

**Practice Book Advisory Committee  
Subcommittee I**

Meeting Minutes  
Tuesday, February 7, 2012  
3:00 p.m.

Office of the Probate Court Administrator  
186 Newington Road  
West Hartford, CT 06110

Attorney Bonnie Bennet convened the meeting at 3:10 p.m.

Other members in attendance: Attorney Molly Ackerly, Attorney Douglas Brown  
Attorney Paul Hudon, Attorney Karen Gano, Attorney Greta Solomon, Judge  
Beverly Streit-Kefalas, Ms. Sondra Waterman

Members absent: Hon. Steven Zelman, Chair

Also in attendance: Attorney David Biklen, Reporter

**Minutes of the January 10, 2012 meeting**

The minutes were amended to reflect the committee's discussion to exclude only conservatorship proceedings under C.G.S. §45a-650 from the application of the proposed rule on the failure to deliver notice expressed in Notice, Item 17b, on page 2 of the minutes. The minutes of the January 10, 2012 meeting, as amended, were unanimously approved.

**Review of outstanding issues included in the minutes from January 10, 2012 meeting:**

The committee reviewed the scribe's notes in the minutes from January 10, 2012 and made the following recommendations:

*Disqualification of Judge, Item 3*

The concept for the rule concerning disqualification of a judge in the event that a party files a lawsuit or complaint with the Council on Probate Judicial Conduct suggests that disclosure of the lawsuit or filing of such complaint is required to the parties and attorneys. In drafting the proposed rule it should be made clear that no disclosure is necessary if the judge decides to recuse himself or herself from the matter.

*Public Access to Records, Item 4b, 5b and 5c*

Given the proposed rule regarding the court's inherent power to manage the courtroom, it was decided the rule governing motions to close a hearing and seal records should provide only for motions by a party, not by the court.

*Public Access to Records, Item 4c and 5d.*

While the committee decided that notice of the time, date and place of hearing on a motion to close hearing or seal file shall be posted in a location in or adjacent to the clerk's office and accessible to the public as stated in Item 3.e., the committee determined that until internet access was available to look up all non-confidential probate cases, orders on the motion to close a hearing or seal a file would be included in the court file. No further posting would be required.

*Public Access to Records: use of pseudonyms*

The committee discussed the fact that CPB Rule 11-20A addresses the use of pseudonyms in the section concerning the sealing of records. Rules should include the use of pseudonyms in the section for sealing of files similar to CPB Rule 11-20A(h) - at the end of Item 5 in the minutes.

*Transfer of Files between Probate Courts, Item 1.*

Where statutes provide that the transfer of a probate file to another court is discretionary, a rule should provide that the streamline procedure is available.

*Change of Name, Item 3*

The committee determined that no changes were needed to Item 3 which states that the application shall be accompanied by an affidavit containing information as required by the court.

**Discussion of draft rules**

The committee began its review of draft rules prepared by Attorney David Biklen designated "2-1-2012 draftBiklen". General topics of discussion are included below and the draft rules containing recommendations made by members of committee at the meeting are attached to these minutes.

*Scope of Rules:*

*Preamble.* A preamble was not included in the initial draft rules. Attorney Biklen will draft a preamble as described in the proposed concepts for Scope of Rules, Item 1, for consideration by the committee at the March meeting.

Item 2 of the concepts was also not included in the draft rules. This concept states that the rules are intended to apply where procedures are not otherwise covered by statute. While the omission was noted, no decision was made whether to include this concept in a draft rule. Further discussion is needed at the March meeting.

The committee voted to change the order of the draft rules. Rule 2, Scope of Rules, will be placed prior to Rule 1.2 Definitions.

### Rule 1.2. Definitions

The committee made suggested changes to the definition of “clerk”, “fiduciary”, and “party” as noted in the revised draft rules.

### Rule 3. Probate Clerk, Files and Records

3.1. Duties of clerk. The committee added a requirement that the clerk record the date the order or decree was mailed. It was suggested that a form be created for this purpose.

3.2. Probate court record. The committee decided it would be helpful to have a rule which distinguished between a court file in a pending matter and permanent court records. Suggested wording was discussed and will be drafted by Attorney Biklen for consideration at the March meeting.

3.3-3.6. Changes in wording were suggested.

### Rule 4. Party

Changes in wording were suggested.

### **Next meeting**

Our next meeting will be held on Tuesday, March 6, 2012 at 3:00 p.m. at the Office of the Probate Court Administrator, 186 Newington Road, West Hartford, CT.

The meeting was adjourned at 6:20 p.m.

Approved March 6, 2012

**State of Connecticut**  
**Probate Practice Book**

**[Preamble]**

**General Provisions**

**Rule 1 Citation and Applicability of Rules.**

**Sec. 1.1 Citation of rules.** These rules shall be known as the Connecticut Probate Practice Book, and may be cited as C.P.P.B.

**Sec. 1.2 Applicability.** These rules govern practice and procedure in the Connecticut probate courts and are mandatory in the courts. The rules do not apply to appeals from probate in the Superior Court, matters transferred from a probate court to the Superior Court or any other probate matter in the Superior Court.

*(C.G.S. § 45a-78)*

**Sec. 1.3 Rules to be liberally interpreted.** The purpose of these rules is to facilitate the efficient conduct of business in the probate courts and to advance justice. The rules shall be liberally interpreted if a strict adherence will cause injustice.

## **Rule 2 Definitions.**

**Sec. 2.1 Definitions.** In these rules:

(1) “Account” means a document by which a fiduciary provides detailed information about the management of an estate. An account must meet the requirements of Rule 36.

(2) “Beneficiary of a decedent’s estate” means a person, fiduciary, or organization that is or may be entitled to a bequest or devise under a will.

(3) “Clerk” means clerk of the court and includes chief clerk, deputy clerk, and assistant clerk.

(4) “Corporate fiduciary” means a bank, trust company, or other corporation or business entity authorized to act as a fiduciary in this state.

(5) “Corporate surety” means a corporation or other business entity authorized to enter into contracts of suretyship for probate bonds in this state.

(6) “Court” means a probate court.

(7) “Court file” means the file in a matter in the court that contains documents filed in or generated by the court in the matter.

(8) “Estate” means a decedent’s estate, trust, conservatorship estate, guardianship estate, or other structure under which a fiduciary has a duty to manage assets held for the benefit of one or more persons or organizations.

(9) “Fiduciary” means an individual or entity serving as an administrator, executor, conservator of the estate, conservator of the person, guardian of an adult with intellectual disability, guardian of the estate of a minor, guardian of the person of a minor, temporary custodian of the person of a minor, trustee, or an individual or entity serving in any other role that the court determines is fiduciary in nature.

(10) “Financial report” means a simplified form of accounting by which a fiduciary provides summary information about the management of an estate. A financial report must meet the requirements of Rule 35.

(11) “Heir” means a person who would take any portion of the estate of a decedent if the decedent died intestate.

(12) “Party” means an individual or entity having a legal or financial interest in a proceeding before the court and any other individual or entity that the court determines to be a party in accordance with the law.

(13) “Personal surety” means a person who does not meet the requirements to be a corporate surety.

(14) “Probate bond” has the meaning set forth in C.G.S § 45a-139.

(15) “Probate court administrator” means the individual holding the office of the probate court administrator of this state.

(16) Insert additional definitions as needed.....

## **Rule 3 Probate Clerk. Files and Records.**

### **Sec. 3.1 Duties of clerk.**

(a) A clerk shall:

- (1) receive files, papers and documents filed with the court;
- (2) make and maintain records of all proceedings of the court;
- (3) have custody of and maintain court files and records of the court, including files and records of any former court in the probate district;
- (4) schedule hearing dates;
- (5) bill and collect fees payable to the court; and
- (6) perform all other duties as directed by the judge or required by law.

(b) A clerk shall give notice of each decision, order, decree, denial and any other ruling of the court to each party and counsel of record. The clerk shall record on the court file the date the notice was mailed.

*(C.G.S. §§ 45a-186, 51-53)*

**Sec. 3.2 Uniform numbering system for court file.** The court shall use a uniform numbering system prescribed by the probate court administrator to identify each court file.

**Sec. 3.3 Probate court is court of record. Rulings to be in writing.** The probate court is a court of record. A decision, order, decree, denial or other ruling of the court shall be in writing. The court shall memorialize any oral ruling in writing.

**Sec. 3.4 Custody of record.** A clerk shall not permit a court file, record, transcript, exhibit or other document in a file to be taken from the court or court office without the judge's authorization.

**Sec. 3.5 Lost document.** Except for a writing purporting to be a will or codicil, if a document in the court file is mislaid, lost, or destroyed, a clerk may permit a sworn copy to be substituted. The clerk shall certify on a document if it is a copy.

**Sec. 3.7 Permanent record of the court.** Documents listed in P.C.R. Sections 10 and 12 are the permanent record of a matter in the court.

## **Rule 4 Party.**

### **Sec. 4.1 Party.**

(a) Except as otherwise permitted by the court, only a party may participate in a proceeding before the court. The listing of a person on an order of notice of the court does not, of itself, make the person a party.

(b) Except for a matter that is confidential, a person not a party may attend a court hearing and may request special notice of a hearing.

*(C.G.S§ 45a-127)*