

**Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes
Tuesday, June 5, 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 3:15 p.m.

Other members in attendance: Attorney Molly Ackerly, Attorney Bonnie Bennet, Attorney Douglas Brown, Attorney Karen Gano, Attorney Paul Hudon, Attorney Greta Solomon, and Ms. Sondra Waterman.

Members absent: Judge Beverly Streit-Kefalas

Also in attendance: Attorney David Biklen, Reporter

Minutes of the May 8, 2012 meeting

It was noted that Rule 6 was inadvertently omitted from the rules attached to the minutes. The word “existence” was substituted for the word “fact” in section 15.5 on page 2 of the minutes. The title of Section 5.1 under Rule 5 Appearance was italicized. The minutes of the May 8, 2012 meeting were unanimously approved, as amended.

Discussion of Draft Rules:

Rule 18 Transfer of Files Between Probate Courts

18.1 Hearing on application to transfer matter to another probate court. This section of draft Rule 18 was revised to identify the specific statutes, C.G.S §§ 45a-599 and 45a-677, where transfer of a file between probate courts is permitted and make clear the court may transfer a matter only upon the request of a person deemed by the court to have sufficient interest. The committee questioned whether a hearing should be required in all cases, in part because of the cost the petitioner. The committee decided that the court may determine if a hearing is necessary.

18.2 Transfer of a conservatorship matter. The language of the draft rule was simplified.

Rule 49 Guardians of Adults with Intellectual Disability (referred to as Rule 19 on the agenda for the June 5, 2012 meeting)

Section 49.1 Criminal background checks. At its January 10, 2012 meeting, the subcommittee raised questions concerning the concept of criminal background checks in guardianship matters for adults with intellectual disability. The committee continues to be divided on this issue, but agreed to bring the draft rule to the full committee for discussion at the meeting scheduled on June 21, 2012.

Section 49.2 Sterilization. The committee approved the draft rule, which parallels a rule for sterilization proceedings concerning persons under conservatorship, with a wording change.

Rule 50 Change of Name (referred to as Rule 20 on the agenda for the June 5, 2012 meeting)

The word “petition” was substituted for “application” throughout the draft rule. There were several other changes in wording, including the substitution of “petitioner” for “next friend” in section 50.2(c).

Review of Drafts of Rules from prior meetings

The committee reviewed the drafts of proposed rules from prior meetings, considering the feedback from judges, court staff, and the full Practice Book Advisory Committee.

Rule 4 Parties.

Section 4.1.(c) Parties. The committee recommended that the wording reflect that an individual or an entity may request special notice of hearing.

Rule 7 Filing Requirements

The committee considered feedback from judges and the full committee as well as a draft rule submitted by Subcommittee III.

Section 7.1 General Filing Requirements. A savings clause was added to the general requirements for filing documents which states that the clerk may accept for filing a document that is in substantial compliance with the rule.

Section 7.2 Commencing a proceeding. The committee agreed to use the word “petition” to cover applications, petitions or motions in this section and throughout the rule. The committee also reviewed subsection (c) in light of concerns voiced

at the March Judges Institute. The concern was whether the rule placed a duty upon the petitioner to ascertain the names and addresses of all parties similar to the one the legislature saw fit to impose in specific children's matters under 45a-607(c) and 45a-609(b). The committee reviewed the language of the draft rule and determined that it struck the proper balance in requiring the petitioner in all cases to use "reasonable efforts" to determine the identity and whereabouts of all parties.

Section 7.3 Forms. Sections (a) and (b) were reversed. Section (a) now states that a documents filed on a form approved by the probate court administrator is in proper form and shall be accepted by the court provided it complies with section 7.1. The reference to formal pleadings in the new section (b) was eliminated. While forms approved by the probate court administrator are not required in most instances, language was added to make clear that there are exceptions to the general rule in the statutes and in the draft rules.

Section 7.4 Signature required. The language was clarified in subsection (c) regarding when a party must sign a document. Subsections (e) and (f) were added regarding the signatures of co-fiduciaries on court documents.

Rule 8 Notice

Section 8.4 To whom notice is given. Notice to the Attorney General if the matter may affect a charitable interest or beneficiary was added to Section 8.4, and Section 8.8 was eliminated.

Section 8.5 Streamline procedure; notice to request hearing. The committee added construction of a document with respect to a charitable interest to the list of matters for which notice may not be streamlined.

Rule 10 Continuances

Section 10.1 Request for continuance of hearing. The committee changed subsection (a) to make clear that a court may continue a hearing. The title of the section was changed to "Continuance of hearing".

Section 10.3 Assessment of costs if hearing continued. The language of 10.3(b) was changed to clarify that costs of continuing a hearing could be charged because a party or counsel for the party failed to attend a hearing for which notice was given.

Rule 13 Court appointed guardians ad litem

Section 13.2 Guardian ad litem: discretionary court appointment. Subsection (a) was revised to reflect limitations on the court's discretion to appoint a guardian ad litem under P.A. 12-25.

Rule 14 Referral to probate magistrate or attorney probate referee

Section 14.5 Amendment to report of probate magistrate or attorney probate referee. Edits to wording in subsection (b) were suggested.

Rule 17 Confidentiality of Social Security Numbers

The committee addressed some of the issues raised on the CBA Estates and Probate Section listserv concerning social security numbers on death certificates and the CT-706 NT. The committee determined that the draft rule adequately addressed the concerns raised by members of the Connecticut bar. The committee suggested that a posting of frequently asked questions on the Probate Practice Book webpage may be helpful.

The meeting was adjourned at 5:50 p.m.

Approved July 28, 2012

Revised drafts of the rules incorporating the above-referenced changes and miscellaneous edits are attached to these minutes.

Rule 18

Transfer of Matter between Probate Courts

Section 18.1 Hearing on application to transfer matter to another probate court

If a person requests a transfer of a matter from one probate court to another probate court as permitted under C.G.S. sections 45a-599 and 677, the court may grant the request with or without a hearing. A hearing on a request for transfer may be held under the streamline procedures for notice and hearing.

(C.G.S. section 45a-599 and 45a-677(h), Rule 8.5)

Section 18.2 Transfer of conservatorship matter

If a transfer of a conservatorship matter is required under C.G.S. section 45a-661, the court may render a decision on pending issues in the matter before ordering the transfer.

(C.G.S. section 45a-661)

Rule 49

Guardians of Adults with Intellectual Disability

Section 49.1 Criminal background checks

At any time during the guardianship proceeding of an adult with intellectual disability, the court may obtain a criminal background check of the guardian or proposed guardian.

Section 49.2 Sterilization

If a guardian of an adult of intellectual disability or other interested person petitions for approval of a sterilization procedure for an adult under guardianship under C.G.S. section 45a-698, each member of the interdisciplinary team appointed under C.G.S. section 45a-695 shall file a report indicating whether the respondent is able to give informed consent and whether sterilization is in the best interests of the respondent.

(C.G.S. sections 45a-695, 45a-698 and 45a-699)

Rule 50

Change of Name

Section 50.1 Change of name, in general

(a) An individual may file a petition in the court for a change of the name of the individual. Except as provided in section 50.2(a), the petition shall be filed in the court in probate district in which the individual resides.

(b) The petitioner for a change of name must appear in court and be examined by the court under oath.

(c) A petition for a change of name must be accompanied by:

(1) an affidavit on a form published by the probate court administrator, containing the information required on the affidavit and other information required by the court; and

(2) the long-form birth certificate of the petitioner unless the court, for cause shown, accepts other evidence of the birth name of the petitioner.

Section 50.2 Change of name of minor

(a) In addition to the requirements of section 50.1, a petition to change a name of a minor must be filed on behalf of the minor by the minor's next friend. The application shall be filed in the probate district in which the minor resides.

(b) A next friend of a minor may be a parent or guardian of the minor.

(c) The court shall send notice of a hearing on a petition for a change of name of a minor 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.

(d) The court may require the petitioner to file an affidavit of children on a form published by the probate court administrator.

(JD-FM-164)

Section 50.3 Single petition for change of name for family

(a) If a petition for a change of name of spouses, parents or minor children in the same family and at the same residence presents the same issues, one petition for a change of name may be filed for those members of the family seeking the change of name. The court shall issue a separate decree for each member of the family who is included on the petition.

(b) The court may require a separate petition for a change of name and filing fee for each family member whose issues are different from other family members seeking a change of name.

Section 50.4 Criminal background check; notification to department of public safety of name change

(a) The court may conduct a criminal background check of an individual seeking a change of name.

(b) If the court grants a change of name to an individual whom the court knows to have a criminal record, the court shall notify the department of public safety and local police department.

(C.G.S. section 45a-99)

Rule 4 Parties

Section 4.1 Parties

(a) Except as otherwise permitted by the court, only a party may participate in a proceeding before the court.

(b) Except for a matter that is confidential, an individual not a party may attend a court hearing.

(c) An individual or entity not a party may request special notice of a hearing.

(d) The listing of an individual or entity on an order of notice does not make the individual or entity a party.

(C.G.S section 45a-127)

Section 4.2 Fiduciary as party

(a) A conservator is a party in a probate proceeding in which the conserved person has an interest if the subject of the proceeding is within the scope of the conservator's authority.

(b) A guardian of the estate of a minor is a party in a probate proceeding affecting the estate of the minor.

(c) A trustee is a party in a probate proceeding in which the trust has an interest.

(d) An executor or administrator of an estate is a party in a probate proceeding in which the estate has an interest.

(e) A guardian ad litem is a party in a probate proceeding in which the represented individual has an interest if the subject of the proceeding is within the scope of the guardian ad litem's appointment; and

(f) The court may recognize any other fiduciary as a party in a probate proceeding if the court determines that the subject of the proceeding is within the scope of the fiduciary's duties and participation of the fiduciary is necessary to protect the interests of the individual for whom the fiduciary acts.

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

Rule 7 Filing Requirements

Section 7.1 General Filing Requirements

(a) A document filed with the court must:

(1) be typed or legibly 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 accept for filing a document that is in substantial compliance with the requirements of subsection (a).

(c) The clerk may require a party to correct a document by substituting a corrected or substituted document or page in proper form.

Section 7.2 Commencing proceeding

(a) A petitioner may commence a proceeding by filing a petition with the court.

(b) A petitioner shall include the name and address of each party on a petition commencing a proceeding.

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

(d) A petitioner under this section shall indicate on a petition 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) decedents' estates;

(2) trusts;

(3) children's matters; and

(4) any other matter in which adjudication of an interest of a service member is sought.

(50 U.C.S App 521)

Section 7.3 Forms

(a) A document filed on a form published by the probate court administrator is proper in form and shall be accepted by the court if it complies with section 7.1. The court may require documentation in addition to the information on the form. Additional documentation required may be specified in these rules.

(b) Unless otherwise required by statute or these rules, probate forms approved by the probate court administrator are not required, but each petition must comply with the requirements of statute and these rules.

Section 7.4 Signature required

(a) Except as provided in subsection (b), the court shall not act on a petition to initiate a proceeding in the court or other document unless the, petition or document containing an original signature is filed in court.

(b) Notwithstanding the absence of a signature otherwise required under subsection (a), the court may act:

- (1) on a written request for a hearing in any form when streamline procedure is permitted under section 8.5;
- (2) on a commitment petition, including a request for a probable cause hearing;
- (3) on a document submitted by a state agency with an electronic signature;
- (4) on 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.]

(c) If petition, motion or other document is required to be signed under oath or penalty of false statement, such as an inventory, account, list of claims, and tax return, a party, or other individual filing the document, must sign himself or herself

(d) A petition or other document not required to be signed under oath or penalty of false statement may be signed by an attorney on behalf of a party.

(e) Except as provided in subsection (d) and subsection (f), when there are co-fiduciaries, any petition or other document filed by the fiduciaries shall be signed by each co-fiduciary.

(f) A co-fiduciary may submit a petition or other document that is not signed by another co-fiduciary if the co-fiduciary making the filing includes a written statement explaining the reasons why the signature of another co-fiduciary could not be obtained.

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

Section 7.6 Social security number redacted

Except as specifically requested in an official probate form or otherwise provided by law or order of the court, an individual 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 in accordance with Rule 17.

Rule 8

Notice

Section 8.1 Notice of hearing and ruling of probate court

Unless otherwise provided by law or these rules, the court shall give notice of each hearing or right to request a hearing, and a copy of each decision, order, decree, denial and other ruling of the court to each person and entity listed on the order of notice.

(C.G.S. sections 45a-124, 45a-127 and 51-53)

Section 8.2 Contents of notice of hearing or right to request hearing

A notice of hearing or right to request a hearing shall include:

- (1) a description of the matter to be heard; and
- (2) except in the discretion of the court for cause shown, a list of the names and addresses of parties, attorneys and others listed on the order of notice to whom notice is sent.

Section 8.3 How notice given

(a) Except as otherwise provide by law, notice of hearing or right to request a hearing shall be given by:

- (1) regular United States mail;
- (2) means authorized by the probate court administrator; or
- (3) other means determined by the court.

(b) Notice by United States mail is complete on mailing.

(c) Unless otherwise required by statute or order of the court, notice of hearing shall be given not later than seven days before the date of the hearing.

(d) Notice of a right to request a hearing shall be given not later than 10 days before the deadline to request a hearing.

(e) The court shall certify on the record the date and manner in which the notice was given.

(C.G.S. section 45a-125)

Section 8.4 To whom notice is given

(a) The court shall give notice under section 8.1 to:

(1) each party designated by statute or these rules;

(2) each attorney of record;

(3) if the court is aware that a party has a court-appointed legal representative, to the representative; and

(4) Attorney General, if a matter may affect a charitable interest or beneficiary.

(b) The court may give notice under this section to any person or entity that:

(1) requests notice in writing provided under C.G.S. section 45a-127; or

(2) the court considers to have sufficient interest in the proceedings and is not otherwise prohibited by law.

(c) While a matter is pending before the court, a fiduciary or, if none is appointed, the petitioner must use reasonable efforts to keep the court informed of a change in address of each party.

(d) A party must inform the fiduciary and the court of each change in address of the party.

(C.G.S. section 45a-127 and section 3-125)

Section 8.5 Streamline procedure; Notice of right to request hearing

(a) Except as provided in subsections (b) and (c), in lieu of a notice of hearing under section 8.1, the court shall streamline the notice procedure by giving notice of the right to request a hearing in the following matters, provided the matter does not appear to be contested or to require testimony or legal argument:

(1) decedent's estates; and

(2) trusts.

(b) The court may schedule a hearing rather than using the streamline notice procedure for proceedings specified in subsection (a) if:

(1) a hearing with attendance by one or more parties is required by statute;

(2) the court determines that public notice is required to protect the interests of a party; or

(3) the court determines that the circumstances related to a particular application, petition or motion require the conduct of a hearing with attendance by a party.

(c) The court may not use the streamline notice procedures for a matter involving cy pres, equitable deviation, or construction of a document with respect to a charitable interest.

(d) In lieu of a notice of hearing under section 8.1, the court may give notice of the right to request a hearing in the following matters, provided that the matter does not appear to be contested or to require testimony or legal argument:

(1) an account for guardians of the estate;

(2) a proceeding for the modification of visitation orders;

(3) a request to transfer probate files between probate courts under C.G.S. sections 45a-599 and 45a-677(h); and

(4) a motion to transfer contested children's matters to the superior court under C.G.S. sections 45a-623 and 45a-715(g).

(e) A notice of a right to request a hearing must include a statement that:

(1) the party is entitled to a hearing before the court;

(2) the party may request a hearing, which request must be received by the court in writing not later than the date specified in the notice; and

(3) if a written request for a hearing is not received by the date specified in the notice, the court may approve the application, motion or petition without a scheduled hearing.

(f) If a written request for a hearing is received by the court, the court shall set a time and place for hearing and give notice of the hearing required by statute and these rules.

(g) If a timely request for a hearing is not received by the court, the court may issue a decree approving the application, motion or petition or schedule a hearing on the matter.

(C.G.S. section 45a-98a)

Section 8.6 Waiver of notice

(a) Any party may waive the party's right to notice of hearing or notice of right to request a hearing by filing in court a written waiver signed by the party.

(b) A legal representative or fiduciary identified in section 4.2 may waive the right of the represented party to notice of hearing or right to request a hearing by filing a written waiver of notice in court signed by the representative or fiduciary.

Section 8.7 Public notice

If public notice is required in a matter pending before the court, the court shall give notice by publication in a newspaper having a circulation in the district in which the court is held or by other means authorized by statute.

(C.G.S. section 45a-126)

Section 8.8 Undelivered notice

(a) If, before the hearing, a notice to a person is returned as undelivered, the court shall order such further notice as would be most likely to reach the person. If additional notice would be futile, the court may take such action that it considers appropriate, including notice by publication or appointment of a guardian ad litem for the person or dispensing with notice.

(b) If, after the hearing but before a decree, ruling or order is issued, the court is notified of an address of a party whose notice was returned as undeliverable, the court may delay issuance of the decree for a reasonable period to allow the party who did not receive proper notice to request another hearing or waive notice of hearing. Notice of a delay in issuance of the decree, including the period and reasons for the delay, shall be given to each party.

(c) If, after a decree in a matter is issued, the court is notified of an address of a party whose notice was returned as undeliverable, the court shall send a copy of the decree to the party and a notice that the party may wish to consult an attorney regarding rights the party may have in the matter.

(d) Except for notice in a conservatorship proceeding under C.G.S. section 45a-650, if a party appears at a hearing for which the party did not receive proper notice, notice is deemed to have been given, unless the party objects at the hearing.

Section 8.9 Failure to give notice to party legally entitled to notice

A party may request reconsideration of an order or decree other than a decree authorizing the sale of real estate for failure to give legal notice to a party entitled to notice under law under C.G.S section 45a-128.

(C.G.S. section 45a-128)

Section 8.10 Notice of continuance

The court may adjourn a hearing, for which notice was given under section 8.3 and convened, to another date and time without further written notice to the parties.

Section 8.11 Notice to member of military service

(a) If a petitioner indicates that a party is in active military service of the United States in accordance with section 7.2 or the court determines that a party in a matter identified in section 7.2 is in active military service, the party shall file a special appearance in the matter that includes an address where notice can be sent or indicate that there is no good address where the party can receive notice owing to the military service.

(b) If the party in the active military service of the United States does not file a special appearance under subsection (a) or if the court knows of no address where notice to the party is assured, the court shall appoint an attorney for the party and send notice of that fact to the party and the attorney.

(c) If a party is in the active military service of the United States, an application, petition, or motion filed with the court in the matters identified in section 7.2(e), and the party has not made a special appearance, the court shall not render a final decision in the matter unless an appearance has been filed in accordance with subsection (a) or an attorney has been appointed to represent the service member in accordance with subsection (b).

(Servicemembers Civil Relief Act (SCRA) 50 USC App 521.)

Section 8.12 When notice given of ruling of probate court

(a) Unless a different time is provided by statute or ordered by the court, the court shall give notice of each decision, order, decree, denial or other ruling of the court by mailing the ruling by regular United States mail not later than 10 days after the date of the ruling.

(b) The court shall certify on the decision, order, decree, denial or other ruling of the court or on a separate form attached to the ruling the date the ruling was mailed to the parties, counsel of record, and others listed on the order of notice of the hearing.

Rule 10 Continuance

Section 10.1 Continuance of hearing

(a) The court may continue a hearing with or without a request of a party.

(b) A party making a request for continuance shall:

(1) make the request in writing;

(2) provide copies of the request to attorneys of record and unrepresented parties;

(3) state the reason for the request;

(4) indicate in the request whether the parties have agreed to the request for continuance; and

(5) submit the request as far in advance as possible of the scheduled hearing for which the continuance is sought;

(c) In the interests of justice, the court may waive the requirements of subsection (b).

Section 10.2 Court action on receipt of request for continuance of hearing.

(a) A hearing on a request for continuance or objection to the request is not required.

(b) The court may grant a request for continuance of hearing or deny the request and proceed with the hearing.

(c) Except as otherwise provided by statute, the court may continue a hearing to perfect notice of the hearing.

Section 10.3 Assessment of expenses if hearing continued

(a) If a request for a continuance is granted, the court may assess expenses against the requesting party under C.G.S. section 45a-106(9), 45a-107(j) or 45a-108(d).

(b) If the court continues a hearing because a party or counsel for a party failed to attend the hearing for which notice has been given, the court may assess expenses against the party or counsel under C.G.S. section 45a-106(8), 45a-107(j) or 45a-108(d).

(C.G.S. section 45a-106(8), 45a- 107(j) or 45a-108(d).)

Rule 13 Court-appointed guardian ad litem.

Sec. 13.1 Guardian ad litem: mandatory court appointment.

(a) The court shall appoint a guardian ad litem:

(1) for a minor child in any proceeding under C.G.S. sections 45a-603 through 45a-622 or 45a-715 through 45a-719 in which an allegation of abuse or neglect of the minor is made;

(2) for a parent who is a minor or incompetent in a proceeding under C.G.S. sections 45a-603 through 45a-622 or 45a-715 through 45a-719;

(3) for a minor child and for any parent who is a minor or incompetent in any proceeding under C.G.S. section 46b-172a;

(4) for a relative in a proceeding under C.G.S. section 45a-751b or 45a-753(c) whose identity is being sought and whose whereabouts is unknown or who appears incompetent but has not been declared incompetent by a court; and

(5) under any other statute that requires appointment of a guardian ad litem.

Section 13.2 Guardian ad litem: discretionary court appointment.

(a) Except as prohibited by C.G.S. section 45a-132, the court may appoint, without notice, a guardian ad litem for a party or person who may have an interest in a proceeding:

- (1) who is a minor;
- (2) who is undetermined or unborn;
- (3) whose identity or whereabouts is unknown; or
- (4) who is incompetent or whom the court has reason to believe is or may

be incompetent, but has not been declared incompetent by a court.

(b) The court may appoint a guardian ad litem only if required by law or these rules or if the court considers appointment necessary, taking into account the legal and financial interests at issue.

(C.G.S. section 45a-132)

Sec. 13.3 Guardian ad litem: scope of appointment. The court may limit the scope of an appointment of a guardian ad litem to a particular action or issue.

Sec. 13.4 Guardian ad litem: term of appointment. The court may terminate an appointment of a guardian ad litem at any time and without notice.

(C.G.S. section 45a-132)

Sec. 13.5 Guardian ad litem: who may serve.

(a) The court may appoint as guardian ad litem an adult whose interests do not conflict with the interests of a person to be represented.

(b) When appointing a guardian ad litem, the court shall:

(1) consider whether the interests of the person to be represented require the protection of a guardian ad litem with legal or other professional training;

(2) give preference to a parent or other family members if the person to be represented is a minor, except if the court finds a conflict of interest under section 13.6(a) or that legal or other professional training is required under section 13.6(b)(1); and

(3) attempt to match the abilities of the guardian ad litem with the needs of the person to be represented.

(C.G.S. section 45a-132(d))

Sec. 13.6 Guardian ad litem: duties. A guardian ad litem:

(1) shall advocate for the best interests of the represented person;

(2) may recommend to the court a waiver, election, modification, or compromise of the rights or interest of the person represented and may, with approval of the court, effectuate a waiver, election, modification, or compromise on behalf of the person represented;

(3) who represents a minor, shall make reasonable efforts to keep each parent and guardian of the minor, who is not a party to the matter, advised of the actions of the court and the guardian ad litem.

(4) A guardian ad litem does not have title in or custody of property of the person represented.

Sec. 13.7 Guardian ad litem: advice and instruction from court; ex parte communication to be avoided.

(a) The court may instruct the guardian ad litem and the guardian ad litem may seek instruction and advice from the court concerning the duties and scope of appointment of the guardian ad litem.

(b) A guardian ad litem and the court shall not engage in ex parte communication. Advice and instruction from the court shall be provided at a hearing or in writing with copies to all parties and counsel of record.

Sec. 13.8 Guardian ad litem: appeal from court order. A guardian ad litem may appeal from an order or decree of the court by which the person represented is aggrieved. The guardian ad litem may, subject to approval of the court, incur any necessary expenses of an appeal.

Rule 14 Referral to probate magistrate and attorney probate referee

Section 14.1 Reference and designation of probate magistrate or attorney probate referee

(a) Except for a matter involving an involuntary conservatorship, involuntary commitment and temporary custody of a minor, the court, with the consent of the parties or their attorneys, may refer a pending application, petition, motion or issue in dispute to a probate magistrate or attorney probate referee.

(b) The court shall file with the probate court administrator a notice of reference under subsection (a) and request for assignment of a probate magistrate or attorney probate referee.

(c) If sufficient funds are available and the probate court administrator determines that assignment of a probate magistrate or an attorney probate referee is appropriate, the administrator shall designate a magistrate or referee, to hear and file a report on the application, petition, motion or issue referred and notify the referring court of the designation. Designation of a magistrate or referee shall be from among the panel of magistrates or referees appointed by the chief justice of the Supreme Court of Connecticut.

(d) The court shall notify each party and attorney of record of the designation of a probate magistrate or attorney probate referee under this section.

(C.G.S. sections 45a-123 and 45a-123a)

Section 14.2 Hearing before probate magistrate or attorney probate referee; recording

(a) Unless a continuance is granted for cause, a probate magistrate or attorney probate referee shall hold an initial hearing not later than 21 days after the designation under section 14(1)(c). The court shall send notice of the hearing in accordance with Rule 8.

(b) A probate magistrate or attorney probate referee shall have all powers and authority conferred on a judge in conducting a hearing, including, but not limited to,

procuring attendance of witnesses, contempt powers, public access to the hearing and sealing of documents.

(c) A probate magistrate or attorney probate referee shall cause an audio recording to be made of a hearing held under this section. Unless otherwise agreed by the parties under C.G.S. section 51-72, the recording shall not constitute a hearing on the record.

(d) The court shall make a copy of the recording on the request of a party. The cost of the recording shall be paid by the party requesting the recording in accordance with C.G.S. section 45a-109. If the court determines that the party is unable to pay for the recording, the expense of the recording shall be paid from the probate court administration fund.

(C.G.S. sections 45a-109 and 51-72)

Section 14.3 Report of probate magistrate or attorney probate referee

(a) Not later than 60 days after conclusion of the hearing on the application, petition, motion or issue referred under section 14.1, the probate magistrate or attorney probate referee shall file a report with the referring court.

(b) The report under this section shall contain, in separate and consecutively numbered paragraphs, findings of fact and conclusions of law regarding the claims and arguments presented by the parties.

(c) Not later than two business days after the report is filed in court, the court shall send a copy of the report of the probate magistrate or attorney probate referee to each party and attorney of record.

(C.G.S. sections 45a-123)

Section 14.4 Objection to report or amendment to report of probate magistrate or attorney probate referee

(a) Not later than 21 days after a report or an amendment to a report is filed in court under section 14.3 or 14.5, a party aggrieved by a finding of fact or conclusion of law may file an objection to the report or amendment with the court. The party shall send a copy of the objection to each party and attorney of record and so certify to the court.

(b) An objection under this section shall:

- (1) be in writing;
 - (2) specify the finding or conclusion of law to which the party is objecting; and
 - (3) specify the basis of the objection.
- (C.G.S. sections 45a-123)*

Section 14.5 Amendment to report of probate magistrate or attorney probate referee

(a) A probate magistrate or attorney probate referee may file an amendment to the report filed with the court at any time before the court accepts, modifies or rejects the report.

(b) Not later than two business days after an amendment is filed in court, the court shall send a copy of the amendment to the report to each party and attorney of record.

(c) A party aggrieved by a finding or conclusion contained in an amendment filed under this section may file a written objection in the manner described in section 14.4.

(C.G.S. sections 45a-123)

Section 14.6 Hearing on objection or amendment to report of probate magistrate or attorney probate referee; hearing on court's own motion

(a) If an objection has been filed to a report or amendment to a report of a probate magistrate or attorney probate referee under section 14.4 or upon the court's own motion, the court shall schedule a hearing on the report and any amendment to it at least 21 days after the report or amendment has been filed. The court shall send notice of the hearing in accordance with Rule 8.

(b) The court shall not consider evidence or testimony on the objection other than the evidence or testimony presented to the probate magistrate or attorney probate referee. The court may require a transcription of the audio recording of the proceeding or a portion of the proceeding before the magistrate or referee.

(c) Unless the party files with the court an affidavit demonstrating the party's inability to pay for a transcript filed under subsection (b), the party filing an objection under subsection 14.4 shall pay for the transcript. If the court determines that the party is

unable to pay for the transcript, the expense of the transcript shall be paid from the probate court administration fund.

(C.G.S. sections 45a-123)

Section 14.7 Court decision on the report

(a) Not later than 30 days after a hearing held by the court under section 14.6, the court shall issue a decree accepting, amending or rejecting the report of a probate magistrate or attorney probate referee.

(b) If no objection has been filed under section 14.4 within 21 days after the report or any amendment to the report has been filed, the court, not later than 30 days after the 21 day period, may dispense with notice of hearing and issue a decree accepting the report.

(c) The court may amend or reject the report and any amendment thereto, if the court finds:

(1) that a finding or conclusion in the report of the magistrate or referee was materially in error; or

(2) there is other sufficient reason not to accept the report.

(d) If the court rejects a report of a probate magistrate or attorney probate referee, the court may hear the application, petition, motion or issue referred or refer the matter to the probate court administrator for designation of another magistrate or referee under section 14.1.

(e) The court shall send a copy of the decree accepting, amending, or rejecting a report of a probate magistrate or attorney probate referee to each party and attorney of record and to the magistrate or referee to whom the application, petition, motion or issue had been referred under this rule.

(C.G.S. sections 45a-123)

Section 14.8 Deferral of court action pending action on report of probate magistrate or attorney probate referee

If the court determines that the issue referred under this rule must be resolved before the court hears other applications, petitions, or motions in the matter from which

the issue was referred, the court may defer a hearing on the matter until receipt of a report of the probate magistrate or attorney probate referee on the issue and action by the court on the report and any amendment to the report.