Probate Practice Book Advisory Committee
Subcommittee II

Meeting Minutes
Monday, November 25, 2013

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

Judge Brian Mahon, Subcommittee Chair, convened the meeting at 3:05 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 October 10, 2013.

Further Discussion of Issues from Feedback List

Allocation of Discovery Costs, Rule 61

It was noted that under §13.30 (j) of the Conn. Practice Book, each party bears its own costs with respect to a deposition. That section is incorporated by reference in our §61.3 (g). Accordingly the issue is addressed with respect to depositions.

As to other forms of discovery, it was noted that there are existing provisions in our rules that may bear upon the issue. Section 6.19 (e)(2) allows the court, in response to an objection, to "order such relief as justice requires" including that discovery be conducted on "specified terms and conditions." Section 61.10 deals with orders of compliance. Subsection (b)(1) allows the court to award the discovering party the expenses of the motion, including attorney's fees. Subsection (b)(4) permits the court to enter such other order as justice requires.

The consensus of the subcommittee was that these provisions adequately address the issue, and that no revisions concerning allocation of discovery costs should be recommended.

Protocol for Hearings When a Party is the Subject of a Protective Order

The issues discussed included:

- Whether the particular restraining other prevents, or provides an exception for, participation in a judicial hearing;
- The Probate Court's ability to access the Judicial Branch Protective Order Registry;
- Alternative means of participating in the hearing to avoid contact between parties.

The consensus was that no rule change be recommended. It was felt that informing the courts of their ability to access the Protective Order Registry does not require a rule. That might better be handled, for example, by a memo from PCA. It was also suggested that a forms change might be considered, e.g. providing a check box on certain types of applications indicating if a party is the subject of a protective order.

Section 33.2 (b)

It was agreed that there is an apparent conflict between the first and second sentences. The first directs that a voluntary conservatorship petition be heard before an involuntary. However, the second sentence seems to say that they may be heard at the same time.

It was agreed that they may not be heard at the same time as the issues are different. It was also agreed that the intent was that voluntary be heard first, but that it may be heard at the time scheduled for the hearing on the involuntary, without the need to separately notice the voluntary hearing, provided the requirements of (b)(1) and (b)(2) are met.

The consensus was that a clarifying amendment would be appropriate.

Section 33.4

The subcommittee agreed that it is not necessary to recommend a rule specifying that an extension of a temporary conservator appointment under §33.4 and C.G.S. §45a-654 (a), be by written decree.

It was noted that §33.4 requires a written request of a party for such an extension to be granted. Section 3.3 requires that all decrees be in writing. Taken together, the subcommittee concluded that the matter was already addressed in the rules, and that no further change was required.

Section 33.9

It was agreed other types of assets, in addition to those jointly owned, present similar considerations in the context of a conservatorship. Examples would include those that are payable on death or which are subject to a beneficiary designation. The subcommittee felt that the same procedures to provide guidance to the conservator should be available in those instances as well. It was suggested that the rule might include assets in which the conserved person has present interest, but which would pass outside the person's probate estate if his or her death occurred presently.

Section 33.10

The consensus was that it was not necessary to establish a combined procedure for appointing a conservator and establishing a trust. It was noted that the petitions can certainly be heard at the same time, but the subcommittee felt that there is not a sufficient need for a combined procedure.

Section 33.12 (d)

Because section 12 of P.A. 13-81 now includes voluntary as well as involuntary conservators, the words "if the conservator was appointed in an involuntary proceeding" are no longer required in §33.12 (d). It was agreed that those words should be omitted.

Section 33.14 (d)

After considerable discussion it was agreed not to propose any revision.

Release from Voluntary Representation

The subcommittee agreed to propose a new rule requiring the court, upon receipt of a notice of termination of voluntary representation under §45a-647, to give notice to all parties and attorneys that the notice of termination was received.

The next meeting will be held on January 8, 2014 at 3:00 at the offices of Mahon, Quinn & Mahon.

The Meeting was adjourned at 5:20 p.m.

Approved January 8, 2014