

Probate Court Rules Advisory Committee

Meeting Minutes

Thursday, January 16, 2014

3:00 p.m.

Office of the Probate Court Administrator
186 Newington Road
West Hartford, Connecticut

The meeting was convened at 3:10 p.m. by Judge Paul Knierim, Probate Court Administrator and Chair.

Other members in attendance: Attorney Molly Ackerly, Attorney Bonnie Bennet, Attorney Douglas Brown, Professor Jeffrey Cooper, Judge Michael Darby, Ms. Suzette Farrar, Attorney Thomas Gaffey, Attorney Paul Hudon, Attorney Christopher Hug, Judge Robert Killian, Jr., Attorney Gabriella Kiniry, Attorney Andrew Knott, Judge Brian Mahon, Judge John McGrath, Attorney Carmine Perri, Attorney Greta Solomon, Judge Beverly Streit-Kefalas, Judge Claire Twerdy, Ms. Sondra Waterman, and Judge Steven Zelman.

Also in attendance: Attorney David Biklen, Committee Reporter

Members not in attendance: Judge Gerald Fox, Jr., Attorney Karen Gano, Attorney Patricia Kaplan, Mr. Stephen Pednault, CPA, and Mr. Arthur Teal.

Remarks of the Chair

Judge Knierim welcomed the committee. The purpose of the meeting is to provide feedback on changes to the Probate Court Rules of Procedure proposed by the three subcommittees.

Approval of the Minutes of October 10, 2013

The minutes of October 10, 2013 were unanimously approved.

Discussion of Proposed Rule Changes

Subcommittee I

Section 7.1, General Filing Requirements

Before discussing the proposed revisions to rules, Subcommittee I Chair Judge Steven Zelman invited input from the full committee on section 7.1 which currently requires a person filing certain documents (e.g., petition to admit a will, inventory, financial report/account) to send copies to each party and attorney of record. Subcommittee I initially supported a change that would relieve filing parties of the obligation to send copies to parties represented by counsel. After further discussion, however, the subcommittee was divided on whether to recommend the change.

A lengthy discussion ensued. Attorney Doug Brown expressed opposition to the current rule on behalf of the estates and probate bar. Attorney Brown and others argued that it interferes with the attorney-client relationship and is inconsistent with practice in Superior Court, where attorneys direct their communications only to other attorneys and self-represented parties. Some expressed concern that the current rule suggests a distrust of attorneys. Other members of the committee countered that the current rule reflects the strong tradition in the Probate Courts of sending notice directly to parties as well as attorneys. Other members identified the practical benefits of sending critical documents simultaneously to both attorneys and parties, since hearings are usually scheduled within a few weeks.

Given the apparent lack of consensus of the committee, Judge Knierim suggested that the committee move on to other topics. Noting that the committee has ample time to revisit the issue, he invited members to contact him if they wish to bring the issue back to the full committee for further discussion.

Judge Zelman reviewed the committee's recommended revisions to Rules 1, 13, 35, 36, and 47. The following rule generated discussion and feedback:

Rule 35, Probate Bonds

Judge Mahon inquired whether the committee had considered the difficulty that fiduciaries have recently been encountering in obtaining probate bonds, especially in conservatorships. Committee members noted that section 45a-139 authorizes a court to excuse bond altogether for smaller estates and that the rules provide courts with a number of alternatives to bonds, including restricted accounts.

Subcommittee II

Judge Mahon, Chair of Subcommittee II, highlighted recommended revisions to Rules 61, 67 and 33 and the subcommittee's analysis of other issues referred to it. The following rules generated discussion and feedback:

Rule 61, Discovery

The subcommittee concludes that a rule permitting the court to allocate discovery costs is unnecessary given the broad discretion of the court to order remedies under sections 61.9 and 61.10.

Rule 67, Interpreters

The subcommittee recommends an amendment to Rule 67 to require the court to administer an oath to an interpreter. Committee members expressed support for an exception for court employees who serve as interpreters and commercially available interpreters approved by the Probate Court Administrator.

Motion to Dismiss

The subcommittee recommends against a rule establishing a motion to dismiss for lack of jurisdiction on the basis that it would add unnecessary complexity to Probate Court procedures.

Protective Orders

Subcommittee II recommends against a rule establishing a procedure when a party is subject to a protective order.

Section 33.2 Petition for voluntary representation to be heard before petition for involuntary conservatorship

The committee debated whether section 33.2, which permits a court to hear a voluntary representation petition without further notice when notice of an involuntary petition has already been given, should be amended. Members expressed a variety of views, but the overwhelming majority favor retaining the rule as currently written, with minor technical adjustments.

Section 33.9 Jointly-owned assets and joint liability

The subcommittee recommends expanding the scope of section 33.9, which addresses joint assets, to include other non-probate assets. The subcommittee should revise the subsection (b) (5) to conform to the recommended language.

Section 33.14 When conservator to submit financial report or account

Members of the full committee suggested that the subcommittee consider adding language to provide that, if no executor or administrator is appointed for a deceased conservator, a successor conservator may file an account on behalf of the deceased conservator. This account may be beneficial in limiting the successor conservator's potential liability.

Subcommittee III

Judge Streit-Kefalas, Chair of Subcommittee III, highlighted recommended revisions to Rules 30, 31, 32, 40, 44 and 45 and the subcommittee's analysis of other issues referred to it. The following rules generated discussion and feedback:

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

Subcommittee III recommends two changes to section 30.12: (1) the affidavit of closing should be added to the list of documents that an executor or administrator must send to each party and attorney; and (2) the fiduciary should be excused from sending required documents to the beneficiary of a specific bequest who has acknowledged, in writing, receipt of the bequest. Some members suggested that the fiduciary be excused from sending documents to the beneficiary of a specific bequest who is listed on a final account as having received his or her bequest (but who has not acknowledged receipt). After discussion, the consensus of the group was in favor of keeping the exception as proposed by the subcommittee.

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

The subcommittee should delete "is the subject of investigation" from the section title. In addition, the subcommittee should broaden the list of those eligible to file a motion to withhold a distribution to include prosecutors from other jurisdictions.

Section 31.9 Determination of amount of property passing to surviving spouse
Attorneys Molly Ackerly and Greta Solomon will draft technical changes to clarify the meaning of this proposed section.

Future meetings

Meetings of the full committee have been scheduled for Thursday, June 26, 2014 and Thursday, September 4, 2014 at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT, from 3:00 to 6:00 p.m.

Prior to the June 26, 2014 meeting, the subcommittees will convene to consider the feedback on proposed rules and the list of additional issues disseminated with the materials for the January 16 meeting.

Adjournment

The meeting adjourned at 5:50 p.m.

Approved June 26, 2014