

**Practice Book Advisory Committee  
Subcommittee I**

Meeting Minutes  
Tuesday, October 4, 2011  
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 3:08 p.m.

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

Members absent: Attorney Karen Gano

Also in attendance: Attorney David Biklen, Reporter

**Minutes of the August 30, 2011 meeting**

The minutes of the August 30, 2011 meeting were unanimously approved.

**Review of feedback from September 15, 2011 Advisory Committee meeting**

*Clerks and Records*, Item No. 8

**A rule should require that all court orders and decrees must be in writing.** Oral orders must be reduced to writing for the record.

*Parties*, Item No. 3

**A rule should state that listing an individual or organization on the court's order of notice does not automatically make the person/organization a party to the matter.** As stated in the proposed rules for Parties, a party must have a legal or financial interest in the matter.

*Appearance of counsel*, Item No. 6(e)(ii)

**In lieu of appearance.** After reviewing the proposed rule on in lieu of appearances, the committee decided to delete item 6(e)(ii) and refer further consideration of this topic to Subcommittee III inasmuch as the issue seems to be limited to conservator matters. Item 6(e)(i) should now be combined with Item 6(e).

*Appearance of counsel*, Item No. 8(b). **Notice of withdrawal.**

**Other than in lieu of appearance as identified in 6(e) (Appearance of counsel), a notice of withdrawal must be filed in court and sent to self-represented parties and all counsel of record at least three (3) business days prior to the date of any scheduled hearing in the matter, except upon written waiver of notice by the represented party.** After review, the subcommittee determined that notice of withdrawal should be required, absent waiver of notice by the represented party, but the period should be 3 business days, not 5 days.

*Filing requirements*, Item No.11

**Duty to provide copies of the petition to all parties.** The committee revisited the issue of requiring the petitioner or the court to provide copies to all parties in light of its earlier discussion and feedback from the full committee. Subcommittee I determined not to address this issue with a general rule. Rather, it was recommended that CMS-generated notices would be modified to make it clear that parties may review the court's file prior to the hearing or request a copy of a petition from the petitioner (and include the petitioner's contact information) or from the court (in which case copy charges would apply). The committee recognized that there may be certain exceptions where a petitioner is required to send a document to all parties; these matters will be considered and proposed by Subcommittee III as they address particular types of cases. [**Scribe's note:** The committee did not address the question of whether the court should provide copies of documents to state agencies free of charge. This may be more properly considered under Probate Fees. Note §45a-112 provides that a court may accept an application when the state is a moving party without fees and costs, and shall bill the fee and other charges to the agency for subsequent changes. Statutory change may be needed.]

**Discussion of concepts for rules regarding Notice Issues.** Concepts for proposed rules are in bold below:

1. **A judge or clerk shall give notice of all hearings, right to request hearings, orders, decrees and rulings unless otherwise provided by statute or these rules.**
2. **Notice of hearing/right to request a hearing must include:**
  - a. **A description of the matter to be heard**
  - b. **A list of the names and addresses of all parties, attorneys and others listed on the order of notice to whom notice has been sent, except in the discretion of the court for cause shown.**
3. **Except as otherwise provided by statute, notice of hearing and right to request hearing shall be given by regular mail or other means authorized by the Probate Administrator, or in the discretion of the**

**court by some other manner as determined by the court.** In anticipation of the advances in technology, the committee decided to make other methods of notice available when authorized by the Probate Administrator.

**a. Notice by mail is complete upon mailing.**

- 4. Courts shall give notice at least seven days prior to the date of a hearing unless a different time is provided by statute or ordered by the court of probate.** The committee will consider the method for computing the number of days under the topic of “counting time periods”.
- 5. When sending a notice of the right to request a hearing (streamline proceeding), courts shall give at least 10 days notice before the hearing request deadline.**
- 6.** Since the rule proposed in Item No. 4 above gives courts discretion to shorten the seven (7) day period, the committee determined that it was not necessary to have a rule regarding notice in emergency situations.
- 7. The judge or clerk shall certify on the record the date and manner in which such notice has been given.**
- 8. The court shall give notice to all interested parties designated by statute or these rules, and to all counsel of record.**
  - a. If the court is aware that the party has a court-appointed legal representative, the legal representative shall also be given notice.**

The committee discussed whether parents of minor must get notice if a guardian ad litem other than a parent is appointed to represent them. After a reviewing the various issues, it was determined that the issue would be addressed when considering rules for the appointment and responsibilities of a guardian ad litem rather than under the notice provisions. [Scribe’s notes: Certain statutes in children’s matters require that notice should be given to minors 12 and over. Should there be a general rule that minors age of 12 and over receive notice even if there is a guardian ad litem appointed? ]
  - b. The petitioner has the burden of ascertaining the names and addresses of all parties and proving to the court’s satisfaction that all proper due diligence was used to discover all such names and addresses. All names and addresses should be submitted by the petitioner with the application. Once appointed, the fiduciary, or if none, the petitioner, has the duty to notify the court of any changes of parties and their addresses.** [Scribe’s notes: When drafting, it is suggested that this paragraph, paragraph b., come before paragraph a. above]

- c. [Scribe's notes: Should we also require the petitioner to indicate whether a party is a minor or adjudicated/alleged incapable?]
- 9. The judge may, in his/her discretion, give notice to any person, agency or entity deemed by the court to have sufficient interest in the proceedings and not otherwise prohibited by statute.**
- 10. Special notice may be given to any person requesting notice in writing as provided in statute. Sec. 45a-127. The committee determined that this concept does not have to be stated separately, but could be added to another rule such as Item 9 above.**
- 11. Including an individual or organization on the court's order of notice does not automatically make the recipient a party to the matter.** This rule is previously stated in these minutes as part of the discussion resulting from feedback from the full committee under Parties.
- 12. Any party may waive his or her right to notice of hearing or notice of right to request a hearing by filing in court a written waiver signed by the party.**
- 13. The court may, in its discretion and in lieu of notice of hearing, give notice to parties and counsel of record of right to request a hearing.**
- a. **Types of matters where streamline procedure may be used:**
    - i. **Decedent estates**
    - ii. **Trusts**
    - iii. **Other matters**
      - 1. **Accounts for Conservators, Guardians of the Estate**
      - 2. **Other matters to be considered by Subcommittee III**
  - b. **Streamline procedure may be used where matter does not appear to be contested or testimony or legal argument is not required.**
  - c. **The notice to party of right to request a hearing should include a statement that:**
    - i. **Party is entitled to a hearing**
    - ii. **A request for hearing must be made in writing on or before the date specified in the notice**
      - 1. **The hearing request deadline must be at least 10 days from the date of mailing of the notice.** The committee will be considering a rule on counting time periods at its next meeting.

- iii. **If a request for hearing is not received by the date specified, the court may proceed to approve the petition without formal hearing**
- d. **When a request for hearing is received, court shall set time and place for hearing and give notice as specified in statute or these rules.**
- e. **If no request for hearing is received, the court may issue a decree approving the petition, or, in its discretion, schedule a hearing.**
- f. **Streamline procedures may not be used for matters involving the cy pres doctrine or equitable deviation.** [Scribe's note: should this be referred to Subcommittee III for their consideration inasmuch as these matters involve specific case types? Are there other matters or case types where streamline should specifically be prohibited?]

**14. Public Notice.**

- a. **Public notice must be made by publication in a newspaper with substantial circulation in probate district or by other means authorized by the Probate Administrator.** C.G.S. §45a-126 and the current probate practice book rule 1.1.05 require that public notice be by publication in a newspaper having a circulation in the district in which the court is held. In anticipation of the advances in technology, the committee decided to make other methods of public notice available when authorized by the Probate Administrator.

**15. Notice must be given to the Attorney General, Charitable Unit, in matters involving charitable interest or a charitable beneficiary.**

Pursuant to §3-125, the Attorney General represents the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes. The committee decided to include a specific rule highlighting the requirement of notice to the Attorney General where a charitable interest or beneficiary may be affected by the court's decision.

**16. If required by treaty, the court shall give notice to a foreign heir/beneficiary of an estate or trust and to the embassy or consulate for the foreign country.**

**17. Failure to deliver notice.**

- a. **If notice is returned as undelivered prior to hearing, the judge shall order such further notice as would be most likely to reach such person.**
  - i. **If additional notice would be futile, the judge shall take such further action as it deems appropriate, including**

**notice by publication, appointment of guardian ad litem or dispensing with notice.**

- b. If a party appears despite a failure to give notice as required by statute or these rules, notice is deemed given and the court, in its discretion, may proceed unless the rights of the party will be impaired by a lack of time to prepare.**
- c. If notice is returned as undeliverable after the hearing, but before the decree is issued, the court, in its discretion, may notify the parties that the court will delay issuing its decree to allow the party who did not receive notice to request another hearing. Rather than specify the number of days a court should delay issuance of a decree, the committee recommended that the rule be silent, giving discretion to the judge.**
- d. If notice is returned as undeliverable after hearing and decree, the court should send a copy of the decree to the party who did not get notice of the hearing with a letter indicating that they may wish to consult an attorney regarding any rights they may have in the matter.**

**18. Notice of continuance.**

- a. A court may adjourn a hearing that has commenced without additional written notice to the parties.**
- b. Other than a. above, the committee determined not to have a proposed rule regarding minimum notice for continuances, the proposed rule on notice of hearing, Item 4. above, stating a minimum of seven days notice unless otherwise provided by statute or by order of the court.**

**19. Notice of incidental motions. No rule proposed.**

**20. Notice to a party in active duty in the military in certain matters, pursuant to the Servicemembers Civil Relief Act. (SCRA) 50 U.S.C.App. 521**

- a. The court shall appoint an attorney for any party in active duty in the military who has “not made an appearance”, before the court may enter a judgment.**
  - i. Rule applies to children’s matters, decedent estates, and in such matters where an adjudication of an interest of the servicemember is sought.**

The committee expressed concern that the “appearance” language in the federal statute may result in confusion given the rule on appearances. Other language (perhaps in the appearance section) should be considered.

- b. If the court determines that a person is in active duty in the military service, the servicemember will be required to file a special appearance which includes an address where notice**

**can be sent or indicate that there is no good address where the servicemember may receive notice due to military service.** A new form will need to be developed that meets the requirement of SCRA.

- c. Where the servicemember does not file such special appearance or if there is no address for the servicemember where receipt of notice is assured, the court shall appoint an attorney pursuant to the act and notice should be sent to the servicemember and court-appointed attorney.**

**21. Time limit for mailing notice of decrees**

- a. The court shall mail notice of all decrees to all parties and attorneys of record not more than 10 days after date of the decree, unless a different time is provided by statute or ordered by the court.** [Scribe's note: 10 days is the current Probate Practice Book Rule. Should the time for sending the decree be shortened?]
- b. Notice of decree means mailing of court's order or decree**
- c. The clerk shall certify for the record the date the decree was mailed to all parties and counsel and others listed on the order of notice.**

**Next meeting**

Our next meeting will be held on Tuesday, November 8, 2011 at 3:00 p.m. at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT.

The meeting was adjourned at 6:30 p.m.

Approved as amended November 8, 2011.