Probate Practice Book Advisory Committee

Meeting Minutes

Thursday, December 15, 2011
3:00 p.m.

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

The meeting was convened at 3:07 p.m. by Judge Paul J. Knierim, Probate Court Administrator and Chair.

Other members in attendance: Attorney Molly Ackerly, Judge Michael Albis, Attorney Bonnie Bennet, Attorney Douglas Brown, Professor Jeffrey Cooper (by speaker phone), Ms. Suzette Farrar, Attorney Tom Gaffey, Attorney Karen Gano, Attorney Paul Hudon, Attorney Christopher Hug, Attorney Patricia Kaplan, Judge Robert Killian, Attorney Andrew Knott, Judge Brian Mahon, Judge John McGrath, Mr. Stephen Pedneault, Attorney Carmine Perri, Attorney Greta Solomon, Judge Beverly Streit-Kefalas, Mr. Arthur Teal, Judge Claire Twerdy, Judge Steven Zelman.

Members absent: Judge Gerald Fox, Attorney Gabriella Kiniry, Ms. Sondra Waterman.

Also in attendance: Attorney David Biklen, Committee Reporter

Remarks of the Chair
Judge Knierim thanked the committee members for their outstanding commitment to the practice book revision project. He commented that the committee has made enormous progress over the past six months and the quality of its work is exceptional.

He informed the committee that he has made some changes to topic assignments among the subcommittees and that subcommittee schedules will be adjusted accordingly.

Judge Knierim encouraged committee members to communicate with their peers to alert them to the work of the committee and the availability of our proposals on the probate court website: www.jud.ct.gov/probate. Attorneys Knott and Brown are keeping the executive committees of the elder law and estates and probate sections of the Connecticut Bar Association informed of the committee's progress. Judge Knierim will be speaking to the estates and probate section at its

February, 2012 meeting. Mr. Pedneault offered to arrange a session for Judge Knierim to address the Connecticut Society of Certified Public Accountants.

Approval of the minutes of September 15, 2011
The minutes of the September 15, 2011 meeting were unanimously approved.

Committee Reports and discussion of proposed concepts

Subcommittee III – Rules for specific types of matters.

Judge Albis, Chair of Subcommittee III, presented proposed concepts for rules on estate tax issues, trusts and guardianships of estates of minors.

The full committee offered feedback on the following topics:

(Topic and item number references are to the subcommittee meeting minutes and also to the concepts lists sent in advance of the full committee meeting.)

Estate Tax, Valuation, Item 2.a.i.1
Since the current instructions for the CT-706NT only identify appraisals and comparative market analysis as methods for substantiating date of death value of real property, future training would need to alert courts to the new provision that would allow taxpayers to use municipal assessments as a basis for fair market value for non-taxable estates. Application of the proposed rule should be explicitly limited to non-taxable estates, since DRS is solely responsible for review of returns for taxable estates.

Estate Tax, Recording estate tax returns, Item 4
The subcommittee was asked to consider adding a provision that would give judges the discretion to record attachments (or portions thereof) even if the party filing the return specifies that the attachment need not be recorded.

Estate Tax, Confidentiality, Item 8
The rule as proposed provides that a beneficiary of a testate estate or heir of an intestate estate can automatically obtain an estate tax return or return information. The subcommittee will consider requiring notification to the fiduciary (and other interested parties) with a right to request a hearing prior to disclosure. The subcommittee will also review whether disclosure of a tax return to which a federal estate tax return is appended may violate federal tax return privacy provisions.

Trusts, Notice, Item I
In drafting the rule, it should be clear that notice to trust beneficiaries is required only for trusts that are subject to the jurisdiction of the court (i.e., all testamentary trusts and inter vivos for which jurisdiction has been invoked). The subcommittee should address whether beneficiaries of a testamentary trust should receive

notice of matters relating the administration of the decedent's estate that will fund the trust. It was the consensus of the committee that notice need not be given to the beneficiaries of an inter vivos trust that is a beneficiary of a decedent's estate but that is not otherwise subject to the court's jurisdiction.

Trusts, Notice to the Attorney General, Item 2
The rule should be expanded to require that notice be given to the Office of the Attorney General in matters involving any charitable interest or charitable beneficiary. The provision will be incorporated into the general notice provisions that Subcommittee I is responsible for drafting, with cross references to the trust and decedents' estates sections.

Trusts, Referrals from Subcommittee I, List of interested parties, Item 2.e.
Drafting should limit the requirement of notice to the Office of the Attorney General in proceedings involving special needs trusts to those trusts established and funded with the approval of the probate court. It should not extend to special needs trusts funded by third parties unless the Attorney General specifically requests notice.

Guardianship of Estates of Minors, Mandatory first year account, Item 4a
The rule should be drafted to give the court discretion to extend the deadline for the first annual account to the anniversary of the guardian's actual receipt of funds on behalf of the minor.

Guardianship of Estates of Minors, Parental support obligations, item 5
The subcommittee will review the draft rule to clarify that advance court approval is required for expenditures for the minor's support, but avoid creating the impression that funds can never be used for support.

Guardianship of Estates of Minors, Compromise of Claim, Item 7
Judge Mahon informed the committee that he has been working with the chair of the Workers' Compensation Commission to develop guidelines for review of settlements in wrongful death cases involving workers who are survived by a spouse and children. The guidelines, when available, should be evaluated for possible inclusion in the practice book.

<u>Subcommittee II – Procedures for Hearings</u>

Judge Mahon, Chair of Subcommittee II, presented proposed concepts for rules on the following topics: ex parte communications, ex parte orders, case management conferences, status conferences, recording hearings, broadcasting, recording and photographing hearings, telephone participation in hearings, interpreters, sequestration of witnesses, subpoenas, contempt, attorney discipline, appeals and concurrent jurisdiction.

The full committee offered feedback on the following topics:

Ex parte communications, Item 2, Exceptions
This item generated renewed discussion of whether the rules should require petitioners to provide copies of filings to all parties. It was noted that Subcommittee I had previously determined not to propose a general rule applicable to all case types but instead to revise the form for notice of hearing to include language informing parties that copies of all filings are available at the court or from the fiduciary. In addition, each subcommittee would determine whether the petitioners should be required to provide copies of particular documents. Subcommittee II will consider whether, or in what circumstances, the petitioner would be required to provide copies to the parties in contested matters.

Recording hearings, Item 1, Audio recordings
The committee discussed at length the subcommittee's proposals regarding the management of audio recordings. It was the consensus of the committee that, in light of the right of a party to require the court to make an audio recording of any proceeding under C.G.S. § 45a-136, the rule should preclude recordings by individual parties. Courts should be required to maintain digital copies of recordings only if a recording is required by statute or if requested under § 45a-136.

Telephone participation in hearings, Item 1
The committee should consider language to clarify that a court may, in its discretion, prohibit participation by phone even if all parties have indicated their consent.

Interpreters, Who may serve, Items 1c
Given the special issues presented when a family member or person other than a professional serves as an interpreter, the subcommittee was asked to detail the factors that a court should consider when deciding whether to permit a non-professional to serve as an interpreter.

Contempt, Recording contempt proceedings, Item 4
The subcommittee will consider a requirement that all contempt proceedings be recorded.

<u>Subcommittee I – General Provisions and Procedures Applicable to all Case Types</u>

Judge Zelman, Chair of Subcommittee I, presented proposed concepts for rules on notice, counting time periods, continuances, service on court as agent, standing orders, supplemental forms and memoranda, court appointments of

attorneys and guardians ad litem, referrals to probate magistrates and attorney probate referees, disqualification of judge and public access to records.

The full committee offered feedback on the following topics:

Notice, Item 8b
Judge Killian suggested that the rule be drafted to emphasize that the petitioner should use his or her “best efforts” to provide names and addresses of interested parties rather than expressing the principle in terms of a “burden.” The subcommittee will also consider additional language indicating that parties are responsible for keeping the court informed of changes of address.

Notice, Public Notice, Item 14
The rule should state that public notice must be made by publication in a newspaper with general circulation in the probate district or by other means authorized by statute.

Notice, Item 17b.
The rule concerning a party who appears at a hearing despite the court’s failure to give proper notice should be modified to provide that notice is deemed given unless the party raises an objection at the hearing. This rule should not apply when a time period is specified by statute (e.g, conservatorships)

Counting Time Periods
Subcommittee I will revisit this proposal to determine whether the proposal to exclude the day of the act in counting time periods is inconsistent with the rule that notice by mail is complete upon mailing. The subcommittee should also determine whether a separate provision is needed to count time periods that establish deadlines for court action, such as the requirement that a probable cause hearing be conducted within 72 hours of the petition.

Continuances
The committee discussed the various methods by which parties communicate continuance requests. While there was discussion that the rule might be more specific about alternate means of making continuance requests such as fax, email and phone, the general consensus was that paragraph 5 provides the necessary flexibility to address the varied circumstances under which requests are made.

Court Appointments – Court-Appointed Attorneys
A question was raised whether a court appointment relieves an attorney of the obligation under the Rules of Professional Responsibility to provide the client with an engagement letter. It was agreed that the topic, which relates to the Rules of Professional Responsibility, is outside the scope of the probate practice book.

Court Appointments – Guardians ad litem, Item 1

Judge Killian asked that the subcommittee consider whether the appointment of a guardian ad litem should be conditioned upon a finding of incapacity.

Court Appointments – Guardians ad litem, Item 5
In drafting the rule on limiting the scope of an appointment of a guardian ad litem, the subcommittee should consider making it mandatory that the scope of the appointment be limited and using the words “particular issues” should be added to or substituted for the current terminology “particular action or actions.”

Disqualification of Judge, Item 2a
Judge Killian asked the subcommittee to consider revising the proposal to permit a judge to act on a disqualification motion without a hearing.

Disqualification of Judge, Item 3
There was general support for the proposed rule that a judge is not automatically disqualified from hearing a matter when a party has filed a complaint with the Council on Probate Judicial Conduct. Inasmuch as Council proceedings are otherwise confidential, the committee will review the proposed requirement that the judge disclose the complaint to attorneys and parties.

Next Meeting

The next quarterly meeting of the full committee is March 15, 2012 at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT from 3:00 to 6:00 p.m.

Adjournment

The meeting was adjourned at 6:10 p.m.

Approved June 21, 2012