

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Monday, May 5, 2014
3:00 p.m.

New Haven Regional Children's Probate Court
873 State Street
New Haven, CT

Judge Beverly Streit-Kefalas convened the meeting at 3:10 p.m.

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

Members not present: Judge Gerald Fox, Mr. Stephen Pedneault, CPA, Ms. Suzette Farrar

Also in attendance: Attorney Molly Ackerly, Attorney David Biklen, Committee Reporter, Ms. Amy Benjamin, Attorney Bonnie Bennet, Ms. Stephanie Janes

Approval of minutes of November 18, 2013 meeting

The subcommittee unanimously approved the minutes of the November 18, 2013 meeting.

Review revisions to draft rules from full committee meeting

Section 30.26 Withholding distributions when an heir or beneficiary is charged with certain crimes. The subcommittee approved the proposed language for new section 30.26 revised as of 1-22-14. The revision expands the list of persons who may file a motion to withhold distributions to out-of-state law enforcement authorities.

Section 31.9 Determination of amount of property passing to surviving spouse. Attorney Molly Ackerly attended the subcommittee meeting to participate in the discussion about revisions to proposed new section 31.9. The proposed language is intended to clarify the circumstances under which property held in a trust for the benefit of a surviving spouse should be treated as passing to the surviving spouse for the purposes of the probate fee calculation. Subcommittee members agreed that the favorable treatment available for property passing to the surviving spouse should be available if the trust qualifies for the marital deduction under the Connecticut estate tax, rather than being tied to the federal estate tax. The subcommittee concluded that the rule should not require calculations for the value of a

spousal interest that does not qualify for the marital deduction, preferring instead to establish a bright line rule.

Review of additional issues since January 16, 2014

The subcommittee reviewed the following issues from the document entitled "Subcommittee III Issues List for May 5, 2014 Meeting."

Rule 30 Decedents' Estates

The subcommittee discussed whether to draft a new section in rule 30 to provide guidance on the circumstances under which the court should treat a creditor as a party for purposes of notice and concluded that the issue is better addressed in the Clerk's Manual and training.

It was the consensus of those present that creditors should be given notice in the following circumstances:

- an attorney has filed an appearance on behalf of the creditor
- the creditor has requested special notice under C.G.S. section 45a-127
- the fiduciary has petitioned to declare the estate insolvent, with the proviso that notice to creditors is not required after a determination that an estate is insolvent and is eligible to use the short-form insolvency process under C.G.S. 45a-383
- The creditor has petitioned the court to hear and decided a rejected claim

Notice is not required merely because the creditor has filed a copy of its claim with the court.

Section 32.4 Trusts

The trustee should be required to send a copy of a petition to terminate a trust under C.G.S. section 45a-484 or 45a-520 to all parties and counsel. Given the existing language in section 32.4 (c), the addition of this provision will serve to require that a copy be sent to the attorney general when the trust involves a charitable interest.

Rule 40 Children's Matters

The subcommittee discussed at length whether to add a provision to rule 40 to detail the procedure for a court-initiated petition to remove a parent as guardian. Attorney Bonnie Bennet, Amy Benjamin, Chief Clerk of the regional children's probate courts, and Stephanie Janes, Program Managers of Mental Health and Family Programs, attended the meeting to participate in the discussion.

The subcommittee recommends that the underlying statute, C.G.S. section 45a-614, should be amended to permit a non-relative who has custody of a child to petition for removal, while deleting the language under which the court can initiate a removal proceeding on its own motion. This narrow

change would avoid the highly sensitive issues that arise when the court acts on its own motion while providing a mechanism to address this category of cases.

Proposed Revisions to rules 40, 44 and 45

The subcommittee approved the previously circulated revisions to rules 40, 44, and 45, all of which are dated November 20, 2013.

Next Meeting

No additional meetings were scheduled. Drafts of proposed revisions to rules 31.9 and 32.4 will be circulated among subcommittee members for comment prior to the June 26, 2014 meeting of the full committee.

The meeting adjourned at 5:00 p.m.

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