

Probate Practice Book Advisory Committee Subcommittee II

Meeting Minutes
Wednesday, September 7, 2011

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

Judge Brian Mahon, Chair of Subcommittee II, convened the meeting at 3:09 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.

Not in attendance: Attorney David Biklen, Committee Reporter

Approval of Minutes

Approval of the minutes of the August, 2011 meeting was moved and seconded. All members present voted to approve.

Discussion of concepts for rules

Discovery and Evidence

The subcommittee continued its prior discussions concerning discovery and evidence. Attorney Hug prepared a summary of the concepts addressed at the prior meetings that served as the basis for the discussion.

It was reiterated that discovery should be available only upon order of the court. Court approval would be given in the context of a case management conference that would occur in any contested matter upon motion of a party or on the court's own motion.

There was discussion as to whether there would be one such conference only, or whether there could be additional conferences. The question was also raised whether the court would be obligated to set such a hearing every time a party requested one. It was agreed that the rules should afford considerable flexibility to meet the needs of the particular case.

It was suggested that there could be two conferences, as appropriate, including one early on that established the needs of the given case and set time frames for accomplishing them. That might be followed by a trial management conference shortly before trial that could address more specific items such as stipulations of fact, exchange and pre-marking of exhibits, witness lists and similar trial-specific matters. Again there was agreement that the process should be flexible.

It was suggested that the rules might include a standard form for a case management or trial management order that could be modified by the court as appropriate to the individual case.

The subcommittee reiterated its agreement that the rules should contain a standard for discovery based upon §13-2 of the Connecticut Practice Book, to the effect that discovery is permissible if it is “reasonably calculated to lead to the discovery of admissible evidence.”

Chair Brian Mahon noted that the subcommittee was agreed upon the concepts, and that further refinement can occur as the drafting process progresses.

Exhibits

The subcommittee discussion centered around the list of issues distributed to the members.

1. **Rules re exhibits.** The subcommittee was of the opinion that rules would be beneficial in this area.
2. **Marking exhibits.** It was noted that not all judges have clerks in attendance at hearings. Accordingly it was agreed that the rule should provide for marking by the judge or clerk. No particular form of marking was seen as necessary, provided that it was clearly marked as an exhibit identifying the party that offered it.
3. **Retention.** Exhibits should be retained by the court while the matter remains pending. There was some discussion about allowing the court to order return of exhibits in instances where the overall matter remains pending, but the exhibit is no longer relevant to the proceeding. It was agreed that the court should maintain a log of exhibits in the file.
4. **Appeal.** The subcommittee discussed the distinction between appeals that are heard on the record and those that are novo. It was agreed that the rule should provide for exhibits in record appeals to be transmitted to the Superior Court as part of the file. As to de novo appeals the rules should require the court to maintain the exhibits while any appeal is pending. There was some discussion as to whether the rules should indicate how a party may obtain exhibits for use in a de novo appeal if they wish to do so. No conclusion was reached on this issue.
5. **Disposition.** The subcommittee concluded that the exhibits should be maintained until the conclusion of the proceedings, unless ordered

otherwise by the court. At that point they could be returned to the offering party or destroyed. It was noted that §7-21 of the Connecticut Practice Book places the burden on the parties to seek return of exhibits and permits the court to destroy them if they do not do so. The sense of the subcommittee was that this approach would be appropriate.

The meeting was adjourned at 4:30.

Minutes approved October 11, 2011.