

**Probate Practice Book Advisory Committee
Subcommittee II**

Meeting Minutes
Wednesday, March 7, 2012

Law Offices of Mahon, Quinn & Mahon
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Meriden, CT

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 3:05 p.m.

Other members in attendance: Attorney Thomas Gaffey, Attorney Christopher Hug, Judge John McGrath, Attorney Carmine Perri, Judge Claire Twerdy

Also in attendance: Committee Reporter David Biklen

Members not in attendance: Professor Jeffrey Cooper, Mr. Arthur Teal

Approval of minutes

The members unanimously approved the minutes of the meeting of February 8, 2012.

Review drafts of proposed rules

The subcommittee continued its review of the draft designated "1-5-12 draft Biklen". [Note: these rules have been re-numbered in the attached revised drafts as rules 29 through 31.]

Rule 2800. Sequestration of witnesses. Attorney Biklen indicated that since this draft was produced it was determined to define the term "court" as the probate court. Therefore all references in the text will be to "court" rather than "probate court". One such reference appears in the second line of rule 2801.

Also in rule 2801, it was agreed to delete the phrase "to a probate proceeding" from the second line.

Rule 2900. Enforcement. It was agreed to change the order of rule 2901 as follows: "A subpoena to require the attendance of a witness at a hearing, or at a deposition, including a subpoena to require the production of documents, shall be issued and served in accordance with statute".

In rule 2903 (c), the words “in a matter of contempt” should be replaced with “involving an adjudication of contempt”.

The second sentence of rule 2905, (“the contempt shall be referred to the state’s attorney...”), should be moved to a new subsection (b), which will read as follows: “Nonsummary criminal contempt under subsection (a) shall be referred to the state’s attorney for prosecution in the Superior Court.”

Subsection (a)(3) of rule 2905 should conclude with the word “or” rather than “and”.

Rule 3000. Concurrent jurisdiction. Rule 3001 should be revised slightly as follows: “A party in a proceeding who has knowledge of a similar proceeding pending in another court...”.

The subcommittee proceeded to review the draft of rule 27 designated “Broadcasting Rule 27 2-28-12 draft DDB.” [Note: this rule has been re-numbered as rule 28 in the revised drafts attached hereto.]

In rule 27.1 the words “subject to” should be replaced with the words “except as provided in”.

The opening clause of subsection (a) of rule 27.2 should be revised as follows: “News media coverage of hearings in the following matters is prohibited”.

In rule 27.2 (a)(7) the words “application for” should be substituted for the words “proceedings concerning”.

The words “in a court proceeding” in subsection (b) of rule 27.2 should be changed to “in a hearing.” Similarly, in subsection (d), the word “sessions”, which appears two places, should be deleted and replaced with “a hearing”.

There was discussion of rule 27.4 (d), and in particular the provision that “the decision shall be final.” The question was raised whether this meant that no appeal was possible, which would appear to be contrary to C.G.S. §45a-186. It was agreed to delete those words.

It was also agreed to combine the second and third sentences of rule 27.6, to read as follows: “The members of each media type shall make their respective pooling arrangements, including establishment of necessary procedures...”.

It was agreed to delete the first clause of the first sentence of rule 27.7 (a), up to and including “during the proceeding”. Thus the sentence would begin “The court may require the attendance...”.

The subcommittee discussed whether subsection (b) of rule 27.7 was necessary. After discussion it was determined that it should remain as part of the rule.

The subcommittee then began its review of revised draft rules, designated “Rules 19-27 2-22-12draftDDB”.

Rule 19. Discovery. A new second sentence should be added to rule 19.1, indicating that subpoenas are to be issued under rule 30.1.

There was considerable discussion about rule 19.2. Concern was expressed that the language may not adequately express the intent as to the court’s “gatekeeper” function in this area. After discussion there was not consensus as to whether this language should be revised. It was agreed that this be brought up at the full committee meeting on March 15.

The subcommittee agreed that the phrase “or a trial management conference under section 24.3” should be deleted and replaced with “or as otherwise ordered by the court.”

Rule 20. Evidence. It was agreed that the word “proceedings” in rule 20.1 should be replaced with the word “hearings”.

The meeting was adjourned at 4:55 p.m.

Approved April 4, 2012

Draft rules as of March 7, 2012 concerning sequestration of witnesses, enforcement, concurrent jurisdiction, news media coverage, discovery and evidence are attached to these minutes.

Rule 19 Discovery.

Sec. 19.1 Taking of deposition. A party may, after the commencement of a proceeding, take testimony of any person by deposition pursuant to C.G.S. sections 52-148b through 52-159a. A party may issue a subpoena under section 29.1.

(C.G.S. Sections 52-148a through 52-159a)

Sec. 19.2 When discovery other than deposition permitted. A *party* in a contested proceeding may request permission to seek discovery of information other than by deposition. The *court* may, after notice and hearing, grant the request in whole or in part on a finding that the information sought appears reasonably calculated to lead to discovery of admissible evidence and that the requested discovery would not be unduly burdensome or expensive.

(C.G.S. Secs. 45a-98b, 45a-129, and 45a-132a)

Sec. 19.3 Discovery requests and disputes. A request for discovery and a dispute concerning discovery may be determined by the *court* at a case management conference under section 24.1 or as otherwise ordered by the court.

Rule 20 Evidence.

Sec. 20.1 Rules of evidence. The rules of evidence established by law shall apply in all hearings in which facts in dispute are found by the *court*.

Rule 28 News Media Coverage.

Sec. 28.1 News media coverage permitted. Except as provided in sections 27.2 through 27.4, the *court* shall permit *news media coverage*.

(C.P.B. §1-10B and 1-11B)

Sec. 28.2 News media coverage not permitted.

(a) *News media coverage* of hearings in the following matters is prohibited:

(1) removal of parent as guardian;

(2) temporary guardianship;

(3) termination of parental rights;

(4) adoption;

(5) emancipation of minor;

(6) commitment of an adult or child for the treatment of psychiatric disability;

(7) application for administration of shock therapy;

(8) involuntary administration of medication for the treatment of psychiatric disability;

(9) commitment of an individual for treatment of drug or alcohol abuse;

(10) special limited conservator;

(11) guardian of person with intellectual disability;

(12) involuntary placement of a person with intellectual disability;

(13) proceedings concerning sterilization; and

(14) any proceeding that must be closed to the public to comply with the law.

(b) News media may not operate broadcasting, television, recording, or photographic equipment in the *court* during a recess in a hearing.

(c) *News media coverage* of a conference between an attorney for a party and the judge or between an attorney and the attorney's client is prohibited.

(d) Except as provided by these rules, *news media coverage* is prohibited in areas immediately adjacent to a courtroom during a hearing or during a recess of a hearing.

(C.P.B. §1-10B and 1-11B)

Sec. 28.3 Objection to news media coverage of probate proceeding.

The *court* shall hold a hearing under section 27.3 to consider whether to limit or prohibit *news media coverage* if:

(1) a party, attorney, witness, or other interested person in a proceeding objects in advance of the proceeding to *coverage* claiming there is substantial reason to believe that the *coverage* will undermine the legal rights of a party or will significantly compromise the safety of a witness or other interested person or impact significant privacy concerns;

(2) the *court* has a substantial reason to believe that *coverage* will undermine the legal rights of a party or will significantly compromise the safety or significant privacy concerns of a party, witness, or other interested person and if no party, attorney, witness, or other interested person has objected to the *coverage*; or

(3) objection is made during a proceeding to *coverage* of specific aspects of the proceeding or of specific individuals or exhibits

(C.P.B. §1-10B and 1-11B)

Sec. 28.4 Hearing on objection to news media coverage.

(a) Any person, including the news media, whose rights are at issue in considering whether to allow *news media coverage* may participate in a hearing held under this section to determine whether to limit or prohibit *coverage*. The burden of proving that *coverage* should be limited or prohibited shall be on the person who filed the objection.

(b) Subject to section 27.4(c), in deciding whether to limit or prohibit *news media coverage*, the *court* shall consider the rights at issue and shall limit or prohibit coverage only if it finds that:

(1) a compelling reason exists to limit or prohibit coverage;

(2) no reasonable alternative exists to the limitation or prohibition;

and

(3) the limitation or prohibition is no broader than necessary to protect the compelling reason at issue.

(c) If an objection to *news media coverage* seeks to protect the identity of a person such as a victim of a crime, police informant, undercover agent, relocated witness, juvenile or individual in a comparable situation, the *court*, in reaching a decision under section 27.4(b), shall give great weight to the objection.

(d) The *court* shall articulate the reasons for its decision whether to limit or prohibit news media coverage.

(C.P.B. §1-10B and 1-11B)

Sec. 28.5 Broadcasting, television, recording, and photographic equipment.

(a) No broadcasting, television, recording, or photographic equipment shall be placed in or removed from a courtroom while a hearing is being held. Lenses and recording magazines, film, tape, and similar recording devices shall not be changed in the courtroom except during a recess in the hearing or other appropriate time during the hearing.

(b) Only camera, television, audio, or other recording equipment that does not produce distracting sound or light may be used to cover a proceeding. Unless

otherwise approved by the *court*, the operator of the equipment shall not use artificial lighting to supplement existing light.

(C.P.B. §1-10B and 1-11B)

Sec. 28.6. Pooling arrangement for news media.

(a) The *court* may require a pooling arrangement for *news media coverage*. A single news media pool representative shall be used for each video, still camera, and radio media in the courtroom. Each media type shall make pooling arrangement for that media type, including establishment of necessary procedures and selection of pool representatives, without calling on the *court* to mediate a dispute as to an appropriate media representative or equipment for a particular proceeding. If a media group does not agree on equipment, procedures, and personnel, the *court* shall not permit the pooled coverage at the proceeding.

(b) Unless good cause is shown, a news media or pool representative seeking to broadcast, televise, record, or photograph a proceeding, at least three days before commencement of the proceeding, shall submit written notice of *news media coverage* to the *court* in which the proceeding is to be heard. Notice of *news media coverage* submitted on behalf of a pool shall contain the name of each news organization seeking to participate in the pool. The *court* shall allow coverage except as otherwise provided in this section. A news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a written notice to the *court* and shall be allowed to participate in the pool arrangement.

(C.P.B. §1-10B and 1-11B)

Sec. 28.7 Conference to establish conditions of news media coverage.

(a) The *court* may require the attendance of attorneys and media personnel at a conference to establish conditions of *news media coverage*. At the conference, the *court* shall establish any conditions.

(b) The conduct of all attorneys with respect to trial publicity is governed by Rule 3.6 of the Rules of Professional Conduct.

(C.P.B. §1-10B and 1-11B)

**Rule 29
Sequestration of Witnesses**

Sec. 29.1. When sequestration of witness permitted. On a finding of good cause, a court, on motion of a party or on its own motion, may order a witness in the proceeding, other than a party, to be sequestered so the witness is not able to hear the testimony of another witness.

**Rule 30
Enforcement**

Sec. 30.1. Issuance of subpoena. A subpoena to require attendance of a witness , or to appear at a deposition, including a subpoena to require production of documents, shall be issued and served in accordance with statute.

Sec. 30.2. Capias to compel attendance or evidence. A court may issue a capias for the arrest of an individual who has failed to comply with a subpoena issued under sec. 30.1 or with a citation by a court to appear

(C.G.S. Secs. 45a-129, 52-143, 52-144, and 52-148e)

Sec. 30.3. Adjudication of contempt.

(a) An individual misbehaving or disobeying an order of a judge during a court proceeding may be adjudicated in contempt and appropriately punished.

(b) Contempt may be either civil or criminal.

(c) The court shall cause a proceeding involving an adjudication of contempt to be recorded.

(Connecticut Practice Book Secs. 1-13A-1-21A)

Sec. 30.4. Summary criminal contempt.

(a) Misbehavior or misconduct in the presence of a court that is directed against the dignity and authority of the court and that causes an obstruction to the orderly administration of justice is a summary criminal contempt and may be adjudicated summarily by the court and punished by fine.

(b) Before a finding of guilt of summary criminal contempt, the court shall inform the defendant of the charges against the defendant and enquire whether the defendant, by presenting evidence of acquitting or mitigating circumstances, has any cause to show why the defendant should not be adjudged guilty of summary criminal contempt.

(c) On an adjudication of summary criminal contempt, the court shall immediately impose a sentence of not more than one hundred dollars for each contumacious act.

Sec. 30.5. Nonsummary criminal contempt.

(a) Misbehavior or misconduct that is directed against the dignity and authority of a probate court shall be considered as nonsummary criminal contempt if the:

- (1) misbehavior does not rise to an obstruction to the orderly administration of justice;
- (2) court has become personally embroiled;
- (3) misconduct did not occur in the presence of the court; **or**

(4) court did not instantly impose summary criminal contempt on the commission of the contumacious act.

(b) Matters involving nonsummary criminal contempt shall be referred to the state's attorney for prosecution in the Superior Court.

(c) The state's attorney shall proceed in the Superior Court with a nonsummary criminal contempt referred under this section in the manner provided for nonsummary criminal contempt procedure in the Connecticut Practice Book.

Sec. 30.6. Civil contempt.

(a) If the intervention of the court is sought by a party to remedy violation of a court order with respect to a dispute between private litigants, the intervention is remedial, and the court may hold the contumacious individual in civil contempt. The court may impose sanctions on the contumacious individual that are coercive and nonpunitive, including fines, to ensure compliance with the order and to compensate the complainant for loss.

(b) If violation of a probate court order renders the order unenforceable, the court may refer the matter for nonsummary criminal contempt under section 30.5.

**Rule 31
Concurrent Jurisdiction**

Sec. 31.1. Notification of court of similar matter. In a proceeding in the probate court, a party who has knowledge of a similar proceeding pending in another court shall notify the probate court of that fact.