

**Probate Practice Book Advisory Committee
Subcommittee II**

Meeting Minutes
Wednesday June 13, 2012

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Meriden, CT

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 2:45 p.m.

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

Also in attendance: Committee Reporter David Biklen

Members not in attendance: Attorney Carmine Perri, Mr. Arthur Teal

Approval of minutes

The members unanimously approved the minutes of the meeting of May 9, 2012.

Further discussion of draft rules

In response to a request from Judge Knierim, the subcommittee revisited rule 20 concerning the rules of evidence. He requested that an effort be made to incorporate into the rule the subcommittee's discussions to the effect that strict application of the rules is not always to be required, just as in the Superior Court.

After considerable discussion, the subcommittee agreed that subsection (a) and (b) should be consolidated into one. Reference to the court's discretion is to be omitted, it being inherent in the use of the word "may". It was also determined to avoid the word "relax" indicating instead that the rules may be applied "liberally rather than strictly". This language was taken from *In re Juvenile Appeal (85-2)*, 3 Conn. App. 184 (1985).

The subcommittee continued its discussion of additional draft rules re discovery, working from drafts dated 4-16-12. Having considered sections 19.1 to 19.5 at the last meeting, discussion began with section 19.6.

It was agreed that answers to interrogatories should be under oath. It was also agreed that objections under subsection (b) should refer to "...interrogatories or requests, *or part thereof*..."

Section 19.7 was unchanged.

It was agreed that section 19.8 (a) should be re-numbered and that the various possibilities contained therein be enumerated.

After a review of section 19.9, it was agreed that the language was confusing and that an effort should be made to simplify and clarify it.

It was noted that the rule entitled "Protective Order" was mis-numbered as §13-5, but should be section 19.10. It was also observed that there is a considerable body of law that has developed around the provision of the Connecticut Practice Book on which it is based, and for that reason it may make sense to leave this language alone.

There was further discussion about comments of the judges at the Judges Institute in March with reference to discovery. The subcommittee reiterated its view of the court as "gatekeeper" with respect to discovery other than by deposition. It was agreed that a case conference under rule 24 was intended to be the primary mechanism for addressing discovery issues. Because discovery is only available in contested matters, it is to be one of a variety of issues to be considered at a case conference, as part of the court's role in managing contested matters. Accordingly it was agreed that a hearing was necessary and appropriate.

With respect to the question about whether judges would be, in effect, pre-trying discovery, the subcommittee agreed that the answer was "no". It was not the intent that in requesting, for example, interrogatories, the party would have to present the court, for its review, with the specific interrogatories it intended to use. In that regard, it was agreed that the rules should provide, as the Superior Court rules do, that interrogatories, request for production and requests for admission, and the answers thereto, not be filed with the court. Rather they would normally come before the court only if there is an objection or other dispute.

Noting that it was the last scheduled meeting of the subcommittee, Judge Mahon thanked the members for all of the time and energy they devoted to this process.

The meeting was adjourned at 4:45.

Approved July 18, 2012

The following revised draft rules concerning discovery and evidence, incorporate the changes referred to in the foregoing minutes.

Section 19.6 Answers to Interrogatories, Requests for Production and Requests for Admissions

(a) Answers to interrogatories, requests for production and requests for admissions shall be in writing under oath and shall be provided within thirty days after the date of the request unless:

(1) The parties file with the court a written stipulation extending the time for such answer; or

(2) Upon motion, the court allows a longer time; or

(3) Objections and the reasons therefore are filed and served within the thirty-day period.

(c) Objection by a party to certain of the interrogatories or requests, or part thereof, shall not relieve that party of the obligation to answer such portions of the interrogatories or requests to which he or she has not objected.

Section 19.7 Objections to Interrogatories, Requests for Production and Requests for Admissions

(a) Objections to interrogatories, requests for production and requests for admissions shall be in writing and shall be filed within thirty days after the date of the request. Objections shall set forth the interrogatory or request objected to and the basis of the objection. Objections shall be filed with the court and shall contain a statement that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that the parties have been unable to reach an accord.

(b) If any objection to an interrogatory is overruled, the interrogatory or request shall be answered within twenty days after the court's ruling unless otherwise ordered by the court.

Section 19.8 Filing of Requests and Objections Interrogatories, requests for production and requests for admissions shall not be filed with the court except as provided in section 19.7 or unless the court orders otherwise.

Section 19.9 Order for Compliance; Failure to Answer or Comply with Order

(a) The court may, on motion and after hearing, make such order as the ends of justice require if it determines that a party has failed to :

- (1) answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead,
- (2) respond to requests for production, or has failed to comply with the provisions of Section 19.10,
- (3) appear and testify at a deposition duly noticed pursuant section 19.2,
- (4) otherwise substantially to comply with any other discovery order made pursuant to this rule.

(b) Such orders may include the following:

- (1) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;
- (2) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (3) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;

(c) The failure to comply as described in this section may not be excused on the ground that the discovery is objectionable unless written objection as authorized by section 19.7 has been filed.

Section 19.10 Continuing Duty to Disclose

(a) A party complying with a discovery request under this rule shall, until the matter is concluded, have a continuing duty to disclose:

- (1) Any new or additional information within the scope of the request;
- (2) That information previously disclosed is not true or is no longer true.

Section 19.11 Protective Order

(a) Upon motion by a party from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the judicial authority.

Section 20.1 Rules of evidence The rules of evidence shall apply in all hearings in which facts in dispute are found by the court. Consistent with law, the court may in the interests of justice, apply the rules of evidence liberally, rather than strictly, provided the due process rights of the parties are preserved.