

**Probate Practice Book Advisory Committee  
Subcommittee III**

Meeting Minutes  
Monday, April 9, 2018  
1:30 p.m.

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

Judge Beverly Streit-Kefalas convened the meeting at 1:35 p.m.

Other members in attendance: Judge Beverly Streit-Kefalas, Attorney Andrew Knott, Ms. Suzette Farrar and Attorney Patricia Kaplan

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

**Approval of minutes of March 5, 2018 meeting**

The subcommittee unanimously approved the minutes of the March 5, 2018 meeting.

Attorney Dostaler provided copies of draft rules concerning all of the concepts addressed by Subcommittee III to date. The subcommittee reviewed the draft rules distributed on April 5, 2018, a copy of which is attached.

**Additional topics**

- The subcommittee recommends that new Section 18.4 be further amended to clarify that a court should hold a hearing on a petition to transfer a matter to a Regional Children's Probate Court if the court does not participate in a Regional Children's Probate Court.
- The subcommittee recommends that Section 30.12 be amended to provide that the court is not required to send notices to a specific legatee who has acknowledged receipt of the legacy with further discussion of the full committee.
- The subcommittee recommends that Section 30.17 be amended to add a provision that allows an executor or administrator to file an account at the same time as a petition for declaration of insolvency under C.G.S. §45a-383.
- The subcommittee recommends adoption of Section 34.5b with language changes as discussed.

- The subcommittee recommends adoption of new Rule 41 with further discussion of language.
- The subcommittee recommends further review of Rule 42.

### **Next Meeting**

The subcommittee will meet on Monday, May 7, 2018 at 2:00 p.m. at the New Haven Regional Children's Probate Court.

The meeting adjourned at 3:20 p.m.

Approved:

DRAFT

# Probate Court Rules Advisory Committee Subcommittee III

## Draft Rules – For Discussion Purposes Only

### Section 1.1 Definitions

“Family Court” means the family division of the Connecticut superior court.

“Juvenile Court” means the Connecticut superior court for juvenile matters.

### **Section 18.4 Transfer of children’s matter to Regional Children’s Probate Court**

(a) On the court’s own motion, a Probate Court may, without notice and hearing, transfer a children’s matter to a Regional Children’s Probate Court.

(b) On motion of a party, a Probate Court may, after notice and hearing, transfer a children’s matter to a Regional Children’s Probate Court. The party shall send a copy of the motion to each party and attorney of record and shall certify to the court that the copy has been sent.

(c) Before deciding a motion to transfer, the court shall consult with the administrative judge of the children’s court concerning the resources available at the children’s court to handle the matter.

(d) A judge who transfers a matter under this section or a judge who participates in the children’s court may hear the matter in the children’s court.

### **Section 30.6 Notice in proceeding to admit will to probate**

(a) The court shall send notice of a petition to admit a purported will to probate to:

- (1) each of the decedent’s heirs;
- (2) each beneficiary, including the trustee of any inter vivos trust, under the purported will being offered for probate;
- (3) each current and presumptive remainder beneficiary of a trust established under the purported will being offered for probate;
- (4) the Attorney General, 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;
- (5) the proposed executor or administrator;
- (6) the petitioner;
- (7) each beneficiary, including the trustee of any inter vivos trust, under any other purported will of the decedent in the custody of the court;
- (8) each current and presumptive remainder beneficiary of a trust established under any other purported will of the decedent in the custody of the court;
- (9) each attorney of record; and
- (10) other persons as the court determines.

(b) The court shall send a copy of the decree to each person listed in subsection (a). If the court admits the will to probate, the court shall also send notice of the admission of the will to probate, which notice shall include:

- (1) a list of the beneficiaries, including the trustee of any inter vivos trust, named in the will and the names of the current and presumptive remainder beneficiaries under any trust established under the will;
- (2) the name and address of the executor or administrator;
- (3) a statement indicating whether the executor or administrator is required to submit a probate bond and advising the beneficiaries of their right to request a bond; and
- (4) a statement indicating that the beneficiaries may address any questions regarding the estate to the executor or administrator.

### **Section 30.12 Executor or administrator to send copy of inventory, status update, 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, 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, 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 acknowledgment with the court. ~~The court is not required to send notice of subsequent proceedings to any beneficiary of a specific bequest for which the court has received a written acknowledgement of receipt.~~

### **Section 31.2 Requirements for estate tax forms for nontaxable estates**

(a) Except as modified by this rule, a person filing a DRS Form CT-706 NT and related forms for a nontaxable estate shall comply with the instructions for the form published by DRS.

(b) If the court grants an extension of time to file a DRS Form CT-706 NT, the court shall send notice of the extension to each party and attorney of record.

### **Section 31.7 ~~Recording attachments to estate tax forms~~ Permanent official record**

(a) Except as provided in subsection (b), the court shall include each of the following documents in the permanent official record for a matter:

(1) ~~The court shall record each~~ DRS Form CT-706 NT or CT-706/709 and any schedules submitted with the form;

(2) Internal Revenue Service Form 706, if applicable, and any schedules thereto;  
and

(3) ~~together with~~ Each attachment submitted with ~~the form~~ DRS Form CT-706 NT or CT-706/709 and Internal Revenue Service Form 706.

(b) ~~unless~~ The person filing the form ~~specifies~~ may specify in writing that an attachment need not be ~~recorded~~ included in the permanent official record, provided that the court may include ~~record~~ the attachment in the permanent official record even if the person filing the form indicates that the attachment need not be recorded if the court finds that the attachment is needed to understand the return.

### **Section 34.5b Transfer of structured settlement payment rights**

(a) A guardian of the estate of a minor may petition the court for approval to transfer payment rights to a structured settlement entered into on behalf of the minor.

(b) The guardian shall accompany the petition with a copy of the transfer agreement and the disclosure statement required under C.G.S. section 52-225h. The disclosure statement must include:

(1) the amounts and due dates of the structured settlement payments to be transferred;

- (2) the aggregate amount of the payments;
- (3) the discounted present value of the payments to be transferred;
- (4) the gross advance amount;
- (5) an itemized list of transfer expenses and an estimate of attorney's fees and disbursements;
- (6) the net advance amount;
- (7) the amount of any penalties or liquidated damages payable by the minor in the event of a breach of the transfer agreement by the minor; and
- (8) a statement that the minor has the right to cancel.
- (c) The court may approve the transfer if the court finds:
  - (1) considering the age and current needs of the minor, the transfer is in the best interest of the minor;
  - (2) the guardian has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and
  - (3) the transfer does not violate any applicable statute or order of any court or governmental authority.
- (d) The guardian shall send a copy of the petition, transfer agreement and disclosure statement to each party and attorney of record and shall certify to the court that the copy has been sent.

#### **Section 34.14 Criminal background check**

At any time during a proceeding relating to guardianship of the estate of a minor, the court may obtain a criminal background check of a guardian or coguardian.

#### **Section 40.19a Single petition for children of same parent**

(a) If a petitioner simultaneously files petitions seeking the same relief for two or more minors having the same parents in any of the following types of matters, the court may treat the petitions as a single petition subject to one filing fee:

- (1) temporary custody;
- (2) removal of guardian;
- (3) termination of parental rights;
- (4) appointment of guardian or coguardian;
- (5) appointment of statutory parent;
- (6) adoption;
- (7) temporary guardianship;
- (8) emancipation; or
- (9) paternity.

(b) The court may charge a separate filing fee for a petition under subsection (a) if the court determines that it is necessary to hear the petitions separately.

#### **Section 40.21 Notice of termination of temporary guardianship**

If the court receives a written notice, from the appointing parent, to terminate a temporary guardianship under C.G.S. section 45a-622 before the temporary guardianship expires, the court shall notify each party and attorney of record that the notice has been received.

#### **Section 40.22 Duties of ~~probate court officer~~ family specialist**

In a proceeding in A Regional Children's Probate Court, the ~~or Probate C~~ourt may assign a ~~probate court officer~~ family specialist to perform any of the following duties:

- (1) conduct conferences with the parties and their attorneys, representatives of the Department of Children and Families and social service providers;

- (2) facilitate development of the family's plan for the care of the minor;
- (3) facilitate development of a visitation plan;
- (4) coordinate with the Department of Children and Families to facilitate a thorough review of the matter;
- (5) assess whether the family's plan for the care of the minor is in the minor's best interests;
- (6) assist the family in engaging community services;
- (7) testify at hearings; and
- (8) conduct follow-up regarding orders of the court.

#### **Section 404.23 Files and reports of ~~probate court officer~~ family specialist**

(a) A ~~probate court officer~~ family specialist shall maintain all notes, correspondence, reports and other materials gathered or created in the scope of the ~~officer's~~ specialist's duties in a file separate from the court file. Except as provided in subsection (c), the court shall not review materials in the ~~officer's~~ file unless admitted into evidence.

(b) Except as provided in C.G.S. section 45a-754, all materials in the ~~officer's~~ specialist's file in a proceeding for removal of parent as guardian, termination of parental rights, appointment of statutory parent, adoption, temporary guardianship or emancipation of a minor are confidential and not open to public inspection and shall not be disclosed to any person.

(c) Before any scheduled hearing on a matter, the ~~officer~~ specialist shall file with the court a copy of each report prepared by the ~~officer~~ specialist in the matter under C.G.S. section 45a-8d.

#### **Section 41.1 Duty to notify courts**

Upon becoming aware that there are existing orders or pending matters in both the Probate Court and the Family Court concerning the same minor, a party shall immediately notify each court in which the matter is currently pending.

#### **Section 41.2 Guardianship or termination of parental rights matter in Probate Court when Family Court has issued order or has pending matter concerning same minor**

Except as provided in section 41.4, the Probate Court may, notwithstanding an existing Family Court order or pending matter concerning custody of the same minor, hear and decide any of the follow petitions concerning the minor:

- (1) removal of a parent or other person as guardian;
- (2) appointment of a guardian, co-guardian or permanent guardian; or
- (3) termination of parental rights.

#### **Section 41.3 Visitation matter in Probate Court when Family Court has issued order or has pending matter concerning the same minor**

(a) Except as provided in subsections (b) and (c) and in section 41.4, the Probate Court may hear and decide a petition under C.G.S. section 45a-612 for visitation of a minor notwithstanding an existing Family Court order or pending matter concerning the custody or visitation of the same minor.

(b) The Probate Court shall dismiss a person's petition for visitation if there is a pending Family Court visitation matter that:

- (1) concerns an existing Family Court order for visitation by the same person;
- (2) was commenced under C.G.S. section 46b-59; or
- (3) was commenced by a person who lacks standing to seek visitation in the Probate Court.

(c) The Probate Court shall not order visitation that is in conflict with a currently effective Family Court visitation order.

#### **Section 41.4 When Probate Court may defer action**

The Probate Court may defer action on a petition for removal of a parent or other person as guardian, appointment of a guardian, co-guardian or permanent guardian, or termination of parental rights concerning a minor if the Probate Court determines that:

- (1) a pending petition in Family Court concerning the minor seeks relief that is not available in the Probate Court;
- (2) the pending petitions in the Probate Court and the Family Court seek conflicting relief concerning the same minor;
- (3) the Family Court has relevant information or evidence at its disposal that is not readily available to the Probate Court; or
- (4) the petition is frivolous or was filed for the purpose of forum shopping or delaying action in another court.

#### **Section 41.5 Communication between Probate Court and Family Court**

(a) On notification that there are existing order or pending matters concerning a minor in both the Family Court and the Probate Court, the judges of the courts may communicate to determine how each court will proceed. Except as provided in subsection (b), the courts shall arrange for an audio recording or for a court reporter to make a stenographic record of communication. Subject to the law governing the confidentiality of Probate Court proceedings concerning minors, the courts may allow the parties to participate in the communication and, on payment of applicable charges, to obtain a copy of an audio recording or transcript of the communication.

(b) The courts may communication on scheduling, calendars, court records and other administrative issues without making a record and without informing the parties of the communication.

#### **Section 42.1 Prior pending matter in ~~Superior Juvenile Court~~**

If a matter concerning a minor is pending in ~~the Superior Juvenile Court for Juvenile Matters~~ before a petition is filed in a Probate Court concerning the same minor, the Probate Court shall dismiss the petition.

#### **Section 42.2 Petition in ~~Superior Juvenile Court~~ when prior matter pending in Probate Court**

(a) If a matter concerning a minor is pending in a Probate Court before the filing of a petition in ~~the Superior Juvenile Court for Juvenile Matters~~ concerning the same minor, the commissioner of children and families and any party having knowledge of the pending matters shall immediately notify the ~~Superior Juvenile~~ Court and the Probate Court that the matter is pending in both courts.

(b) On notification that the ~~Superior Juvenile~~ Court has a pending matter concerning a ~~child minor~~ for whom there was a prior pending matter in a Probate Court, the judges of the ~~Superior Juvenile~~ Court and Probate Court shall communicate to determine which court should proceed and which court should dismiss the matter. The courts may allow the parties to participate in the communication.

(c) The ~~Superior Juvenile~~ Court and the Probate Court shall make an audio recording or arrange for a court reporter to make a stenographic record of a communication made under subsection (b). The parties shall be promptly informed of the communication and granted access to the audio recording or transcript.

(d) The courts may communicate on scheduling, calendars, court records and other administrative issues without making a record and without informing the parties of the communication.



### **Section 42.3 Petition in ~~Superior Juvenile~~ Court when Probate Court grants custody or guardianship to commissioner of children and families**

If a Probate Court appoints the commissioner of children and families as temporary custodian or guardian of the person of a minor, the commissioner shall immediately file a petition under C.G.S. section 46b-129 in ~~the Superior Juvenile~~ Court ~~for Juvenile Matters~~ and notify the Probate Court of the filing. The ~~Superior Juvenile~~ Court shall assume jurisdiction. The Probate Court shall defer further action and dismiss the matter on issuance of a ~~Superior Juvenile~~ Court order regarding custody of the minor.

### **Section 42.4 Emergency action by the commissioner of children and families when prior matter pending in Probate Court**

(a) If the commissioner of children and families determines that exigent circumstances necessitate a 96-hour hold or a motion for an order of temporary custody in ~~the Superior Juvenile~~ Court ~~for Juvenile Matters~~ for a minor for whom a matter is pending in a Probate Court, the commissioner shall immediately notify the Probate Court of the commissioner's action and report to the Probate Court the outcome of the temporary custody hearing in ~~the Superior Juvenile~~ Court under C.G.S. section 46b-129.

(b) If the ~~Superior Juvenile~~ Court grants the motion for an order of temporary custody under subsection (a), the Probate Court shall dismiss the matter.

### **Section 42.5 Safety and service agreement**

(a) If the Probate Court becomes aware that a family member has entered into a safety and service agreement with the commissioner of children and families for a minor for whom the court has a pending matter, the court shall contact a social worker or supervisor in the Department of Children and Families to determine whether the commissioner intends to file a petition regarding the minor in ~~the Superior Juvenile~~ Court ~~for Juvenile Matters~~.

(b) If the commissioner indicates that the commissioner does not plan to file a petition regarding the minor in ~~the Superior Juvenile~~ Court, the Probate Court shall proceed to hear and decide the matter.

(c) If the commissioner indicates that the commissioner plans to file a petition in ~~the Superior Juvenile~~ Court, the commissioner shall file the petition not later than eight days after informing the Probate Court of the intended action and notify the Probate Court of the filing. The Probate Court may hear and decide a pending petition for temporary custody before receipt of notification that the petition has been filed in ~~the Superior Juvenile~~ Court. On receipt of notification that the petition has been filed in ~~the Superior Juvenile~~ Court, the Probate Court shall defer further action and dismiss the matter on issuance of a ~~Superior Juvenile~~ Court order regarding custody of the minor.

(d) If the commissioner fails to file a petition within eight days of informing the Probate Court of the intention to file, the Probate Court shall proceed to hear and decide the matter.