

Probate Practice Book Advisory Committee

Subcommittee II

Meeting Minutes
Wednesday, December 7, 2011

Law Offices of Mahon, Quinn & Mahon

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, 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 meeting of November 9, 2011, was moved and seconded. All members voted to approve.

Discussion of Concepts for Rules

- I. Enforcement
 - A. Subpoena - The subcommittee agreed that the rule should provide for subpoenas to obtain the attendance of witnesses at probate hearings, and that subpoenas be issued and served in accordance with §§52-143 and 52-144. The rules should further provide that subpoenas may also require the production of documents. Vermont rule 45 (b) may serve as a model.

The rules should indicate that subpoenas to appear at depositions should be governed by §52-148e.

- B. Capias - It was agreed that the rules should provide that the court may issue a capias for the apprehension of an individual who has been served with a subpoena, or a citation to appear issued by a court, and who has failed to appear. See §§52-143 (e), and 45a-129.

- C. Contempt - The members agreed that the rules should provide some guidance and clarity in connection with contempt, which is an inherent authority of the probate courts. The distinctions between civil and criminal contempt, and summary and nonsummary contempt, contained in P.B. §§1-13A to 1-21A should be reflected in the rules.

The subcommittee discussed the difficulties attendant upon transporting individuals to correctional facilities upon a finding of contempt. Noting that nonsummary criminal contempt in the Superior Court is treated in the same manner as a criminal prosecution, it was agreed to provide that any nonsummary criminal contempt in a probate court be referred to the State's Attorney for prosecution.

It was also agreed that the rules provide for limits on the imposition of fines similar to those found in the Connecticut Practice Book.

The subcommittee discussed whether to require the recording of contempt proceedings. While the members felt that recording was a good practice, they determined not to require it. It was felt that there may be instances in which recording is difficult, and the members did not want to adopt a rule that might lead the court into error.

- D. Discipline of attorneys - The subcommittee discussed the provision of §51-84, which applies to all courts, including probate courts. The subcommittee determined not to propose a rule on this subject. The members felt that attorney discipline is best left to the grievance process, and that in situations where it might be appropriate, the statute governs without the need of a rule.

II. Appeals

After considerable discussion, the subcommittee agreed not to propose rules in this area. The consensus was that appeals are governed by statute, and addressed there in some detail. There are ambiguities in the statutes. Further, the appellate process takes place almost exclusively in the Superior Court. The members concluded that it would be difficult to formulate meaningful rules, and there is some danger that rules might further confuse the issues.

While a stay may be sought in the probate court during an appeal, it was felt that there is little that a rule might add to what is contained in the statutes.

III. Concurrent Jurisdiction

The members discussed at some length the issues surrounding concurrent jurisdiction, which are complex and largely substantive in nature. It was concluded that this is not an appropriate subject for rules. However, it was agreed that it would be useful to have a rule that requires any party having knowledge of a similar matter pending in another court to so inform the court.

Finalize Concepts for Rules

I. Telephone participation in hearings

After further discussion, it was agreed to propose a rule similar to Wisconsin rule §807.13, permitting telephone participation when:

- a. permitted by statute
- b. the parties so stipulate, or
- c. the court allows it after considering factors to be listed, adapted from those contained in the Wisconsin rule

It was also suggested that the rule refer to electronic means of participation. This could avoid the need to revise the rule in the future to reflect the availability of new technologies, such as video conferencing.

II. Interpreters

The subcommittee recognized the informal nature of many probate proceedings and did not want to infringe upon that except where necessary. The cost of providing certified interpreters was also seen as a problem. Thus it was agreed that the rules should allow for less formal translation methods where appropriate.

It was noted that there is a specific statutory requirement concerning the deaf and hearing impaired, and that the statute should be specifically referenced.

It was agreed to propose a rule that follows the general format of Wisconsin rule 807.13, above, and would allow any type of interpreter or translation if:

- a. permitted by statute
- b. the parties so stipulate, or
- c. the court allows it after considering factors to be listed, adapted from those contained in the Wisconsin rule.

III. Sequestration of witnesses

The consensus of the members was to offer a rule that would afford the court discretion, upon a finding of good cause, to order the sequestration of witnesses. It was also agreed that it should specify that no party may be so excluded.

Schedule of Subcommittee Meetings

The members agreed to the following schedule:

Wednesday, January 11, 2012, 3:00 p.m. at Probate Administration

Wednesday, February 8, 2012, 3:00 p.m. at the Law Offices of Mahon, Quinn & Mahon

Wednesday, March 7, 2012, 3:00 p.m. at the Law Offices of Mahon, Quinn & Mahon

The meeting was adjourned at 5:05 p.m.

Approved January 11, 2012