

**Probate Practice Book Advisory Committee  
Subcommittee I**

**Meeting Minutes**

Tuesday, January 9, 2018

3:00 p.m.

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

The meeting was convened at 3:20 p.m. by Judge Steven Zelman, Chair.

Other members in attendance: Attorney Molly Ackerly, Attorney Bonnie Bennet, Attorney Douglas Brown, Ms. Mary Ann Champney, Attorney Paul Hudon, Mr. Stephen Pedneault, CPA, and Attorney Greta Solomon

Members Not Present: Judge Michael Darby, Attorney Karen Gano

**Remarks of the Chair**

Judge Zelman welcomed Mary Ann Champney to the committee. Mary Ann Champney is Chief Clerk of the Northeast Probate Court and the Northeast Regional Children's Probate Court.

**Approval of minutes of November 28, 2017 meeting**

The minutes of the November 28, 2017 meeting were unanimously approved.

**Review of Draft Rules**

Attorney Bonnie Bennet began the meeting with an overview of the development of the draft rules. At the committee's request, she reviewed the relevant Connecticut Practice Book provisions and the Maine and New Hampshire rules of procedure concerning electronic filing of court documents. Both Maine and New Hampshire have developed a separate set of rules for eFiling. While these rules provided important examples and guidance in developing the proposed Connecticut Probate Court Rules of Procedure, Connecticut's approach of amending existing Practice Book rules in preparation for, and initiation of, a new eFiling system is the more appropriate and valuable approach. The proposed rules are broad in nature to enable the Office of the Probate Court Administrator to develop and launch a new eFiling system. Technical procedures will be contained in a separate document, similar to the E-Services Procedures and Technical Standards document issued by the Chief Court Administrator.

The committee reviewed the draft rules and had the following suggestions and recommendations regarding specific provisions:

**Section 1.1 (definitions)**

Section 1.1 (26) "Original signatures" was revised to mean "a symbol executed or adopted as a signature by a person in ink on paper." The committee recommended that the definition be simplified.

Section 1.1 (38) “Registered filer” generated a discussion of whether the public should be able to view documents in a matter on the eFiling system. Attorney Paul Hudon stated that public records are public records and the ability to view documents should not be restricted to registered filers. He also questioned what was meant by a “matter” and suggested that a definition may be needed. Bonnie recalled that this suggestion had been made in the past and it was determined that a definition was not needed. Given the proposed eFiling rules, however, she will review the current rules for consistency and clarity in the use of the word “matter”. The broader question regarding access to the eFiling system was discussed further in the committee’s review of proposed revisions to rule 16, Public Access to Hearings and Records.

#### Section 3.1(b) (duties of clerk)

The word “decree” should be substituted for “notice” in the last sentence of the subsection.

#### Section 5.9 (attorney registration for eFiling system)

The proposed rule states that a Connecticut attorney who files an appearance in a matter or is permitted to appear pro hac vice shall be deemed a registered filer, unless the probate court administrator has excused the attorney from using the eFiling system. Attorney Molly Ackerly questioned why the probate court administrator would grant an exemption rather than the individual court. The concept is that exceptions to the default rule will be rare and applied to all matters in the courts in which the attorney files an appearance. The attorneys on the committee acknowledged that they could not envision a reason for an exemption from eFiling on a case by case basis.

#### Section 6.2 (waiver of probate fees and expenses)

Attorney Ackerly questioned the reason for the additional requirement in subsection 6.2(a) that the fee waiver request be filed on the latest revision of a form published by the probate court administrator. Since Section 7.3 of the rules require that the court accept a document if it is filed using the latest revision of a form published by the probate court administrator, the additional language proposed in subsection 6.2(a) will be deleted.

#### Section 7.1 (general filing requirements)

After a full discussion, the committee agreed that that it was not necessary to add language to provide that subsection (a) would only be applicable if the eFiling system was instituted. If there are no registered filers, parties and attorneys must file all documents in paper form.

Section 7.1a will be reformatted.

#### Section 7.4 (signature required)

The committee had a robust discussion concerning the provisions of subsection 7.4(c) which govern when an attorney may sign a request, motion, petition or document on behalf of a client. The members feel strongly that if a document is required to be signed under penalty of false statement, the client must sign the document. The attorney would then scan and electronically file the original document with the court on behalf of the client. This provision is similar to section 7(d) of the New Hampshire Circuit Court – Electronic Filing Pilot Rules. In the alternative, the client could sign a form published by the probate court administrator affirming the accuracy of the document and authorizing the attorney to electronically file the document. The form would be similar to IRS Form 8879.

#### Section 8.5 (how notice of hearing given)

The committee recommended redrafting subsection (a) to more clearly state the alternative methods for notice of hearing: electronic service, regular mail or other method that the court deems necessary to notify a party. A question was raised whether the rules should include a provision regarding when notice by other methods is complete.

#### Section 8.10 (notice of decree)

Since section 6.5 was deleted, Attorney Ackerly recommended that section 8.10 make clear that the copy of each decree sent to a person entitled to notice under section 8.2 would be provided free of charge.

#### Section 11.1 (service of process on court as agent)

It is recommended that section 11.1 provide that the court send by regular mail a copy of the original served papers to an attorney for the fiduciary or appearing pro hac vice who is not a registered filer.

#### Section 12.7 (court-appointed attorney registration for eFiling)

The text should include “court-appointed attorney”.

#### Section 13.9 (court-appointed guardian ad litem registration for eFiling)

The words “court-appointed” should be deleted from the title of the section.

#### Section 16.1 (public access to hearings and records)

The committee again discussed the broader policy issues involved in providing unrestricted online access to the eFiling system. While Attorney Hudon continued to advocate for public access, several other committee members felt that restricting online access to registered users in a matter was necessary given the sensitive nature of Probate Court matters and the vulnerable populations served by the court. Section 16 (a) makes clear that except as provided by law or as determined by the court, members of the public would otherwise be able to view and obtain copies of court records.

#### Section 36.13 Records to be maintained by fiduciary

The changes to the rule reflect the increasing use of electronic records and documents. Steve Pednault raised the concern that electronic documents can be easily manipulated and altered.

#### **Next Meeting**

The next meeting will be held on Tuesday, February 27, 2018, from 3:00 p.m. to 6:00 p.m. at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT.

#### **Adjournment**

The meeting was adjourned at 6:10 p.m.

Approved 2-27-18