

**Probate Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes

Tuesday, April 22, 2014

3:00 p.m.

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

The meeting was convened at 3:12 p.m. by Judge Steven Zelman, Chair.

Other members in attendance: Attorney Bonnie Bennet, Attorney Douglas Brown, Judge Michael Darby, Attorney Karen Gano, Attorney Greta Solomon, and Ms. Sondra Waterman.

Members absent: Attorney Molly Ackerly, Attorney Paul Hudon.

Also in attendance: Attorney David Biklen, Reporter

Remarks of the Chair

After welcoming the committee members, Judge Zelman dispensed with additional remarks.

Approval of the November 12, 2013, 2013 Meeting

The minutes of the November 12, 2013 meeting were unanimously approved.

Review revisions of draft rules

The committee reviewed and unanimously approved the proposed revisions of the following rules:

Rule 35 Probate Bonds

Rule 36 Fiduciary Accounting: General Provisions

Rule 47 Change of Name

Review of additional issues and feedback since January 16, 2014

After review and discussion of concepts for revisions to current rules, which have been raised since January 16, 2014, the committee reached the following conclusions:

Rule 5 Appearance

Section 5.2 (b) shall state that the court may act on a motion to permit an attorney to appear pro hac vice without notice and hearing.

Rule 8 Notice

Section 8.2 should state that, on the request of a party, or on the court's own motion, the court may remove any person from the notice list if the court determines that notice is not required under the section. The court may act without notice and hearing. If the court removes a person from the notice list, the court shall send written notice to the person making the request and to the person being removed informing him or her that a written request for special notice may be made under C.G.S. section 45a-127.

While the revised rule would provide a tool for the court to update the notice list on its own motion, the committee was clear that the court did not have an obligation to review and update the list, absent a request of a party.

Rule 18 Transfer of Matter between Probate Court

A new subsection of section 18.2 should state that, if the court has established a trust under C.G.S. section 45a-655 and the conservatorship is transferred to another district under C.G.S. section 45a-661, the court may, on the motion of a person authorized to request a transfer of the conservatorship, transfer the trust to the probate district to which the conservatorship is transferred. The court may act on the motion to transfer the trust without notice and hearing.

After discussion the committee decided that a similar subsection should be added to section 18.1 to state that, if the court establishes a trust that complies with the provisions of section 1917 (d) (4) of the Social Security Act, 42 USC 1396p (d) (4), and a guardianship for the beneficiary of the trust is transferred to another district under C.G.S. section 677, the court may, on the motion of a person authorized to request a transfer of the guardianship, transfer the trust to the probate district to which the guardianship is transferred. The court may act on the motion to transfer the trust without notice and hearing.

Adjournment

The meeting was adjourned at 4:30 p.m.

Draft rules as approved at the April 22, 2014 meeting are attached.

Rule 35 Probate Bonds

Section

- 35.1 When probate bond required
- 35.2 Probate bond to be filed before appointment
- 35.3 Corporate surety required
- 35.4 Form of probate bond
- 35.5 Probate bond to secure performance of all fiduciaries
- 35.6 Amount of probate bond
- 35.7 Restricted account
- 35.8 Fiduciary to report increase in value of estate
- 35.9 Adjustments to amount of probate bond
- 35.10 Surety on additional probate bond
- 35.11 Release of probate bond
- 35.12 Action on probate bond

Section 35.1 When probate bond required

(a) Except as otherwise provided in this rule, the court shall require a fiduciary to submit a probate bond whenever required by statute or by the provisions of a will or other governing instrument.

(b) The court may excuse the requirement of a bond if:

- (1) the value of the assets of the estate or the amount of the estate that is not held in a restricted account is less than the amount under C.G.S. section 45a-139 (c);
- (2) the fiduciary is a corporate fiduciary;
- (3) in a decedent's estate:
 - (A) the will or other governing instrument excuses bond; or
 - (B) each heir or beneficiary of a decedent's estate waives the requirement of a bond;
- (4) in a trust, the will or other governing instrument excuses bond;
- (5) in a voluntary conservatorship, the petitioner waives the requirement of a bond; or
- (6) in an involuntary conservatorship, the respondent or conserved person excused bond in a written designation of conservator under C.G.S. section 45a-645.

(c) Notwithstanding subsection (b), on motion of a party or on the court's own motion, the court may require a fiduciary to submit a bond if the court determines that a bond is necessary to protect parties or creditors or to assure the payment of taxes or administration expenses.

(C.G.S. sections 36a-250, 45a-144 (c), 45a-163 (a), 45a-164 (b), 45a-165, 45a-167 (a), 45a-169, 45a-206 (b), 45a-242 (d), 45a-289, 45a-290, 45a-303 (d), 45a-316, 45a-317a, 45a-326 (c), 45a-430, 45a-451, 45a-473, 45a-474, 45a-477, 45a-478 (c), 45a-483, 45a-559c (f), 45a-629 (b), 45a-632, 45a-635, 45a-646, 45a-650 (i), 45a-654 (a), 45a-659 (c) and 45a-660 (a).)

Section 35.2 Probate bond to be filed before appointment

(a) Except as provided in subsection (b), if the court requires a probate bond from a fiduciary, the court shall not issue a decree appointing the fiduciary or issue a probate certificate evidencing the appointment until the fiduciary has filed the bond.

(b) The court may issue a decree or fiduciary certificate under subsection (a) granting the fiduciary limited interim authority to obtain the probate bond.

_(C.G.S. section 45a-139 (b).)

Section 35.3 Corporate surety required

(a) A probate bond filed on and after the effective date of this rule shall be secured by a corporate surety.

(b) An individual signing a bond on behalf of a corporate surety shall provide written evidence of the individual's authority to sign on behalf of the surety.

(c) A bond filed before the effective date of this rule that is secured by a personal surety is deemed to meet requirements of this rule, provided that a court may require that a corporate surety be substituted for a personal surety if the court determines that the personal surety does not provide adequate security for the bond.

(d) A personal surety under subsection (c) who is not a resident of this state shall file a certificate, acknowledged before an officer authorized to take acknowledgments of deeds, appointing the judge of probate and the judge's successors in office to be the surety's agent for service of process.

(C.G.S. sections 45a-139 (b) and 52-60.)

Section 35.4 Form of probate bond

A probate bond shall be on a form published by the probate court administrator or on a substantially similar form.

(C.G.S. section 45a-139 (b).)

Section 35.5 Probate bond to secure performance of all cofiduciaries

If an estate has more than one fiduciary, the cofiduciaries shall submit a single bond securing the faithful performance of all cofiduciaries.

(C.G.S. section 45a-139.)

Section 35.6 Amount of probate bond

(a) Except as otherwise directed by the terms of a will or other governing instrument or provided by statute or this section, the amount of a probate bond shall be equal to the value of the assets under the control of the fiduciary and anticipated additional receipts of income or assets during the applicable accounting period.

(b) The amount of the bond may be less than provided in subsection (a) as follows:

(1) if the fiduciary does not have the power to sell or mortgage real property, the court may reduce the amount of the bond by the value of the real property;

(2) if the fiduciary deposits assets in a restricted account, the court may reduce the amount of the bond by the value of the assets that are restricted;

(3) if all heirs or all beneficiaries of a decedent's estate request bond in a smaller amount, the court may order bond in an amount equal to the amount requested;

(4) if a fiduciary is an heir or beneficiary of a decedent's estate, the court may reduce the amount of the bond by the fiduciary's share of the estate; or

(5) if the court has approved a structured settlement, the court may order bond in an amount equal to the funds that are anticipated to come under the fiduciary's control during the applicable accounting period.

(C.G.S. sections 45a-139, 45a-151 (b) and 45a-289 (b).)

Section 35.7 Restricted account

(a) The court may authorize a fiduciary to establish a restricted account to hold the assets of an estate. Except as specified in an order of the court, the fiduciary shall deposit all assets and income in the restricted account immediately on receipt.

(b) A restricted account may be established only by execution of an agreement in the exact form published by the probate court administrator under which the fiduciary and a financial institution approved by the court agree that no disbursements may be made except on written approval of the court.

(c) Except as provided in subsection (d), If-if the court requires the fiduciary to establish a restricted account, the court shall not issue a decree appointing a fiduciary or issue a probate certificate evidencing the appointment until the fiduciary has filed the fully executed agreement establishing the restricted account.

(d) The court may issue a decree or fiduciary certificate under subsection (c) granting the fiduciary limited interim authority to establish the restricted account.

~~(d)~~(e) Not later than ten days after receipt of any income or assets, the fiduciary shall submit proof of deposit into the restricted account.

~~(e)~~(f) Whenever the fiduciary is required to submit a financial report or account, the fiduciary shall submit verification that the restricted account remains in force and the most recent statement for the restricted account. The verification shall be on a form published by the probate court administrator or on a substantially similar form.

~~(f)~~(g) On request of the fiduciary, the court may authorize disbursement of funds from the restricted account. The court may act on the request without notice and hearing. If the court authorizes funds to be disbursed without a hearing, the disbursement is subject to review in connection with the fiduciary's financial report or account covering the period in which the disbursement is made.

(C.G.S. section 45a-139 (c).)

Section 35.8 Fiduciary to report increase in value of estate

A fiduciary from whom a probate bond is required shall file a report listing the receipt of additional assets or income or the recognition of capital gain from the sale of an asset if the aggregate amount of the additional assets, income and capital gain exceeds ten percent of the amount of the bond or \$50,000, whichever is greater. The fiduciary shall file the report not later than 30 days after the receipt or sale occurs. The court may require the fiduciary to increase the amount of the bond in accordance with section 35.6 or deposit the additional assets, income and capital gain in a restricted account under section 35.7.

(C.G.S. section 45a-139 (b).)

Section 35.9 Adjustments to amount of probate bond

The court may adjust the amount of the probate bond to reflect a change in the value of the estate in connection with the review of an account or financial report, on receipt of a report under section 35.8 or at any other time.

(C.G.S. section 45a-139 (b).)

Section 35.10 Surety on additional probate bond

If the court orders a fiduciary to increase the amount of a probate bond, the additional amount shall be secured by the same surety as the original bond, except that the court may permit a different surety for the additional amount if both the original surety and different surety agree to joint and several liability for the original and additional amounts.

(C.G.S. section 45a-139 (b).)

Section 35.11 Release of probate bond

(a) Except as provided under subsection (b) or under C.G.S. sections 45a-245 and 45a-331 (b), the court shall not issue a certificate releasing a probate bond until the court has approved the fiduciary's final financial report, ~~statement in lieu of account~~ or account and, if required, the affidavit of closing.

(b) The court may issue a certificate releasing the bond if the court excuses the requirement of a final financial report or account under section 32.7 or 33.17.

Section 35.12 Action on probate bond

The court shall give notice of a hearing on an application to recover on a probate bond to each party and attorney of record. The court shall send notice to the surety by certified mail.

(C.G.S. section 45a-144; Probate Court Rules, rule 8.)

Rule 36

Fiduciary Accounting: General Provisions

Section

- 36.1 Methods of accounting
- 36.2 Financial reports distinguished from accounts
- 36.3 When account is required instead of financial report
- 36.4 Financial reports and accounts to present information in clear manner and be signed under penalty of false statement
- 36.5 Fiduciary to send copies of financial report or account to all parties
- 36.6 When executor or administrator to submit financial report or account
- 36.7 When trustee to submit financial report or account
- 36.8 When final financial report or account of trustee excused
- 36.9 When conservator to submit financial report or account
- 36.10 Periodic or final financial report or account excused when person under conservatorship is Title 19 recipient
- 36.11 When guardian of estate to submit financial report or account
- 36.12 Affidavit of closing
- 36.13 Records to be maintained by fiduciary
- 36.14 Definition of fiduciary acquisition value

Section 36.1 Methods of accounting

Except as provided in section 36.3, a fiduciary required or permitted to account to the court for the management of an estate may satisfy the legal requirements of an account by submitting a financial report meeting the requirements of rule 37. If an account is required instead of a financial report, the fiduciary shall submit an account meeting the requirements of rule 38.

Nothing in this rule prevents a fiduciary from submitting an account instead of a financial report.

(C.G.S. sections 19a-301, 45a-98 (a) (6), 45a-143, 45a-175 through 45a-180, 45a-242 (b), 45a-317 (f), 45a-489a (d), 45a-517, 45a-559d, 45a-654 (f), 45a-655 (c) and 45a-660 (b).)

Section 36.2 Financial reports distinguished from accounts

A financial report is a simplified form of accounting by which a fiduciary provides summary information about the management of an estate. A financial report differs from an account in the following ways:

- (1) principal and income need not be reported separately;
 - (2) assets may be reported at current fair market value rather than fiduciary acquisition value; and
 - (3) a financial report need not balance in the manner required for an account.
- (Probate Court Rules, rules 37 and 38.)

Section 36.3 When account is required instead of financial report

(a) A fiduciary shall submit an account rather than a financial report if the fiduciary is required to account separately for principal and income under section 38.1.

(b) On motion of a party or on the court's own motion made before approval of a financial report, the court may require the fiduciary to submit an account instead of a financial report if the court determines that an account is necessary to review the fiduciary's management of the estate.

Section 36.4 Financial reports and accounts to present information in clear manner and be signed under penalty of false statement

(a) A fiduciary submitting either a financial report or an account to the court shall present all required information in a concise, clear and understandable manner and in sufficient detail so that the court and the parties can review the fiduciary's management of the estate.

(b) A fiduciary shall sign a financial report or account under penalty of false statement.

(c) A fiduciary may submit a financial report or account on a form published by the probate court administrator or in any format that satisfies the requirements of rules 36 through 38.

Section 36.5 Fiduciary to send copies of financial report, ~~or account~~ and affidavit of closing to all parties

(a) A fiduciary submitting a financial report, ~~or account~~ or affidavit of closing shall send, at the time of filing, a copy to each party and attorney of record and shall certify to the court that the copy has been sent.

(b) If a beneficiary is a charity or charitable interest, the fiduciary shall send a copy of each financial report, ~~or account~~ or affidavit if closing, at the time of filing, to the Attorney General and shall certify to the court that the copy has been sent.

(C.G.S. section 45a-175.)

Section 36.6 When executor or administrator to submit financial report or account

See section 30.19.

Section 36.7 When trustee to submit financial report or account

See section 32.5.

Section 36.8 When final financial report or account of trustee excused

See section 32.7.

Section 36.9 When conservator to submit financial report or account

See section 33.14.

Section 36.10 Periodic or final financial report or account excused when person under conservatorship is Title 19 recipient

See section 33.17.

Section 36.11 When guardian of estate to submit financial report or account

See section 34.8.

Section 36.12 Affidavit of closing

(a) If the court directs the fiduciary to file an affidavit of closing, the fiduciary shall file the affidavit in accordance with this section not later than 30 days after completing distribution of all assets on hand.

(b) The affidavit of closing shall itemize each transaction since the end of the accounting period of the fiduciary's final financial report or account and shall include:

(1) the reserve shown on the final financial report or account;

(2) income or assets received; and

(3) amounts disbursed from the reserve and additional income and assets.

(c) The affidavit shall include a statement that assets in the fiduciary's control have been distributed in accordance with the final financial report or account and that the estate is fully settled.

(d) Except for amounts shown as reserve on the financial report or account or additional income or assets received after the end of the accounting period, the affidavit shall not modify any item that would alter a beneficial interest previously adjudicated in the allowance of a financial report or account.

(e) The affidavit shall be signed under penalty of false statement.

(f) The court may accept the affidavit without notice and hearing.

Section 36.13 Records to be maintained by fiduciary

(a) A fiduciary shall maintain complete records of the fiduciary's management of the estate including, but not limited to:

(1) each accounting, report, journal or ledger used in managing the estate and each electronic equivalent thereof, including all data recorded with accounting software;

(2) each statement and passbook for each bank account, including savings, checking, money market, certificates of deposit and other types of accounts;

(3) each canceled check or check image for each bank account;

(4) each statement for each investment account;

(5) a receipt for each deposit made into each bank or investment account and supporting information relating to the deposit;

(6) supporting information relating to each disbursement made from each bank or investment account, including original supporting vendor invoices and receipts;

(7) each statement for each credit card account;

(8) each statement for each store card account;

(9) supporting information relating to each charge made on each credit card, store card or debit card, including supporting vendor invoices and charge slips or receipts;

(10) supporting information relating to each distribution made from the estate or trust to any heir, beneficiary, conserved person or minor, as applicable;

(11) with respect to a conservatorship of the estate, supporting information relating to each gift or other transfer for less than full consideration made from the estate to a party other than the conserved person, provided, however, that a conservator may make gifts and transfers only with prior court approval under C.G.S. section 45a-655 (e);

(12) detailed payroll information for each employee engaged or paid by the estate for each pay period, including time reporting records, original payroll registers, journals, and reports and copies of all Internal Revenue Service Forms 941, 942, W-3 and W-2 and other payroll tax returns;

(13) details of each contracted service provider engaged or paid by the estate for each calendar year, including original invoices from contractors and copies of all Internal Revenue Service Forms 1096 and 1099 and other tax forms;

(14) a detailed journal describing the fiduciary's services and any amounts paid to the fiduciary;

(15) with respect to a decedent's estate or trust, a copy of each state and federal fiduciary income tax return filed by or on behalf of the estate or trust;

(16) with respect to a conservatorship of the estate or guardianship of the estate of a minor, a copy of each state and federal personal income tax return filed by or on behalf of the person under conservatorship or minor, including each form and information received for each tax year used in the completion of each return;

(17) with respect to a conservatorship of the estate, a copy of each state and federal gift tax return filed by or on behalf of the person under conservatorship; and

(18) any other record not specified in this section documenting the fiduciary's actions in the management of the trust or estate.

(b) The fiduciary shall not destroy any estate financial records until the court approves the fiduciary's final financial report or account, the conclusion of any appeal, or the termination of any other applicable record retention requirement, whichever is later.

Sec. 36.14 Definition of fiduciary acquisition value

(a) The fiduciary acquisition value of an asset is:

(1) for a decedent's estate, the fair market value of the asset on the date of death;
(2) for a trust, the fair market value of the asset on the date of death of the testator or settlor or on any other basis for value that the court directs after considering the nature of the trust and the manner in which it was funded; and

(3) for a conservatorship, guardianship or any other estate not specified in this section, the fair market value of the asset on the date of appointment of the first fiduciary.

(b) The fiduciary acquisition value of an asset that a fiduciary purchases during the course of administration is the sum of the purchase price of the asset and expenses directly related to the purchase.

(c) The fiduciary acquisition value of an asset shall not be changed based on unrealized gain or loss owing to fluctuations in market value.

(d) The fiduciary acquisition value of an asset shall be adjusted to reflect transactions in which:

(1) additional investments, such as capital improvements to real property, are made in an asset; and

(2) some of the original investment is returned to the fiduciary, such as the sale of a partial interest in an asset or the receipt of principal payments on a promissory note.

Rule 47

Change of Name

Section

- 47.1 Change of name of adult
- 47.2 Change of name of minor
- 47.3 Single petition for change of name for family
- 47.4 Criminal background and sex offender registry check; notification to Department of Emergency Services and Public Protection

Section 47.1 Change of name of adult

(a) An individual 18 years of age or older seeking to change his or her name shall file a petition in the court for the probate district in which the individual resides.

(b) The petition shall be accompanied by:

- (1) an affidavit on a form published by the probate court administrator;
- (2) a certified copy of the petitioner's long-form birth certificate, unless the court accepts other evidence of the birth name of the petitioner; and
- (3) other information if required by the court.

(c) The court shall send notice of the hearing on the petition to the petitioner and the petitioner's spouse, except that the court may excuse notice to the spouse if notice to the spouse might jeopardize the safety of the petitioner.

(d) Unless otherwise directed by the court, the petitioner shall appear in court and present two forms of identification, including at least one form of photographic identification. The judge or clerk shall administer an oath or affirmation to the petitioner and each other person who will testify.

(C.G.S. sections 45a-99, 46b-63 and 52-11; *Don v. Don*, 142 Conn. 309, 114 A.2d 203 (1955).)

Section 47.2 Change of name of minor

(a) A petition to change the name of a minor may be initiated only by a next friend as petitioner. A parent or guardian of the minor or other person permitted by the court may act as next friend.

(b) The petitioner shall file the petition in the court for the probate district in which the minor resides.

(c) The petition shall be accompanied by:

- (1) an affidavit on a form published by the probate court administrator;
- (2) a certified copy of the minor's long-form birth certificate, unless the court accepts other evidence of the birth name of the minor; and
- (3) other information if required by the court.

(d) The court shall send notice of the hearing on the petition to the:

- (1) petitioner;
- (2) parents of the minor, if not the petitioner;
- (3) guardian of the minor, if not the petitioner; and
- (4) minor, if 12 years of age or older.

(e) The petitioner shall appear in court. The judge or clerk shall administer an oath or affirmation to the petitioner and each other person who will testify.

(C.G.S. sections 45a-99, 46b-63 and 52-11; *Don v. Don*, 142 Conn. 309, 114 A.2d 203 (1955); *Shockley v. Okeke*, 92 Conn. App. 76, 882 A.2d 1244 (2005), appeal dismissed, 280 Conn. 777, 912 A.2d 991 (2007).)

Section 47.3 Single petition for change of name for family

(a) If petitions for change of name of spouses, parents or minor children of the same family living at the same residence are filed at the same time, the court may treat the petitions as a single matter subject to one entry fee. The court shall issue a separate decree for each member of the family.

(b) The court may charge a separate entry fee for a petition under subsection (a) if the court determines that it is necessary to hear the petition separately from the other petitions.

Section 47.4 Criminal background and sex offender registry check; notification to Department of Emergency Services and Public Protection

(a) If the court has reason to believe that an individual seeking to change his or her name has a pending charge, conviction or other criminal record, the court shall obtain a criminal background check of the individual. The court may obtain a criminal background check of any individual seeking a change of name.

(b) If an individual 18 years of age or older seeks to change his or her name, The-the court shall ~~obtain a sex offender registry check of an individual 18 years or older seeking to change his or her name~~ search the registries of sexual offenders and of offenders convicted of committing a crime with a deadly weapon. If the individual is a registered sex offender or as an offender convicted of committing a crime with a deadly weapon, the court shall proceed in accordance with C.G.S. section 45a-99.

(c) If the court grants a change of name to a registered sex offender, a registered offender convicted of a crime with a deadly weapon, or ~~an- any other~~ individual whom the court knows to have a criminal record, the court shall send a copy of the decree to the Department of Emergency Services and Public Protection and the police department for the town where the offense occurred.

(C.G.S. section 54-257.)