

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Tuesday, January 24, 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 3:10 p.m.

Other members in attendance: Judge Gerald Fox, Attorney Patricia Kaplan, Attorney Gabriella Kiniry, Attorney Andrew Knott, Mr. Stephen Pednault, CPA

Members absent: Ms. Suzette Farrar, Judge Robert Killian, Judge Paul Knierim

Also in attendance: Attorney David Biklen, Committee Reporter, Attorney Thomas Gaffey, Probate Administration, Attorney Carl Schiessel, Connecticut Hospital Assn.

Approval of Minutes of January 4, 2012 Meeting

The minutes of the January 4, 2012 meeting were unanimously approved.

Further discussion re temporary guardianship

Judge Albis raised for discussion questions re temporary guardianship that might be addressed by rule. The first was whether one parent might apply for temporary guardianship without the other parent joining in. The subcommittee agreed that one parent could do so. The consensus was that if one parent conferred his or her guardianship rights on a third party, it would leave the rights the non-petitioning parents unaffected.

The second question was whether the non-petitioning parent in the above situation should get notice. The subcommittee agreed that he or she should receive notice.

Discussion of conservator proceedings

Using the list of issues for conservatorships, the subcommittee reached the following conclusions (paragraph numbers correspond to the issues list):

1. Establishment of trust by conservator under §45a-655 (e)

- a. The conservator should be required to provide a copy of the proposed trust agreement.
- b,c. At the hearing on approval, the conservator should be required to explain the goals and purposes of the trust, and to present evidence to support of those findings required by the court under §45a-655 (e).
- d. The subcommittee discussed the issue of privacy of the conserved person's estate planning documents, while recognizing their importance to the approval of the proposed trust. The consensus was that the court may request that estate planning documents be provided, to the extent they can be found, and that the court may, in its discretion, restrict access to the attorney for the conserved person and the guardian ad litem, if any.
- e. While recognizing the difficulty inherent in determining the heirs and beneficiaries at that point, the subcommittee agreed that they should, to the extent known or reasonably ascertainable, be given notice.

2. GAL appointments §45a-132

- a. The subcommittee discussed the role of the guardian ad litem as regards the initial appointment of a conservator. It noted that the issue on appointment was whether there is sufficient evidence of the facts required by statute, and that "best interests" is not a factor in determining incapacity. The subcommittee concluded that when a GAL is appointed in a conservatorship, the court should limit the scope of the GAL's duties, and the appointment of GAL should terminate when the assigned tasks are accomplished. Further, the assigned tasks should not relate to the determination of incapacity.

3. Falvey v. Zurolo

- a. The provisions of this proposed rule are intended to reflect the decision of the Appellate Court in *Falvey v. Zurolo*. It should apply to the appointment of any involuntary conservator, or successor, as well as to any voluntary application in which no proposed conservator is designated.
- b. In determining whether to appoint a particular individual as conservator, the court must receive and consider evidence of the factors set out in §45a-650 (h).
- c. The interested parties should be afforded the opportunity to present evidence and argument concerning the proposed conservator.

- d. This rule should be inapplicable where the proposed conservator is appointed, designated or nominated by the respondent or conserved person.

4. Confidentiality of Physicians' evaluations

- a. The subcommittee agreed that the statutory confidentiality of physicians' evaluations would be abrogated if the public were permitted to attend the hearing during discussion of such evaluations. The consensus was that where feasible the hearing should be closed to the public during testimony or discussion re the physician's evaluation.
- b. In a case where a non-party requests a copy of the audio recording of a hearing on the appointment of an involuntary conservator, the subcommittee agreed that such non-party should not receive any portion concerning the physician's evaluation. Noting the difficulty inherent in redacting an audio recording, the subcommittee agreed that the court should cause the recording to be transcribed at the cost of the requesting non-party, and the transcript redacted to remove discussion of the medical evaluation.
- c. The consensus was that the rule should make clear that while the physician's evaluation is confidential, it is nonetheless available to the interested parties to the conservatorship proceeding.

5. Criminal background checks

The court should have the discretion to order criminal background checks of any conservator or proposed conservator, anyone providing care to the conserved person, anyone living in the household with the conserved person, and anyone else having sufficient connection with the conserved person to warrant such action.

6. Use of streamline procedure in conservatorships

- a. The subcommittee noted that certain aspects of conservator proceedings, such as appointment, are clearly not suitable for streamlining, but that others, such as periodic accounts, might be appropriate in some instances. After discussion, however, the subcommittee concluded that the streamline procedure should not be used in connection with any conservatorship matter. It may be necessary to cross reference Subcommittee I's action re streamlining in general.

7. Accounting in conservatorships

- a. Mandatory account at end of first year

- b. Cross reference to §45a-5976 re payment of expenses after death of conserved person
- c. Cross reference §45a-594 re limitations on compensation where conserved person receives public assistance or VA benefits
- d. Cross reference §45a-660 (a) – upon death of conserved person, conservator’s final account to segregate unexpended proceeds of sale of real property
- e. Upon termination of conservatorship or removal of conservator, final account to be filed within 60 days unless a different time is ordered by court

8. Compromise of Claim

- a. Conservator petitioning for approval of compromise of claim shall submit a settlement statement showing the expenses of the settlement and the net proceeds the estate will receive.
- b. The conservator shall file a supplemental or substitute inventory within 30 days of receipt of the proceeds of any settlement.

9. Voluntary conservator

- a. After filing of an application for involuntary conservator, and before the court has acted on such application, the respondent may file an application for voluntary representation under §45a-646.
- b. The court shall hear and determine such voluntary application before acting on the involuntary application.
- c. Court may act on voluntary application under (a) without further notice if respondent present and any other necessary parties are present or have waived notice

10. Temporary conservator

- a. Court to provide notice and conduct hearing in accordance with §45a-654 (c).
- b. Notwithstanding (a) if the court determines that the delay resulting from giving notice etc. would cause immediate and irreparable harm to the respondent, the court may, ex parte and without prior notice, appoint a temporary conservator in accordance with §45a-654 (d). Cross reference Subcommittee II general provision on ex parte orders.
- c. Extension of temporary appointment upon filing of application for involuntary conservator [§45a-654 (a)] requires:
 - i. Written request of petitioner or temporary conservator
 - ii. Decree (hearing not required)

11. Jointly owned assets

- a. In a case where the conserved person holds property or liabilities jointly with others, the conservator of the estate may file an application seeking an order of the court as to proper administration of such property or liabilities, taking into account such considerations as:
 - i. The conserved person's intended estate plan
 - ii. The source of the property
 - iii. The conserved person's needs
 - iv. The availability of other assets to meet those needs
 - v. The impact on the conserved person's eligibility for public assistance
- b. In addition to the parties otherwise entitled to notice, the court shall cause notice of such hearing to be given to the joint tenants and others as the court shall determine.

12. Sale of real property

- a. Upon application of the conservator of the estate pursuant to §45a-656b (a), the court may authorize the conservator to terminate a tenancy or lease, sell or offer for sale any real property of the conserved person, sell or dispose of any household furnishings of the conserved person, or change the conserved persons' residence if the court finds that:
 - i. The sale is necessary, or
 - ii. The conserved person consents to the sale.
- b. In addition to (a), the sale and conveyance of real property of the conserved person by the conservator shall require an order of the court in accordance with §45a-164 finding that the proposed sale is in the best interests of the conserved person.

Review feedback from full committee

1. Estate tax issues

- a. Valuation, Item 2 a.i.1. This provision allowing the use of municipal assessment as evidence of valuation should be clearly limited to non-taxable estates.
- b. Recording tax returns, Item 4. This provision should make clear that judges have the ability to order the recording of specific attachments deemed necessary by the court, even if the party requested that the attachments not be recorded.
- c. Confidentiality, Item 8. The subcommittee determined not to include a provision for prior notice to the fiduciary or the opportunity for a hearing before disclosure of a return to an heir or beneficiary in light of the provisions of §12-398 (c)(1).

- d. Trust, lists of interested parties, Item 2.e. Notice to the Attorney General in matters involving special needs trusts should be limited to such trusts established and funded with the approval of the probate court. It should not be extended to trusts established and funded by third parties.
- e. Guardians of estate, Item 4a. The requirement of filing of an account after the first year should include the ability of the court to adjust the time for filing with reference to the actual receipt of assets by the guardian.
- f. Guardians of estate, Item 5. The rule should allow for estate funds to be used for support of the minor in those instances in which the court, in the interests of the minor, authorizes the expenditure, such as when the parent lacks the means to provide support.

Other items

1. Guardians of estate, supplemental or substitute inventories

- a. The subcommittee agreed to a provision, similar to the that recommended for conservators above, requiring that upon settlement of a claim the guardian file a supplemental or substitute inventory the proceeds within 30 days after receipt.

2. Waiver of fees, conservators

- a. It was agreed that there should be no exemption from the fee waiver statute (§45a-111) with respect to applications for appointment of a conservator of the estate. The entry fee is the responsibility of the petitioner, not the respondent. If the petitioner is indigent, a fee waiver should be available, notwithstanding that the respondent may have assets sufficient.

Next meeting

The next meeting is to be held on Monday, February 6, 2012, at 3:00 p.m., at the New Haven Regional Children's Probate Court.

The meeting was adjourned at 5:45.

Approved 2-6-12