

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Thursday November 7, 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, Judge Gerald Fox, Attorney Patricia Kaplan, Attorney Gabriella Kiniry, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott, Mr. Stephen Pedneault, CPA

Members absent: None

Also in attendance: Attorney David Biklen, Committee Reporter, Attorney Carl Schiessl, Connecticut Hospital Association

Approval of Minutes of October 3, 2011 Meeting

The minutes of the October 3, 2011 meeting were unanimously approved.

Discussion of concepts for rules regarding Guardianships of Estates of Minors

Using the list of issues for guardianships (revised as of October 28, 2011), the committee reached the following conclusions:

- 1. Use of streamline procedure for guardianships.** The streamline notice procedure may be used for any petition relating to a guardianship, but the court shall conduct at least one hearing with the participation of the guardian either at the time of the initial appointment or at some other point prior to authorizing the guardian to take control of any assets.
- 2. Appointment of guardians ad litem in guardianships.** No rule proposed.
- 3. Probate bonds in guardianships.** No rule proposed.

4. Accounting in guardianships.

- a. **Mandatory first year account.** A guardian of estate shall render a financial report or account for the first year following the guardian's appointment. Thereafter, the guardian shall file periodic financial reports or accounts at least once during each three year period or more frequently if the court determines that more frequent accounting is in the best interest of the minor.
- b. Cross reference § 45a-97 re ability of guardian to pay certain expenses after death of minor
- c. Cross reference § 45a-594 re: maximum compensation of a guardian of a minor receiving public assistance
- d. Release of funds from restricted accounts (cross reference provision in probate bonds).

5. **Parental support obligation.** Funds of the minor should not be used for the minor's support without the permission of the court, since the parents of the minor have a duty to support the minor from their own funds. If there is no one legally liable for the support of the minor, the guardian may use the minor's assets for reasonable and necessary support with the approval of the court. **[Scribe's Note: This language is taken from the current rule, except that the second sentence was modified to require court approval when there is no one with a support obligation.]**

6. **Closing out a guardianship when the assets fall below the \$10,000 threshold of § 45a-631.** The court should retain jurisdiction over a guardianship estate even if the value of the property falls below the maximum amount that a parent or guardian may hold without a guardianship under § 45a-631, provided, however, that the court may authorize the transfer of funds to a custodian under the Connecticut Uniform Transfers to Minors Act if the requirements of § 45a-558c(c) are met.

7. Compromise of claim.

- a. **Combined application to appoint guardian and compromise claim.** A petitioner may file a single petition seeking to be appointed as guardian of the estate of a minor and requesting authorization to compromise a disputed or doubtful claim. **[Scribe's Note: We will need to sort out the probate fee, CMS and weighted workload consequences of this before finalizing a rule.]**
- b. **Settlement statement required.** A guardian or proposed guardian petitioning for authorization to compromise a disputed or doubtful claim shall submit a settlement statement that details the expenses

associated with the settlement and that specifies the amount of the net proceeds that the estate will receive.

- c. **Structured settlements.** While no rule is proposed, we will ask the Procedures Review Committee to consider a revision to the decree form that will prohibit a guardian from assigning the settlement in exchange for a lump sum payment without prior probate court approval.

8. Transfers to custodial accounts. See 6 above.

9. Establishment and transfer of guardianship funds to trusts under § 45a-151(b). No rule proposed.

10. Non-resident minors. §§ 45a-632, 45a-635 45a-636. No rule proposed.

Referrals from Subcommittee I:

1. Definitions needed:

- i. Guardian of the estate
- ii. Structured settlement

2. List of interested parties:

- i. Guardian(s)
- ii. Parent(s) or guardian(s)
- iii. Minor if 12 or older
- iv. Commissioner of Administrative Services if the minor is receiving aid or care from the state (§ 45a-630)

3. Who signs documents in guardianship proceedings. No specific rule required for guardianships.

4. Additional documentation. A court may in its discretion require a petitioner or guardian to supply a certified copy of a birth certificate for the minor.

5. Probate fees in guardianship matters.

- a. An indigent petitioner seeking to establish a guardianship is entitled to a waiver of the entry fee.
- b. A petitioner seeking to establish a guardianship of the estate is entitled to reimbursement of the entry fee from the estate if the petition is granted, unless the court determines that the use of estate funds must be restricted to maintain the minor's eligibility for public assistance.

Review feedback from full committee meeting

After considering the minutes of the full committee's September 15, 2011 meeting and the memorandum of Attorney Greta Solomon, the subcommittee approved the following changes to the previously drafted concepts:

1. Probate Bonds.

Item No. 4 Changes in value of assets. The proposed rule, which would have required a fiduciary to report changes in the value or nature of assets greater than 10% of the amount of the probate bond, should be modified in two ways: First, the rule should be limited to receipts of additional property and realized gains. It should not apply to paper changes in value due to market fluctuations. Second, the reporting required should be triggered only if the increase in assets exceeds 10% of the bond or \$50,000, whichever is greater.

Item No. 7 Amount of bond when structured settlement is approved. A court may reduce the amount of the bond by an amount equal to the value of assets that are subject to a structured settlement that will pay out after the minor turns 18.

Item No. 12 Release of bond. The words "or a statement in lieu of account" should be added after the word "account."

2. Decedents' Estates

Item 17(a) Distributions to incapable beneficiaries. The rule should be modified to permit distribution to an incapable heir or beneficiary's attorney-in-fact who is authorized under a valid power of attorney to manage assets on behalf of the beneficiary and who is willing to accept the responsibility. If the beneficiary does not have an attorney-in-fact who is willing and able to manage the assets, the 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.

Item 17(c) Distributions for the benefit of minors. The word "permitted" should be substituted for "so directed."

Item 19(c) Parties entitled to notice of a petition to admit a will. The subcommittee concluded that the proposed rule requiring notice to beneficiaries under prior wills in the custody of the court (as well as heirs and beneficiaries under the purported last will) is necessary to protect the rights of interested parties who may be aggrieved by the

admission of the purported last will. The committee emphasizes that no change is proposed to § 45a-282, which establishes the obligation of a custodian of a will or codicil to deliver it to the executor or court. The petitioner's burden of providing the court with addresses for interested parties would extend to beneficiaries under prior wills as it currently does for heirs and for beneficiaries under the purported last will.

[Scribe's note: Should the CBA Ethics Committee be asked for an opinion whether an attorney can properly withhold prior original wills that were retained and not destroyed when the client executed a subsequent will? An opinion might also create a safe harbor for attorneys holding copies of prior wills, as opposed to original instruments.]

Item 19(e) Creditors as interested parties. There was discussion about whether creditors who have notified the court of a claim against the estate should be listed as interested parties, particularly since creditors may already have been paid. The consensus was that no change is necessary, since a court has the discretion to discontinue notice to a creditor that informs the court that it has been paid.

Next Meeting

Our next meeting will be held on Monday December 5, 2011 at 3:00 p.m. at the New Haven Regional Children's Probate Court.

Revised Meeting Schedule

Two meetings will be held in January, the first on Wednesday January 4, 2012 and the second on Tuesday January 24, 2012. A revised meeting schedule will be distributed to the subcommittee and posted on the website.

The meeting was adjourned at 6:15 p.m.

Approved December 5, 2011