

**Probate Practice Book Advisory Committee  
Subcommittee II**

Meeting Minutes  
Wednesday May 9, 2012

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

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 2:35 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.

Also in attendance: Committee Reporter David Biklen

Members not in attendance: Mr. Arthur Teal

**Approval of minutes**

The members unanimously approved the minutes of the meeting of April 4, 2012.

**Review of revised drafts of proposed rules**

The subcommittee conducted a second review of draft rules 26 and 27 from the draft designated "Sub II Rules 19-31 4-23-12 draftDDB-TG".

Rule 26, Participation in Hearing by Electronic Means. The subcommittee agreed that the words "in Hearing" be deleted from the title of the rule. There was also discussion as to the use of the term "proceeding" in several places throughout the rule. It was determined to replace that word with "hearing, conference or deposition" wherever it appears in the rule.

It was also agreed to replace "physical presence of the witness" in subsection (b)(2), with "presence of the witness in person." Similarly, in subsection (b)(3), "witness in court" is to be changed to "witness in person."

Rule 27, Interpreters. The term "proceeding," which appears twice, is to be replaced in both instances with "hearing, conference or deposition."

## **Further discussion of draft rules**

Rule 24, Case conferences. The subcommittee reviewed Attorney Hug's draft of April 10, 2012.

It was agreed that the word "case" should be avoided, and that the title of the rule should be simply "conferences." However, section 24.1 will continue to use the term "case management conference."

It was agreed that §24.1 should include a provision for notice, with a cross-reference to the general provision for notice of hearing.

There should be added to the enumerated items under §24.1 (a), reference to a probate magistrate or attorney probate referee. Another addition should be consideration of whether the court should order that copies of future filings with the court be certified to all other parties. There should also be included a provision similar to §24.3 (a)(1), "identification of factual and legal issues".

Section 24.2 should include a provision for notice to be given of the status conference in accordance with the general provision for notice.

Possible referral to a probate magistrate or attorney probate referee should be added to §24.3 (a).

A new §24.3 (c) should provide for modification, similar to §24.1 (c).

Rule 19, Discovery. The subcommittee reviewed Attorney Hug's proposed changes to rule 19.

To further support the "gatekeeper" role of the court, it was agreed that §19.1 provide that except as to depositions, discovery requires approval of the court. Further, the provisions for particular forms of discover will govern, unless modified by the court.

The subcommittee began to discuss the drafts provided by Attorney Gaffey dated 4-16-12, considering sections 19.1 to 19.5 of that draft. It was noted that under section 13-27 (g) of the Connecticut Practice Book a party deponent may be requested to appear at deposition along with specified documents and items without the need for a subpoena duce tecum. A subpoena is required for a non-party deponent. It was agreed that a similar provision should be incorporated in section 19.2.

With respect to interrogatories, it was agreed that the number be limited to 25, unless the court orders otherwise. This is in line with rule 33 of the federal rules.

The subcommittee felt that the use of the word “serve” in the discovery rules might be confusing. It was agreed to use the word “issue” instead.

The next subcommittee meeting will be on June 13, 2012, at 2:30 p.m. at the Law Offices of Mahon, Quinn & Mahon in Meriden.

The meeting was adjourned at 4:45 p.m.

Approved June 13, 2012

*The following revised drafts of the rules discovery, conferences, participation by electronic means and interpreters, incorporate the changes referred to in the foregoing minutes.*

## **Rule 19 Discovery**

### **Sec. 19.1 Discovery in general.**

(a) Except as to depositions under section 19.2, discovery in probate proceedings requires court approval. Where court approval is given, the provisions of this rule shall govern, unless modified by the court.

(b) A *party* in a contested proceeding may move for disclosure of information other than by deposition and subpoena. The *court* may, pursuant to rule 24, grant the request in whole or in part on a finding that the information sought appears reasonably calculated to lead to discovery of admissible evidence and that the requested discovery would not be unduly burdensome or expensive.

*(C.G.S. Secs. 45a-98b, 45a-129, and 45a-132a)*

### **Sec. 19.2 Taking of deposition.**

(a) A *party* may, after the commencement of a proceeding, take testimony of any person by deposition pursuant to C.G.S. sections 52-148b through 52-159a. A party may issue a subpoena under section 30.1.

(b) Notice of deposition to a party deponent may be accompanied by a request, in accordance with section 19.4, for the production of documents and tangible things at the taking of the deposition.

(c) Procedures in taking depositions shall be in accordance with section 13-30 of the Connecticut Practice Book, as amended.

(d) Depositions may be used in court as provided in section 13-31 of the Connecticut Practice Book, as amended.

*(C.G.S. Sections 52-148a through 52-159a)*

### **§ 19.3. Interrogatories**

(a) Subject to section 19.1, a party may issue written interrogatories to another party. Interrogatories may relate to any matters which can be inquired into under section 19.1, and the answers may be used at trial to the extent permitted by the rules of evidence.

(b) Unless otherwise ordered by the court, no more than twenty-five interrogatories may be issued, including all discrete subparts. Permission to issue additional interrogatories may be granted in accordance with rule 24.

**§ 19.4. Requests for Production, Inspection and Examination** Subject to section 19.1, a party may make written request to any other party to inspect, copy, photograph or otherwise reproduce designated documents (including, but not limited to, writings, drawings, graphs, charts, and photographs) or to inspect and copy, or test any tangible things in the possession, custody or control of the party to whom the request is made or to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, or testing the property.

**§ 19.5. Requests for Admission**

(a) Subject to section 19.1, a party may issue to any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter of the pending action set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. Copies of documents shall be provided with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(b) Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

c) The court may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits.

(d) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.

(e) The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy.

## **Rule 24 Conferences**

### **Sec. 24.1 Case management conference.**

(a) The *court* at any time, on its own motion or at the request of a *party* to a contested proceeding, may order a case management conference, giving notice in accordance with rule 8, to address the following matters related to the proper and expeditious progress of the proceeding:

- (1) identification of factual and legal issues;
- (2) the extent to which written discovery should be permitted;
- (3) determination of the process for obtaining medical records;
- (4) disclosure of individuals with knowledge of claims and defenses;
- (5) disclosure of experts;
- (6) setting deadlines for written discover, depositions, disclosures, filing of any motions and scheduling hearing;
- (7) whether an order should be issued requiring that all copies of all future filings be provided to all other parties, with the certification of the filing party or attorney that copies were so provided;
- (8) whether the matter should be referred to alternative dispute resolution;

(9) whether the matter should be referred to a probate magistrate for hearing; and

(10) any other matter the *court* considers appropriate to assist in management of the proceeding.

(b) Notice of a case management conference shall be given in accordance with rule \_\_\_\_.

(c) At the conclusion of a case management conference, the *court* may issue an order concerning any matter addressed at the conference.

(d) A request to modify an order issued under this section shall be made by motion filed with the court.

#### **Sec. 24.2 Status conference.**

(a) The *court*, on its own motion or at the request of a *party* to a proceeding, may order a status conference concerning the status of the proceeding, giving notice in accordance with rule 8.

(b) The *court* may not issue any order in connection with a status conference unless the order is permitted under section 23.1.

#### **Sec. 24.3 Trial management conference**

(a) The *court* at any time, on its own motion or at the request of a *party* to a contested proceeding, may order a trial management conference, giving notice in accordance with rule 8, to consider matters related to the conduct of the hearing, including:

(1) identification of issues;

(2) procedure for issuance of trial subpoenas;

(3) need for motions and scheduling;

(4) prehearing brief;

(5) stipulation of facts;

(6) exchange and marking of documents the parties believe may be offered in evidence at the hearing;

(7) whether sworn statements or depositions may be introduced;

(8) whether a stenographic or other official record of the proceeding will be maintained;

(9) identity of witnesses;

10) anticipated length of trial;

(11) scheduling of trial;

(12) whether the matter should be referred to alternative dispute resolution; and

(13) any other matter the *court* considers appropriate to assist in management of the proceeding.

(b) Notice of a case management conference shall be given in accordance with rule \_\_\_\_.

(c) At the conclusion of a trial management conference, the *court* may issue a trial management order with respect to a matter addressed at the conference.

(d) A request to modify an order issued under this section shall be made by motion filed with the court.

## **Rule 26 Participation by Electronic Means**

### **Sec. 26.1 When participation by electronic means permitted.**

(a) The court may, in its discretion, allow a *party* or witness to participate in a hearing, conference or deposition by telephonic or other electronic means if:

(1) participation by electronic means is permitted by law;

(2) the parties to the hearing, conference or deposition agree to participation by electronic means and the *court* approves; or

(3) the *court* allows participation by electronic means.

(b) In determining whether to allow participation in a hearing, conference or deposition by electronic means, the *court* shall consider:

(1) the extent to which surprise or prejudice would result from electronic participation by a witness or *party*;

(2) the extent to which a *party* is unable to procure the presence of the witness in person;

(3) the convenience of the parties and the cost of producing the *party* or witness in person;

(4) the extent to which participation by electronic means will allow full and effective examination and cross examination;

(5) the importance of testimony being presented in person; and

(6) other factors the *court* considers relevant.

## **Rule 27 Interpreters**

### **Sec. 27.1 Interpreters in probate proceeding.**

(a) The *court* shall allow a person to serve as interpreter in a hearing, conference or deposition as required by statute.

(b) In a hearing, conference or deposition in which translation is necessary to enable a *party* or witness to participate or testify, the *court* may allow a person to serve as interpreter, taking into account:

(1) whether the interpreter is impartial;

(2) the competence of the interpreter to provide accurate and reliable interpretation service;

(3) whether use of the interpreter will allow full and effective examination and cross examination;

(4) the convenience of the parties;

(5) the cost of providing an interpreter;

(6) the importance of testimony of the witness needing an interpreter in the proceeding;

(7) whether surprise or prejudice would result from participation of the interpreter; and

(8) other factors the *court* considers relevant .

*(C.G.S. section 46a-33a)*