

## **Probate Practice Book Advisory Committee**

### Meeting Minutes

Thursday, March 15, 2012  
3:00 p.m.

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

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

Other members in attendance: Attorney Mary Ackerly, Judge Michael Albis, Professor Jeffrey Cooper, Ms. Suzette Farrar, Attorney Thomas Gaffey, Attorney Karen Gano, Attorney Paul Hudon, Attorney Christopher Hug, Judge Robert Killian, Attorney Gabriella Kiniry, Attorney Andrew Knott, Judge Brian Mahon, Judge John McGrath, Mr. Stephen Pednault, CPA, Attorney Carmine Perri, 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: Attorney Bonnie Bennet, Attorney Douglas Brown, Judge Gerald Fox, Attorney Patricia Kaplan, Attorney Greta Solomon, and Mr. Arthur Teal.

### **Remarks of the Chair**

Judge Knierim again thanked the members for all of their efforts on practice book project. The committee is on track to complete a draft practice book in accordance with the original June 30, 2012 goal. Attorneys Bennet, Biklen and Gaffey and he will spend the summer doing final edits, after which the committee will meet once more to review the final product.

Judge Knierim described the process for Supreme Court approval of the rules. He noted that the proposed rules must first be published in the Connecticut Law Journal, followed by a public hearing conducted by the Supreme Court. After the public hearing, PCA will consider whether any edits are appropriate in light of comments received. The rules would then be presented to the Supreme Court for approval, after which the rules as approved would be published in the Law Journal. Judge Knierim expects that this process will be concluded by year end, with the rules to take effect on July 1, 2013.

## **Discussion of proposed concepts**

### Subcommittee III – Rules for specific types of matters

Judge Albis, Chair of Subcommittee III, presented proposed concepts for rules on children’s matters, conservators and commitments.

The committee offered the following feedback:

(Topic and item number references are to the concept lists provided to the members in advance of the meeting.)

#### *Children’s Matters, Reinstatement, Item 6*

After discussion, the consensus was that preponderance of the evidence is the appropriate standard for petitions to reinstate as guardian.

#### *Children’s Matters, Notice for adult adoptions, Item 9(b)*

The question was raised whether the rule should provide for notice to be given to the Attorney General if an adoption might affect an estate plan with a charitable bequest. After discussion, it was agreed that the adult adoption statute, § 45a-734 needs updating, and that the necessary changes are beyond the scope of the practice book.

#### *Commitments, Confidentiality of hearings, Item 1*

Concern was expressed about the provision allowing the court to permit attendance of “relatives and friends” and its effect on the respondent’s right to confidentiality. The subcommittee will consider revisions to clarify who is statutorily entitled to be present in light of the language of § 17a-498(a), which requires the court to notice “such relatives and friends as it deems advisable” and whether a respondent is entitled to exclude any persons from the hearing. The rule should also address whether witnesses who are not otherwise entitled to be present should be excluded from the hearing when not testifying.

### Subcommittee II – Procedures for Hearings

Judge Mahon, Chair of Subcommittee II, presented proposed concepts for broadcasting, recording and photographing hearings.

### Subcommittee I - General provisions and procedures applicable to all case types

Judge Steven Zelman, Chair of Subcommittee I, presented proposed concepts for closing hearings in non-confidential matters, sealing files in non-confidential matters, transfer of files between probate courts, guardianships of adults with intellectual disability, sterilization and change of name.

*Change of name. Item 9*

The subcommittee should consider adding a provision to the rule requiring the court, after granting a change of name to a person who is known to have a criminal record, to notify the police department that made the arrest, in addition to the Department of Public Safety.

**Discussion of drafts of proposed rules.**

Subcommittee II – Procedures for Hearings

Judge Mahon reviewed draft Rules 19 through 21.

*Rule 19, Discovery*

It was noted that section 19.1, regarding depositions, appears to apply to any proceeding, but section 19.2, regarding other forms of discovery, is limited to contested proceedings. Committee members agreed that the phrase “in a contested proceeding” is not necessary in section 19.2, since a court could simply deny a discovery request if there is no dispute.

*Rule 21. Exhibits*

The subcommittee will consider adding a requirement that a party offering documentary evidence to provide copies to all other parties.

*Rule 24, Case conferences*

The subcommittee will consider adding referral to a probate magistrate or to mediation to the list of topics that may be addressed at a case conference under section 24.1

*Rule 28, News media coverage*

It was noted that section 28.2, which prohibits any news media coverage in confidential matters, would prevent coverage of events such as National Adoption Day. The subcommittee will consider adding a provision that would afford the court discretion to permit coverage if all parties consent.

The subcommittee will also consider a provision that would prohibit coverage of testimony regarding a confidential physician’s report in conservatorships.

The subcommittee will consider whether internet “streaming” should be governed by the rule. The subcommittee will also review the definition of “news media coverage” to determine whether it should include broadcasting activity by any person or be limited to news media representatives.

## Subcommittee I - General provisions and procedures applicable to all case types

Judge Zelman reviewed draft Rules 1 through 7.

### *Rule 3, Probate clerk. Files and records*

It was noted that the draft rules use a number of different terms for similar concepts, including “records,” “files,” “court files” and “permanent record.” The subcommittee will review the draft to clarify the terminology.

It was suggested that there be a cross reference between section 3.4 and rule 21 concerning the disposition of exhibits.

### *Rule 4, Party*

The subcommittee will review section 4.1(a) to determine whether the term “participate” requires clarification.

### *Rule 5, Appearance*

The committee discussed the provisions of section 5.2(e) under which a court appointed attorney is not required to file an appearance. Some felt that an appearance should be required, noting that the appearance is a mechanism by which the attorney can indicate acceptance of the appointment. Others noted that this has not traditionally been the practice in the probate courts, and questioned the utility of requiring another piece of paper. It was agreed that the subcommittee will consider this provision further.

The subcommittee will seek to clarify the provisions of § 5.2 dealing with appearances by legal representatives.

The committee discussed section 5.9, which addresses the withdrawal of an attorney from a matter. The subcommittee will review the rule to determine whether any changes are needed in light of ethical duties imposed by the Rules of Professional Conduct. The subcommittee will also consider incorporating a mechanism by which a court-appointed attorney would request permission to withdraw.

### *Rule 7, Filing requirements*

Section 7.1 (a) states specific requirements for all filings. The question was raised as to the consequences for non-compliance. The subcommittee will draft a savings clause for filings in “substantial compliance” with the rule.

## Subcommittee III – Rules for specific types of matters

Judge Knierim reviewed draft rules 33 through 36.

*Rule 33, Probate bonds*

There was considerable discussion about the requirement that probate bonds be secured by corporate sureties. It was noted that surety bonds have become increasingly difficult to obtain. Discussion centered on the intent that the rules would provide courts with greater flexibility to excuse bond altogether in favor of alternatives such as restricted accounts, and that bonds would therefore be required only when absolutely necessary.

The subcommittee will discuss whether a fiduciary should be required to submit proof that a person signing a restricted account agreement on behalf of a financial institution has authority to act. The committee will also discuss whether to require a fiduciary to submit periodic proof that the restricted account is still in force. Finally, the committee will add provision to § 33.10 so that it is clear that a fiduciary can submit a substitute bond, instead of submitting a rider to the existing bond, when a court orders an increase in the amount of the bond

*Rules 34-36, Fiduciary Accounting*

The committee discussed the difference between a statement in lieu of account and a financial report under Rules 34 and 35. The subcommittee intends that the financial report, which contains more information than the statement in lieu, would replace the statement and further intends that the statement in lieu statute would be repealed when the new accounting rule becomes effective. Under the proposed rule, the financial report could be used in situations not currently eligible for a statement in lieu, such as estates having a trust as a beneficiary.

The subcommittee will amend section 33.13(a)(11) to refer to “gifts or transfers” by conservators.

**Next meeting**

The next quarterly meeting of the full committee will be on June 21, 2012, at the Office of the Probate Court Administrator, 196 Newington Road, West Hartford, CT, from 3:00 to 6:00 p.m.

**Adjournment**

The meeting was adjourned at 6:35 p.m.

Approved June 21, 2012