

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Monday, March 7, 2016
9:30 a.m.

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

Judge Beverly Streit-Kefalas convened the meeting at 9:32 a.m.

Other members in attendance: Judge Robert Killian, Judge Gerald Fox, Jr., Attorney Andrew Knott, Ms. Suzette Farrar and Attorney Heather Dostaler

Members not present: Attorney Patricia Kaplan and Attorney Gabriella Kiniry

Also in attendance: Attorney David Biklen, Committee Reporter (by telephone)

Approval of minutes of February 8, 2016 meeting

The subcommittee unanimously approved the minutes of the February 8, 2016 meeting.

Attorney Biklen provided copies of draft rules concerning all of the concepts addressed by Subcommittee III to date. The subcommittee began its review of the draft rules distributed on March 3, 2016 a copy of which is attached. The subcommittee's comments were limited to Section 40.18 and the new sections dealing with fiduciaries seeking instruction or a party seeking to compel or prohibit fiduciary action.

Section 40.18 (NEW) Canvass under *In re Yasiel*

A second draft of new Section 40.18 was distributed at the meeting a copy of which is attached. The subcommittee recommends:

- The rule should specify the rights about which a parent must be canvassed;
- The rule should also apply to any permanent guardianship proceedings because of the prohibition against reinstatement;
- The rule should require a canvass of any parent whose rights will be terminated regardless of whether the parent is the respondent or petitioner or if the termination is by consent;
- The rules should require the canvass be made at the first hearing at which the parent being terminated / subject to permanent guardianship is present. The canvass should be clear that if the parent being terminated

does not exercise his rights, then the judge will decide on the evidence presented to the court;

- The rules should require knowing consent evidenced by an affidavit by the parent being terminated.

Another draft of the rule will be submitted to the subcommittee at the next meeting.

New sections relating to fiduciary actions

- The subcommittee recommends that the rule use the phrase “request, motion, petition or other document” instead of motion.
- The subcommittee discussed where to put the new rules and considered a new Rule 20. This issue will be revisited.

Additional topics

- The subcommittee recommends that Section 7.1 be amended to include a provision stating that a petitioner must, upon request by a party, send a copy of the document to the party at no charge. The subcommittee recommends that the court’s notice of hearing be modified to include a statement of party’s right to request a copy of the document from the fiduciary.

Next Meeting

The subcommittee will meet on Monday, April 4, 2016 at 9:30 a.m. at the New Haven Regional Children’s Probate Court.

The meeting adjourned at 11:20 a.m.

Approved: April 11, 2016

Probate Court Rules Advisory Committee Subcommittee III

Draft Rules – For Discussion Purposes Only

Section 30.4 Court to inform petitioner of purported will in its custody

(a) If a petitioner seeks admission of a purported will to probate and the court has another purported will for the same decedent in its custody, the court shall advise the petitioner of the existence of the other purported will. The petitioner shall provide the name and address of each beneficiary and the executor under the other purported will in accordance with section 7.2.

(b) If a petitioner seeks the grant of intestate administration of an estate and the court has a purported will for the same decedent in its custody, the court shall notify the petitioner [and the executor and beneficiaries under the purported will] of the existence of the purported will. The petitioner shall provide the name and address of each beneficiary and executor under the purported will in accordance with section 30.6. The court shall schedule a hearing on the admission of the purported will before acting on the petition for intestate administration. If no executor or beneficiary under the purported will appears at the hearing to advocate for admission of the purported will, the court shall appoint a temporary administrator to advocate for admission.

(C.G.S. sections 45a-316 and 45a-317.)

Section 30.12 Executor or administrator to send copy of inventory, status update report, financial report, account and affidavit of closing to each party and attorney

(a) Except as provided in subsection (c), the executor or administrator of an estate shall send a copy of the inventory, each supplemental or substitute inventory, each status update report, each financial report or account and the affidavit of closing, at the time of filing, to each party and attorney of record and shall certify to the court that the copy has been sent. An executor or administrator who submits an affidavit in lieu of administration as a substitute for an inventory or account under section 30.23 shall send copies of the affidavit in accordance with this subsection.

(b) If a beneficiary under a will or any current or presumptive remainder beneficiary of a trust established under the will is a charity or charitable interest, the executor shall send a copy of the inventory, each supplemental or substitute inventory, each status update report, each financial report or account and the affidavit of closing, at the time of filing, to the Attorney General and shall certify to the court that the copy has been sent.

(c) The executor or administrator is excused from the requirement of sending copies under subsections (a) and (b) to any beneficiary of a specific bequest who has acknowledged, in writing, receipt of the bequest. The executor or administrator shall file a copy of the acknowledgement with the court.

(C.G.S. section 45a-341.)

Section 30.26 Withholding of distribution when heir or beneficiary charged with certain crimes

No change necessary. PA 15-236, sec. 4, is already codified in 45a-447.

Section 32.7 When final financial report or account of trustee excused

(a) The trustee of a testamentary trust may petition the court to excuse the requirement of a final financial report or account required under section 32.5 (c) or 32.5 (d) if:

(1) the will waives periodic accounts; and

(2) each current beneficiary and presumptive remainder beneficiary of the trust has signed a written instrument that waives the final report or account and acknowledges the amount of the distribution to which the beneficiary is entitled.

(b) A petition under subsection (a) shall include:

(1) the signed waiver under subsection (a) (2);

(2) an itemized list of assets on hand, shown at current fair market value;

(3) an itemized proposed distribution to each beneficiary; and

(4) for the period since the most recent financial report or account approved by the court or, if none, since the trustee accepted the trusteeship, a summary of:

(A) the method used to determine the compensation of the trustee;

(B) the information that has been provided to the beneficiaries; and

(C) the trustee's management of the trust.

(c) The court may excuse the final report or account if the court determines that it would impose an unreasonable burden to require the report or account and that each current beneficiary and presumptive remainder beneficiary has knowingly and voluntarily waived the requirement of a report or account.

(d) The probate fee for a petition under this section shall be calculated in accordance with C.G.S. section [45a-108] 45a-108a (this new section number must be confirmed after legislature approves the 2016 supplement to the statutes).

(C.G.S. section 45a-177.)

Section 40.15 Criminal background check

(a) Unless an immediate appointment is necessary to ensure the safety of a minor, the court shall obtain a criminal background check of a proposed temporary custodian, guardian of the person, temporary guardian or coguardian of the person before issuing a decree appointing the fiduciary.

(b) If the requirement of a criminal background check is waived at the time of appointment under subsection (a), the court shall obtain a criminal background check as soon as reasonably possible after issuing the decree making the appointment.

(c) At any time during a proceeding concerning a minor, the court may obtain a criminal background check of:

- (1) an individual providing care to the minor;
- (2) an individual living in the household of the minor; or
- (3) any other person if necessary to protect the interest of the minor.

(C.G.S. section 45a-617.)

(NEW) Section 40.18. Court to review with parent rights in proceeding to terminate parental rights

If a court is considering whether to grant a petition to terminate the parental rights of a parent, the court shall inform the parent of the parent's rights as required by *In Re Yasiel R.*, 317 Conn. 773 (2015), ask the parent whether the parent understands the rights described, and invite the parent to ask questions.

(*In Re Yasiel R.*, 317 Conn. 773 (2015)).

(NEW) Section xxx.xx. Fiduciary may seek instruction or approval of action.

A fiduciary may file a motion seeking instruction from the court and a motion for the court to approve an action of the fiduciary.

(NEW) Section xxx.xx. Motion by party to compel or prohibit action by fiduciary.

A party in a proceeding [to probate the estate of a decedent?] may file a [motion, petition?] to compel or prohibit an action by the fiduciary of the estate. The court may grant the [motion, petition] only if the action would be a breach of fiduciary duty or an abuse of discretion.

(NEW) Section 40.18. Court to review with parent rights in proceeding to terminate parental rights.

If a court is considering whether to grant a petition to terminate the parental rights of a parent present in court, the court shall inform the parent:

(1) of the nature of the termination of parental rights proceeding and the legal effect of the proceeding if a judgment is entered terminating parental rights;

(2) of the parent's right to defend against the accusations in the petition to terminate parental rights;

(3) of the parent's right to confront and cross-examine witnesses;

(4) of the parent's right to object to the admission of exhibits;

(5) of the parent's right to present evidence opposing the [allegations] [accusations? See (2) above];

(6) of the parent's right to be represented by counsel;

(7) of the parent's right to testify on the parent's own behalf;

(8) that, if the parent does not intend to testify, the court, on its own or if requested by the petitioner, may [is permitted to?] take an adverse inference from parent's failure to testify; and

(9) of the significance of the inference.