

**Probate Practice Book Advisory Committee
Subcommittee I**

Meeting Minutes

Tuesday, May 3, 2016
3:00 p.m.

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

The meeting was convened at 3:23p.m. by Judge Steven Zelman, Chair.

Other members in attendance: Attorney Bonnie Bennet, Attorney Douglas Brown, Attorney Paul Hudon, Attorney Greta Solomon

Members not present: Attorney Molly Ackerly, Judge Michael Darby, Attorney Karen Gano, Mr. Stephen Pedneault, CPA, Ms. Sondra Waterman

Also in attendance: Attorney David Biklen, Reporter

Minutes of the March 22, 2016 meeting

The minutes of the March 22, 2016 meeting were unanimously approved.

Review of Draft Rules

Section 7.5, Financial Account Numbers

The committee approved the draft of a new section of Rule 7, Filing Requirements, concerning the reporting of financial account numbers. The draft rule provides that the fiduciary may report the last four digits of account held by a bank or other financial institution in lieu of the full account number. The committee modified section 7.5 (b) to clarify the court's authority to require the fiduciary to provide the full account number if the court determines that disclosure is necessary.

Section 36.13 (records to be maintained by fiduciary)

At its March 22, 2016 meeting, the committee recommended that section 36.13 (a) (3) be revised to require the fiduciary to maintain each canceled check or check image for each bank account *if provided by* the financial institution. This recommendation was inadvertently omitted from the list of approved revisions attached to the March minutes. No further discussion was necessary.

Multiple sections regarding probate fees

- Section 39.3. The committee reviewed proposed language for a new section of Rule 39 intended to treat as a single petition for fee purposes a petition to approve a fee arrangement and a petition to

approve an account filed at the same time. Committee members decided not to recommend the additional provision since the language may result in unnecessary confusion and these petitions are rarely filed at the same time.

- Section 47.3 This section of the Probate Court Rules concerning a single petition for change of name of a family was used as a model in drafting other sections regarding probate fees. The committee approved the change from “entry fee” to “filing fee” in section 47.3, as noted at the March 2016 meeting.

Additional Topics/Concepts/Draft Rules

Section 8.10 (Notice of mailing of decree)

At its March 22, 2016 meeting, the committee approved a change to section 8.10 (a) to make it clear that the court is to send the decree and the certification of the date the decree was mailed to each person entitled to notice. After the March meeting, court staff suggested that the committee consider removing the requirement that 1. the court send a sealed copy of the decree to each person entitled to notice and 2. any certification of the mailing of the decree be attached to the decree. After full discussion of these suggestions, the committee decided not to make further changes to Section 8.10 at this time.

Section 18.3 (Transfers between Probate Courts)

The committee approved a new provision under Rule 18, Transfer of Matter between Probate Courts, referencing recent legislation, P.A. 16-7, that provides the Probate Court with authority to transfer an initial petition, application or motion to another Probate Court if the transferring court determines that it does not have jurisdiction to hear the matter but the other court does have jurisdiction.

Proposed Meeting Schedule

No additional meetings were scheduled. Drafts of revisions to sections 7.5, 18.3, 36.13, 47.3 of the Probate Court Rules will be circulated among subcommittee members for comment prior to the September 2016 meeting of the full committee.

Adjournment

The meeting was adjourned at 4:50 p.m.

Rule 7

Filing Requirements

Section

- 7.1 General filing requirements
- 7.2 Commencing a proceeding
- 7.3 Forms
- 7.4 Signature required
- 7.5 Financial Account Numbers

Section 7.1 General filing requirements

(a) A document filed with the court shall:

- (1) be typed or printed in ink;
- (2) be signed and dated in accordance with section 7.4;
- (3) after the matter is commenced, refer to the name that the court assigned the matter; and
- (4) satisfy the filing requirements under governing statutes and these rules.

(b) The court may accept for filing a document that is in substantial compliance with the requirements of subsection (a).

(c) The clerk may require a party to correct a document by substituting a corrected or substituted document or page that complies with subsection (a).

(d) When these rules require a person filing a petition or other document to send a copy of the petition or document to each party and attorney of record, the person shall certify to the court that the copy has been sent.

(Probate Court Rules, sections 5.5, 5.7, 10.1, 14.5, 30.7, 30.12, 30.22, 30.23, 32.4, 33.8, 34.3, 36.5, 40.16, 41.1, 60.2, 61.9 and 71.7.)

Section 7.2 Commencing a proceeding

(a) To commence a proceeding, a petitioner shall file a petition, together with any entry fee required under section 6.1. The petition shall include:

- (1) a description of the action sought and the basis for the request;
- (2) the name and address of each party;
- (3) the date of birth of each party who is a minor; and
- (4) the name, address and position of trust of the legal representative of any party who has been adjudicated incapable.

(b) The petitioner shall use reasonable efforts to determine the name and address of each party. If the petitioner is unable to determine the name or address of a party, the petition shall include a statement describing the efforts made to identify and locate the party.

(c) A petitioner shall, in accordance with the Servicemembers Civil Relief Act, indicate whether a party is in the active military service of the United States when commencing a proceeding concerning:

- (1) a decedent's estate;
 - (2) a trust;
 - (3) a children's matter; or
 - (4) any other matter in which adjudication of an interest of a servicemember is sought.
- (Servicemembers Civil Relief Act, 50 U.S.C. app. section 521.)

Section 7.3 Forms

(a) The court shall accept a document if it:

- (1) is filed on the latest revision of a form published by the probate court administrator; and
- (2) complies with sections 7.1 and 7.2.

- (b) The court may require documentation in addition to the information on the form.
- (c) Unless otherwise required by statute or these rules, use of a form published by the probate court administrator is not required. A petition not on a form published by the probate court administrator shall comply with the requirements of statute and these rules.

Section 7.4 Signature required

- (a) Except as provided in subsection (b), the court shall not act on a request, motion, petition or other document unless it bears the original signature of the individual filing it.
- (b) The court may act on a request, motion, petition or document lacking an original signature when in receipt of a:
- (1) written request for a hearing when the court has given notice using the streamline notice procedure under section 8.6;
 - (2) document submitted by a state agency with an electronic signature;
 - (3) motion or request made during a hearing;
 - (4) commitment petition, including a request for a probable cause hearing, when the signed original petition will be delivered to the court on or before the hearing; and
 - (5) request, motion, petition or document if the court determines that action is necessary before the signed original is filed.
- (c) An attorney may sign a request, motion, petition or other document on behalf of a client unless it is required to be signed under oath or penalty of false statement.
- (d) Except as provided in subsections (c) and (e), each cofiduciary shall sign a request, motion, petition or other document filed in a matter.
- (e) A cofiduciary may submit a request, motion, petition or other document that is not signed by another cofiduciary if the filing includes a written statement explaining why the signature could not be obtained.

Section 7.5 Financial Account Numbers

- (a) Except as provided in subsection (b), if information about an account held at a bank or other financial institution is reported in connection with a proceeding, the fiduciary may list the name of the financial institution and the last four digits of the account number in lieu of the full account number.
- (b) The court may require the fiduciary to provide the full account number if the court determines that disclosure is necessary.

Rule 18

Transfer of Matter between Probate Courts

Section

18.1 Hearing on application to transfer guardianship matter

18.2 Transfer of conservatorship matter

18.3 Transfer of initial petition, application or motion to court having jurisdiction

Section 18.1 Hearing on application to transfer guardianship matter

- (a) On motion of a person authorized by C.G.S. section 45a-599 or 45a-677, the court may transfer a guardianship matter to another Probate Court if it finds that an adult with intellectual disability or a minor has become a resident of the other probate district and that the transfer is in the best

interests of the adult with intellectual disability or the minor. The court may act on the motion without notice and hearing or may use the streamline notice procedure.

(b) If the court has established a trust under C.G.S. section 45a-151 or 45a-655 and the guardianship for the beneficiary of the trust is transferred under section 18.1 (a), the court may, on motion of a person authorized by C.G.S. section 45a-599 or 45a-677 to request a transfer of the guardianship, transfer the trust to the probate district to which the guardianship has been transferred. The court may act on the motion without notice and hearing.

(Probate Court Rules, section 8.6.)

Section 18.2 Transfer of conservatorship matter

(a) On motion of a person authorized by C.G.S. section 45a-661, the court shall transfer a conservatorship matter to another Probate Court if it finds that:

- (1) a person under conservatorship has become a resident of the other probate district; and
- (2) the requested transfer is the preference of the person under conservatorship.

(b) If a transfer is required under C.G.S. section 45a-661, the court may issue a decision on a pending petition or motion before ordering the transfer.

(c) If the court has established a trust under C.G.S. section 45a-151 or 45a-655 and the conservatorship for the beneficiary of the trust is transferred under section 18.2 (a), the court may, on motion of a person authorized by C.G.S. section 45a-661 to request a transfer of the conservatorship, transfer the trust to the probate district to which the conservatorship has been transferred. The court may act on the motion without notice and hearing.

Section 18.3 Transfer of initial petition, application or motion to court having jurisdiction

If upon receipt of a petition, application or motion to initiate a matter, the court finds, after notice and hearing, that the court does not have jurisdiction over the petition, application or motion but another Probate Court in this state does have jurisdiction to hear the matter, the court shall proceed in accordance with Public Act 16-7.

Rule 36

Fiduciary Accounting: General Provisions

Section 36.13 Records to be maintained by fiduciary

(a) A fiduciary shall maintain complete records of the fiduciary's management of the estate including, but not limited to:

- (1) each accounting, report, journal or ledger used in managing the estate and each electronic equivalent thereof, including all data recorded with accounting software;
- (2) each statement and passbook for each bank account, including savings, checking, money market, certificates of deposit and other types of accounts;
- (3) if provided by the financial institution, each canceled check or check image for each bank account at the institution;
- (4) each statement for each investment account;
- (5) a receipt for each deposit made into each bank or investment account and supporting information relating to the deposit;
- (6) supporting information relating to each disbursement made from each bank or investment account, including original supporting vendor invoices and receipts;

- (7) each statement for each credit card account;
 - (8) each statement for each store card account;
 - (9) supporting information relating to each charge made on each credit card, store card or debit card, including supporting vendor invoices and charge slips or receipts;
 - (10) supporting information relating to each distribution made from the estate or trust to any heir, beneficiary, conserved person or minor, as applicable;
 - (11) with respect to a conservatorship of the estate, supporting information relating to each gift or other transfer for less than full consideration made from the estate to a party other than the conserved person, provided, however, that a conservator may make gifts and transfers only with prior court approval under C.G.S. section 45a-655 (e);
 - (12) detailed payroll information for each employee engaged or paid by the estate for each pay period, including time reporting records, original payroll registers, journals, and reports and copies of all Internal Revenue Service Forms 941, 942, W-3 and W-2 and other payroll tax returns;
 - (13) details of each contracted service provider engaged or paid by the estate for each calendar year, including original invoices from contractors and copies of all Internal Revenue Service Forms 1096 and 1099 and other tax forms;
 - (14) a detailed journal describing the fiduciary's services and compensation paid to the fiduciary;
 - (15) with respect to a decedent's estate or trust, a copy of each state and federal fiduciary income tax return filed by or on behalf of the estate or trust;
 - (16) with respect to a conservatorship of the estate or guardianship of the estate of a minor, a copy of each state and federal personal income tax return filed by or on behalf of the person under conservatorship or minor, including each form and information received for each tax year used in the completion of each return;
 - (17) with respect to a conservatorship of the estate, a copy of each state and federal gift tax return filed by or on behalf of the person under conservatorship; and
 - (18) any other record not specified in this section documenting the fiduciary's actions in the management of the trust or estate.
- (b) The fiduciary shall not destroy any estate financial records until the court approves the fiduciary's final financial report or account, the conclusion of any appeal, or the termination of any other applicable record retention requirement, whichever is later.

Rule 47

Change of Name

Section 47.3 Single petition for change of name for family

- (a) If petitions for change of name of spouses, parents or minor children of the same family living at the same residence are filed at the same time, the court may treat the petitions as a single matter subject to one entry-filing fee. The court shall issue a separate decree for each member of the family.
- (b) The court may charge a separate entry-filing fee for a petition under subsection (a) if the court determines that it is necessary to hear the petition separately from the other petitions.