

**Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes
Tuesday, January 10, 2012
3:00 p.m.

Office of the Probate Court Administrator
186 Newington Road
West Hartford, CT 06110

Judge Steven Zelman, Chair of Subcommittee I, convened the meeting at 3:07 p.m.

Other members in attendance: Attorney Molly Ackerly, Attorney Bonnie Bennet, Attorney Paul Hudon, Attorney Karen Gano, Attorney Greta Solomon, Judge Beverly Streit-Kefalas, Ms. Sondra Waterman.

Members absent: Attorney Douglas Brown

Also in attendance: Attorney David Biklen, Reporter; Attorney Sally Zanger, Connecticut Legal Rights Project.

Minutes of the December 6, 2011 meeting

The minutes of the December 6, 2011 meeting were unanimously approved.

Review of concepts from December 6, 2011 meeting:

The committee reviewed the scribe's notes in the minutes from December 6, 2011 and made the following recommendations:

Disqualification of Judge

Page 4, Item 1: Since Canon 3E states that a judge shall disqualify himself or herself in a proceeding in which a judge's impartiality might reasonably be questioned and identifies instances where this may be an issue, it was decided to strike the phrase: Notwithstanding any other grounds for disqualification at the beginning of proposed rule 1 under this section. The concept for the proposed rule now reads:

A judge of probate shall, upon a motion of any party or upon the court's own motion, be disqualified from acting in a matter if such judge is disqualified from acting therein pursuant to General Statutes §45a-22 or Canon 3E of the Code of Probate Judicial Conduct.

Public Access

Page 6, Item I: The committee discussed whether the concept concerning the probate court's inherent power to manage the courtroom should be included at the very beginning of the Public Access section or under the subsections concerning the closure of hearings and sealing of files. It was decided that the location for this concept was a drafting issue.

Review of feedback from December 15, 2011 Advisory Committee meeting

Notice, Item 8b

The committee agreed that the rule should be drafted to indicate that the petitioner, and later the fiduciary, should use reasonable efforts to provide the court with the names and addresses of parties rather than expressing the principle in terms of a "burden." The rule should also state that the interested parties should also keep the fiduciary and the court informed of any change of address during the pendency of a matter.

Notice, Public Notice, Item 14

The rule should state that public notice must be made by publication in a newspaper with general circulation in the probate district or by other means authorized by statute.

Notice, Item 17b.

The rule concerning a party who appears at a hearing despite the court's failure to give proper notice should be modified to provide that, under these circumstances, notice is deemed given unless the party raises an objection at the hearing. Conservatorship proceedings under C.G.S. 45a-650 should be explicitly excluded from the application of the rule because § 45a-650(a) prohibits a court from hearing further evidence absent a finding of proper notice.

Notice, Item 17d

The concept for the proposed rule should be re-written to make clear that it applies only when the address of a party is discovered after a decree has been entered: **If a party did not get notice of hearing and informs the court of her or her whereabouts after a decree was issued, the court should send the party a copy of the decree and a notice that the party may wish to consult an attorney regarding any rights they may have in the matter.** It was suggested that a form could be developed for this purpose.

Notice to parties with limited English proficiency. No rule proposed.

Counting Time Periods, Items 1 and 2

The committee agreed that the rule for counting time periods should be re-written as follows:

- 1. Except as otherwise provided by statute, in computing any period of time prescribed or allowed by these rules, by order of the court or by**

applicable law, the day of the act, event, or default with reference to which the time period runs shall not be included.

2. **Except where a time period is provided by statute, the court may order an extension of a time period, with or without motion or notice, upon a request made by a party prior to the expiration of the time period originally prescribed or as extended by previous order.**

Court Appointments – Guardians ad litem, Item 1

The subcommittee was asked to consider whether the appointment of a guardian ad litem should be conditioned upon a finding of incapacity. No change was recommended to the proposed rule.

Court Appointments – Guardians ad litem, Item 5

The concept for the proposed rule is modified as follows:

5. **The court may limit the scope of any appointment to particular action or actions. The appointment may be terminated by the court at any time.**

The committee did not decide whether to change “particular actions” to “particular issues”, but will further discuss the wording of the proposed rule when reviewing the draft of the proposed rule.

Disqualification of Judge, Item 2a

The committee was asked to consider revising the proposal to permit a judge to act on a disqualification motion without a hearing. The committee decided that a hearing should be held as stated in the proposed rule. The committee also determined that the rule should make clear that a motion for disqualification should be decided prior to a hearing on the merits. This concept is currently included in Item 2c.

Disqualification of Judge, Item 3

The rule as proposed provides that a judge is not automatically disqualified in the event that a party files a complaint with the Council on Probate Judicial Conduct, but would require that the judge disclose the filing of such complaint to the parties and attorneys. In response to the concern that Council proceedings are otherwise confidential, the committee decided to add that **“any disclosure by the judge of the filing of complaint with the Council shall not constitute a waiver the confidentiality of the Council’s proceedings”** [Scribe’s note: the concept as currently written suggests that the judge make the parties and counsel aware of the complaint even if the judge disqualifies himself. This issue can be addressed during the drafting stage.]

Discussion of the concepts for rules regarding Public Access to Records.

The committee continued with its discussion of the concepts for proposed rules regarding Public Access to Records which had begun at its December 6, 2011 meeting. Concepts for proposed rules are in bold below.

3. **Motion to close a hearing; Motion to seal record**
 - a. **Any proceeding and any document filed in court, except proceedings or documents that are confidential by statute or by these rules, are open to the public unless and until a motion to close a hearing or seal a file or document, or portion thereof, has been filed and an order has been granted by the court.**
 - b. **A party shall file a motion to close a hearing at least three (3) business days prior to the scheduled hearing on the underlying application.**
 - c. **A party shall file an application to seal a document or file in court prior to submitting the information requested to be sealed.**
 - d. **The court shall schedule a hearing on the motion to close hearing or seal a document or file, or portions thereof, at which arguments of the private and public interests shall be presented.**
 - e. **Except as otherwise ordered by the court, notice of hearing on the motion to close hearing and motion to seal a file or document shall be sent to all parties. Notice of the time, date and place of hearing shall also be posted in a location in or adjacent to the clerk's office and accessible to the public.**
 - f. **The application to close a hearing or seal a document or file and the court's decree on the application are public record.**
 - i. **If the court determines that grounds for closing a hearing or sealing a file exist, in extraordinary circumstances the court may seal portions of its own sealing order.**
4. **Closing hearings in non-confidential proceedings**
 - a. **Except where proceedings or documents are confidential by law or as provided in this section, the public may attend any hearing.** The committee questioned whether it was necessary to repeat this concept under the section regarding closing hearings inasmuch as it is stated in 3. above. This issue will be considered when reviewing a draft rule.
 - b. **Upon written motion of any party as set forth in 3. above, or upon its own motion, the court may order that the public be excluded from a hearing or portion thereof if the court concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending the hearing. The court shall first consider**

reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the hearing shall not constitute a sufficient basis for the issuance of such an order. The committee questioned whether the rule should provide for a motion by the court. This will be reviewed again at the drafting stage. [Scribe's note: Given the rule regarding the court's inherent power to manage the courtroom, Item 1. under Public Access in the minutes from December 6, 2011, is it necessary to provide for the court's own motion in this rule?]

- c. **In connection with any order issued pursuant to subsection (b) of this section, the court shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the court which upon issuance the court clerk shall immediately enter in the court file and post in a location in or adjacent to the clerk's office and accessible to the public. The court's decision on the motion to close the hearing shall be included in the file.**

5. Sealing of documents in non-confidential proceedings

- a. **Except where proceedings or documents are confidential by law or as provided in this section, the public shall have access to any file, document, or other material on file in the court.** The committee questioned whether it was necessary to repeat this concept under the section regarding sealing of documents inasmuch as it is stated in 3. above. This issue will be considered when reviewing a draft rule.
- b. **Upon written motion of a party as set forth in 3. above, or upon its own motion, the court may order that any files, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.** The committee questioned whether the rule should provide for a motion by the court. This will be reviewed again at the drafting stage.
- c. **Upon written motion of any party, or upon its own motion, the court may order that files, documents, or other materials in connection with a court proceedings be sealed or their disclosure limited only if the court concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing the materials. The court shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary**

to protect such overriding interest. An agreement of the parties to seal and limit the disclosure of documents in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order. [Scribe's Note: Most of the above paragraph which parallels paragraph 4b above was inadvertently omitted from the issues to be considered.]

- d. In connection with any order issued pursuant to subsection (c) of this section, the court shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the court which upon issuance the court clerk shall immediately enter in the court file and post in a location in or adjacent to the clerk's office and accessible to the public. The court's decision on the motion to seal shall be included in the file.**
- e. The court may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The court shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.**
- f. The court may upon a motion of a party, or upon its own motion, unseal a file where the original grounds for sealing the file no longer exist, the sealing order was improvidently granted or the interest protected no longer outweighs the public's right to access.**

[Scribe's notes: 1: CPB Rule 11-20A also addresses the use of pseudonyms. Should the rule specifically address this issue? §11-20A(h) provides that pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judge and only if the judge concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The section on pseudonyms parallels the sections on sealing files generally. 2. should the rule require posting of the time, date, scope and duration of any notice of hearing and order regarding the sealing of files on the probate court website?]

Discussion of the concepts for rules regarding Transfer of Files between Probate Courts. Concepts for proposed rules and action are as follows:

1. **Hearings.** Where statutes provide that the transfer of a probate file to another probate court is discretionary, a hearing is required. [**Scribe's notes:** Should a request to transfer a file between probate courts, where action is discretionary, be added to the list of matters available for the streamline procedure?]
2. **Notice.** A copy of an order or decree transferring a file shall be sent to all parties whether or not a hearing is required. Since proposed rule regarding notice of decrees (item 3 under the Clerks and Records) requires clerks to send all parties and counsel notice of all judicial action, it was questioned whether it is necessary to repeat this concept under this section.
3. **Transfers in Conservatorship matters.** While transfer of a conservatorship matter is mandatory when requested by a person specified by statute, the rule should provide that the court may grant the request to transfer the matter after rendering a decision on pending issues.

Discussion of the concepts for rules regarding Guardianships of Adults with Intellectual Disability. Concepts for proposed rules and action are as follows:

1. **Counsel.**
 - a. The committee recommended a statutory change to state that a court-appointed attorney in a guardianship of adult with intellectual disability shall represent the respondent or ward in any proceedings under §45a-669-684 similar to the conservatorship statute, 45a-649a(c).
 - b. The committee recommended a statutory change that would make the attorney's role in a review of a guardianship of adults with intellectual disability similar to the review process in conservatorship under CGS §45a-660(c) – i.e., not later than 30 days after receipt of reports from guardian and DDS, if any, the attorney for the ward shall notify the court that the attorney has met with the client and whether a hearing is requested.
2. **Criminal Background Checks.** The committee discussed whether to include a rule providing the judge with discretion to require a proposed guardian to submit to a criminal background check. While the committee was divided on this issue, the majority of members decided to bring the concept to the full committee for their consideration, especially since Committee III is considering a similar rule for other court-appointed fiduciaries.

Sterilization: § 45a-690 et seq.

1. **Informed consent.** A rule should make clear that the court may require an interdisciplinary team to report on a respondent's ability to make

informed decision pursuant to 45a-695 even when respondent has a guardian of person for an adult with intellectual disability or a conservator. The court shall require an interdisciplinary team to provide evidence on the issue of the best interest of the respondent in all cases pursuant to 45a-699.

Discussion of the concepts for rules regarding Change of Name. Concepts for proposed rules in bold below.

1. **A rule shall specify that an application for change of name shall be brought in the probate district in which the person whose name is sought to be changed resides.**
2. **The petitioner shall be required to appear in court and be examined under oath.**
3. **The application shall be accompanied by an affidavit containing information as required by the court.** The affidavit form, as with all probate forms, should be available online. [**Scribe's notes:** Should the rule specify the type of information required on the affidavit: questions regarding residency, criminal record, other applications to change name, outstanding debts, real estate, acknowledgment of requirement to notify the Commissioner of Public Safety if on the sexual offender registry?]
4. **The petitioner shall present a long-form birth certificate or, for cause shown, other evidence of birth name.**
5. **Change of the name of a minor.**
 - a. **An application to change a name of a minor must be filed on behalf of a minor through his or her next friend.**
 - b. **Notice to the following persons is required:**
 - i. **Notice to next friend**
 - ii. **Notice to parents, if not next friend**
 - iii. **Notice to guardian, if not next friend**
 - iv. **Notice to minor child age 12 or older**
 - c. **An Affidavit of Children (JD-FM-164) may be required for change of name of minor.** This form would alert the court to pending actions, or other actions affecting the child.
 - d. **The rule should state that a parent or guardian may serve as next friend.**
6. The committee determined that it was not necessary to have a rule that the parties could waive notice of hearing in order to expedite the hearing inasmuch as the rule on Notice addresses this issue generally.
7. **A rule should allow spouses and parents and minor children to file one application for change of name..**
 - a. **If one application is accepted, the court shall issue individual decrees for each member of the family.**
 - b. **The court may require multiple applications (and fees) where the issues may not be the same for all family members requesting a change of name.**

8. No rule is necessary concerning overlapping jurisdiction with the Superior Court for change of name. The affidavit asks whether the petitioner has sought a change of name previously in either probate or Superior Court.
9. **A rule shall require notification to the Department of Public Safety/State Police in the event that the court grants a change of name for a person that the court knows has a criminal record.**
 - a. **A rule shall allow the court, in its discretion, to conduct a criminal background check, whether or not a criminal offense is listed on the affidavit.**
 - b. The rule does not need to reference the statutory requirement of notifying the Department of Public Safety if the person requesting the change of name is required to register with the Commissioner of Public Safety as a sexual offender.

Interested parties:

- a. Person for whom a change of name is being sought
- b. Next friend of minor
- c. Parents/guardians of minor, if not serving as next friend
- d. Minor, 12 or over
- e. Commissioner of Public Safety, if person whose name is sought to be changed is required to register as sexual offender.

Specific forms required:

1. A long-form birth certificate or, for cause shown, other evidence of birth name
2. An affidavit [containing information regarding residency, criminal record, other applications for change of name?]

Next meeting

Our next meeting will be held on Tuesday, February 7, 2012 at 3:00 p.m. at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT.

The meeting was adjourned at 6:05 p.m.

Approved February 7, 2012