

**Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes
Tuesday, March 6, 2012
3:00 p.m.

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

Attorney Bonnie Bennet convened the meeting at 3:25 p.m.

Other members in attendance: Attorney Douglas Brown, Attorney Paul Hudon, Attorney Karen Gano, Attorney Greta Solomon, Judge Beverly Streit-Kefalas (via speakerphone), Ms. Sondra Waterman, Hon. Steven Zelman. Chair

Members absent: Attorney Molly Ackerly

Also in attendance: Attorney David Biklen, Reporter

Minutes of the February 7, 2012 meeting

The minutes of the February 7, 2012 meeting were unanimously approved.

Review of Drafts of Rules 1 through 4 from prior meeting

Preamble: It was suggested that the language of the preamble be timeless. As such, reference to the Probate Practice Book Advisory Committee should be deleted. Some members recommended that the preamble emphasize the importance of maintaining the informality and accessibility of the courts. Others cautioned having the preamble expand upon the rules themselves. A preamble which is limited in scope will be drafted.

Section 1.2 Applicability of Rules. The following statement was added to Section 1.2: If a rule conflicts with statute, the statute governs. It was believed that this statement would make the rules more clear for the lay person. Judge Zelman remarked that the rules should be written in clear, short, concise sentences.

Section 2.1 Definitions. The position of “clerk” was added to the definition to rectify an inadvertent omission.

Section 3.1(b) Duties of Clerk. The rule was clarified to state that the clerk shall send a copy of each decision, order, decree or denial of the court, not just notice of a decree.

Section 3.5 Lost document, and 3.6 Permanent record. Minor wording and numbering changes were made.

Discussion of Draft Rules:

Rule 5 Appearances

Section 5.1 Who may appear before the court. Wording changes were made to clarify rules regarding non-attorneys and court-appointed attorneys.

Section 5.2 Appearance by legal representative of party. Language was added clarifying the appearance of guardians ad litem and attorney in fact on behalf of a party. Reference to a holder of a power of appointment was deleted. The proposed rule regarding a representative for a deceased fiduciary was also deleted as it was otherwise covered by the rule and statute.

Section 5.3. Appearance of legal counsel. Language of the rule was clarified.

Section 5.5. Legal Intern. The rule was simplified.

Section 5.6. Filing appearances before the court. A number of changes made clear that an appearance of an attorney includes any attorney in the attorney's firm.

Section 5.6 Form of appearance, 5.7 Effect of appearance, 5.8 Withdrawal of appearance and 5.9 Change of name, composition, or association of law firm. Clarifications and changes in numbering were suggested.

Rule 6 Probate Fees

Section 6.1 Entry fee. Reference to the decedents' estates and fiduciary accountings was deleted and replaced with payment of fees when required.

Section 6.3 Withdrawal of matter. Changes in wording suggested.

Section 6.5. Certified copy of decree. The rule was clarified to reflect that a decree with court seal, rather than a certified copy, is to be sent to each party.

Rule 7 Filing Requirements

Section 7.1 General Filing Requirements, 7.2 Commencing proceeding in court. 7.3 Forms. Minor changes in wording suggested to provide consistency between rules.

Section 7.4 Signature required. The exceptions to the rule that require an original document were clarified. Motions made during a hearing were added to the list of exceptions. The rules governing when a party or the party's attorney must sign a document were clarified.

Next meeting

Our next meeting will be held on Tuesday, April 3, 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 6:35 p.m.

Approved April 3, 2012

Draft rules as of March 6, 2012 are attached to these minutes.

State of Connecticut Probate Practice Book

Preamble

Pursuant to Connecticut General Statutes Section 45a-78, the Probate Court Administrator is charged with recommending to the justices of the Supreme Court uniform rules of practice for the probate courts.

The rules of practice have been promulgated to provide uniformity of procedures in the courts, efficient and inexpensive determination of probate matters, and advancement of justice. Of equal importance is the need to maintain the informality and accessibility of the probate court system and the discretion of the judges.

General Provisions

Rule 1 Citation and Applicability of Rules.

Sec. 1.1 Citation of rules. These rules shall be known as the Connecticut Probate Practice Book, and may be cited as C.P.P.B.

Sec. 1.2 Applicability. These rules govern practice and procedure in the Connecticut probate courts and are mandatory in the courts. The rules do not apply to appeals from probate in the superior court, matters transferred from a probate court to the superior court or any other probate matter in the superior court. The rules apply where procedures in the court are not otherwise covered by statute. If a rule conflicts with statute, the statute governs.

(C.G.S. § 45a-78)

Sec. 1.3 Rules to be liberally interpreted. The purpose of these rules is to facilitate the efficient conduct of business in the probate courts and to advance justice. The rules shall be liberally interpreted if a strict adherence cause injustice.

Rule 2 Definitions.

Sec. 2.1 Definitions. In these rules:

() “Account” means a document by which a *fiduciary* provides detailed information about the management of an *estate*. An *account* must meet the requirements of Rule 36.

() “Beneficiary of a decedent’s *estate*” means a person, *fiduciary*, or organization that is or may be entitled to a bequest or devise under a will.

() “C.G.S” means the Connecticut general statutes.

() “Clerk” means chief *clerk*, deputy *clerk*, *clerk* or assistant *clerk* of the *court*.

() “Corporate *fiduciary*” means a bank, trust company, or other corporation or business entity authorized to act as a *fiduciary* in this state.

() “Corporate surety” means a corporation or other business entity authorized to enter into contracts of suretyship for *probate bonds* in this state.

() “Court” means a probate *court*.

() “Court file” means the file in a matter in the *court* that contains documents filed in or generated by the *court* in the matter.

() “*Current beneficiary*” means a *trust beneficiary* who is a distributee or permissible distributee of trust income or principal on the date the status of the *trust beneficiaries* is determined.

() “Contingent remainder *beneficiary*” means a *trust beneficiary* who would be a *presumptive remainder beneficiary* on the date the status of the *trust beneficiaries* is determined if the interest of another *presumptive remainder beneficiary* terminated because a condition specified in the *will* or other governing instrument is not met as of such date.

() “DRS” means the state of Connecticut Department of Revenue Services.

() “Estate” means a decedent’s *estate*, trust, conservatorship *estate*, guardianship *estate*, or other structure under which a *fiduciary* has a duty to manage assets held for the benefit of one or more persons or organizations.

() “Fiduciary” means an individual or entity serving as an administrator, executor, conservator of the *estate*, conservator of the person, guardian of an adult with intellectual disability, guardian of the *estate* of a minor, guardian of the person of a minor, temporary custodian of the person of a minor, trustee, or an individual or entity serving in any other role that the *court* determines is *fiduciary* in nature.

() “Financial report” means a simplified form of *accounting* by which a *fiduciary* provides summary information about the management of an *estate*. A *financial report* must meet the requirements of Rule 35.

() “Heir” means a person who would take any portion of the *estate* of a decedent who died intestate.

() “Intestate” means a decedent who died without a *will*, including a decedent whose purported *will* was not admitted to probate.

() “News media coverage” means broadcasting, televising, recording or photographing by news media of a probate *court* proceeding.

() “Nontaxable estate” means the estate of a decedent whose Connecticut taxable estate is less than or equal to the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.

() “Party” means an individual or entity having a legal or financial interest in a proceeding before the *court* and any other individual or entity that the *court* determines to be a *party* in accordance with the law.

() “P.C.R.” means the probate *court* regulations of this state.

() “Personal surety” means a person who does not meet the requirements to be a corporate surety.

() “Presumptive remainder beneficiary” means a *trust beneficiary* who would be a distributee or permissible distributee of trust income or principal on the date the status of the *trust beneficiaries* is determined if (A) the interests of the *current beneficiaries* terminated on the date without causing the trust to terminate or (2) the trust terminated on the date.

() “Probate bond” has the meaning set forth in C.G.S § 45a-139.

() “Probate court administrator” means the individual holding the office of the probate court administrator of this state.

() “Taxable estate” means the estate of a decedent whose Connecticut taxable estate exceeds the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.

() “Testate” means a decedent who died leaving a *will* that is admitted to probate.

() “Trust beneficiary” means a person or entity that has a present or future beneficial interest in a trust, whether vested or contingent.

() “Trust protector” means, a person or entity identified in a *will* or other governing instrument, charged with [the responsibility of?] protecting the interests of a trust beneficiary, and identified as a trust protector, trust advisor, or beneficiary surrogate, or as a person or entity in an equivalent role.

() “Will” means, before admission to probate, an instrument purporting to be the last *will* and testament of a decedent and any codicil thereto and, after admission to probate, an instrument that is the last *will* and testament of a decedent and any codicil thereto.

() Insert additional definitions as needed.....

Rule 3 Probate Clerk. Files and Records.

Sec. 3.1 Duties of clerk.

(a) A *clerk* shall:

- (1) receive files, papers and documents filed with the *court*;
- (2) make and maintain records of all proceedings of the *court*;
- (3) have custody of and maintain *court files* and records of the *court*, including files and records of any former *court* in the probate district;
- (4) schedule hearing dates;
- (5) bill and collect fees payable to the *court*; and
- (6) perform all other duties as directed by the judge or required by law.

(b) A *clerk* shall send copies of each decision, order, decree, denial, and any other ruling of the *court* to each *party* and counsel of record. The *clerk* shall record the date the notice was mailed.

(C.G.S. §§ 45a-186, 51-53)

Sec. 3.2 Uniform numbering system for court file. The *court* shall use a uniform numbering system prescribed by the probate *court* administrator to identify each *court file*.

Sec. 3.3 Probate court is court of record. Rulings to be in writing. The probate *court* is a *court* of record. A decision, order, decree, denial or other ruling of the *court* shall be in writing. The *court* shall memorialize any oral ruling in writing.

Sec. 3.4 Custody of record. A *clerk* shall not permit a *court file*, record, transcript, exhibit or other document in a file to be taken from the *court* or *court* office without the judge's authorization.

Sec. 3.5 Lost document. Except for a writing purporting to be a *will*, if a document in the *court file* is mislaid, lost, or destroyed, a *clerk* may permit a sworn copy to be substituted. The *clerk* shall certify on the document that it is a copy.

Sec. 3.6 Permanent record of the court. Documents listed in P.C.R. Sections 10 and 11 are the permanent record of a matter in the *court*.

Rule 4 Party.

Sec. 4.1 Party.

(a) Except as otherwise permitted by the *court*, only a *party* may participate in a proceeding before the *court*. The listing of a person on an order of notice of the *court* does not, of itself, make the person a *party*.

(b) Except for a matter that is confidential, a person not a *party* may attend a *court* hearing and may request special notice of a hearing.

(C.G.S. § 45a-127)

Rule 5 Appearance.

Sec. 5.1 Who may appear before court.

(a) A *party* who is an individual may appear before the *court* with or without an attorney.

(b) A legal representative or *fiduciary* for a *party* identified under section 5.2 may appear before the *court* on behalf of the *party* without an attorney and without filing an appearance.

(c) Only a person who is an attorney may appear for a *party* except as provided in section 5.2.

(d) An attorney under section 5.3 or 5.4 may appear for a *party* for whom the attorney has filed an appearance.

(e) An attorney appointed by the court for a party may appear without filing an appearance.

(C.G.S. § 51-88; *State Bar v CBT*, 145 Conn 222 (1958), 146 Conn 556 (1959))

Sec. 5.2 Appearance by legal representative of party.

If there is no conflict of interest and an appearance is not otherwise prohibited by law, the following legal representatives or fiduciaries may appear before the *court* on behalf of a *party* without an attorney:

- (1) conservator for a conserved person in matters other than the conservatorship matter before the *court*;
- (2) guardian of the *estate* for a minor in a matter other than the guardianship of the *estate* matter before the *court*;
- (3) trustee in a matter other than the trust matter before the *court*;
- (4) executor of an *estate* and administrator of an *estate* other than the *estate* before the *court*;
- (5) guardian ad litem appointed by the *court* for the purpose for which the guardian ad litem is appointed;
- (6) attorney in fact authorized under a power of attorney executed by the *party*; and
- (7) other fiduciaries that the *court* may direct.

(See C.G.S. §§ 45a-487a through 45a-487d regarding virtual representation in trust matters)

Sec. 5.3 Appearance of legal counsel.

Except as provided in section 5.4, only an attorney who is licensed to practice law in Connecticut may represent a *party* before the *court*.

Sec. 5.4 Out-of-state attorney appearing pro hac vice.

(a) The *court*, on special and infrequent occasion and for good cause shown, may grant an attorney in good standing at the bar of another state, the District of Columbia, or Puerto Rico, permission to appear pro hac vice in the *court* in a matter for a *party*.

(b) An attorney of this state seeking permission for an out-of-state attorney to appear pro hac vice in a matter shall file a written application with the *court* having jurisdiction of the matter accompanied by an affidavit of the out-of-state attorney:

(1) certifying whether the out-of-state attorney has a grievance pending against the attorney in another jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning the discipline or resignation;

(2) designating the judge of the *court* as the agent of the out-of-state attorney on whom process and service of notice may be served at the *court*;

(3) agreeing to register with the statewide grievance committee in accordance with the provisions of the Connecticut Practice Book while appearing in the matter in this state and for two years after completion of the matter and to notify the grievance committee of the expiration of the two-year period; and

(4) identifying the number of matters in which the out-of-state attorney has appeared pro hac vice in the *court* and Superior Court of this state since the attorney first appeared pro hac vice in this state.

(c) A member of the bar of this state must be present at all proceedings with the attorney appearing pro hac vice and must sign all documents filed with the *court* and assume full responsibility for them and for the conduct of the matter and of the attorney to whom the privilege of pro hac vice has been accorded.

(d) Good cause, under section 5.4(a), for according the privilege of pro hac vice is limited to facts or circumstances affecting the personal or financial welfare of the client of the out-of-state attorney, not the attorney. The facts or circumstances may include a showing that by reason of a long-standing attorney-client relationship predating the matter before the *court*, the out-of-state attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the matter or that the client has been unable to secure the services of Connecticut attorney.

(e) If the *court* grants an application to appear pro hac vice, the *court* immediately shall notify the statewide grievance committee of the grant.

(Connecticut Practice Book Sec. 2-16)

Sec. 5.5 Legal intern.

(a) Upon the approval of the court, a legal intern, under the supervision by an attorney licensed to practice law in Connecticut, may appear in *court* on behalf of a *party*, if the *party* consents, in writing, to the appearance of the intern.

(b) To become a legal intern an individual must:

(1) be a student at an accredited law school;

(2) file in *court* a certification by the dean of the student's law school as being a student in good standing.

(c) The supervising attorney shall:

(1) assume personal professional responsibility for the work of the intern;

(2) assist in the intern's preparation to the extent the supervising attorney considers necessary; and

(3) be present in *court* with the intern.

(d) Section 5.5 does not enlarge the rights of an individual, not an attorney licensed to practice law in Connecticut or a legal intern covered by these rules, to engage in activities customarily considered to be the practice of law.

Sec. 5.6 Filing appearance before court.

(a) Except by leave of the *court*, an attorney may not appear in a *court* or be heard on behalf of a *party* until the attorney has filed an appearance.

(b) An appearance shall be filed with the *clerk* of the *court* in which the matter is pending for which the attorney is appearing.

(c) An appearance is entered in the *court* on the filing of an appearance or filing an application which includes an appearance that contains the name and signature of the attorney, name of the attorney's law firm, mailing address, telephone number, and juris number of the attorney.

(d) In addition to the attorney filing an appearance, any attorney in the attorney's law firm may appear for the *party* for whom the appearance is filed without a filing a separate appearance.

(e) The attorney of a *party* for whom an appearance has been entered in a matter shall send notice of the appearance or initial application which includes an appearance of an attorney for a *party* to each attorney and *party* who is not represented by an attorney. The attorney shall certify to the *court* that the notice has been sent.

(f) The *court* shall send a copy of its appointment of a court-appointed attorney to all attorneys and parties of record in the matter.

Sec. 5.7 Form of appearance.

- (a) An appearance filed with a *court* shall:
- (1) be typed or printed in ink;
 - (2) list in the heading the name of the matter, the name of the probate *court* district, and date of the appearance;
 - (3) be signed by the attorney making the appearance;
 - (4) contain the name of the attorney, the name of the attorney's law firm, mailing address, telephone number, and juris number of the attorney; and
 - (5) indicate whether the appearance is filed in lieu of or in addition to an appearance on file in the *court*.

(b) If the appearance is in lieu of an appearance in the matter on file in the *court*, the attorney filing the new appearance shall send a copy of the new appearance to the attorney whose appearance is to be replaced and certify to the *court* that the copy has been sent. The requirements of this subsection are in addition to the requirements of section 5.6(e).

Sec. 5.8 Effect of appearance.

(a) The *court* shall give notice of each hearing and right to request a hearing to each attorney who has filed an appearance in addition to each party represented by the attorney.

(b) The filing of an appearance, by itself, does not waive the right to challenge jurisdiction.

Sec. 5.9 Withdrawal of appearance.

(a) An attorney, except for a *court*-appointed attorney, may withdraw the attorney's appearance in the *court* by

(1) filing a notice of withdrawal with the *court*, and

(2) sending the notice to each *party* who is not represented by an attorney and to each attorney of record.

(b) Except for an appearance in lieu of an appearance on file in the *court* under section 5.6(b) or written waiver of notice by the *party* represented, the notice of withdrawal shall be filed in *court* and sent to each self-represented *party* and counsel of record not later than three business days before the date of a scheduled hearing in the matter.

(c) The appointment of an attorney for a *party* by the *court* shall continue for the duration of the matter or until further order of the *court*.

Sec. 5.10 Change of name, composition, or association of law firm.

An attorney or the attorney's firm of the attorney who has entered an appearance shall notify the *court* of a change of name, composition, association, address, or telephone number of the firm.

Rule 6 Probate Fees.

Sec. 6.1 Entry fee, when payable.

(a) Except as provided in C.G.S. §§ 45a-111 and 45a-112, a petitioner filing an application, petition, or motion in any proceeding shall submit to the *court* the statutory entry fee, if any, at the time of filing the matter. The application, petition, or motion is not filed for purposes of commencing the matter until the required fee is paid.

(b) If more than one petitioner files an application, petition, or motion under section 6.1(a) for the same matter, an entry fee shall be charged only for first application, petition, or motion that commences the matter.

Sec. 6.2 Waiver of fees and costs

(a) If the *court* finds that a petitioner will be deprived of a right to bring an application, petition, or motion by reasons of indigence or that a petitioner is otherwise unable to pay fees and costs, the *court* may approve a waiver of fees and costs.

(b) A request for a waiver of fees and costs shall be filed in *court* at the time of filing the underlying application, petition, or motion. The petitioner shall submit, with the request for waiver, documents and information required by statute and the *court* to support the waiver request. A request for waiver may be submitted in any matter in the *court's* jurisdiction except for a decedent's *estate*.

(c) If waiver of fees and costs has been approved by the *court*, the person who was granted the waiver shall:

(1) notify the *court* if there is a substantial change in the financial circumstances of the person granted the waiver; or

(2) if requested by the *court*, file an additional application for a waiver of fees.

(See C.G.S. § 52-259b)

Sec. 6.3 Withdrawal of matter. If a petitioner files a motion to withdraw after notice of hearing has been sent, the petitioner is not entitled to a refund of entry fees and costs. The petitioner seeking to withdraw shall pay for costs incurred before the withdrawal is filed, such as cost of service of notice.

Sec. 6.4 Payment of fees and costs before final decree issued. Except as otherwise provided by statute or the *court*, the *court* shall not issue a decree on an *account* or final *account* in a decedent's *estate* until all probate fees and costs have been paid.

Sec. 6.5 Sealed copy of decree. The *court* shall provide, without cost, one copy of each decree with the seal of the *court* to each *party*.

Rule 7. Filing Requirements.

Sec. 7.1. General Filing Requirements.

(a) A document filed with the *court* must:

- (1) be clearly and legibly typed or printed in ink;
- (2) be dated and signed in accordance with section 7.4;
- (3) contain the name of the matter, using the name assigned by the *court* after the matter is commenced; and
- (4) comply with governing statutes and these rules.

(b) The *clerk* may require a *party* to correct and complete the filing of a document by substituting a corrected or substituted document or page in proper form.

Sec. 7.2 Commencing proceeding in court.

(a) A petitioner may commence a proceeding by filing an application, petition, or motion with the *court*.

(b) A petitioner shall include the name and address of each interested *party* on each application, petition, or motion commencing a proceeding.

(c) If the name or whereabouts of a *party* is unknown, the petitioner shall use reasonable efforts to locate the *party* and include a statement describing the efforts made to provide the missing name and address.

(d) The petitioner shall indicate the name of each *party* who is a minor, including date of birth, or who has been adjudicated incapable.

(e) In accordance with the Servicemembers Civil Relief Act, a petitioner shall indicate whether a *party* is in active military service of the United States when commencing the following matters:

- (1) decedent's *estate*;
- (2) children's matter; and
- (3) any other matter in which adjudication of an interest of a service member is sought.

(50 UCS App 521)

Sec. 7.3 Forms.

(a) A formal pleading or probate form approved by the probate court administrator is not required to commence a matter, but each application, petition, or motion must comply with statutory requirements and these rules.

(b) A document filed on a form approved by the probate court administrator is proper in form and shall be accepted by the *court*. The *court* may require documentation in addition to the information on the form. The additional documentation required may be specified in these rules.

Sec. 7.4 Signature required.

(a) The *court* shall not act on an application, petition or motion to initiate an action by the *court*, or other document until a document containing an original signature is filed in *court*, except the *court* may act:

- (1) on a written request for a hearing in any form when streamline procedure permitted under Section 8.5;
- (2) on a commitment application, including a request for a probable cause hearing;
- (3) on a document submitted by a state agency with an electronic signature;
- (4) motions or requests made during a hearing; and
- (5) if the *court* determines there is sufficient reason to act before a document with an original signature is filed in *court*.

[(6) Other documents as determined by other subcommittees.]

(b) A *party* shall sign an application, petition, motion, or other document required to be signed under oath or penalty of false statement, such as an inventory, *account*, list of claims, and tax return.

(c) An application, petition, motion, or other document that is not required to be signed under oath or penalties of false statement may be signed by an attorney on behalf of a *party*.

(Reference to requirements of signatures of multiple fiduciaries from Subcommittee III)

Sec. 7.5 Social security number redacted. Except as specifically requested in an official probate form or otherwise provided by law or order of the *court*, a person filing a document with the *court* shall not include a social security number or employer identification number and shall redact the number from any document pursuant to Rule

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