public will be able, as they can presently, to view and request copies of non-confidential documents from the court.

Discussion of drafts of proposed rules

Subcommittee I – Rules for All Case Types

In Judge Zelman's absence, Attorney Bonnie Bennet highlighted the rule changes recommended by Subcommittee I. The following draft rules generated discussion:

Rule 1 (37) Definitions

The definition of “purported will” appears to include a will that was denied admission to probate. The editing committee will review usage of the term to determine whether the definition should be revised.

Rule 7.4 Signature Required

The committee discussed subsection 7.4(d)(2)(B), which permits a client to authorize an attorney to sign and file a document required to be signed under penalty of false statement on the client’s behalf. The concern is whether the client could still be held criminally liable for false statement. PCA will review the governing law and determine whether the model in use by the Internal Revenue Service is appropriate for the Probate Courts.

Rule 8.5 How Notice of hearing given

Rule 8.10 Notice of Decree

PCA will consider whether legislation is needed to address how the appeal period is determined when the court mails the decree on a different day from the date on which it transmits it electronically. The committee recommends that the eFiling system be configured so that users will automatically receive email notification of communications sent to the eFiling system mailbox, with a user option to change the notification method.

Rule 22 eFiling

The committee discussed the importance of protecting against disclosure of confidential documents to persons other than parties and attorneys and the improper disclosure of confidential information (such as tax return and health information) to parties and attorneys. The eFiling system will need to include a means of terminating online access to a file when a person’s status as a party ends.

Subcommittee III – Rules for Specific Case Types

Judge Beverly Streit-Kefalas, Chair of Subcommittee III, highlighted the changes to the rules proposed by Subcommittee III. The following draft rules generated discussion:

Rule 30 Decedents’ Estates

The subcommittee recommends that section 30.6 be amended to make it clear that, when an inter vivos trust is a beneficiary under the decedent’s will, it is the trustee (not the trust beneficiaries) who is entitled to notice of proceedings in the decedent’s estate. Judge Streit-Kefalas reported that two judges had registered objection to this proposed clarification at the June Probate Assembly meeting. The consensus of the committee is that the clarification is appropriate because current law does not afford the trust beneficiaries standing in the decedent’s estate proceeding.

Subcommittee II – Rules for Hearings

In Judge Mahon’s absence, Attorney Heather Dostaler highlighted the changes to the rules recommended by Subcommittee II. The following draft rules generated discussion:

Section 33.11b Transfer of Structured Settlement payment rights

Members of the committee questioned the need for a guardian ad litem for a conserved person in a proceeding concerning the transfer of structured settlement payment rights.

Section 43.5 When guardian with authority to manage assets to submit financial report or account

Several members expressed concern that this proposed rule placed an undue burden on guardians of persons with intellectual disability to account for funds up to \$10,000. The editing committee will work on language to make it clear that the court has authority under C.G.S. section 45a-677a to excuse the filing of an inventory and account.

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 Knierim and Attorneys Bennet, Dostaler, Gaffey and Biklen) will meet over the summer to refine the language and ensure consistency with existing provisions. After review by the full committee and the Probate Assembly, Judge Knierim will seek Supreme Court approval of the final product in November.

Discussion of Unsupervised Probate

Professor Jeffrey Cooper asked for comments and feedback on the recent Symposium on Unsupervised Probate sponsored by the Connecticut Bar Foundation and Quinnipiac University School of Law. The majority of the advisory committee was in attendance at the symposium.

The committee expressed general support for the concept of providing an option for unsupervised administration of decedents' estates. Key points of the discussion included:

- Whether supervised administration should be "opt out" or "opt in"
- Methods to ensure that heirs and beneficiaries know their rights
- Protection of creditors
- Accounts should be excused when the fiduciary is the sole beneficiary
- Increase the maximum for the small estate procedure
- Expand Probate Court Rule 30.23 (concerning the settlement of a full estate with a simplified procedure similar to the affidavit in lieu)

Next meeting

The next meeting of the full committee will be on September 6, 2018 at 3:00 p.m. at the Office of the Probate Court Administrator.

Adjournment

The meeting adjourned at 6:20 p.m.