

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Monday, June 4, 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 3:05 p.m.

Other members in attendance: Attorney Patricia Kaplan, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott, Mr. Stephen Pedneault, CPA

Members not present: Ms. Suzette Farrar, Judge Gerald Fox, Attorney Gabriella Kiniry

Also in attendance: Attorney David Biklen, Committee Reporter

Approval of Minutes of May 7, 2012 Meeting

The minutes of the May 7, 2012 meeting were unanimously approved.

Review proposed revision to draft rule on alternate remedies

The subcommittee reviewed Attorney Pat Kaplan's proposed revisions to the draft rule on alternate remedies. The subcommittee recommends inclusion of the proposal as revised in the section of the practice book on rules applicable to all case types. A formatted draft is attached.

Review input from full committee, Judges Institute and Clerks Meeting:

- 1. Probate Bonds.** The subcommittee agreed that the rules should require periodic verification that a restricted account remains in force and a copy of the most recent statement from the financial institution. The verification should be required on the same frequency as financial reports and accounts.

We will ask the Procedures Review Committee to develop a form for this purpose. In addition, we will ask the Procedures Review Committee to consider adding a notice to the PC-411 making it clear that the financial institution will be liable for unauthorized withdrawals.

2. **Fiduciary Accounting.** We will add the words “or other transfers for less than full consideration” after “gifts” in section 34.13(11) to make it clear that the rule covers all gratuitous transfers.
3. **Decedents’ Estates.** The committee discussed the following feedback items:
 - a. **Certification that copies have been sent.** The sections requiring the fiduciary to send copies of specified filings to all parties should require certification to the court that the copies have been sent. (This change will also be made to all other rules containing a requirement that copies be sent to parties.)
 - b. **Closure of full estate using affidavit in lieu.** The committee concluded that the rule permitting closure of a full estate with an affidavit in lieu of administration should be retained despite concerns about creditors, for two reasons. First, the estate does, by definition, qualify for the small estates procedures, which results in similar issues for creditors. Second, the legal rights of creditors are not affected, because they still have recourse to the beneficiaries.
 - c. **Sale of real estate.** The committee revisited whether newspaper notice should be required for all petitions to sell real estate and concluded that the current draft, which makes the decision discretionary, is appropriate. The committee also discussed Section 38.11, which establishes procedures to be used when a prospective purchaser contacts the court to offer a higher purchase price for real property than the amount proposed in a petition for sale. The provision should be amended to make it clear that the court has the flexibility to deny the private sale petition and order a public sale or to take other appropriate steps.
 - d. **Obligation to provide names and addresses of beneficiaries under prior wills.** The committee concluded that rule 7 sufficiently addresses the concern about who will provide the names and addresses of beneficiaries under prior wills by requiring the petitioner to provide information about all parties.
 - e. **Copies vs. original wills in custody of the court.** After a lengthy discussion, a majority of the committee members concluded that the court should give notice to beneficiaries under any will in the custody of the court, whether it is the original instrument or a copy.
 - f. **Contingent beneficiaries.** After review of the definition of beneficiary, the committee concluded that notice is not required for contingent beneficiaries whose contingencies are known to have not been met. No amendment is required.
4. **Estate Tax Matters.** Due to the overwhelming sentiment of judges and clerks in opposition to a requirement that releases of lien and opinions of no tax be issued immediately, proposed section 39.7 should be deleted.

5. Children's Matters. The committee discussed the following feedback items:

- a. Reinstatement.** Section 42.7 should be amended to specify that the evidentiary standard for best interests in a reinstatement proceeding is preponderance of the evidence.
- b. Adoption by same sex couples.** The subcommittee concluded that the provision contained in the current draft, which permits same sex couples to use the step-parent adoption procedure, should be retained.
- c. Transfers to regional children's courts.** Section 43.1 should require the transferring judge to consult with the administrative judge of the children's court before transferring a case.

6. Conservators. The committee discussed the following feedback items:

- a. Streamline for accounts.** The committee revisited the prior decision to prohibit use of the streamline procedure for all conservatorship matters and decided that streamline should be permissible for hearings on conservatorship accounts and financial reports.
- b. Liens for administration expenses.** The committee concluded that a statutory change would be necessary to authorize liens for administration expenses.
- c. Termination of conservatorship of estate.** The committee discussed the suggestion that the rule should require proof that a facility has been appointed as representative payee before terminating a conservatorship of the estate. The committee concluded that the rule would be unduly restrictive given that many conserved persons do not reside in a facility.
- d. Periodic accounts for Title XIX beneficiaries.** The committee discussed the suggestion that periodic accounts be waived for conserved persons receiving Title XIX or similar public assistance. The rule was previously revised to permit acceptance of periodic DSS eligibility redetermination materials in lieu of a periodic account.
- e. Billing when final account is waived.** The committee concluded that, when a final account is waived under the rules, the court should charge an accounting fee based upon the value of assets at the time the waiver petition is filed. This fee will generally be the minimum \$50 accounting fee, which is less than the \$150 entry fee.
- f. Sterilization proceedings.** In sterilization proceedings involving a conserved person, the rule should require evidence whether the conserved person is capable of giving informed consent as well as best interests. This will parallel a provision that Subcommittee I drafted for guardians of adults with intellectual disability.

Revised drafts of the above-referenced rules are posted on the website at jud.ct.gov/probate under the link for Probate Practice Book Advisory Committee.

The meeting was adjourned at 6:00 p.m.

Approved 7-13-12

State of Connecticut Probate Practice Book

Rule 51 Alternative Remedies

Section 51.1 Alternative Remedies

When deciding a petition, the court may, without further notice, order an alternative remedy that is similar to or less intrusive than the remedy requested in the petition if the court finds that:

- (1) the alternative remedy could have been requested in the underlying petition or in a petition concerning substantially the same issues that involves no additional parties; and
- (2) either:
 - (A) notice of the hearing indicated the possibility of an alternative remedy; or
 - (B) no party who is absent from the hearing would be prejudiced by the lack of notice of the possibility of an alternative remedy and each party present at the hearing has been provided a meaningful opportunity to present evidence and argument concerning the alternative remedy.