

**Probate Practice Book Advisory Committee
Subcommittee II**

Meeting Minutes
Thursday, October 10, 2013

ITBD Conference Center
185 Main Street
New Britain, CT

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 3:45 p.m.

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

Members not in attendance: Mr. Arthur Teal

Also not in attendance: Committee Reporter David Biklen

Following the meeting of the full committee, Subcommittee II met to discuss the "Rules for Hearings" section of the document entitled "Feedback as of September 19, 2013".

Section 61.9, Objection to discovery request. The issue revolves around the difference in the language used in §61.1 (a)(2) "request for production, inspection and examination" and that used in § 61.9, "request for production". While the subcommittee felt that §61.9 should properly be read to include, "examination and inspection" as well as "production", it was decided to make a clarifying change to that section. Instead of referring to specific types of discovery, it will instead refer to "a discovery request under section 61.1 (a)."

It was noted that similar language appears in §61.7. It was agreed that the same change was warranted there, and that rule 61 should be reviewed in its entirety to see if similar changes should be made elsewhere.

The suggestion concerning a rule allowing the court to allocate discovery costs was also discussed. The group was uncertain as to exactly what was being suggested. It was agreed that Attorney Gaffey would inquire and try to better define the issue for consideration at the next meeting.

Rule 67, Interpreters. With respect to a code of conduct, the subcommittee concluded that it would not be feasible. Unlike the Superior Courts, the Probate Courts do not employ interpreters. Moreover, many of the individuals called upon to interpret are friends or family members of the people they interpret for. The consensus was it would not be possible or appropriate to seek to impose a code of conduct on them.

On the other hand, the group felt that it would be both appropriate and helpful to require interpreters to be put under oath. This would remind them of the seriousness of the matter, and that their translation should be as accurate as possible. It was agreed that a new section should require that the interpreter be sworn, cross referencing the oath under C.G.S. 1-25.

Section 72.2 News Media Coverage. It was agreed that requests for federal firearms relief under C.G.S. §45a-100 should be added to the list of confidential proceedings under §72.2.

Section 61.1, When permission of court is required. Attorney Perri raised a case in which he was involved where a motion to permit discovery turned into an argument over the specific questions and items of discovery sought, as well as issues of discoverability. He suggested that requiring court approval for discovery adds an unnecessary layer to the process and that we should consider eliminating it.

The consensus was that the requirement for court approval is an important aspect of the court's role as "gatekeeper". The group felt that the judge in the particular case had allowed the hearing to get off track, and that better education of judges in this regard may be warranted. However, it is too soon to tell whether this is a systemic issue that would justify a rule change. It was agreed not to recommend any change at this time.

Motion to Dismiss. The discussion suggested that a rule providing for a motion to challenge the jurisdiction of the court might be of some assistance to self-represented parties, who might not be aware that such a thing exists. It was felt that attorneys are sufficiently familiar with the concept and don't require a rule. There was concern that embodying the motion to dismiss in a rule might open the door to other motions, possibly leading to broader motion practice than we would like. The group questioned whether there would be sufficient benefit to adopting a rule in this area. However, it was also noted that this is a subject that is not directly related to hearings, but is more general in nature, and that perhaps one of the other subcommittees should consider the issue as well.

The subcommittee was asked to look at the proposed form for listing exhibits under §61.1, so that their input could be provided to the Procedures Review Committee. It was suggested that it would be easier to read if the page contained lines. The suggestion was also made that far right hand column should be changed to "ID / Full" or the equivalent rather than "Admitted: Y/N".

The next meeting will be held on November 25, 2013, at 3:00 p.m. at the offices of Mahon, Quinn & Mahon, in Meriden.

The meeting was adjourned at 5:20 p.m.