

**Probate Practice Book Advisory Committee
Subcommittee III**

Meeting Minutes
Monday, April 11, 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 9:45 a.m.

Other members in attendance: Attorney Patricia Kaplan, Ms. Suzette Farrar and Attorney Heather Dostaler

Members not present: Judge Robert Killian, Judge Gerald Fox, Jr., Attorney Andrew Knott and Attorney Gabriella Kiniry

Also in attendance: Attorney David Biklen, Committee Reporter

Approval of minutes of March 7, 2016 meeting

The subcommittee unanimously approved the minutes of the March 7, 2016 meeting with Attorney Kaplan abstaining.

Attorney Biklen provided copies of draft rules concerning all of the concepts addressed by Subcommittee III to date with new changes in redline form. The subcommittee began its review of the draft rules distributed on April 1, 2016 a copy of which is attached. The subcommittee's comments were limited to Section 40.18.

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

The subcommittee recommends:

- The rule should not use the word "respondent" to be clear that the rule will 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 and also at the hearing to determine whether parental rights will be terminated or a permanent guardian appointed;
- The statutes already require knowing consent evidenced by an affidavit by the parent being terminated and, therefore, proposed subsection (c) in the March 3, 2016 draft should be removed.

Next Meeting

No additional meetings were scheduled. Drafts of proposed revisions to the rules will be circulated among subcommittee members for comment prior to the meeting of the full committee.

The meeting adjourned at 10:55 a.m.

Approved:

DRAFT

Probate Court Rules Advisory Committee Subcommittee III

Draft Rules – For Discussion Purposes Only

Section 7.1 General filing requirements

- (a) A document filed with the court shall:
- (1) be typed or printed in ink;
 - (2) be signed and dated in accordance with section 7.4;
 - (3) after the matter is commenced, refer to the name that the court assigned the matter; and
 - (4) satisfy the filing requirements under governing statutes and these rules.
- (b) The court may accept for filing a document that is in substantial compliance with the requirements of subsection (a).
- (c) The clerk may require a party to correct a document by substituting a corrected or substituted document or page that complies with subsection (a).
- (d) When these rules require a person filing a petition or other document to send a copy of the petition or document to each party and attorney of record, the person shall certify to the court that the copy has been sent.
- (e) The person filing a petition or other document shall, on the request of a party, send a copy of the document to the party at no charge.

(Probate Court Rules, sections 5.5, 5.7, 10.1, 14.5, 30.7, 30.12, 30.22, 30.23, 32.4, 33.8, 34.3, 36.5, 40.16, 41.1, 60.2, 61.9 and 71.7.)

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-XXX.

(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 advise respondent parent of rights in proceeding to terminate parental rights or appoint permanent guardian.

(a) In a proceeding to terminate parental rights or to appoint a permanent guardian, the court shall advise a respondent parent of his or her right to participate and confirm that the parent understands the possible consequences of the proceedings. The court shall conduct this canvass at the first hearing at which the respondent parent(s) whose rights will be affected is present.

(b) In accordance with subsection (a), the court shall advise each respondent parent:

- (1) of the nature of the proceeding and the legal effect of a decree terminating parental rights or appointing a permanent guardian;
- (2) that the parent has the right to defend against the claims in the petition;
- (3) that the parent has the right to confront and cross-examine witnesses;
- (4) that the parent has the right to object to the admission of exhibits;
- (5) that the parent has the right to present evidence opposing the claims;
- (6) that the parent has the right to be represented by an attorney;
- (7) that the parent has the right to testify on the parent's own behalf;

(8) that the court may draw an adverse inference if the parent does not testify and the significance of this inference; and

(9) that, if the parent does not testify, object to exhibits, or question witnesses, the court will decide the matter based on the evidence presented at the hearing.

(c) If a respondent parent consents to termination of parental rights or to the appointment of a permanent guardian, the parent shall acknowledge the consent on a form promulgated by the Office of the Chief Court Administrator evidencing to the satisfaction of the court that the parent has voluntarily and knowingly consented to the termination of his or her parental rights and that the parent understands the effect of his or her consent.

[C.G.S. §45a-616a and 45a-715; 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 petition seeking instruction from the court or a petition seeking approval from the court for an action to be taken by the fiduciary.

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

A party in a proceeding may file a petition to compel or prohibit an action by the fiduciary. The court may grant the petition only if the action would be a breach of fiduciary duty or an abuse of discretion.