

**Probate Practice Book Advisory Committee  
Subcommittee III**

Meeting Minutes  
Monday, May 7, 2012  
3:00 p.m.

New Haven Regional Children's Probate Court  
873 State St.  
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, Attorney Gabriella Kiniry, Judge Paul Knierim, Attorney Andrew Knott

Members not present: Mr. Stephen Pedneault, CPA

Also in attendance: Attorney David Biklen, Committee Reporter

**Approval of Minutes of April 2, 2012 Meeting**

The minutes of the April 2, 2012 meeting were unanimously approved.

**Review of draft rules on Conservatorships (Rule 45)**

The subcommittee reviewed the draft rule on conservatorship identified as "Conservatorship 4-13-12 DDB draft with PJK edits."

**Section 45.1 Appointment of guardian ad litem for conserved person.** This proposed rule is obviated by the passage of RB 5287 and will be deleted from the draft.

**Ex parte appointment of temporary conservator.** The rule should include a provision that parallels the rule governing immediate temporary custody. The rule will provide as follows: If the judge determines that it is necessary to meet with the petitioner before deciding an ex parte temporary conservatorship petition, the court shall record the meeting. If the judge appoints a temporary conservator, the judge shall recuse himself or herself from the 3 day hearing.

**Section 45.4 Confidentiality of Medical Evidence.** The committee revisited its prior discussion whether hearings should be closed during the presentation of medical evidence. The members concluded that hearings should ordinarily remain open and that closure would be appropriate only in extraordinary

circumstances. A cross reference to rule 16, which contains general provisions regarding the closure of hearings, will be substituted for the previously drafted section.

**Section 45.8 Jointly-owned assets.** The factors to be considered should include reference to the needs of individuals whom the conserved person is obligated to support.

**Section 45.9 Establishment of trust.** Subsection (a)(1) should refer to the benefits of the trust for the conserved person. Subsection (a)(2) should require a copy of any estate planning document and a statement about the location of the original instrument. A new subsection (a)(8) will require the conservator to disclose any beneficial interest in the proposed trust.

**Section 45.10 Order to seal estate planning documents.** The subcommittee concluded that this proposed rule should be deleted.

**Section 45.11 Settlement of claims.** The rule should require the conservator to specify the terms of any proposed structured settlement.

### **Review draft rule on Alternative Remedies**

The subcommittee reviewed the draft rule on alternative remedies prepared by Judge Albis. Subcommittee members agreed that the rule would be helpful, but Attorney Kaplan expressed concern about courts adopted an overly broad interpretation. She will draft a revision for consideration at the next meeting.

### **Review draft rules on Commitments (Rules 46-48)**

**Section 46.5 Warrant for examination at general hospital.** The term “hospitalize” should be substituted for “commit” in reference to physician emergency certificates.

**Rule 47 Proceedings for Medication and Treatment of Psychiatric Disabilities.** A section should be added to require an audio recording of all medication and treatment proceedings.

Revised drafts of the rules incorporating the above-referenced changes and miscellaneous edits are attached to these minutes.

### **Next Meeting**

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

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

Approved 6-4-12

**State of Connecticut**

**Probate Practice Book**

**Rule 45  
Conservators**

**Section 45.1 Petition for voluntary representation to be heard before petition for involuntary conservatorship**

(a) The respondent in an involuntary conservatorship proceeding may file a petition for voluntary representation under C.G.S. section 45a-646 at any time before the court decides the involuntary conservatorship petition.

(b) The court shall hear and decide a petition for voluntary representation made under subsection (a) before acting on a petition for involuntary conservatorship. The court may conduct the hearing on the petition for voluntary representation at the same time as a hearing on an involuntary conservatorship petition without further notice if:

(1) the respondent is present; and

(2) all parties entitled to notice under C.G.S. section 45a-646 are present or have waived notice of the hearing on voluntary representation.

*(C.G.S. section 45a-646)*

**Section 45.2 Appointment of temporary conservator without notice and hearing**

(a) The court may appoint a temporary conservator under C.G.S. section 45a-654(d) without notice to the parties and without conducting a hearing.

(b) If the court determines that it is necessary to meet with the petitioner before deciding a petition to appoint a temporary conservator on an ex parte basis, the court shall make an audio recording of the meeting. The recording shall be available to the parties. If the court appoints a temporary conservator and the three-day hearing required by C.G.S. section 45a-654(d)(1)) is contested, the judge who met with the petitioner shall be disqualified from conducting the three-day hearing.

*(C.G.S. sections 45a-645a and 45a-654(d); C.P.P.B. rule 23 Orders without Notice and Hearing)*

### **Section 45.3 Extension of temporary conservatorship pending decision on conservatorship petition**

A party may petition to extend a temporary conservatorship pending disposition of an involuntary conservatorship petition. The court may, with or without notice and hearing, extend the temporary conservator's appointment until the disposition of the involuntary conservatorship petition or for 30 days beyond the initial appointment, whichever occurs first.

*(C.G.S. section 45a-654(a); C.P.P.B. Rule 23 Orders without Notice and Hearing)*

### **Section 45.4 Motion to close hearing during presentation of medical evidence**

See C.P.P.B. Rule 16 Public Access to Proceedings and Records.

Scribe's note: The following language, originally drafted as part of Section 45.4 should be moved to rule 16 (public access to proceedings and records) or rule 25 (availability of audio recordings).

(a) The court shall not disclose the audio recording of a hearing in which the court receives confidential medical evidence under subsection (a) to any person who is not a party or an attorney for a party. On the request of a person who is not a party or an attorney for a party, the court shall cause the recording to be transcribed and shall provide the non-party with a transcript from which the parts of the hearing that are closed to non-parties under subsection (a) have been redacted. The cost of the transcript shall be paid by the person requesting it.

### **Section 45.5 Criminal background check**

At any time during a conservatorship proceeding, the court may obtain a criminal background check of:

- (1) a conservator or proposed conservator;
- (2) an individual providing care to the conserved person;
- (3) an individual living in the conserved person's household; or

(4) any other person whom the court determines necessary to protect the conserved person's best interests.

Scribe's note: Does DPS permit a background check in this situation without a release?

#### **Section 45.6 Court to review qualifications of proposed conservator**

If a petitioner seeking voluntary representation or a respondent or conserved person in an involuntary conservatorship proceeding has not designated or nominated a conservator, the court shall give the parties an opportunity to present evidence and argument before appointing a proposed conservator or successor conservator. In deciding whether to appoint the proposed conservator, the court shall consider the factors set forth in C.G.S. section 45a-650(h) based on evidence in the record of the proceeding.

*(C.G.S. sections 19a-575a, 45a-645, 45a-646 and 45a-650(h); Falvey v. Zurolo, 130 Conn.App. 243 (2011) )*

#### **Section 45.7 Conservator of estate to send copies of inventory to each party**

A conservator of the estate shall send a copy of the inventory and each supplemental or substitute inventory to each party and attorney of record at the time of filing with the court and shall certify to the court that the copies have been sent.

#### **Section 45.8 Jointly-owned assets and joint liabilities**

(a) If a conserved person holds property jointly with another person or is jointly liable with another person on a debt, the conservator of the estate may petition for instructions concerning the administration of the joint property or liability.

(b) The court shall give notice of the hearing on a petition submitted under subsection (a) in accordance with Rule 8 to each party and attorney of record and to each the joint owner of the property or each person jointly liable on the debt that is the subject of the petition. The court shall consider the following factors when determining how the conservator should administer the joint asset or liability:

(1) each will, trust instrument or other estate planning document executed by the conserved person;

(2) the original source of the property;

- (3) the current and anticipated needs of the conserved person and any individual whom the conserved person is obligated to support;
- (4) the availability of other assets to meet the needs of the conserved person and any individual whom the conserved person is obligated to support; and
- (5) the impact of the manner of administration of the joint property or liability on the conserved person's eligibility for public assistance.

**Section 45.9 Establishment and funding of trust with conservatorship property**

(a) A conservator of the estate petitioning to establish and fund a trust under C.G.S. section 45a-655(e) shall make diligent effort to obtain information about the conserved person's estate plan and the names and current addresses of the conserved person's heirs and beneficiaries. The conservator shall accompany the petition with the following:

- (1) the proposed trust instrument;
- (2) a written explanation of the benefits of the proposed trust for the conserved person;
- (3) the copy of any will of the conserved person or any trust instrument or other estate planning arrangement of the conserved person that may be affected by the establishment and funding of the trust, together with a statement regarding the location of the original will, trust instrument or other estate planning arrangement;
- (4) the name and current address of each of the conserved person's heirs;
- (5) the name and current address of each beneficiary under any will;
- (6) the name and current address of each current and presumptive remainder beneficiary of a trust that is required to be disclosed under subsection (a)(3);
- (7) the name and current address of each beneficiary under any other estate planning arrangement that is required to be disclosed under subsection (a)(3); and
- (8) a statement indicating whether the conservator has any beneficial interest in the proposed trust.

(b) The court shall give notice of the hearing on a petition under subsection (a) to each party and attorney of record, the conserved person's heirs, the beneficiaries under

any will, each current and presumptive remainder beneficiary under any trust identified under subsection (a)(6) and each beneficiary under any other estate planning arrangement identified under subsection (a)(7).

(c) The conservator shall have the burden of proving the required findings under C.G.S. section 45a-655(e).

(d) If the court approves the establishment and funding of a trust, the conservator shall have a continuing duty to report the discovery of any will, trust instrument or other estate planning arrangement of the conserved person that was not previously submitted to the court.

*(C.G.S. section 45a-655(e); C.P.P.B. Rule on sealing files)*

#### **Section 45.11 Settlement of claims in favor of conservatorship estate**

(a) A conservator of the estate petitioning the court for authorization to settle a claim shall accompany the petition with a settlement statement that includes:(1) the gross amount of the proposed settlement;

(2) an itemized list of the expenses associated with the settlement, including any proposed attorney's fees; and

(3) the anticipated net proceeds that the estate will receive or the terms of any proposed structured settlement.

(c) The conservator shall file an inventory or supplemental or substitute inventory not later than 30 days after receipt of the proceeds of the settlement.

*(C.G.S. section 45a-151)*

#### **Section 45.12 Sale of real property from conservatorship estate**

(a) Notice of a hearing on a petition of a conservator of the estate for authority to sell real property shall not be required to be made by publication unless the court determines that notification of the public is necessary to protect the interests of the conserved person.

(b) If no previously filed inventory lists the real property that is the subject of the petition with the legal description of the property, the conservator shall submit an



inventory or supplemental or substitute inventory that includes the property and the legal description.

(c) The court may require the conservator seeking authority to sell real property to submit a comparative market analysis, appraisal, municipal assessment or other information about the fair market value of the property.

(d) The court may approve a sale of real property if the court determines that:

(1) the sale is necessary or the conserved person consents to the sale, as required by C.G.S. section 45a-656b(a); and

(2) the sale is in the best interests of the conserved person, as required by C.G.S. section 45a-164.

(e) If a prospective purchaser of real property notifies the court that it is willing to pay a higher price for the property than the amount under the petition, the court may continue the hearing and direct the conservator to take such further action as the court determines to be in the best interests of the conserved person. The court may appoint a committee under C.G.S. section 45a-167.

(f) If real property that is the subject of a petition is specifically devised under the conserved person's will, the conservator shall segregate the sale proceeds from any other estate assets.

*(C.G.S. sections 45-164 through 45a-169, 45a-656b(a), 45a-660(a);*

*C.P.P.B. Rule on publication notice)*

### **Section 45.13 Release of funds from restricted account in conservatorship of estate.**

See section 33.7.

### **Section 45.14 When financial report or account to be filed for conservatorship of estate**

(a) A conservator of the estate shall submit an annual financial report or account for the first year following the conservator's appointment or, with prior court approval, for the first year following the conservator's first receipt of funds on behalf of the estate.

(b) After submitting the first annual financial report or account under subsection (a), the conservator shall thereafter submit a periodic financial report or account at least once during each three-year period, unless otherwise directed by the court.

(c) Except as provided in section 45.17, a conservator shall submit a final financial report or account when the conservatorship is terminated, the conserved person dies or the conservator seeks to resign or is removed by the court.

(d) If a conservator dies while administering an estate, the executor or administrator of the estate of the deceased conservator shall file, on behalf of the deceased conservator, a final financial report or account for the conservatorship estate.

*(C.G.S. sections 45a-177, 45a-180, 45a-594, 45a-597 and 45a-660(b))*

**Section 45.15 Required contents of financial report or account of conservator of estate.**

See rules 34 through 36.

**Section 45.16 Conservator of estate to send copies of financial report or account to all parties**

A conservator of the estate submitting a financial report or account shall send a copy to each party and attorney of record at the time of filing with the court and shall certify to the court that the copies have been sent.

**Section 45.17 Waiver of periodic or final financial report or account in conservatorship when conserved person is Title 19 recipient**

(a) A conservator of the estate may petition the court to terminate the conservatorship of the estate and waive the requirement of a final financial report or account if the Connecticut department of social services has determined that the conserved person is eligible for Medicaid under Title 19 of the Social Security Act. The conservator's petition shall include:

(1) a copy of the department's determination letter and approved spend-down plan, if any; and

(2) a report showing the manner in which the conservator has executed the spend-down plan, including the name of the funeral home at which a prepaid funeral has been arranged and the amount of funds transferred to the conserved person or to the person's patient account.

(b) The court may, after notice in accordance with Rule 8, waive the requirement that the conservator submit a final financial report or account if the court determines that there are no assets remaining in the estate other than the amount permitted to be retained by a Medicaid recipient, that the conservatorship of the estate should be terminated, and that submission of a final financial report or account would serve no useful purpose.

(c) If the court determines that the conservatorship of the estate should continue after the conserved person becomes eligible for Title XIX, the court may permit the conservator to file, in lieu of a periodic financial report or account, a copy of the documentation required by the department of social services to periodically verify the conserved person's continued eligibility for Title XIX, together with the department's letter confirming that the conserved person continues to be eligible.

*(C.G.S. section 45a-660)*

#### **Section 45.18 Reimbursement of fees to petitioner in conservatorship of estate proceedings.**

The court may, on the motion of a party or on the court's own motion, after notice under Rule 8, order a conservator of the estate to reimburse a party for any probate court fees incurred in making a petition to the court concerning the conservatorship, including the initial petition to appoint a conservator, if the court determines that reimbursement of probate fees is equitable. If the court determines that reimbursement of probate fees is equitable but the court previously waived the petitioning party's probate court fees under C.G.S. section 45a-111 due to indigency, the conservator shall remit payment to the probate court administration fund. The reimbursed probate court fees shall be paid from estate assets as an administration expense.

*(C.G.S. sections 45a-105 through 45a-112)*

**Section 45.19 Petition to determine title relating to conservatorship**

If the court declines jurisdiction to hear a petition concerning title to property relating to a conservatorship of the estate under C.G.S. section 45a-98a, the court shall send written notice of the declination to all parties and attorneys of record.

*(C.G.S. section 45a-98a)*

# **State of Connecticut Probate Practice Book**

## **Rule 46 Commitment for Treatment of Psychiatric Disabilities**

### **Section 46.1 Confidentiality of psychiatric commitment proceeding**

The court shall exclude any person who is not a party or an attorney for a party from attending or participating in a hearing on probable cause or commitment for treatment of psychiatric disabilities, except that:

- (1) the parents of a respondent who is under the age of 16 may participate in the hearing;
- (2) the court may permit an individual to participate in the hearing on the request of the respondent;
- (3) the court may, after considering any objections of the respondent, permit the participation of a relative or friend of the respondent whom the court determines has a demonstrated concern for the respondent's best interests; and
- (4) a witness may attend such parts of the hearing as the court determines appropriate.

*(C.G.S. section 17a-500(a); C.P.P.B Rule on sequestration of witnesses)*

### **Section 46.2 Audio recording of psychiatric commitment proceeding**

The court shall make an audio recording of each probable cause hearing under C.G.S. section 17a-78(d), 17a-502(d) or 17a-506(e) and each hearing on commitment for psychiatric disabilities under C.G.S. section 17a-77 or 17a-498.

*(C.G.S. section 17a-498(c); C.P.P.B. Rule on audio recording)*

### **Section 46.3 Notice and procedures in probable cause hearing**

(a) The court shall give notice of a probable cause hearing under C.G.S. section 17a-78(d), 17a-502(d) or 17a-506(e) to the facility in which the respondent is confined. The notice may be given by telephone, electronic communication or other reasonable means.

(b) If the respondent wishes to attend the probable cause hearing, the facility at which the respondent is confined shall arrange for the respondent's presence at the hearing. The facility shall have the burden of proving that there is probable cause to continue the confinement. Staff from the facility shall present medical evidence at the hearing concerning the condition of the respondent at the time of the admission and at the time of the hearing, the effects of medication, if any, and the advisability of continuing treatment.

*(C.G.S. sections 17a-78(d), 17a-502(d) and 17a-506(e))*

#### **Section 46.4 Notice of hearing on psychiatric commitment**

(a) The court shall give notice of a commitment hearing under C.G.S. section 17a-498 to the respondent by personal service and to the facility in which the respondent is confined by first class mail or other reasonable means. The court shall give notice of the hearing to such relatives and friends of the respondent as the court determines advisable by first class mail or other reasonable means.

(b) The court shall give notice of a hearing on the commitment of a child under the age of 16 under C.G.S. section 17a-77 to the respondent child and to the parents of the respondent child by personal service and to the facility in which the respondent child is confined by first class mail or other reasonable means. The court shall give notice of the hearing to such other relatives and friends of the respondent child as the court determines advisable by first class mail or other reasonable means.

*(C.G.S. sections 17a-77(a) and 17a-498(a))*

#### **Section 46.5 Warrant for examination at general hospital**

(a) If a respondent in a commitment proceeding under C.G.S. section 17a-498 refuses to be examined by the court-appointed physicians, a party may petition the court to issue a warrant for a police officer to apprehend and transport the respondent to a general hospital for examination. The court may issue the warrant without notice and hearing. If the examining physicians hospitalize the respondent under an emergency certificate under C.G.S. section 17a-502(a), the court shall dismiss the commitment

petition. If the examining physicians release the respondent, the physicians shall send their reports to the court and the court shall hear and decide the commitment petition.

(b) If a child under the age of 16 in a commitment proceeding under C.G.S. section 17a-77 refuses to be examined by the court-appointed physicians, a party may petition the court to issue a warrant for a police officer to apprehend and transport the respondent child to a general hospital for examination. The court may issue the warrant without notice and hearing. If the examining physicians hospitalize the respondent child under an emergency or diagnostic certificate under C.G.S. section 17a-78(a), the court shall dismiss the commitment petition. If the examining physicians release the respondent child, the physicians shall send their reports to the court and the court shall hear and decide the commitment petition.

*(C.G.S. sections 17a-77(c), 17a-78(a), 17a-498(d) and 17a-502(a); Rule 23 Orders without Notice and Hearing)*

#### **Section 46.6 Warrant for examination proceeding in court**

(a) Any person believing that an individual 16 years of age or older has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled may petition the court to issue a warrant for a police officer to apprehend and bring the respondent to the court for examination. The court may issue the warrant without notice and hearing.

(b) The court may conduct the examination hearing under this section at any location suitable to facilitate the participation of the respondent.

(c) If the court issues a warrant under this section, the examining physicians shall, on delivery of the respondent to the general hospital, determine whether to commit the respondent under an emergency certificate under C.G.S. section 17a-502(a).

*(C.G.S. sections 17a-502(a) and 17a-503(b); Rule 23 Orders without Notice and Hearing)*

#### **Section 46.7 Voluntary admission of individual under conservatorship**

On receipt of the report of a psychiatrist under C.G.S. section 17a-506(c), the court may render its decision whether the conserved person gave informed consent to voluntary

admission with or without notice and hearing. The court shall provide copies of the decree to the facility and to all parties and attorneys of record in the conservatorship proceeding.

*(Rule 23 Orders without Notice and Hearing)*



# **State of Connecticut Probate Practice Book**

## **Rule 47**

### **Proceedings for Medication and Treatment of Psychiatric Disabilities**

#### **Section 47.1 Confidentiality of proceeding for medication to treat psychiatric disabilities or shock therapy**

The court shall exclude any person who is not a party or an attorney for a party from attending or participating in a hearing on a petition for medication for treatment of psychiatric disabilities under C.G.S. section 17a-543(e), 17a-543(f) or 17a-543a or hearing on a petition for shock therapy under C.G.S. section 17a-543(c), except that:

(1) the court may permit an individual to participate in the hearing on the request of the patient;

(2) the court may, after considering any objections of the patient, permit the participation of a relative or friend of the patient whom the court determines has a demonstrated concern for the patient's best interests; and

(3) a witness may attend such parts of the hearing as the court determines appropriate.

*(C.G.S. sections 17a-500(a))*

#### **Section 47.2 Audio recording of proceeding for medication or treatment of psychiatric disabilities**

The court shall make an audio recording of each hearing on a petition for medication for treatment of psychiatric disabilities under C.G.S. sections 17a-543(e), 17a-543(f) and 17a-543a and each petition for authority to administer shock therapy to a patient who is incapable of giving informed consent under C.G.S. section 17a-543(c).

*(C.G.S. sections 17a-543(c), 17a-543(e), 17a-543(f) and 17a-543a;*

*C.P.P.B. rule on audio recordings)*

#### **Section 47.3 Where to file petition for medication to treat psychiatric disabilities**

(a) A petition alleging that a patient in a facility is incapable of giving informed consent to medication for treatment of psychiatric disabilities and seeking the appointment of a conservator for the patient shall be filed in a court having jurisdiction of an involuntary conservatorship petition for the patient under C.G.S. section 45a-648(a).

(b) A petition alleging that a patient in a facility is incapable of giving informed consent to medication for treatment of psychiatric disabilities and requesting that a previously appointed conservator be authorized to consent to medication shall be filed in the court:

(1) having jurisdiction over the conservator; or (2) where the facility is located.

(c) A petition alleging that a patient in a facility is capable of giving informed consent to medication for treatment of psychiatric disabilities but refuses to consent shall be filed with the court where the facility is located.

*(C.G.S. sections 17a-543(e) and 17a-543(f))*

#### **Section 47.4 Where to file petition for shock therapy**

A petition seeking authority to administer shock therapy to a patient who is incapable of giving informed consent shall be filed at the court where the facility in which the treatment would be given is located.

*(C.G.S. section 17a-543(c))*

#### **Section 47.5 Notice of petition for medication to treat psychiatric disabilities**

The court shall give notice of a hearing for medication to treat psychiatric disabilities under C.G.S. section 17a-543(e) or 17a-543(f) to the patient and the facility in which the patient is being treated by first class mail, except that a petition that seeks the appointment of a conservator shall be given in accordance with C.G.S. section 45a-649. The court shall give notice of the hearing to such other relatives and friends of the patient as the court determines advisable by first class mail or other reasonable means.

*(C.G.S. sections 17a-543 and 45a-649)*

#### **Section 47.6 Notice of petition for shock therapy**

The court shall give notice of a petition seeking authority to administer shock therapy to the patient by personal service and to the facility at which the treatment may be given by first class mail or other reasonable means. The court shall give notice of the hearing to such relatives and friends of the patient as the court determines advisable by first class mail or other reasonable means.

# **State of Connecticut Probate Practice Book**

## **Rule 48 Commitment for Treatment of Drug and Alcohol Dependency**

### **Section 48.1 Confidentiality of drug and alcohol dependency commitment proceedings**

The court shall exclude any individual who is not a party or an attorney for a party from attending or participating in a hearing on a petition for commitment for treatment of drug or alcohol dependency, except that:

(1) the court may permit an individual to participate in the hearing on the request of the respondent;

(2) the court may, after considering any objections of the respondent, permit the attendance and participation of a relative or friend of the respondent whom the court determines has a demonstrated concern for the respondent's best interests; and

(3) a witness may attend such parts of the hearing as the court determines appropriate.

*(C.G.S. sections 17a-685(c) and 17a-688(a))*