

**Probate Practice Book Advisory Committee  
Subcommittee I**

Meeting Minutes

Tuesday, November 12, 2013

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

Also in attendance: Attorney David Biklen, Reporter

**Remarks of the Chair**

Judge Zelman began the meeting with the suggestion that the revision to section 7.1(d) recommended by a majority of the committee at its October meeting be brought to the full Advisory Committee for discussion. The suggested change involves the certification by the fiduciary that copies of certain documents have been sent to attorneys and self-represented parties, as opposed to all parties as the rules currently require. Given the significance of the suggested change and its impact on other sections of the rules, Judge Zelman believed the proposed revision warranted full discussion and debate.

Several members expressed the opinion that they have had second thoughts since recommending the change to the rules in October. They noted that 1. the current rule requires the fiduciary, not the attorney, to send copies to each party and attorney and 2. counsel do not always provide copies of documents to the parties they represent in a timely fashion. Other committee members reported that many practicing attorneys have expressed strong opposition to the requirement that documents be sent to represented parties and support the change to section 7.1(d) recommended by the committee last month.

The committee recognized that this is a difficult philosophical issue about which even the members of subcommittee are divided. It was unanimously agreed that the issue should be considered by the full Advisory Committee at its January, 2014 meeting.

In the interim, it was suggested that we do a better job with public relations, informing attorneys that the requirement that copies be sent to represented parties is not an ethical violation under Rule 4.2 of the Rules of Professional Conduct.

### **Approval of the October 10, 2013 Meeting**

The minutes of the October 10, 2013 meeting were unanimously approved.

### **Review of remaining issues from feedback list**

#### **Rule 35 Probate Bonds**

**Sections 35.2 and 35.7:** The committee agreed that sections 35.2 and 35.7 should be clarified to provide for the issuance of a fiduciary's probate certificate for the limited purpose of obtaining a bond or an executed restriction on assets form before the issuance of a decree appointing a fiduciary and "full" probate certificate.

It was recommended that section 35.2 be amended to include a second paragraph stating that, notwithstanding the first paragraph, the court may issue a decree or fiduciary certificate granting the fiduciary limited interim authority to obtain a probate bond.

A similar paragraph should be added to section 35.7 to allow the court to issue a decree or fiduciary probate certificate granting the fiduciary limited interim authority to establish a restricted account, notwithstanding section 35.7(c).

**35.11:** The reference to the Statement in Lieu of Account should be deleted from this section inasmuch as this form of account is obsolete.

#### **Rule 36 Fiduciary Accounting: General Provisions**

The committee was in agreement that the fiduciary should send an affidavit of closing to parties and attorneys of record and certify that it has been sent. There was discussion about whether to limit the parties to those entitled to receive a proposed distribution or the reserve as shown in the account. Since Subcommittee III is considering possible exceptions to the rules requiring the fiduciary to send copies of financial reports and accounts for specific legatees who have received their bequest, it was agreed to add a reference to the affidavit of closing in section 36.5. The intent is that the rules requiring a fiduciary to send copies of an inventory, financial report and account should also apply to affidavits of closing.

The committee decided it was not necessary to make any changes to section 36.12, including section 36.12(f). The court currently accepts the affidavit of closing. This has not been an issue for the courts. In addition, it was noted that the court accepts the affidavit of closing before releasing bond. Since the committee is recommending that the fiduciary send a copy of the affidavit of closing to parties and attorneys, it is the expectation that the parties will contact the

fiduciary or the court if they have a concern. It is not necessary for the court to issue a decree or to send another copy of the affidavit of closing accepted by the court.

### **Rule 47 Change of Name**

Inasmuch as Public Act 13-3, section 21 requires a mandatory check of the registry of offenders convicted of a crime with a deadly weapon before granting a change of name, the committee recommended that this requirement be added to section Rule 47 (b). It is not necessary to make any changes to section Rule 47 (c).

### **Review Revisions of draft rules.**

The proposed revisions of Rules 1 and 13 were unanimously approved.

### **Dates for upcoming meetings**

Inasmuch as the review of the issues from the feedback list assigned to the committee has been completed, it was decided to cancel the meeting tentatively scheduled for Tuesday, December 10, 2013. Minutes of the November 12, 2013 meeting and proposed language for revised Rule 35, 36 and 47 will be disseminated to the committee for comment prior to the meeting of the full advisory committee on January 16, 2014.

### **Adjournment**

The meeting was adjourned at 5:20 p.m.

**Draft rules as approved at the November 12, 2013 meeting are attached.**

Approved April 22, 2014

## Rule 1 Definitions

Section  
1.1 Definitions

### Section 1.1 Definitions

In these rules:

(1) "Account" means a document meeting the requirements of rule ~~36~~ 38 by which a fiduciary provides detailed information about the management of an estate.

(2) "Beneficiary of a decedent's estate" means a person or fiduciary that is or may be entitled to a bequest or devise under a will.

(3) "C.G.S." means the Connecticut General Statutes.

(4) "Clerk" means a chief clerk, deputy clerk, clerk or assistant clerk of the court.

(5) "Contingent remainder beneficiary" means a trust beneficiary who would be a presumptive remainder beneficiary on the date the beneficiary's interest is determined if the interest of another presumptive remainder beneficiary terminated because a condition specified in the will or other governing instrument is not met.

(6) "Corporate fiduciary" means a bank, trust company or other corporation or business entity authorized to act as a fiduciary in this state.

(7) "Corporate surety" means a corporation or other business entity authorized to enter into contracts of suretyship for probate bonds in this state.

(8) "Court" means a Probate Court.

(9) "Current beneficiary" means a trust beneficiary who, on the date the beneficiary's interest is determined, is a distributee or permissible distributee of trust income or principal.

(10) "Decree" means a written decision, order, grant, denial, opinion or other ruling of the court.

(11) "DRS" means the Department of Revenue Services.

(12) "Estate" means a decedent's estate, trust, conservatorship estate, estate of a minor or other legal structure under which a fiduciary has a duty to manage assets held for the benefit of one or more persons.

(13) "Fiduciary" means a person serving as an administrator, executor, conservator of the estate, conservator of the person, guardian of an adult with intellectual disability, guardian of the estate of a minor, guardian of the person of a minor, temporary custodian of the person of a minor, trustee or person serving in any other role that the court determines is fiduciary in nature.

(14) "Financial report" means a simplified form of accounting meeting the requirements of rule 37 by which a fiduciary provides summary information about the management of an estate.

(15) "Heir" means an individual who would take any share of the estate of a decedent who died intestate.

(16) "Intestate" means having died without a valid will.

(17) "Minor" has the meaning provided in C.G.S. section 45a-604 (4).

(18) "Motion" means a written filing seeking court action that is incidental to the matter before the court.

(19) "News media" means an entity, or representative of an entity, that is regularly engaged in the gathering and dissemination of news and is approved by the office of the chief court administrator.

(20) "News media coverage" means broadcasting, televising, recording or photographing a hearing or conference by news media.

(21) "Nontaxable estate" means the estate of a decedent whose Connecticut taxable estate is less than or equal to the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.

(22) "Party" means a person having a legal or financial interest in a proceeding before the court, a fiduciary under section 4.2 and any other person whom the court determines to be a party. The term has the same meaning as interested party.

(23) "Person" means an individual or entity.

(24) "Person under conservatorship" means a conserved person as defined under C.G.S. section 45a-644 (h) or a person under voluntary representation under C.G.S. section 45a-646.

(25) "Personal surety" means a surety that does not meet the requirements to be a corporate surety.

(26) "Petition" means a written filing that commences a matter in the court. The term has the same meaning as application.

(27) "Presumptive remainder beneficiary" means a trust beneficiary who would be a distributee or permissible distributee of trust income or principal on the date the beneficiary's interest is determined if:

(A) the trust terminated on the date; or

(B) the interests of the current beneficiaries terminated on the date without causing the trust to terminate.

(28) "Probate bond" has the meaning provided in C.G.S. section 45a-139.

(29) "Probate court administrator" means the individual holding the office of the probate court administrator of this state.

(30) "Probate Court Rules" means the Connecticut Probate Court Rules of Procedure.

(31) "Public notice" has the meaning provided in C.G.S. section 45a-126.

(32) "Purported will" means an instrument purporting to be a decedent's last will and testament and any codicil to it that has not been admitted to probate.

(33) "Structured settlement" means an arrangement under which a claimant accepts deferred payment of some or all of the proceeds of the settlement of a disputed or doubtful claim.

(34) "Taxable estate" means the estate of a decedent whose Connecticut taxable estate exceeds the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.

(35) "Testate" means having died leaving a valid will.

(36) "Trust beneficiary" means a person that has a present or future beneficial interest in a trust, whether vested or contingent.

(37) "Trust protector" means a person identified in a will or other governing instrument who is charged with protecting the interests of a trust beneficiary and is identified as a trust protector, trust advisor, or beneficiary surrogate, or as a person in an equivalent role.

(38) "Will" means an instrument and any codicil to it admitted to probate as the last will and testament of a decedent.

## Rule 13

### Court-appointed Guardian Ad Litem

#### Section

- 13.1 Mandatory appointment of guardian ad litem
- 13.2 Discretionary appointment of guardian ad litem
- 13.3 Scope of appointment
- 13.4 Termination of appointment
- 13.5 Who may serve as guardian ad litem
- 13.6 Duties of guardian ad litem
- 13.7 Instruction and advice from court
- 13.8 Guardian ad litem may appeal from court order

#### **Section 13.1 Mandatory appointment of guardian ad litem**

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

- (1) a parent who is a minor or is incompetent in a proceeding under C.G.S. sections 45a-603 through 45a-622 or sections 45a-715 through 45a-719;
- (2) a minor child in a proceeding under C.G.S. section 46b-172a;
- (3) a parent who is a minor or is incompetent in a proceeding under C.G.S. section 46b-172a;
- (4) a relative in a proceeding under C.G.S. section 45a-751b or 45a-753 (c) whose identity is sought and whose address is unknown or who appears to be incompetent but has not been adjudicated incompetent by a court; and
- (5) a party in a proceeding under any other statute or rule that requires appointment of a guardian ad litem.

(b) The court shall send a copy of the appointment to each party and attorney of record.

(C.G.S. sections 17a-77, 45a-163 (a) and 45a-164 (d); Probate Court Rules, section 32.3.)

#### **Section 13.2 Discretionary appointment of guardian ad litem**

(a) Except as prohibited by C.G.S. section 45a-132, the court may appoint a guardian ad litem for a party:

- (1) who is a minor;
- (2) who is incompetent or who appears to be incompetent but has not been adjudicated incompetent by a court;
- (3) who is undetermined or unborn; or
- (4) whose name or address is unknown.

(b) The court may consider the appointment of a guardian ad litem for a party on request of a party or person interested in the welfare of a party or on the court's own motion. The court may act without notice and hearing.

(c) The court may appoint a guardian ad litem under this section only if the court, after considering the legal and financial interests at issue, determines that the appointment is necessary.

(d) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the procedures under C.G.S. section 45a-132 (a) apply.

(e) The court shall send a copy of the appointment to each party and attorney of record.

(C.G.S. sections 45a-603 through 45a-622 and 45a-715 through 45a-719; Probate Court Rules, sections 30.8, 30.9 and 40.2.)

### **Section 13.3 Scope of appointment**

(a) The court may limit the scope of appointment of a guardian ad litem to a specific purpose or to answer a specific question.

(b) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the court shall limit the scope of appointment of a guardian ad litem in accordance with C.G.S. section 45a-132 (a).

### **Section 13.4 Termination of appointment**

(a) On request of a party or on the court's own motion, the court may terminate the appointment of a guardian ad litem at any time if the court determines that a guardian ad litem is no longer needed. The court may act without notice and hearing.

(b) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the court shall terminate the appointment of a guardian ad litem if required under C.G.S. section 45a-132 (a).

### **Section 13.5 Who may serve as guardian ad litem**

(a) The court shall appoint as guardian ad litem an adult whose interests do not conflict with the interests of the person for whom the guardian ad litem will act.

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

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

(2) give preference to a parent, guardian or other family member if the person is a minor, unless the court finds a conflict of interest under subsection (a) or that legal or other professional training is required under subsection (b) (1); and

(3) match the abilities of the guardian ad litem with the needs of the person.

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

### **Section 13.6 Duties of guardian ad litem**

(a) A guardian ad litem shall:

(1) advocate for the best interests of the person for whom the guardian is acting; and

(2) if the person is a minor, make reasonable efforts to keep each parent or guardian of the minor who is not a party to the matter advised of the actions of the guardian ad litem and the court.

(b) A guardian ad litem may recommend to the court a waiver, election, modification or compromise of the rights or interests of the person for whom the guardian ad litem is acting and may, with approval of the court, effectuate the waiver, election, modification or compromise on behalf of the person.

(c) A guardian ad litem does not have title to or custody of property of the person for whom the guardian ad litem is acting.

### **Section 13.7 Instruction and advice from court**

(a) On request of a guardian ad litem or on the court's own motion, the court may give instruction and advice 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 conference or in writing with a copy to each party and attorney of record.

(Probate Court Rules, rule 68.)

**Section 13.8 Guardian ad litem may appeal from court order**

A guardian ad litem may appeal from a decree affecting the interests of the person for whom the guardian ad litem is acting. Subject to approval of the court, the guardian ad litem may incur necessary expenses in connection with the appeal.

(C.G.S. sections 45a-186 and 45a-187.)