

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Wednesday January 4, 2012
3:00 p.m.

New Haven Regional Children's Probate Court
873 State Street
New Haven, CT

Judge Michael Albis, Chair of Subcommittee III, convened the meeting at 3:15 p.m.

Other members in attendance: Ms. Suzette Farrar, Judge Gerald Fox, Attorney Patricia Kaplan, Judge Robert Killian, Attorney Gabriella Kiniry, Judge Paul Knierim, Mr. Stephen Pedneault, CPA

Members absent: Attorney Andrew Knott

Also in attendance: Attorney David Biklen, Committee Reporter

Approval of Minutes of December 5, 2011 Meeting

The minutes of the December 5, 2011 meeting were unanimously approved.

Discussion of children's matters

Using the list of issues for children's matters, the subcommittee reached the following conclusions (paragraph numbers correspond to the issues list):

2. Appointment of guardian ad litem

- a. The committee briefly revisited this topic from the prior meeting and amended the concept to read as follows: In considering the appointment of representatives for a minor under § 45a-620, the court may appoint an attorney as the sole representative or may, if the court determines that the minor is unable to express his or her wishes to the attorney, appoint one individual to serve as both attorney and guardian ad litem. The court may appoint separate individuals as attorney and guardian ad litem if the court determines that the minor's wishes, if followed, could lead to substantial physical, financial or other harm to the minor.

3. Temporary custody

- a. For purposes § 45a-607(b), the term custody refers to actual physical custody of the minor at the time of filing the petition for

immediate temporary custody (ITC). If a minor is in the physical custody of a parent or guardian at the time of filing, the court shall not grant ITC on an ex parte basis, except in accordance with § 45a-607(b)(2). If the minor is not in the physical custody of a parent or guardian at the time of filing, the court shall not grant ITC on an ex parte basis, except in accordance with §§ 45a-607(b)(1) to (3), inclusive. The court may grant ITC on an ex parte basis to a petitioning parent or guardian under §§ 45a-607(b)(1) to (3), inclusive, only if the respondent parent or guardian does not have physical custody of the minor at the time of filing. [Scribe's note: The last sentence is to make it clear that a court can hear a parent against parent ITC under § 45a-607(b)(1) to (3) even though one parent (the petitioner) may in fact have custody. I've not said anything about petitions under § 45a-607(b)(2) because the section assumes that a parent does have custody.]

- b. **Petition on court's own motion.** No rule proposed.
- c. **Conduct of hearing when statute authorizes ex parte order.** The court may decide on a petition for ITC pursuant to § 45a-607(b) without prior written notice to the parties and without conducting a hearing. If the court determines that an hearing is necessary to understand the allegations set forth in the petition, the court may conduct a hearing after making reasonable efforts to notify all interested parties by telephone or other means of the time and place of the hearing. Cross reference Subcommittee II general provision on ex parte orders.
- d. **ITC denied, should court proceed to TC.** No rule proposed, since this issue can be resolved with a forms change.
- e. **Findings when DCF is appointed.** No rule proposed, since there is already a form available, and the issue is best addressed through training.

4. Removal of parent as guardian

- a. **Evolving requests.** If a parent or guardian consents to removal in connection with a petition seeking his or her removal and the appointment of a named individual as guardian, the court shall not appoint a different individual as guardian unless: (i) the respondent parent or guardian consents to the appointment or (ii) the court, acting on a petition seeking the appointment of a different individual as guardian, finds by clear and convincing evidence that the respondent parent or guardian has performed acts of omission or commission as set forth in § 45a-610 (2) to (5), inclusive, and that the proposed appointment should be made in light of the factors set forth in § 45a-617. [Scribe's note: Do we need a parallel provision for ITC and temporary custody?]
 - i. **Petitioner not appropriate as guardian.** Addressed in (a) above.

- ii. **Keep one parent as guardian and appoint a third party as a co-guardian.** Addressed in (a) above.
 - iii. **Competing requests to be guardian.** No rule proposed. Subcommittee I has determined that the first petitioner pays the entry fee and additional entry fees are not collected for competing petitions.
 - b. **Orders not requested in original petition.** Addressed in (a) above.
5. **Visitation § 45a-612.** No rule proposed.
6. **Reinstatement § 45a-611.** No rule proposed, but a standard form for reinstatement petitions should be developed.
- a. **Rule directing reinstatements to the Superior Court that removed.** No rule proposed. This is addressed in PB § 35-20, and the problems encountered a few years ago appear to have been resolved through training.
 - b. **Rule directing reinstatements to the probate court that removed.** No rule proposed, as the issue is adequately addressed in § 45a-611.
 - c. **DCF report.** No rule proposed, as the issue is adequately addressed in § 45a-619.
 - d. **Burden of proof.** A parent or former guardian who was removed as guardian of a minor and who seeks reinstatement as such minor's guardian has the burden of proof to establish by a preponderance of the evidence that the factors that resulted in removal have been resolved satisfactorily. If the court finds that the parent or former guardian has met the burden of proof, the court shall then determine if reinstatement of the parent or former guardian is in the minor's best interests.
7. **Temporary guardianship § 45a-622.** No rule proposed. Although Subcommittee members agreed that a rule regarding DCF reports is not necessary in light of § 45a-619, it was the consensus of the group that additional training in this area would be appropriate.
8. **Termination of parental rights.** No rule proposed.
9. **Adoption**
- a. **Preliminary hearing.** The court may conduct a preliminary non-ceremonial hearing on a petition to approve an adoption to address issues associated the petition. The court shall give notice of the hearing to all interested parties in accordance with § 45a-727(c)(1).
 - b. **Appointment of out-of-state child placing agency as statutory parent.** Upon the application of an out-of-state child placing agency having guardianship of a minor who has been placed in this state

for adoption under the Interstate Compact for the Placement of Children, the court shall appoint the agency as statutory parent if the minor is free for adoption under § 45a-725 and no appointment of a statutory parent has been made under §§ 17a-112 or 45a-717. For purposes of this section, the term child placing agency shall have the meaning set forth in § 45a-707(3). Cross reference § 17a-175, Interstate Compact on the Placement of Children, Article V and § 45a-718.

- c. **Adoption by same sex married couples.** A petition by one of the spouses of a same sex married couple for the other spouse to adopt a child born to the couple during their marriage may be brought as a step-parent adoption under § 45a-724(a)(2) even if both spouses are deemed parents of the child under the laws of this state. In accordance with § 45a-733, the court may waive notice to the Commissioner of Children and Families and shall waive, unless good cause is shown, all requirements for an investigation and report by the Department of Children and Families or by a child-placing agency.
- d. **Notice for adult adoptions § 45a-734.** The court has discretion to give public notice of a hearing on an application to approve an adult adoption. The court may, in lieu of or in addition to public notice, give notice to such other parties as the court determines, including relatives or other persons interested in the welfare of the parties.

10. Paternity § 46b-172a.

- a. **Father's paternity claim vs. prior acknowledgement of paternity.** No rule proposed, since a statutory change appears necessary to authorize a father to petition for paternity in probate court when another man has previously executed an acknowledgement of paternity.

11. Emancipation §§ 46b-150 through 46b-150h. No rule proposed.

12. Voluntary services § 17a-11.

- a. **Court to give notice of periodic reviews.** [Scribe's note: The committee discussed whether the rules should obligate courts to calendar reminders for DCF to meet the statutory timelines for review of voluntary service cases under § 17a-11. On reflection, such an instruction seems more appropriate for the clerk's manual than the practice book.]
- b. **Termination of services.** Addressed in (a) above.

13. Probate Court Officers

- a. **Function of Probate Court Officers.** A matter being heard at a regional children's probate court may be assigned to a probate court officer to perform any of the following functions: conduct family case conferences with interested parties, their counsel and representatives from DCF; coordinate with DCF to facilitate thorough investigation and review of the matter; assess whether the family's proposed plan for guardianship of the minor, if any, is in the minor's best interests and testify at hearings concerning the probate court officer's assessment; assist the family in engaging community services; and conduct follow-up regarding orders of the court.
 - i. All notes, correspondence, reports and other materials maintained by a probate court officer in the scope of the officer's duties shall be maintained in a file that is separate from the court's case file.
 - ii. Except for materials admitted into evidence, the court shall not review materials in the file maintained by a probate court officer.
 - iii. We discussed, but did not yet reach a conclusion, on access by parties and counsel to PCO files.

14. Family case conferences. No rule proposed.

15. In court reviews. The court may on its own motion schedule a hearing described as an in court review for the purpose of considering possible modifications to prior court orders. Notice of the hearing for an in court review shall specify the order or orders that are the subject of review.

16. Court ordered examinations. No rule proposed.

17. Overlapping jurisdiction with Juvenile and Family Courts

- a. **Overlapping jurisdiction with Juvenile Court.** The provisions of the interagency agreement should be incorporated into the rules.
- b. **Transfers to Juvenile Court.** Proposed Rules 5 and 6 (2004) should be incorporated into the rules.
- c. **Overlapping jurisdiction with Family Court.** No rule proposed. If an interagency agreement is developed in this area, its provision could be incorporated into the rules.

18. Transfers to other probate courts. This topic is being addressed by Subcommittee I.

19. Criminal background checks. The court shall obtain a criminal background check prior to the appointment of any temporary custodian,

guardian, temporary guardian or co-guardian unless an immediate appointment is necessary to ensure the safety of the minor. If the requirement of a criminal background check is waived at the time of appointment, the court shall obtain a criminal background check as soon as reasonably possible thereafter.

Referrals from Subcommittee I:

1. Definitions needed:
 - a. Cross reference § 45a-604 definitions of mother, father, parent, minor / minor child, guardianship, guardian and termination of parental rights in connection with removal statutes.
 - b. Cross reference § 45a-707 definitions of adoption, child-placing agency, relative and statutory parent in connection with termination provisions. (It appears that we do not need to use the definition for child care facility. Note that both statutes have the same definition for guardianship and termination of parental rights, but different definitions of parent.)

2. List of interested parties:
 - a. Parent(s) or guardian(s)
 - b. Attorney and / or guardian ad litem for minor
 - c. Minor if 12 or older
 - d. DCF or other child placing agency
 - e. Office of the Attorney General

3. Is there any specific additional documentation that a court may require?
 - a. Long form birth certificate
 - b. Affidavit disclosing other proceedings concerning the minor.

Next Meeting

Our next meeting will be held on Tuesday January 24, 2012 at 3:00 p.m. at the New Haven Regional Children's Probate Court.

The meeting was adjourned at 6:30 p.m.

Approved 1-24-12