

**Practice Book Advisory Committee  
Subcommittee I**

Meeting Minutes  
Tuesday, December 6, 2011  
3:00 p.m.

Office of the Probate Court Administrator  
186 Newington Road  
West Hartford, CT 06110

The meeting was convened the meeting at 3:07 p.m.

Members in attendance: Judge Steven Zelman, Chair, Attorney Molly Ackerly, Attorney Bonnie Bennet, Attorney Karen Gano, Attorney Paul Hudon, Attorney Greta Solomon, Ms. Sondra Waterman.

Members absent: Attorney Douglas Brown, Judge Beverly Streit-Kefalas

Also in attendance: Attorney David Biklen, Reporter

**Minutes of the November 8, 2011 meeting**

The minutes of the November 8, 2011 meeting were unanimously approved after noting and correcting a few typographical errors.

**Court Appointments**

The committee resumed discussion of concepts for rules regarding the duties of **Court Appointment of Guardians ad Litem**

**1. Duties of the GAL**

- a. **The GAL shall advocate the best interests of the person represented.** The committee decided that further detail of specific duties of a guardian at litem was not needed in the rules. Rather, it was recommended that the Office of the Probate Court Administrator develop guidelines for both court-appointed GALs and attorneys.
- b. **The GAL may recommend to the probate court a waiver, election, modification or compromise of the rights or interest of the person represented and may, with the approval of the court, effectuate such waiver, election, modification or compromise on behalf of the person represented.**
- c. **A GAL for a minor, other than a parent, shall make reasonable efforts to keep the parents advised of the actions of the court and of the GAL when the parent is not a party to the matter.**

- d. **The GAL may seek advice and instruction from the court concerning the GALs duties. The court and the GAL shall avoid ex parte communication regarding any request for, and the provision of, instruction and advice to a guardian ad litem.**
2. **The GAL has neither title in, nor custody of, the property of the person represented.**
3. **The GAL may appeal from any order or decree of the probate court by which the person represented is aggrieved and may, subject to the approval of the probate court, incur any necessary expenses of such appeal.**
4. **Compensation of GALs.** C.G.S §45a-132 states that reasonable compensation shall be paid as an expense of administration. The committee decided not to make a recommendation of who should pay for a GAL if there are no assets or insufficient assets being administered to compensate the GAL.

#### **Fiduciaries**

1. The committee determined that it was not necessary to have a rule regarding the appointment of fiduciaries for the purpose of referencing the provisions of § 3C(c) of the Code of Probate Judicial Conduct.

#### **Discussion of concepts for rules regarding Referrals to Probate**

**Magistrates and Attorney Probate Referees.** Concepts for proposed rules are in bold below:

1. **A court may refer any pending matter to a probate magistrate or an attorney probate referee except those matters prohibited by statute: involuntary conservatorships, involuntary commitments and temporary custody of minors.**
  - a. **A reference may not be made to a probate magistrate or attorney probate referee unless all parties or their attorneys consent.**
  - b. The committee determined that since the consent of all parties to a reference was required by the rules it is not necessary to state that a reference may not be made where the parties, as a matter of right, are entitled to a trial by jury and an affidavit of intent to claim a jury trial has been filed pursuant to C.G.S. § 45-98a. [CPB § 19-2 and 45a-98a]
  - c. **A complete matter may not be referred to a probate magistrate or attorney probate referee. Reference of the matters identified in proposed rule 1 above is limited to particular issues in dispute.**
2. **The court shall notify the Administrator of the reference and request for assignment of a probate magistrate or attorney probate referee.**
3. **The Administrator may designate a magistrate or attorney referee to hear a matter allowed by statute, if the Administrator determines that the assignment is appropriate and there are sufficient funds available for the appointment of a magistrate in the budget established under C.G.S. § 45a-84.**

4. The Administrator shall assign a magistrate or an attorney probate referee from among the probate magistrates and attorney probate referees appointed by the Chief Justice.
5. The court shall notify the parties and counsel of the assignment of a magistrate or attorney referee and shall schedule a hearing, and any continuances thereof, upon the matter referred. The initial hearing shall be held within 21 days after receipt in the court of the Administrator's designation or the magistrate or attorney referee, unless continued for cause shown.
6. The magistrate or attorney referee to whom a matter is referred shall have all powers and authority conferred upon a judge of probate in conducting the hearing on the issues referred, including but not limited to the procuring of the attendance of witnesses, contempt powers, and public access to the hearing and sealing of documents in the matter before the magistrate or attorney referee.
7. An audio recording of the hearing shall be made. The recording shall not cause the hearing to be on the record, unless the parties agree pursuant to C.G.S. § 51-72. A copy of the recording shall be made by the court upon request.
8. The magistrate or attorney referee shall file a report with the referring court no later than 60 days after the conclusion of the hearing. The report shall state, in separate and consecutively numbered paragraphs, findings of fact and conclusions of law regarding the claims and arguments presented by the parties.
9. The court shall send copies of the report to all parties and counsel immediately upon receipt.
10. Any party aggrieved by a finding of fact or conclusion drawn therefrom in the report shall file an objection with the court not later than 21 days after the report is filed in court.
  - a. Any objection shall be in writing and shall specify the findings and conclusions that are challenged and the basis for the objection.
  - b. The magistrate or attorney referee may amend the report in response to an objection, with or without further hearing. If the magistrate determines that a hearing on the objection is required, the magistrate shall notify the court to send notice of hearing to all parties and counsel.
11. The magistrate or attorney referee may file amendments to the report at any time before the referring judge accepts, modifies or rejects the report.
  - a. The court shall send copies of any amendment to all parties and counsel immediately upon receipt.
    - i. Any party aggrieved by a finding or conclusion contained amendment shall file an objection with the court no later than 21 days after the amendment is filed in court.

12. If no objections have been received by the court within 21 days of the filing of the report, or any amendment thereto, the court may dispense with notice of hearing and issue its decree accepting the report.
13. Upon the objection of a party, or on the court's own motion, the court shall schedule a hearing upon the report and any amendment thereto at least 21 days after the report or amendment is filed in court. Notice of hearing shall be sent to all parties and counsel.
14. An objecting party shall file with the court at or before the hearing a transcript of any portion of the recording of the hearing before the magistrate or attorney referee pertaining to any objection raised by the party. No further testimony or evidence may be offered at the hearing on the report or any amendment thereto.
  - a. The expense of the transcript shall be charged against the objecting party, except if the party files an affidavit with the court demonstrating the inability to pay, the expense of the transcript shall be paid from the Probate Court Administration Fund.
15. The court shall issue a decree, accepting, amending, or rejecting the report no later than 30 days after the conclusion of the hearing. If the court finds that the probate magistrate or attorney probate referee has materially erred in his or her findings or conclusions in the report or amendment or that there are other sufficient reasons for why the report should not be accepted, the court shall modify or reject the report and any amendments thereto.
  - a. If the court rejects the report and any amendment, the judge may hear the matter or refer the matter to a different magistrate or attorney referee in accordance with 2. above.
16. The court shall send a copy of the court's decree to all parties and attorneys of record and to the magistrate or attorney referee to whom the matter is referred.
17. Effect of the reference: If the court determines that the referred issue must be resolved prior to hearing other applications, petitions, motions filed in the case, the court may, in its discretion, defer a hearing on such application, petition, or motion for the purpose of receipt and court action upon the report.

#### **Discussion of concepts for rules regarding Disqualification of Judge.**

Concepts for proposed rules are in bold below:

1. **Notwithstanding any other grounds for disqualification, a judge of probate shall, upon a motion of any party or upon the court's own motion, be disqualified from acting in a matter if such judge is disqualified from acting therein pursuant to General Statutes §45a-22 or Canon 3E of the Code of Probate Judicial Conduct.** [Scribe's notes: The committee added the phrase "notwithstanding any other grounds for disqualification" to encompass situations where the grounds for disqualification are "gray". Canon 3E states that a judge shall disqualify

himself or herself in a proceeding in which a judge's impartiality might reasonably be questioned, and identifies instances where this may be an issue. It seems that the language of the code addresses the issues the committee raised, obviating the need for the "notwithstanding" language.]

- 2. Any motion for disqualification made by a party shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification. The motion shall be filed not less than three business days before any hearing unless good cause is shown for failure to file within such time.**
  - a. Upon receipt of the motion, the judge shall either disqualify himself or herself from hearing the matter, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or request that the Probate Court Administrator cite another judge, without suggestion or recommendation, to hear and decide the disqualification issue.**
  - b. The court's ruling on the motion shall be in writing. If the motion for disqualification is denied, the ruling shall include findings of fact with respect to the allegations contained in the motion.**
  - c. The court shall act on the motion for disqualification before proceeding on the merits of the underlying application.**
- 3. A judge is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judge or filed a complaint with the Council on Probate Judicial Conduct. When the judge has been made aware of the filing of such lawsuit or complaint, he or she shall advise the attorneys and parties to the proceeding and either disqualify himself or herself from hearing the matter, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or request that the Probate Court Administrator cite another judge, without suggestion or recommendation, to hear and decide the disqualification issue.**
- 4. The interested parties may waive disqualification of a judge provided:**
  - a. The judge is not disqualified from acting pursuant to C.G.S. §45a-22 or Canon 3E;**
  - b. The judge discloses in writing the basis of disqualification;**
  - c. Following disclosure the parties and their counsel are afforded the opportunity to consider the matter outside the presence of the judge, and**
  - d. All interested parties waive disqualification in writing.**

**Any written disclosure and waiver under this section shall be recorded as part of the record of the proceeding.**
- 5. Upon disqualification under this rule, the court shall request that the Probate Court Administrator cite another judge to hear such matter pursuant to General Statutes §45a-120. The acting judge shall be selected by the Probate Court Administrator without recommendation or suggestion by the disqualified judge.**

6. **This rule applies to probate judges and probate magistrates and attorney probate referees.**

**Discussion of concepts for rules regarding Public Access to Records.**

Concepts for proposed rules are in bold below:

1. **Except as otherwise provided by law or this section of the rules, there shall be a presumption of public access to probate proceedings and records.**
  - a. **Notwithstanding the provisions above, the probate court is vested with the inherent power to manage the courtroom as necessary to ensure justice and expeditious disposition of cases. [Scribes Notes: would it be better to embody this concept in the section dealing with the closure of the hearing and sealing of files so that it is addressed in the context of the public and private interests involved?]**
2. **The public shall be denied access to probate proceedings or documents that are confidential by law or these rules, except by order of the court.**
  - a. **Confidential proceedings and records shall be open and available to the parties and their counsel, including copies of documents.**
    - i. **In extraordinary circumstances where safety considerations require, the court may provide alternative access to documents and proceedings including access to hearings via other available means.**
    - ii. **The parties and counsel having access to confidential proceedings and records shall be responsible for preserving the confidentiality thereof.**
    - iii. **Non-parties may be:**
      1. **permitted to testify**
      2. **present in the hearing if all parties consent and allowed by the court**
  - b. **In addition to parties and counsel, confidential records in children's matters may be inspected or disclosed to:**
    - i. **The Department of Children and Families**
    - ii. **Any licensed child-placing agency involved in the case before the court**
    - iii. **Any judge or employee of a court in this state who, in the performance of his or her duties, requires access to such record**
    - iv. **The Office of the Probate Court Administrator**
    - v. **Courts of other states under the Uniform Child Custody Jurisdiction and Enforcement Act, §46b-115 et seq.**
  - c. **Access to and disclosure of adoption records shall be in accordance with statute.**
  - d. **Judge's notes are confidential and shall not be disclosed to the public or to parties, except upon court order.**

- e. Social Security numbers are confidential [Proposed Rule 9]**
- i. Filing - Redaction:** Except as specifically requested in an official probate court form, or otherwise provided by law or order of the court, persons filing documents with the probate courts shall not include any social security number or employer identification number and shall redact such numbers from any document. The responsibility for omitting or redacting social security numbers and employer identification numbers rests solely with the person filing the document. The probate court or the clerk of the probate court need not review any filed document for compliance with this rule.
  - ii. Social Security Number Required:** If a social security number or employer identification number is required in connection with a proceeding before a court of probate, the number shall be reported on a separate sheet containing the name of the individual or entity, the social security number or employer identification number and the matter in the court to which it relates. The separate sheet shall not be recorded and shall be confidential. The court shall not disclose any social security number or employer identification number reported on such second sheet to any person, including any interested party, provided that the court may permit disclosure of such social security number or employer identification number to a person found by the court to require the number for a proper purpose directly related to the proceeding before the court.
  - iii. Social Security Number Not Required:** In the event that a person files a document that contains a social security number or employer identification number and the court determines that such number is not required in connection with the proceeding, the court may, in its discretion, direct the clerk to (i) return the document and direct the filing party to resubmit it without the social security number or employer identification number, or (ii) redact the document to render the social security number or employer identification number illegible. In accordance with §2.e.i of this rule, nothing in this rule shall be construed to require a court to return a document or to redact a social security number or employer identification number.
  - iv. Original Documents:** If necessary to avoid modifying an original document, the court may, in its discretion, direct that an original document containing a social security number or employer identification number be sealed, and

**that a copy thereof, from which only the social security number or employer identification number has been redacted, be placed in the court file.**

- v. Disclosure to State and Federal Agencies: The provisions of this rule shall not prohibit the disclosure of a social security number or employer identification number to an agency of this state, the federal government, or any law enforcement agency, or to any representative thereof acting in his or her official capacity.**

- 3. Motion to close a hearing; Motion to seal record  
The committee began its discussion of motions to close hearings and seal files in non-confidential matters. 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, January 10, 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 6:15 p.m.

Approved January 10, 2012