

Probate Court Rules Advisory Committee

Subcommittee II

Meeting Minutes
Wednesday, February 10, 2016

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Judge Brian Mahon, Subcommittee Chair, convened the meeting at 2:00 p.m.

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

Also in attendance: Committee Reporter David Biklen (by phone)

Members not in attendance: Professor Jeffrey Cooper

The subcommittee discussed the issues contained on the list of issues as of 2/8/16.

1. The subcommittee reviewed the draft document provided by Judge Paul Ganim listing items that may be required in connection with a compromise of claim. After discussion it was agreed that the enumerated items would be helpful in connection with a personal injury action. However, there are a variety of types of matters that may come before the court for approval of a compromise. Accordingly it was agreed that this level of detail should not be included in the rules. However it was agreed that section 30.14, 33.11 and 34.5 be amended by adding a new subsection (c) to the effect that the fiduciary shall also provide other information as required by the court.

It was also suggested that this be kept in mind as a possible topic for a future educational program for judges, noting that not all judges are experienced in personal injury matters and may not be familiar with the some of the items on Judge Ganim's list.

2. This item was resolved previously and no rule change is required.

3. The subcommittee discussed section 33.17 (d) concerning probate fees when the final account of a conservator is waived by virtue of the fact that the conserved person is receiving Title XIX benefits. The existing rule provides that the probate fee shall be as per C.G.S. section 45a-108 as if it were an account. However, section 45a-108 was repealed in the last legislative session and replaced by section 450 of P.A. 15-5 (June Special Session). It provides a new method of calculating probate fees for

accounts and includes a percentage multiplied by the number of one year periods covered by the account. The issue is whether that makes sense in this context.

The subcommittee noted that Subcommittee III had considered a parallel provision re trusts, section 32.7. That subcommittee agreed to propose that the rule provide that the fee be calculated as if it were an account covering a one-year period.

It was noted that in many of conservator cases there will be no funds left to pay the probate fee. It was also noted that we are trying to urge conservators to use funds from the spend-down to pay administrative expenses. The probate fee would fall into that category and it was felt that it should be paid to the extent that there are funds available.

The consensus was that the reference to section 45a-108 be corrected to refer to section 450 of P.A. 15-5 (June Special Session), but otherwise to propose no change in the rule.

4. It was noted that C.G.S. section 4a-17 uses the archaic term “superintendent” of the facility, which could lead to some confusion as to who should be noticed. Nonetheless that is the statutory language. It was agreed to amend section 44.4 to provide that the facility should receive notice “by certified mail per section 4a-17”.

5. Judge McGrath noted a case in which counsel had requested “informal discovery” and provided materials concerning informal discovery processes under New York law. It was noted that most judges currently encourage parties to engage in informal discovery and share information without court involvement. The hearing management conference is well equipped to address issues of this type. The consensus was to propose no change in this area.

Attorney Perri raised the question whether process to request permission for discovery could be combined with a hearing on any objections to discovery. He noted that in his experience two hearings are required, with the attendant time and expense involved. He suggested that the rule might, for example, require that a request to issue interrogatories include the proposed interrogatories so that any objection to them could be addressed at the same time.

It was noted that permission for discovery may properly be addressed at a hearing management conference and does not require a separate hearing. The consensus was that no change should be proposed at this time.

Attorney Perri suggested that the disclosure of experts might be required in a similar manner to that provided in the Connecticut Practice Book. Some concern was expressed about making the process too formal and that and may be overly burdensome on unrepresented parties. It was also noted that disclosure of experts may be addressed at the hearing management conference under section 60.2 (a)(8). The

consensus was that the existing section 60.2 (a)(8) should be sufficient and that no changes should be proposed at this time.

6. There was discussion about a possible new rule specifying that a request for stay pending appeal could be acted on by the court without notice and hearing. Some concern was expressed about acting without a hearing. If such approach were to be adopted, it was felt that the rule should provide guidance as to when it would be appropriate to do so. If immediate action is required to deal with exigent circumstances, perhaps it should be followed by a hearing to confirm or revoke the court's action on the stay. The consensus was that more information is required before a recommendation is made.

7. Newly enacted Regulation 22 governs the probate mediation program. The proposal is to embody some of the procedural aspects of the regulation in a rule. It was agreed that Attorney Gaffey will provide an initial draft for consideration by the subcommittee.

8. Rules 15 and 68 contain references to the Code of Probate Judicial Conduct. A revised code has recently been adopted by the Probate Assembly requiring that the citations in the rules be amended accordingly. It was agreed that Attorney Gaffey would provide those revisions to the subcommittee.

A date will be set for the next meeting once initial drafts of the proposed changes have been circulated to the members.

The meeting adjourned at 4:00 p.m..