

Probate Court Rules Advisory Committee

Subcommittee II

Meeting Minutes
Wednesday, January 24, 2018

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

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

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

Members not in attendance: Professor Jeffrey Cooper, Natasha Haims and Judge John McGrath.

Approval of Minutes

The minutes of the December 13 meeting were approved, with the correction of several typographical errors.

Review of Draft Revisions

The subcommittee reviewed and discussed the draft revisions to Rules 33, 43, 44, 45, 60, and 64.

It was noted that the proposed revision to section 43.5 was incorrectly identified as 43.4. Similarly, section 43.5 (c) incorrectly cross-referenced section 33.17. The correct reference is 43.8.

It was decided to delete the word “guardianship” thereby referring to the “guardianship estate” in sections 43.5 (d) and 43.8 (b).

The additions to section 44.4 and 45.4 indicate that where the facility is the petitioner, the facility “may” be noticed by regular mail. However, it was noted that the earlier portions of the rule provide that the court “shall” give notice by the means indicated. The revised statute was consulted and it was determined that the language of the proposed revision to the rule precisely mirrors that of the statute. Therefore it was concluded that the proposed revision should remain as is.

There was considerable discussion about the proposed revision to section 60.2. It was agreed that subsection (8) should be revised to refer to the “disclosure of fact witnesses”, and that “including experts” should be deleted. The new subsection

(18) re expert witnesses should be moved up to be the new (9), and the following subsections re-numbered. It was also agreed that the words “which may” be deleted from the new section, so that it reads “disclosure of expert witnesses, including...”.

With respect to section 64.2, it was agreed that the proposed language of subsection (b) be amended to read “the court shall not be required to include...”.

Discussion of Concepts

At the suggestion of a member of another subcommittee, there was discussion concerning a possible rule that would permit a court to deny a petition without a hearing if the court has previously found that the filing party has engaged in an extended pattern of frivolous filings.

The subcommittee looked at C.G.S. § 52-259b, as well as Connecticut Practice Book §§ 1-25 and 85-2. The group was somewhat favorable to the idea of consequences for a person seeking to abuse the process. However, there was concern about how to establish and apply a standard as to what is “frivolous”. The question was raised whether the standard would differ as between attorneys and non-attorneys. It was also noted that the notion of permitting a court to refuse to hear such a petition without a hearing is contrary to traditional judicial principles.

Ultimately the question was raised whether there is a real problem in this area that justifies such a rule. The group requested that Attorney Gaffey make inquiries in this area and report back to the subcommittee.

There was also discussion of another concept at the request of a member of another subcommittee. It was noted that section 34.2 requires a proposed guardian of the estate to appear at the hearing so that the court can review the guardian’s duties. The suggestion was that similar rule be considered in connection with conservatorship matters.

After discussion it was agreed that such a rule could be helpful. It was noted that there are differences between the two areas. A larger proportion of conservators are likely to be attorneys or other professional conservators. However, section 34.2 provides that attendance may be excused if the proposed guardian signs a form acknowledging and agreeing to perform those duties. A similar provision in a conservator rule would enable professional conservators, who are familiar with those duties, to be excused from attending. The consensus was to propose such a rule relating to conservators.

Next meeting

The next meeting will be held on Wednesday, February 28, 2018 at 2:00 p.m. at the Law Offices of Mahon, Quinn and Mahon.

The meeting was adjourned at 3:25.

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