

**Probate Practice Book Advisory Committee  
Subcommittee III**

Meeting Minutes  
Monday December 5, 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, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott, Mr. Stephen Pedneault, CPA

Members absent: Attorney Gabriella Kiniry

Also in attendance: Attorney David Biklen, Committee Reporter

**Approval of Minutes of November 7, 2011 Meeting**

The minutes of the November 7, 2011 meeting were unanimously approved.

**Review feedback from full committee and other outstanding issues on fiduciary accounting**

Using the list of open issues on Fiduciary Accounting (revised as of September 29, 2011 to include feedback from the full committee's September 15, 2011 meeting), the subcommittee reached the following conclusions:

- 1. Notice. Note: The committee previously determined that the following provision, which relates exclusively to trusts, would be transferred to the section on trusts.** The committee concluded that the rule should provide for mandatory notice to the current beneficiaries and presumptive remainder beneficiaries of a trust. Notice to contingent remainder beneficiaries is not required unless the court determines that the interests of the presumptive remainder beneficiaries conflict with the interests of the contingent remainder beneficiaries.
- 2. Virtual representation.** The use of virtual representation, which is statutorily limited to trust proceedings, has already been addressed in the section on trusts.

- 3. Review definition of fiduciary acquisition value.** Subcommittee members agreed with feedback from the full committee that tying fiduciary acquisition value to changes in income tax basis would cause confusion.

  - a.** Fiduciary acquisition value for trusts. Section 3(a)(iii) should be modified to read: “for a trust, the fair market value of the asset as of the date of death of the testator or settlor, or such other basis for value as the court determines upon consideration of the nature of the trust and the manner in which it was funded.”
  - b.** Adjustments to fiduciary acquisition value. Section 3(c) should be amended to read as follows: “the fiduciary acquisition value of an asset should not be changed based on unrealized gain or loss due to fluctuations in market value but should be adjusted to reflect transactions in which additional investments are made in the asset, such as capital improvements to real property, or transactions in which some of the original investment is returned to the fiduciary, such as the sale of a partial interest in the asset or the receipt of principal payments on a promissory note.”
- 4. Itemization of in-kind distributions.** An itemized list of assets is required for in-kind distributions, regardless of whether the fiduciary is submitting a financial report, statement in lieu of account, or full account. Tangible personal property of modest value may be described in summary form unless the court directs otherwise. [Scribe’s note: I suggest that we add another sentence to say that, for purposes of distribution, assets should be valued at current market values unless all heirs or beneficiaries are receiving a pro-rata share of each asset.]
- 5. Court discretion to require an account for a testamentary trust when periodic accounts are waived.**

  - a.** A court shall not require the trustee of a testamentary trust to submit periodic accounts if the will establishing the trust excuses periodic accounts, but may require an interim account for such specific period of time as the court in its discretion deems necessary to protect the interests of the trust and its beneficiaries. Periodic account shall not be required once the interim account has been resolved.
  - b.** The trustee of a testamentary trust for which periodic accounts are excused shall submit a final account upon the termination of a trust or upon the trustee’s resignation, provided, however, that a court may excuse the requirement of a final account if the court approves a receipt and release in accordance with Paragraph 12.
  - c.** Cross reference § 45a-177
- 6. Maintenance of financial records.** A fiduciary shall maintain complete financial records for the estate or trust, which records shall include, without limitation:

- a. All accountings, reports, journals or ledgers used in managing the estate or trust and all computerized equivalents thereof, including all data recorded with accounting software;
- b. All original bank statements and passbooks for each bank account, including savings, checking, money market, certificates of deposit, and other types of accounts;
- c. All canceled checks or check images for each bank account;
- d. All original investment statements for each investment account;
- e. Copies of all deposit tickets for each deposit made into each bank or investment account and supporting information relating to such deposits;
- f. Supporting information relating to each disbursement made from each bank or investment account, including original supporting vendor invoices and receipts;
- g. All original credit card statements for each credit card account;
- h. All original store card statements for each store card account;
- i. Supporting information relating to each charge made on any credit card, store card or debit card, including supporting vendor invoices and charge slips or receipts;
- j. Supporting information relating to each distribution made from the estate or trust to an heir, beneficiary, conserved person or minor, as applicable;
- k. With respect to a conservatorship of the estate, supporting information relating to each gift made from a conservatorship estate to a party other than the conserved person, provided, however, that a conservator may only make gifts with prior court approval in accordance with § 45a-655(d);
- l. Complete detailed payroll information for each employee engaged or paid by the estate or trust for each pay period, including time reporting records, original payroll registers, journals, and reports and copies of all Forms 941, 942, W-3 and W-2 and other payroll tax returns;
- m. Complete details of each contracted service provider engaged or paid by the estate or trust for each calendar year, including original invoices from contractors and copies of all Forms 1096 and 1099 and other tax forms;
- n. Detailed journals describing the fiduciary's services and any amounts paid to the fiduciary as compensation;
- o. With respect to a conservatorship of the estate or guardianship of the estate of a minor, copies of all state and federal personal income tax returns filed by or on behalf of the conserved person or minor; including all forms and information received for each tax year used in the completion of each return;
- p. With respect to a decedent's estate or trust, copies of all state and federal fiduciary income tax returns filed by or on behalf of the estate or trust;

- q. With respect to a conservatorship of the estate, copies of all state and federal gift tax returns filed by or on behalf of the conserved person; and
- r. Any other records not specified above that document the fiduciary's actions in the management of the trust or estate.

**7. Title 19 waiver of accounting requirement.** The committee previously decided that a court should have the discretion to waive the requirement of a conservator's final financial report or account when DSS has determined that the conserved person is eligible for Title 19. The following procedural steps should be followed in exercising that discretion:

- a. The conservator should submit a copy of the DSS eligibility letter;
- b. The conservator should submit a copy of the DSS approved spend-down plan, if any, and a report showing the manner in which the conservator has executed that plan, including the name of the funeral home at which a prepaid funeral agreement has been arranged; and
- c. The court shall send notice to all interested parties of a hearing to determine whether the conservatorship of estate should be terminated without a final financial report or account.

**8.**

- a. **Trustee's power to adjust between income and principal.** No rule proposed.
- b. **Interest on bequests paid after one year.** No rule proposed.
- c. **Mutual distribution agreements.** In an intestate estate, a mutual distribution agreement that provides for distribution of any property to persons other than heirs shall be valid if all the heirs or their representatives make and file a written division in accordance with the provisions of the 45a-433(b). In a testate estate, a mutual distribution agreement that provides for distribution of any property to persons other than beneficiaries under the will shall be valid if all the beneficiaries or their representatives make and file a written division in accordance with the provisions of the 45a-434(b).
- d. **Closing affidavits.**
  - i. When the court has directed a fiduciary to file an affidavit of closing, the fiduciary shall file the affidavit within thirty days of completing distribution of all estate on hand.
  - ii. Procedure to close estate when not received. Although no rule is proposed, the committee recommends that the Procedures Review Committee consider developing a form by which courts can advise heirs and beneficiaries that no affidavit has been received and that they can contact the court if they have not received a distribution that they were expecting.
- e. **Release of bond.** This topic has already been addressed under probate bonds.

- 9. Statement that accounts must contain sufficient information to put parties on notice about all significant transactions.** The committee reviewed Attorney Biklen's drafting and concluded that this topic has already been addressed.
- 10. Grouping individual transactions.** A fiduciary who is filing a full account may group individual transactions into categories, provided that the period covered by a single entry shall not exceed one year.
- 11. Necessity for full account for charitable trusts.** Given that courts are required to give notice of all proceedings concerning charitable trusts to the Office of the Attorney General and given that a court has the discretion to order a full account at any time prior to approving a financial report, the subcommittee deciding against a rule that charitable trusts automatically require full accounts.
- 12. Summary report for receipt and release:** A court may waive the requirement of a final account for a testamentary trust only if:
- a. the court approves, after notice and hearing (which may include streamline notice) a summary report that includes an itemized list of assets on hand with current fair market values, an itemized proposed distribution, and a brief statement containing a description of the information that has been provided to beneficiaries and a summary of the trustee's management of the trust since the most recent account or, if none, since the trustee accepted the trusteeship;
  - b. the court determines that it would impose an unreasonable burden to require a final financial report or account; and
  - c. all beneficiaries sign a receipt and release.
- 13. Attorney and fiduciary fees**
- a. **Time records.**
    - i. **Separate time records as attorney and fiduciary.** No rule proposed.
    - ii. **Should time records be mandatory?** While committee members agreed that keeping time records is best practice, the consensus was that time records should not be a condition to being compensated as an attorney or fiduciary.
    - iii. **Engagement letter.** The factors listed in the attorney task statement should include the attorney's engagement letter.
  - b. **Fees of accountants and other professionals.** No rule proposed.
  - c. **CO-17 issues.** No rule proposed.

## Referrals from Subcommittee I:

1. Definitions needed:
  1. Fiduciary
  2. Testamentary trust
  3. Inter vivos trust
  4. Settlor of a trust
  5. Beneficiary of a trust
  6. Current beneficiary of a trust
  7. Presumptive remainder beneficiary of a trust
  8. Contingent remainder beneficiary of a trust
  9. Trust protector, trust advisor, beneficiary surrogate or functional equivalent

## Discussion of children's matters

Using the list of issues for children's matters, the subcommittee reached the following conclusions:

1. **Streamline Notice.** The streamline notice procedure should be available in children's matters only for applications to approve proposed modifications to visitation orders.
2. **Appointment of guardian ad litem**
  - a. In proceedings in which the appointment of both an attorney and a guardian ad litem for a child is mandatory pursuant to § 45a-620 and 42 USC §§ 5101 to 5107, a court may appoint one person to serve in both capacities. If a conflict arises between the child's wishes or position and that which the attorney believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. [Scribe's note: We ran out of time before finishing this discussion and should spend time at the next meeting considering how to square this approach with the recently enacted revisions to § 46b-129a. A possibility is to precede the above with a rule that says that courts should ordinarily appoint an attorney for the minor for that sole role, then move into the possibility of one person serving both roles, and finally addressing situations where separate appointments are required.]
  - b. Cross reference statutes in which the appointment of a GAL is mandatory under state law in children's cases: § 45a-621 (minor or incompetent parent in removal); § 45-708 (minor or incompetent parent in termination); § 46b-172a(d) (minor or incompetent parent in paternity)

**Next Meeting**

Our next meeting will be held on Wednesday January 4, 2012 at 3:00 p.m. at the New Haven Regional Children's Probate Court.

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

Approved January 4, 2012