

**Probate Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes

Thursday, October 10, 2013

4:00 p.m.

Central Connecticut State University
ITBD Conference Center
185 Main Street
New Britain, Connecticut

The meeting was convened at 4:00 p.m. by Judge Steven Zelman, Chair.

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

Remarks of the Chair

Judge Zelman welcomed the members of the subcommittee and introduced Judge Michael Darby, a new member replacing Judge Beverly Streit-Kefalas who is now chair of Subcommittee III.

The committee agreed to meet on Tuesday, November 12, 2013 and Tuesday, December 10, 2013 to consider the suggested revisions to rules assigned to Subcommittee I and three rules initially assigned to Subcommittee III - Rule 35: Bonds, Rules 36: Fiduciary Accountings and Rule 47: Change of Name

Discussion of feedback regarding rules

GENERAL PROVISIONS

1.1(1): The committee approved the change in the definition of “account” to cross-reference rule 38.

Rule 6 Probate Fees

After discussion and a review of the materials from the committee’s prior deliberation regarding fee waivers, the committee decided not to make any changes to section 6.2, Waiver of Probate Fees and Expenses. The committee is not opposed to considering future modifications to the rule if the courts reach consensus regarding additional criteria and documentation required in fee waiver determinations.

It was also suggested that the fee waiver forms include a reference to the rebuttable presumption under C.G. S. section 52-259b that a person is indigent if receiving public assistance or the person's annual income is 125% or less of the federal poverty level after taxes, mandatory wage deductions and child care expenses.

Rule 7 Filing Requirements

The committee addressed at length the concerns raised by a number of attorneys regarding the requirement to send a copy of certain documents to a party who is represented by counsel. Section 7.1(d) is seen as a "lightening rod" for some members of the bar, many of whom believe the requirement is an ethical violation. Rule 4.2 of the Rules of Professional Conduct was reviewed by the committee. After a full discussion, the consensus was that it is not unethical to send a copy of a document to a party represented by other counsel, inasmuch as it is authorized, in fact, required by the rules for certain documents.

Nonetheless, the majority of the committee expressed discomfort with the rule and recommended that section 7.1 (d) be revised to read: When these rules require a person filing a petition or other document to send a copy of the petition or document to each self-represented party and attorney of record, the person shall certify to the court that the copy has been sent. The members in favor of the change to the rule cited the uniformity with an attorney's usual practice, client management, and the attorney's professional responsibility to keep their clients informed. The majority of committee members was not persuaded by the fact that the Probate Court sends notice to each party and attorney of record nor by the concern that parties often do not receive copies of the will, inventory or accounts prior to court hearings.

The committee decided that it is not necessary for the rule to specify the methods by which copies could be sent. It was also agreed that the rule should not specify consequences for failure to send copies as required, leaving this issue up to the judges in individual cases.

Rule 13 Court-appointed Guardian Ad Litem

The committee agreed with the suggestion that:

In section 13.1 (1), the word "is" should be added before "incompetent" for consistency with subsection (3).

In section 13.1 regarding mandatory appointments of a GAL, a new subsection (6) should be added to require the court to send a copy of the appointment of a GAL to each party and attorney. A similar provision should be added in 13.2 regarding discretionary GAL appointments, as subsection (e).

Rule 35 Probate Bonds

Rule 36 Fiduciary Accounting: General Provisions

Rule 47 Change of Name

The committee briefly reviewed the suggested revisions to Rules 35, 36, and 47. It was agreed to take up these suggestions at its next meeting after reviewing the minutes of subcommittee III and any other relevant information concerning these rules and proposed revisions.

Dates for upcoming meetings

The next meeting will be held on Tuesday, November 12, 2013, from 3:00 p.m. to 6:00 p.m. at the Office of the Probate Court Administration, 186 Newington Road, West Hartford, CT.

Adjournment

The meeting was adjourned at 5:43 p.m.

Approved November 12, 2013