

Probate Practice Book Advisory Committee Subcommittee II

Meeting Minutes
Wednesday July 20, 2011

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

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

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

Members absent: Judge John McGrath

Discussion of concepts for rules

Discovery

There was considerable discussion about the general nature of the rules in this area. The subcommittee agreed that the informality of the probate courts offers some advantages that should be preserved. At the same time additional guidance may be of assistance to the parties and their counsel, as well as promoting procedural consistency between courts. But while additional formalities may provide guidance, they may also result in additional expense and delay, in addition to setting up technical stumbling blocks for the parties. The subcommittee agreed that goal should be the development of rules that promote fairness while avoiding those that may actually impede fairness. The rules need to be both balanced and flexible.

It was noted that, unlike proceedings in the Superior Court, probate matters are typically not adversary in nature. The probate courts handle a wide variety of matters, many of which are not contested and are, in fact, almost administrative. On the other hand there are a relatively small numbers of truly adversary proceedings that involve the introduction of evidence by contending parties and adjudication by the court. It is these matters in which the structure of rules would be most beneficial. However, the rules must be flexible enough to provide guidance in contested matters without imposing an unnecessary burden in uncontested matters.

The subcommittee also took note of the fact that probate proceedings involve a high percentage of unrepresented parties. While they, too, may benefit from the guidance provided by rules, the rules must be written in plain language that is readily understandable by those without legal training.

The need for structure with flexibility is also important in situations in which there is disparity in the relative positions of the parties, e.g. represented v. unrepresented, party of considerable means v. party of modest means, big firm v. small firm. Flexibility should be built into the rules in an effort to promote fairness in these situations.

It was suggested that one way to accomplish this would be to have the court determine the type and extent of discovery in light of the circumstances of the particular case. The subcommittee took note of Rule 26 of the Vermont Rules of Probate Procedure, which provides for discovery in probate matters only upon order of the court. There was discussion as to whether the court should be proactive, with the availability of discovery being dependent upon the court's approval, or reactive, with the parties initiating discovery and the court responding to problems if and when they develop. There seemed to be some consensus in favor of a more proactive approach, with the court as "gate keeper."

There was a brief discussion about the use of interrogatories. The suggestion was made that they are of limited utility and should require court approval.

The question was raised whether existing discovery rules in the Connecticut Practice Book might be incorporated by reference, as some other statutes do. The sense of the subcommittee was not to follow that approach, and that we can devise rules that are more suitable to use in the Probate Courts.

Attorney Hug suggested that the discovery rules of the American Arbitration Association may provide the subcommittee with some insight. He offered to research them and report back to the group.

The subcommittee determined that its next meetings would be held on August 17, and September 7. Both will be at 3:00 p.m. at the Law offices of Mahon, Quinn and Mahon. Chair Brian Mahon indicated that the subcommittee meeting schedule for the balance of the year would be determined at the next meeting.

The meeting was adjourned at 4:30.

Minutes approved August 17, 2011