

Probate Practice Book Advisory Committee

Subcommittee II

Meeting Minutes
Wednesday, November 9, 2011

Office of the Probate Court Administrator

Judge Brian Mahon, Chair of Subcommittee II, convened the meeting at 2:10 p.m..

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

Also in attendance: Committee Reporter David Biklen.

Approval of minutes

Approval of the minutes of the October 11, 2011 meeting was moved and seconded. All members voted to approve.

Discussion of Concepts for Rules

I. Recording hearings

A. Audio recordings

1. (a) The subcommittee felt that the various statutes providing for recording of proceedings should be referenced in the rules as guidance for parties and counsel .

It was also agreed that the rule should provide for the court, on its own motion, to record proceedings.

B. Stenographic record

1. Again for purposes of providing guidance, it was agreed that the rules should refer to §§51-72 and 51-73, under which the parties may agree in writing to a stenographer and a hearing on the record

2. It was also agreed that the rules should reflect the existing practice of permitting parties to bring their own stenographers to a hearing,

provided that absent compliance with §§51-72, 51-73, the transcript would not constitute the official record of the court and would have no impact on the nature of any appeal.

There was not consensus as to whether other parties would be required to have access to a copy of the transcript at their own cost.

B. Copies of audio recordings

1. The subcommittee felt that the rules should provide that copies of audio recordings should be available upon request to anyone, except in confidential proceedings. Where the matter is confidential, copies should be available to all necessary parties, unless otherwise provided by statute.

2. While the subcommittee felt there should be a charge for providing a copy of a recording, it was agreed that establishing charges is a matter for the legislature.

C. Transcripts

The subcommittee agreed that the rules should refer to those statutes that provide for transcripts. In other matters, where the court has made a recording but there is no statutory provision for transcripts, the rule should provide for copies of the recording only, leaving any party to have it transcribed if they wish at their own cost and without court involvement.

II. Broadcasting, recoding and photographing hearings

A. Canon 3B of the Code addresses this topic in some detail. It was agreed that the rule should provide that broadcasting, recording etc. may be allowed only in compliance with Canon 3B.

III. Telephone participation in hearings

There was considerable discussion about participation in hearings by telephone. It was agreed that it should not be allowed simply as a matter of convenience, and that issues of fundamental fairness should be central to the topic.

There was some feeling that it should be allowed only in more administrative matters, such as status conferences, but not in matters

requiring testimony. At the same time it was recognized that there may be instances in which is necessary, even in contested evidentiary hearings, for example in a proceeding to terminate the parental rights of an individual who is incarcerated.

It was suggested that the court be given some discretion in this area, but subject to a standard involving fundamental fairness and the requirements of due process.

There was not general consensus and the members felt that it should be discussed further at the next meeting. It was suggested that it might be helpful to look further at rules in other states.

IV. Interpreters

Like the discussion re telephone participation, it was suggested that a rule afford the court with discretion, subject to a standard taking into account such things as due process requirements, the reliability of the interpreter, the costs involved and the issues involved.

Since there is a statute particular to deaf and hearing impaired it was suggested that the rule make reference to it.

Once again it was agreed that this topic requires further discussion at the next meeting.

V. Sequestration of Witnesses

It was agreed to defer discussion until the next meeting.

The meeting was adjourned at 4:40.

Approved December 7, 2011