

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Thursday October 3, 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 3:09 p.m.

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

Members absent: Judge Gerald Fox, Mr. Stephen Pednault, CPA

Also in attendance: David Biklen, Committee Reporter

Approval of Minutes of September 8, 2011 Meeting

The minutes of the September 8, 2011 meeting were unanimously approved.

Discussion of concepts for rules regarding Estate Tax Issues

Using the list of issues for the estate tax, the committee reached the following conclusions:

1. **Cross reference instructions for estate tax forms.** Except as modified by these rules, a person filing a CT-706NT or related form with a probate court in connection with a non-taxable estate shall comply with the DRS instructions for the form.
2.
 - a. **Valuation of property listed on CT-706 NT (these provisions do not apply to a CT-706/709).**
 - i. A person filing a CT-706NT shall substantiate the fair market value of real property. This requirement can be met by supplying any one of the following:
 1. Information from the municipal assessment on the property, adjusted to reflect 100% of the fair market value as of the date of the assessment;

7. **Domicile Declaration.** A person filing a CT-706NT claiming that the decedent was not a Connecticut resident shall submit FORM C-3 Connecticut Domicile Declaration. **[Scribe's note:** Based on our discussion, I assume that we do not want to address what the court should do if the C-3 does not justify the claim of non-residency. If the estate is approaching taxability, 3 above would apply and the court would require the person filing the return to submit a CT-706/709 to DRS.]

8. **Confidentiality.** If the court receives a request to disclose an estate tax return or information related to the return, the court shall hold a hearing to determine whether the party requesting disclosure has a material interest which will be affected by information contained in the return, unless the person filing the return consents to disclosure. A court may also excuse the requirement of a hearing and permit disclosure if the person seeking disclosure is:
 - a. A fiduciary of the estate;
 - b. In the case of an intestate estate, an heir of the estate
 - c. In the case of a testate estate, a beneficiary of the estate

Referrals from Subcommittee I

1. **Definitions:** None proposed.

2. **List of Interested Parties:** None proposed.

3. **Whether all co-fiduciaries must sign estate tax returns.** Committee members reviewed the previously discussed principle that all co-fiduciaries must sign documents containing representations of fact (except that a co-fiduciary may file her or her own separate account) and that an attorney may sign and file other documents on behalf of a fiduciary client. In the context of estate tax returns, this would mean that all co-fiduciaries must sign documents such as the estate tax return, amendments, and domicile declarations, while an attorney representing the fiduciaries could sign documents such as extension requests and applications for releases of liens. **[Scribe's note:** It does not appear that a separate rule is necessary here. I will relate our conclusion to Subcommittee I, which is drafting the rules regarding filing requirements. Note also that § 12-392(b)(3)(D) requires that all co-fiduciaries sign returns.]

4. **Additional documentation.** No rule proposed.

Discussion of concepts for rules regarding trusts

Using the list of issues for trusts, the committee reached the following conclusions:

1. **Notice.** The provisions regarding notice in trust matters that are contained in the fiduciary accounting section should be moved to this section. The committee has thus far agreed upon a general rule that notice should be provided to all current eligible beneficiaries and all presumptive remainder persons. Notice need not be sent to contingent remainder beneficiaries unless the court determines that it is necessary for the particular proceeding.
2. **Notice to the Attorney General.** The court shall give notice to the Office of the Attorney General for any trust proceeding involving a charitable trust or a special needs trust or functional equivalent.
3. **Virtual representation.** In any proceeding involving a trust, the petitioner shall inform the court if the petitioner has knowledge that there are possible unborn or undetermined current or presumptive remainder beneficiaries or that any current or presumptive remainder beneficiary is a minor or is not legally capable of acting. In the event that any of the foregoing applies, the petitioner shall indicate whether the one or more of the adult beneficiaries who is legally capable of acting can virtually represent the interests of any such beneficiary pursuant to §§ 45a-487a through 45a-487f. The court shall make a written finding whether virtual representation applies. If the court determines that virtual representation does not apply, the court shall appoint a guardian ad litem to represent the interests of any such undetermined, unborn, minor or incapable beneficiary. (Cross reference § 45a-132)
4.
 - a. **Title, construction and cy pres.** If the court declines jurisdiction to hear a construction, title or cy pres petition pursuant to § 45a-98a, the court shall memorialize such declination in a writing that shall be sent to all interested parties.
 - b. **Transfers of foreign trusts.** No rule proposed.
 - c. **Bypass inoperative trust.** A fiduciary who proposes distribution from an estate directly to the beneficiaries of a trust rather than to the trustee shall petition the court for authorization to bypass the trust pursuant to § 45a-482. Such petition may be heard together with the fiduciary's administration account. [**Scribe's note:** This section should probably be moved to the decedents' estate section.]
 - d. **Termination of non-charitable charitable trusts.** No rule proposed.
 - e. **Trust reformation.** No rule proposed.
 - f. **Termination of charitable trusts.** No rule proposed.

5.
 - a. **Accounting under § 45a-175.** A financial report that satisfies the requirements of the fiduciary accounting rules is permissible for any proceeding under § 45a-175 unless a court determines a full account is necessary. [**Scribe's note:** This section should probably be moved to the fiduciary accounting section.]
 - b. **Title, construction and cy pre.** See 4(a).
6. **Charitable community trusts.** No rule proposed.
7. **Spousal elective share.** No rule proposed.
8. **Trusts for missing persons.** No rule proposed.

Referrals from Subcommittee I

1. **Definitions needed:**
 - a. Current beneficiary
 - b. Presumptive remainder beneficiary
 - c. Contingent remainder beneficiary
2. **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)
 - d. Settlor, if living
 - e. Trustee
 - f. Current beneficiaries and presumptive remainder beneficiaries
 - g. In the discretion of the court, contingent remainder beneficiaries (cross reference the provision in the trusts section that address the exercise of this discretion)
 - h. For trusts with charitable beneficiaries and for special needs trusts and functional equivalents, the office of the attorney general
 - i. Trust protectors, trust advisors, beneficiary surrogates and functional equivalents
 - j. The committee concluded that holders of powers of appointment need not be treated as interested parties.
3. **Who signs documents in trust proceedings.** Committee members agreed that the general rule that all co-fiduciaries must sign documents containing representations of fact (except that a co-fiduciary may file her or her own separate account) and that an attorney may sign and file other documents on behalf of a client applies in the trust context.

- 4. Documents to be submitted.** No rule proposed. Note that there was strong consensus that an inter vivos trust instrument must be submitted in connection with any proceeding that deals directly with the trust, but not in connection with a decedent's estate that pours over to an inter vivos trust.
- 5. Fee waivers in trust proceedings.** Petitions or accounts submitted by a trustee having control of trust assets should not be eligible for fee waivers. A non-trustee who is indigent and who files a petition should be eligible for a fee waiver for the entry fee. Note, however, that the court would have the power to order the trustee to pay the probate fee from trust assets if the court finds in favor of the petition.

Next Meeting

Our next meeting will be held on Monday November 7, 2011 at 3:00 p.m. at the New Haven Regional Children's Probate Court.

The meeting was adjourned at 6:05 p.m.

Approved November 7, 2011