

**Probate Practice Book Advisory Committee  
Subcommittee II**

Meeting Minutes  
Wednesday, February 8, 2012

Law Offices of Mahon, Quinn & Mahon  
636 Broad Street  
Meriden, CT

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 3:00 p.m.

Other members in attendance: Professor Jeffrey Cooper, Attorney Thomas Gaffey, Attorney Christopher Hug, Judge John McGrath, Attorney Carmine Perri, Mr. Arthur Teal, Judge Claire Twerdy

Also in attendance: Committee Reporter David Biklen

**Approval of minutes**

The members unanimously approved the minutes of the meeting of January 11, 2012.

**Review drafts of proposed rules**

The subcommittee continued its review of the draft designated "1-5-12 draft Biklen".

Rule 2300. Orders issued with prior notice and hearing. It was agreed to delete references to the term "ex parte" and instead refer to "orders issued with prior notice and hearing". There was some discussion of the distinction between items (1) and (2). Item (1) refers to statutes that explicitly provide for ex parte orders. Item (2) refers to statutes that are silent, neither explicitly authorizing ex parte orders, nor requiring notice and hearing. After considerable discussion concerning ways to clarify this, it was decided to leave the language as drafted.

Rule 2400. Case and trial management conferences. There was some discussion about the distinction between case management and trial management conferences and the need for separate rules. It was agreed that they are different and that separate rules are required.

It was agreed add a provision to make clear that case management or trial management orders can be issued by the court memorializing the matters addressed at the conference.

There was also discussion as to the items to be considered under each. It was agreed that there are differences but also overlap. Consideration was given to the items that should be included under each. Some of the items to be addressed at a trial management conference include:

- Issuance of subpoenas
- Stipulations of fact
- Pre-hearing briefs
- Exchange and pre-marking of exhibits
- Sworn statements or depositions to be introduced
- Anticipated length of trial
- Whether a record is to be made.

There was also agreement that “discovery” should be broken into two components: depositions and other written discovery.

It was noted that the drafts do not contain provisions for status conferences, and it was agreed that a proposed rule should be drafted to reflect the concepts agreed upon earlier. This should be a new rule 2402, i.e. it should be located between the rules concerning case management and trial management conferences.

Rule 2500. Recording of hearings. It was agreed to delete reference to “audio or electronic” recording, referring instead only to “recording”. This is to coincide with the language of the various statutes.

It was also agreed that rule 2501 should be re-ordered. The first subsection should state that the court shall make a recording when required by statute. The next should say that the court may make a recording of any other matter in its discretion. The third should indicate that, except as provided in rules 2503 and 2504 re stenographers, and the rule dealing with media coverage, no one else can make a recording of a probate hearing.

Rule 2501 should also contain a provision requiring that all recordings made in accordance with statute be maintained for a period of one year, or for such longer period as the court may direct or as required by regulations promulgated by the Probate Court Administrator. [Cross reference rule re recordings in conservator matters.]

Transcripts of recorded hearings under 2502 should be provided by the court *only* when the statutes provide for transcripts. In other case the parties may obtain copies of the recording and have them transcribed on their own.

Rule 2503 should be modified to require a written agreement of the parties, to conform with the statute.

Under 2504, the ability of a party to bring their own stenographer should be conditioned upon their providing a copy of the transcript to the court, and the ability of other parties to request and receive copies at their cost.

Rule 2600. Electronic Media in Hearings. It was agreed that the title should be changed to avoid confusion with the rule dealing with media coverage of court proceedings. The new title should be "Participation in Hearings by Electronic Means."

In rule 2601, subsection (b)(1), (2) and (4), the word "whether" should be replaced with "the extent to which."

Rule 2700. Interpreters. A new subsection (a) should indicate that the provisions of this rule are subject to the requirements of any relevant statute. [Cross reference statute re deaf and hearing impaired, §36a-33a.]

A new subsection (b) should make clear that the subject of this rule is not whether an interpreter should be allowed, but who may serve in that capacity. New (c) will list factors for consideration.

The meeting was adjourned at 5:00 p.m.

The next meeting will be held on Wednesday, March 7, 2021 at 3:00 p.m. at the Law Offices of Mahon, Quinn & Mahon in Meriden.

Approved March 7, 2011.

Revised drafts of the rules concerning orders issued without notice and hearing, case conferences, recording of hearings, participation in hearings by electronic media, and interpreters that incorporate the above-referenced changes are attached to these minutes.

## **Rule23 Orders without Notice and Hearing.**

### **Sec. 23.1 When order without notice and hearing permitted.**

- (a) The *court* may issue an order without notice and hearing if:
- (1) authorized by statute;
  - (2) the governing statute does not require prior notice and a hearing; or
  - (3) each necessary *party* has waived notice of a hearing.
- (b) The *court* may require notice and a hearing before issuing an order permitted under section 23.1(a).

## **Rule 24 Case Conference.**

### **Sec. 24.1 Case management conference.**

(a) The *court*, on its own motion or at the request of a *party* to a contested proceeding, may order a case management conference to address matters related to the proper and expeditious progress of the proceeding, including:

- (1) discovery;
- (2) depositions;
- (3) identification of issues;
- (4) need for motions and scheduling;
- (5) identity of witnesses;
- (6) scheduling of trial;
- (7) whether the matter should be referred to alternative dispute resolution;

and

- (8) any other matter the *court* considers appropriate to assist in management of the proceeding.

(b) At the conclusion of a case management conference, the *court* may issue a case management order with respect to a matter addressed at the conference.

### **Sec. 24.2 Status conference.**

(a) The *court*, on its own motion or at the request of a *party* to a contested proceeding, may, at any time, order a status conference to consider any matter sufficiently related to the proceeding.

(b) The *court* may not issue any order in connection with a status conference unless the order is permitted under section 23.1.

### **Sec. 24.3 Trial management conference.**

(a) The *court*, on its own motion or at the request of a *party* to a contested proceeding, may order a trial management conference to consider matters related to the conduct of the hearing, including:

- (1) identification of issues;
- (2) procedure for issuance of trial subpoenas;
- (3) need for motions and scheduling;
- (4) prehearing brief;
- (5) stipulation of facts;
- (6) exchange and marking of documents the parties believe may be offered in evidence at the hearing;
- (7) whether sworn statements or depositions may be introduced;
- (8) whether a stenographic or other official record of the proceeding will be maintained;
- (9) identity of witnesses;
- (10) anticipated length of trial;
- (11) scheduling of trial;
- (12) whether the matter should be referred to alternative dispute resolution; and
- (13) any other matter the *court* considers appropriate to assist in management of the proceeding.

(b) At the conclusion of a trial management conference, the *court* may issue a trial management order with respect to a matter addressed at the conference.

## **Rule 25 Recording of Hearings.**

### **Sec. 25.1 Making and maintaining recordings.**

(a) The *court* shall make a recording of a *court* proceeding when required by statute.

(b) If not otherwise required by statute, the *court* shall make a recording of a *court* proceeding on the request of a *party* pursuant to statute.

(c) If not required under subsections (a) and (b), the *court* may, in its discretion, make a recording of any matter before it.

(d) Except as authorized under section 25.3 and 25.4, no person shall make a recording of a *court* proceeding.

(e) Except in confidential matters, the *court* shall provide a copy of a recording of a *court* proceeding to any person on request and payment any applicable statutory fee.

(f) In confidential proceedings, the *court* shall, unless otherwise provided by statute, provide a copy of a recording of a *court* proceeding to any *party* on request and payment of any applicable statutory fee.

(g) The *court* shall maintain a recording of a *court* proceeding made under sections 25.1(a) and (b) for one year, or such longer period as may be directed by the *court* or regulations promulgated by the *probate court administrator*. A recording made under section 25.1(c) may be maintained for a period that the *court* determines.

*(C.G.S. Secs. 45a-136, 45a-645a, 17a-498, 17a-685, Probate Court Regulations Sec. 27 )*

**Sec. 25.2 Transcript of recorded hearing.** Except as required by law, the *court* is not required to cause a recording of a *court* proceeding to be transcribed.

*(C.G.S. Sec.45a-186a.)*

**Sec. 25.3. Court may call official stenographer by agreement of parties.** If each *party* agrees in writing, the *court* may call an official stenographer to make a stenographic record of a *court* proceeding. The stenographic record shall which shall, under C.G.S. sections 51-72 and 51-73, be part of the official record of the proceeding.

*(C.G.S. Secs. 51-72 and 51-73.)*

**Sec. 25.4. Stenographic record made without call of court.**

(a) Absent an agreement of the parties under section 25.3, a *party* may provide a stenographer to make a stenographic record of a *court* proceeding if the *party* provides a copy of the stenographic record to:

- (1) the *court*; and
- (2) any other *party* on payment of the cost of the copy to the reporter.

(b) A stenographic record under this section is not part of the official record of the *court* proceeding and shall have no effect on the nature of an appeal taken from a decision in the matter.

**Rule 26 Participation in Hearing by Electronic Means.**

**Sec. 26.1 When participation by electronic means permitted.**

(a) A *party* or witness may participate in a proceeding by telephonic or other electronic means if:

- (1) participation by electronic means is permitted by law;
- (2) the parties to the proceeding agree to participation by electronic means

and the *court* approves; or

- (3) the *court* allows participation by electronic means.

(b) In determining whether to allow participation in a proceeding by electronic means, the *court* shall consider:

(1) the extent to which surprise or prejudice would result from electronic participation by a witness or *party*;

(2) the extent to which a *party* is unable to procure the physical presence of the witness;

(3) the convenience of the parties and the cost of producing the *party* or witness in *court*;

(4) the extent to which participation by electronic means will allow full and effective examination and cross examination;

- (5) the importance of testimony being presented in person; and

(6) other factors the *court* considers relevant.

## **Rule 27 Interpreters.**

### **Sec. 27.1 Interpreters in probate proceeding.**

(a) The *court* shall allow a person to serve as interpreter in a proceeding as required by statute.

(b) In a proceeding in which translation is necessary to enable a *party* or witness to participate or testify, the *court* may allow a person to serve as interpreter, taking into account:

- (1) whether the interpreter is impartial;
  - (2) the competence of the interpreter to provide accurate and reliable interpretation service;
  - (3) whether use of the interpreter will allow full and effective examination and cross examination;
  - (4) the convenience of the parties;
  - (5) the cost of providing an interpreter;
  - (6) the importance of testimony of the witness needing an interpreter in the proceeding;
  - (7) whether surprise or prejudice would result from participation of the interpreter; and
  - (8) other factors the *court* considers relevant .
- (C.G.S. Sec. 46a-33a)

