

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Monday July 11, 2011
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: Ms. Suzette Farrar, Attorney Gabriella Kiniry, Attorney Patricia Kaplan, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott and Mr. Stephen Pednault, CPA

Members absent: Judge Gerald Fox

Also in attendance: Attorney Bonnie Bennet

The committee discussed the proposed meeting schedule and list of topics to be reviewed at each meeting. The subcommittee will meet on Mondays. A list of specific dates for each monthly meeting will be sent to subcommittee members and posted on the website.

Discussion of concepts for rules

Probate Bonds

The committee reviewed the list of issues to consider for probate bonds and reached the following conclusions:

1. **Bond to be filed before appointment.** A rule should specify that a proposed fiduciary who is required to have bond must file the bond before the appointment is made.
2. **Court discretion to require bond.** In accordance with § 45a-289, courts should have discretion to require a bond even when the will excuses bond. Proposed Rule 4.7 (2004) is an appropriate statement of this concept.
3. **Corporate fiduciaries.** The default rule should be that a corporate fiduciary (a bank or trust company or other corporate entity with trust powers) should not be required to have a bond, in accordance with § 45a-169, but courts should have discretion to require a bond. Proposed Rule 4.8 (2004) is an appropriate statement of this concept.

4. **Changes in value and nature of assets.** Fiduciaries should be required to report any change in the value of assets under their control that exceeds 10% of the value of the bond. Fiduciaries should also be required to report any change in the nature of any asset (e.g., the sale or mortgage of real estate) that exceeds 10% of the value of the bond.
5. **Waivers.** Contrary to the current rule, the beneficiaries under a will that does not excuse bond (but also doesn't specifically require it) should be able to waive bond in the same manner as heirs of an intestate estate. Similarly, the beneficiaries should be able to waive bond when the will excuses bond for named executors but the estate is being handled by an administrator c.t.a. for whom the will does not specifically excuse bond.
6. **Restricted accounts.** When a court authorizes use of a restricted account, the following provisions should apply:
 - a. The fiduciary and financial institution must execute the standard probate court form to establish a restricted account. Alternate forms are not permitted.
 - b. The appointment of a proposed fiduciary should not be finalized until proof is provided that the restricted account was established and the estate funds deposited into it.
 - c. It is within the discretion of a court to review a request to release funds from a restricted account administratively (without collecting an entry fee and without notice and a hearing), or in the alternative to conduct a hearing. Matters handled administratively would be subject to subsequent review in connection with the fiduciary's accounting. The committee did not yet decide whether the manner in which a request to release funds is handled should be governed by a specific criterion (e.g., a fixed amount or percentage value).
7. **Amount of bond.** When a bond is required, the general rule is that the amount of the bond should equal the value of the assets under the fiduciary's control plus expected income during the accounting period, minus the value of real property over which the fiduciary does not have a power of sale. The amount of the bond may be adjusted in accordance with any of the following provisions:
 - a. A court may reduce the bond by an amount equal to the value of assets held in restricted accounts.
 - b. A court may reduce a bond if the heirs or beneficiaries waive bond (see also paragraph 5 above).
 - c. A court may reduce the bond if a fiduciary is also a beneficiary of the estate, in proportion to the fiduciary's interest in the estate.
 - d. Notwithstanding any of the foregoing provisions, a court has discretion to require a bond in a larger amount when necessary to protect the interests of parties or to ensure payment of funeral expenses, administration expenses, taxes and claims.
 - e. The existing rule establishing a \$1,000 minimum bond amount should be repealed in light of the passage of § 45a-139(c).
8. **Real estate.** See paragraphs 4 and 7. No separate rule is required.

9. **Surety when bond amount is increased.** When a court increases the amount of a bond, the additional coverage should be secured by the same surety as the original bond, provided that a new surety is acceptable if both sureties agree to joint and several liability for the entire bond amount.
10. **Surety liable for all co-fiduciaries.** When an estate has more than one fiduciary, any bond must cover all co-fiduciaries.
11. **Security.**
 - a. A new rule will require supporting documentation to verify that the individual signing a bond on behalf of a corporate surety has authority to act on behalf of the surety (i.e., is an officer of the surety or is acting as agent under a power of attorney). The form bond should be modified to require the name of the signatory to be printed or typed under the signature line. We concluded that we would rely upon the Insurance Department to enforce requirements relating to the qualification of out-of-state corporate sureties to do business in Connecticut.
 - b. Going forward, only corporate sureties will be accepted. Personal sureties will be prohibited.
12. **Release of bond.** A new rule will provide that a court shall not issue a certificate for surety to release a bond until the court has approved a final account and, if required, an affidavit of closing.
13. **Action on Bond.** A new rule will specify that, in an action on the bond, notice shall be provided to the surety by certified mail.
14. **Rules regarding bonds for particular types of matters.** It was the general consensus that the new rule would differ from the existing rule in that it would not contain specific and varied rules for particular types of cases, although we also agreed to revisit the topic after reviewing the new draft rule in the totality.

Fiduciary Accounting

The committee reviewed the list of issues to consider for fiduciary accounting and reached the following conclusions:

1. **Notice.**
 - a. **Trust accounting.** The rule should require a court to provide notice to all current eligible beneficiaries and all presumptive remainder persons. Any other beneficiary, even those with contingent interests, should be given notice upon request. We should cross reference the virtual representation statute for guidance on when a guardian ad litem might be needed. A court must give notice to a beneficiary even if the trust instrument purports to excuse notice to that beneficiary. Likewise, any beneficiary is an interested party and is therefore entitled to participate in proceedings notwithstanding provisions in the trust instrument that purport to prohibit such

