

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Thursday September 8, 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 3:05 p.m.

Other members in attendance: Ms. Suzette Farrar, Judge Gerald Fox, Attorney Gabriella Kiniry, Attorney Patricia Kaplan, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott.

Members absent: Mr. Stephen Pednault, CPA.

Approval of Minutes of August 1, 2011 Meeting

The minutes of the August 1, 2011 were unanimously approved.

Discussion of concepts for rules regarding Decedents' Estates

Using the list of issues for decedents estates (revised to reflect questions referred from Subcommittee I), the committee reached the following conclusions:

- 1. Step-by-step instructions.** The committee concluded that step-by-step instructions for administering decedents' estates are better suited for a separate pamphlet-type publication and are not appropriate for the practice book.
- 2. Streamline procedure.**
 - a. Committee members agreed that the practice book should strongly encourage the use of the streamline procedure. Language should indicate that a hearing should be scheduled only in those exceptional circumstances in which a judge makes a specific determination that a particular case necessitates a hearing.
 - b. We discussed the need for guidance on what to do when a streamline or other notice is returned undeliverable, but noted that the issue has been assigned to Subcommittee I.

3. Small estates procedure.

- a. In the event that a court receives an affidavit in lieu of administration but the state exercises its right under § 4a-16 to be appointed legal representative, the court must inform the original petitioner that its petition will not be acted upon. A new form notice or decree should be developed for this purpose.
- b. The committee raised but did not resolve the question whether notice should be given to interested parties on receipt of an affidavit in lieu.
- c. An estate that is opened as a full estate but that is subsequently determined to be eligible for the small estates procedure under § 45a-273 may be concluded either by filing an affidavit in lieu of administration and request for order of distribution or such other simplified documents as the court in its discretion may allow.

4. Temporary Administration.

- a. A court may waive the requirements of inventory and account if a temporary administrator makes a written representation that the temporary administrator did not take control of any of the assets or income of the estate.
- b. The committee debated whether a rule could permit courts to make a case-by-case determination whether to publish notice to creditors when appointing a temporary administrator but concluded that § 45a-354 does not afford courts any discretion on the issue.
- c. A statutory change should be sought regarding the new form of temporary administrator for the sole purpose of investigating a cause of action, which was established by Public Act 11-128 §§ 18-19. Specifically, a new title should be substituted for temporary administrator to avoid confusion with temporary administrators who have control over assets and are acting in a fiduciary capacity. Section 45a-354 should also be amended to avoid triggering the 150 day period defining the personal liability of a fiduciary for claims.

5. Death certificate or alternate proof of death. A petitioner seeking admission of a will or grant of administration is required to submit a death certificate, provided that a petitioner may prove death by other means.

6. Family tree / missing heirs. The committee discussed at length but did not reach a conclusion whether the practice book should have a provision that explicitly gives judges the discretion to require a petitioner to submit a family tree or a document describing efforts to locate missing heirs.

7. Petitioner's duty to send copies.

- a. A petitioner seeking admission of a will should be required to send copies to all heirs and beneficiaries.

- b. A fiduciary should be required to send a copy of the inventory and any amendments to all interested parties.
- c. The committee did not discuss whether a fiduciary must send copies of any financial reports or accounts to all interested parties, but should adopt a recommendation on this topic at the next meeting.

8. Notice on petition to admit will.

- a. Streamline notice or notice of a hearing should be sent to all heirs, beneficiaries under prior wills that have been submitted to the court (even if not submitted for probate) and the beneficiaries under any will and codicil that is offered for admission.
- b. A court may admit a will without providing notice of a hearing only if all the heirs and all the beneficiaries under prior wills that have been submitted to the court (even if not submitted for probate) have waived notice in writing.

9. GALs

- a. **GALs for minor heirs and beneficiaries.** A rule should give courts the discretion to appoint a guardian ad litem for an heir or beneficiary who is a minor. The rule should encourage the appointment of a family member when appropriate to avoid the expense of an attorney GAL.
- b. **GALs for missing heirs.** A rule should give courts the discretion to appoint a guardian ad litem for a missing heir in connection with the admission of a will that differs from the laws of intestacy.
- c. Before appointing a GAL, a court should consider whether, in light of the size of the estate, an heir would be likely to receive any portion of the estate if the estate were intestate (e.g., a child of both the decedent and surviving spouse would not receive anything from an estate valued at less than \$100,000).

10. Guidelines for GALs. Subject to the specific direction of the court, the rule should instruct GALs as follows:

- a. For a GAL representing a missing heir, take reasonable steps to verify that the heir is in fact missing.
- b. Review the will to verify due execution.
- c. Make inquiry of appropriate parties to determine whether there is any reasonable basis to challenge the validity of the will.
- d. A GAL should seek to minimize the expense to the estate and is not required to conduct an exhaustive search for a missing person.
- e. A GAL may seek guidance from the court on the scope of the appointment.

11. Notice of decree admitting will to probate. The court must send notice of the decree admitting the will to probate to all heirs, beneficiaries under

prior wills and beneficiaries under the will that has been admitted. The rule should include the language from Proposed Rule 12.5(c) (2004) regarding the contents of the notice (disclosing the name and address of the fiduciary and informing beneficiaries that questions should be directed to the fiduciary).

12. Notices in testate estates after admission of will. After the admission of a will, notice of any further proceedings should be sent to beneficiaries and not to heirs, unless an heir specifically requests notice. See Proposed Rule 12.5(d) (2004)

13. Notification of state agencies. The committee discussed whether courts should send notice of all decedents' estates to the Department of Administrative Services. Since that requirement is already embodied in the Clerk's Manual, a practice book rule is unnecessary.

14. Appointment of Agent for Service. Although the committee discussed the possibility of a rule to alert practitioners to the requirement of § 52-60, the general approach has been to avoid repeating statutory requirements unless some further procedural guidance is required. The committee discussed possible statutory changes to obviate the filing of appointment of judge as agent for service of process or to have the appointment in favor of a clerk instead of the judge.

15. Sale of Real Property.

- a. Absent special circumstances, publication notice should not be required.
- b. A court may grant a petition to sell real estate without further notice if all beneficiaries are capable and waive notice and all creditors who have notified the court of a claim also waive notice.
- c. A court may require the fiduciary to file an inventory and return and list of claims before acting on a petition to sell real estate.
- d. A court may, in its discretion, require a realtor's comparative market analysis, appraisal, information about the municipal assessment or other information to determine the fair market value of a property that is the subject of a petition to sell.
- e. In the event that others interested in purchasing a property that is the subject of a petition to sell indicate a willingness to pay a higher price than the proposed contract, the court may continue the hearing and direct the fiduciary to take such further action as the court determines to be in the best interest of the estate. The court may also appoint a committee under § 45a-167

16. Dormancy and administrative closure. The committee discussed at length whether the practice book should incorporate the administrative closure technique that is outlined in TR 95-468. No conclusion was

reached. It was agreed that any such rule should require that the notice to interested parties should specify that the court will be taking no further action if the dormancy is approved and that they should contact the court if they believe that the estate should be kept open or a successor fiduciary should be appointed. Notice should also clearly alert the fiduciary as to what remains to be done to complete the estate administration.

17. Report on status of estate. The committee agreed that the practice book should include a rule modeled on the New York procedure that requires a fiduciary to file a form report if estate administration has not been completed in a timely manner. The form will be required no later than the third month following the first anniversary of the fiduciary's appointment and annually thereafter. The fiduciary must report the approximate amounts distributed and on hand and the reasons why administration has not been completed. The form should indicate that the court may take steps to expedite the process and that failure to file can be grounds for disallowance of fees or removal. The committee discussed but did not reach a conclusion as to whether an attorney for a fiduciary should be required to file some similar type of report.

18. Distributions to minors and incapable beneficiaries.

- a. Except as provided in subparagraph c, an executor or administrator must provide proof that a conservatorship has been established before making any distribution to or on behalf of an incapable heir or beneficiary who has been adjudged incapable by a court of competent jurisdiction.
- b. Except as provided in subparagraph c, an executor or administrator must provide proof that a guardianship has been established before making any distribution that exceeds the amount set forth in § 45a-631 (or any partial distribution if the sum of all partial distributions will exceed that amount) to or on behalf of a minor heir or beneficiary.
- c. A fiduciary may make a distribution directly to a minor or incapable heir or beneficiary or to a UTMA custodian, trust, parent, guardian or other party on behalf of the minor or incapable heir or beneficiary if so directed in the will.

[Scribe's Note: While we have not discussed distributions to incapable beneficiaries, I added a reference because it is consistent with our discussion about minor beneficiaries]

19. Background checks of fiduciaries. The committee discussed without reaching a conclusion about a possible rule that would either require or give discretion to a court to conduct a criminal background or credit check on a proposed fiduciary. Concern was expressed about the reliability of criminal background checks in light of the myriad agencies that maintain separate databases. Concern was also expressed about whether credit

checks would unfairly limit the ability of individuals with limited means to serve as fiduciary.

20. Draft list of interested parties. (Note: lists of interested parties will be provided to Subcommittee I for each type of case. Subcommittee I will incorporate them into the notice provisions contained in the section dealing with Procedures Applicable to All Case Types)

- a. Executor or administrator
- b. If intestate, all heirs
- c. If there is a purported will, all heirs and beneficiaries under prior wills that have been submitted to the court for the petition to admit the will. If the will is admitted, all beneficiaries under the will and/or codicils
- d. If the will contains any charitable bequests, the Office of the Attorney General
- e. Creditors who have notified the court of a claim against the estate
- f. Providers of goods or services that constitute funeral or administration expenses who have notified the court of a claim or dispute with the fiduciary
- g. Any agency of the State of Connecticut that has given notice of a claim against the estate or a beneficiary
- h. In the event of a domicile dispute, DRS
- i. Any guardian ad litem who is appointed to represent the interests of a party
- j. Any fiduciary who is responsible for the financial and/or legal affairs of a beneficiary or heir.
- k. Such other parties as the court may determine

21. Fee waivers. It was the consensus of the committee that a statutory change would be needed to allow waivers of fees in decedents' estates.

Next Meeting

Our next meeting will be held on Monday October 3, 2011 at 3:00 p.m. at the New Haven Regional Children's Probate Court.

The meeting was adjourned at 7:00 p.m.

Approved October 3, 2011