

**Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes
Tuesday, November 8, 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 3:15 p.m.

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

Members absent: Judge Beverly Streit-Kefalas

Also in attendance: Attorney David Biklen, Reporter

Minutes of the October 4, 2011 meeting

The minutes of the August 30, 2011 meeting were unanimously approved with the following amendments:

1. Item 8 a., clarifying the language to state that “[I]f the court is aware that the party has a *court-appointed* legal representative, the legal representative shall also be given notice.
2. Item 12, changing “wavier” to “waiver”;
3. Item 14, changing “requires” to “require”;
4. Item 17 d. changing “which” to “that”;
5. Item 20 b. making the language gender neutral;
6. Item 20 c. adding “receipt of” before the word notice to state “where receipt of notice is assured”;
7. Item 21 d. clarifying that the clerk shall certify for the record the date that the decree was mailed to all parties and counsel and others listed on the order of notice.

Review of concepts from prior meeting: Notice

The committee reviewed the scribe’s notes in the minutes from October 4, 2011 and made the following recommendations:

Page 2: There should be a legislative proposal to change C.G.S. §45a-112 to provide that state agencies shall not be required to pay entry fees and other

charges for probate matters. While the committee was initially concerned about the charge to state agencies for copies of documents, upon review of the statute, the recommendation is to eliminate the charge to state agencies for both fees and charges.

Item 8a: The committee made no recommendation regarding notice to minors age 12 or over. The statutory provisions requiring notice in certain children's matters is sufficient.

Item 8c: The committee proposed that, in addition to providing names and addresses of all parties, the petitioner must indicate whether a party is a minor including the minor's date of birth and whether the party has been adjudicated incapable.

Item 13f: Other than matters involving the cy pres doctrine or equitable deviation, the committee deferred consideration of other matters that should not be streamlined to Subcommittee III.

Item 21 a. The committee decided that the proposed rule concerning the 10 day limit for sending out decrees did not need to be revised. However, they did make the suggestion that there be a certification of the date the decree was mailed either on the decree or on a separate form that would be attached to the decree. This would help parties determine the appeal period for the decree.

Discussion of concepts for rules regarding Counting Time Periods.

Concepts for proposed rules are in bold below:

- 1. In computing any period of time prescribed or allowed by these rules, by order of the court or by applicable law, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the court is not open, in which event the period shall extend until the end of the next business day.**
- 2. Except as otherwise prohibited by statute or these rules, the court may order an extension of a time period, with or without motion or notice, upon a request made by a party prior to the expiration of the time period originally prescribed or as extended by previous order.**

Discussion of concepts for rules regarding Continuances. Concepts for proposed rules are in bold below:

- 1. A request for continuance may be made by any interested party.**

2. Requests for continuance shall be in writing with copies to the interested parties and counsel. The request shall clearly set forth the reason for the requested continuance.
3. Requests for continuances should indicate whether parties agree thereto.
4. Any request shall be submitted as far in advance of the scheduled hearing as is reasonably possible.
5. The court may dispense with 2 or 3 above in the interest of justice.
6. A hearing upon a request for continuance or objection thereto is not required.
7. A continuance may be granted only upon order of the court.
8. The court may, in its discretion, grant a continuance or may deny the request and proceed with the hearing as scheduled.
9. If a continuance is granted the court may assess costs against the requesting party in accordance with C.G.S. sections 45a-106(9), 45a-107(j) or 45a-108(d).
10. If continuance of a matter is required due to the failure of a party or counsel to attend a duly noticed hearing, the court may assess costs against such party or counsel in accordance with C.G.S. sections 45a-106(9), 45a-107(j) or 45a-108(d).
11. Except as otherwise provided by statute, the court may continue a hearing to perfect notice of hearing.

Discussion of concepts for rules regarding Service on Court as Agent.

Concepts for proposed rules are in bold below:

1. Since C.G.S. §§ 52-60 and 52-61 provide that service of process may be made upon the judge of probate as agent for an out-of-state fiduciary, the committee recommended a change to the statute to make clear that service upon the court, or clerk, constitutes service upon the judge. For example it was noted that, pursuant to C.G.S. §52-64, service on the state may be made by leaving "a copy of the process with the Attorney General at the Attorney General's office".
2. **The judge or court staff shall record the day and hour that service is made.**
3. **No later than two business days after service is made, the court shall send the original process served on the judge as agent for service to the fiduciary by certified mail return receipt and mail a copy of the process to the attorney of record for the fiduciary, if any.**
4. **The court shall retain a copy, including the date and time of service, in the court file.**

Discussion of concepts for rules regarding Standing Orders, Supplemental Forms and Memoranda

Inasmuch as there is a proposed rule under Filing Requirements that states that where preprinted forms are used, no additional forms are required, the committee decided not to recommend any further rules on standing orders or supplemental forms. The proposed rule under filing requirements does provide, however, that the court may require additional documentation.

Discussion of concepts for rules regarding Court Appointments

Court-appointed Attorneys

Concepts for proposed rules are in bold below:

- 1. The court shall appoint an attorney to represent a party where such appointment is required by statute.**
- 2. The court may appoint an attorney to represent or appear on behalf of any minor in a proceedings brought under §§45a-603 to 45a-622, inclusive, and sections §§45a-715 to 45a-717, inclusive.**
- 3. The probate court administrator shall maintain a panel from which the courts of probate shall select and appoint counsel for a party where appointment from a panel maintained by the administrator is required under the following statutes:**
 - a. C.G.S § 17a-76. Commitment of children with mental illness;**
 - b. C.G.S § 17a-274. Involuntary placement with Department of Developmental Services;**
 - c. C.G.S § 17a-498. Commitment of adults with mental illness;**
 - d. C.G.S § 17a-543a. Special limited conservators;**
 - e. C.G.S § 17a- 685. Commitment for alcohol and drug dependency;**
 - f. C.G.S § 19a-131b and 19a-221. Orders of quarantine or isolation;**
 - g. C.G.S § 19a-265(h). Commitment for tuberculosis;**
 - h. C.G.S § 45a-649a. Involuntary conservatorship; or**
 - i. C.G.S § 45a-694. Sterilization.**
 - j. And any other statute that may require appointment from the administrator's panel.**
- 4. Each court of probate shall maintain a panel of attorneys from which the judge, when necessary and appropriate, shall appoint an attorney in matters where appointment of an attorney from the administrator's panel is not required by statute.**
- 5. The committee decided that further detail regarding the panels of the attorneys maintained by the administrator and the courts as well as the process for inclusion on the panels and court appointments should not**

be included in the Probate Practice Book. A reference should be made to Probate Court Regulations regarding court-appointed attorneys.

- 6. Attorneys appointed by the court shall represent their client in accordance with the Rules of Professional Conduct.**

Guardian ad Litem

Concepts for proposed rules are in bold below:

- 1. In any proceeding, the court may appoint, with or without notice, a guardian ad litem for one or more minor, incompetent, undetermined or unborn persons, or persons whose identity or whereabouts are unknown, if it appears to the court that such person or persons have, or may have, an interest in the proceedings.**
- 2. The appointment of a GAL is within the discretion of the court, except as otherwise provided by statute or by these rules.**
- 3. The judge has discretion to appoint a GAL for an alleged incapable or incompetent person or where the judge has reason to believe that an interested party is or may be incapable or incompetent.**
- 4. The court shall only appoint a GAL when required by law or when the appointment is deemed necessary by the court taking into account the legal and financial interests involved.**
[Scribe's Note: Consideration should be given to combining items 2 to 4 in drafting a proposed rule.]
- 5. The court may limit the scope of any appointment to particular action or actions. The appointment may be terminated by the court upon completion of the action or actions requested.**
- 6. The appointment of a GAL shall be mandatory in the following instances:**
 - a. In any proceeding under §45a-603 to §45a-622, inclusive, or §§45a-715 to 45a-719, inclusive, in which there is made any allegation of abuse or neglect of a minor child, the court shall appoint a guardian ad litem for such minor child;**
 - b. In any proceedings under §§45a-603 to 45a-622, inclusive, or §§45a-715 to 45a-719, inclusive, the court shall appoint a guardian ad litem for any parent who is a minor or incompetent.**
 - c. In any proceeding under §46b-172a, the court shall appoint a guardian ad litem for a minor child and for any parent who is a minor.**
 - d. Any other statute that may require appointment of a guardian ad litem.**
- 7. Virtual representation in trust matters as proposed by Subcommittee III should be addressed or cross-referenced in this rule.**

8. **Who may serve as GAL:**
 - a. **The court may appoint any adult whose interests do not conflict with those of the person or persons.**
 - b. **In appointing a GAL, the court should consider the extent to which protection of the interests at issue may require legal or professional training and judgment.**
 - c. **When appointing a guardian ad litem for a minor, the court shall give preference to a parent or other family member unless the judge determines that there is a conflict of interest or the issues involved require a GAL with legal or professional training or judgment.**
 - d. **When appointing a GAL, the court shall, in accordance with the provisions of §3C(c) of the Code of Probate Judicial Conduct, appoint on the basis of merit, avoid favoritism, and make only those appointments that are required by law or are deemed necessary by the court. The court shall try to match the abilities of the GAL with the unique needs of the individual to be represented.**
 - e. **The court may, at any time, remove a guardian ad litem with or without notice, whenever it appears to the court to be in the best interest of the person represented. A successor may be appointed to protect the interest of a party in accordance with this rule and applicable law.**
 - f. **As with the court-appointed attorneys, the committee determined that the Practice Book was not the forum for directing what records the court must keep concerning the appointment of guardians ad litem.**

9. **Duties of the GAL**

The committee had a robust discussion of a rule, if any, regarding the duties of a guardian ad litem. The committee discussed whether the duties of a court-appointed GAL should be included in the rules at all, or whether it would be better to publish a separate set of guidelines for persons appointed to this position. There was also discussion of the varying duties of a GAL depending on whether the GAL is appointed to represent the legal interests of minors and unknown heirs in estates and trust matter, or to represent the best interest of a respondent or ward or conserved person. Finally, there was discussion of whether there should be a general rule containing a broad definition of the duties of a guardian ad litem with specific guidelines for appointments in different areas of jurisdiction. Given the late hour, it was determined to adjourn and begin with this topic at the next meeting.

Next meeting

Our next meeting will be held on Tuesday, December 6, 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 6:20 p.m.

Approved December 6, 2011