

**Practice Book Advisory Committee  
Subcommittee I**

Meeting Minutes  
Tuesday, May 8, 2012  
3:00 p.m.

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

Judge Steven Zelman, Chair of Subcommittee I, convened the meeting at 3:10 p.m.

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

Members absent: Attorney Karen Gano

Also in attendance: Attorney David Biklen, Reporter

**Minutes of the April 3, 2012 meeting**

The minutes of the April 3, 2012 meeting were unanimously approved.

**Discussion of Draft Rules:**

**Rule 14 Referral to Probate Magistrates and Probate Attorney Referees**

In addition to several suggestions in wording that have been incorporated in the rules attached to these minutes, the committee made the following substantive changes to the draft rule:

*14.4 Objection to report or amendment to report of probate magistrate or attorney probate referee.* The committee added a requirement that the party filing the objection to a report or amendment with the court also send copies of the objection to each party and attorney of record. The committee also recommended adding a general rule that wherever the rules require that a party send a document to each party and attorney of record, the party must certify to the court that copies have been sent.

*14.6 Hearing on objection or amendment to report of probate magistrate or attorney probate referee; Hearing on court's own motion.* The committee eliminated the requirement that an objecting party file a transcript of the portion of recording of the hearing before the magistrate or referee pertaining to the

objection raised. Section 14.6(b) of the proposed rule now provides that a court may require a transcription of the audio recording of the proceeding, or portion of the proceeding before the magistrate or referee. This provision follows the statement that the court shall consider no evidence or testimony on the objection other than the evidence submitted at or testimony given at the hearing before the magistrate or referee.

*Section 14.7 Court decision on the report.* The committee wanted to clarify that, in the event that an objection had not been filed within 21 days of the filing of the report of a magistrate or attorney probate referee as required in Section 14.4, within 30 days thereafter, the court may dispense with notice of hearing and issue its decree approving the report.

### **Rule 15 Disqualification of judge**

In addition to several suggestions in wording which have been incorporated in the rules attached to these minutes, the committee made the following substantive changes to the draft rule:

*Section 15.3 Motion for disqualification of judge.* A new section (a) was added to state that a party seeking disqualification of a judge shall file a motion with the court.

*Section 15.5 Disqualification of judge against whom lawsuit or complaint filed.* The proposed rule currently states that if a judge discloses that a complaint against the judge has been filed with the council on probate judicial conduct, the disclosure is not a waiver of confidentiality of the proceedings before the council. The committee discussed a suggestion made at the March Judges Institute that the rule further state that, if so disclosed, the parties may not disclose the existence of the complaint. The committee determined it was unable to constrain or require other parties to maintain confidentiality in the rules of the probate court.

### **Rule 16 Public access to proceedings and records**

In addition to several suggestions in wording which have been incorporated in the rules attached to these minutes, the committee made the following substantive changes to the draft rule:

*Section 16.2 Confidential proceedings and records in general.* The committee added subsection(c) to allow a court to redact or seal a name or location of a party if the court determines that it is necessary to protect the personal safety of a party.

*Section 16.8 Hearing on motion to close hearing or seal record.* At its January 10, 2012 meeting, the committee discussed means of providing notice of the

time, date and place of hearing on the motion to close a hearing or seal a record. It was determined that until there was a case look-up option on the website for the probate court system, notice of a motion to seal a record or close a hearing should be posted in a location in or adjacent to the office of the clerk and accessible to the public. At the March Judges Institute, it was suggested that the committee consider newspaper notice or other locations in the town accessible to the public.

After a full discussion of the issue generally and newspaper notice in particular, the committee decided to add language giving the court discretion to provide such other notice as it may direct. It was suggested that newspaper notice would result in greater notice and publicity for these cases than other matters. The rule would allow, however, for newspaper notice in discretion of the judge in particular cases. The committee again expressed interest in posting notice of the motion to seal record or close hearing on the website for the probate courts system, similar to the notice on the judicial website for superior court cases, at such time as case look up is available.

*Section 16.9 Order to close hearing or seal record in non-confidential matters*  
Section 16.9(b) provides that an agreement by the parties to close a hearing or seal a record is not a sufficient basis to order closure of the hearing or sealing of the record. At the March Judges Institute a question was raised whether a confidentiality agreement should be addressed in this rule. The committee concluded that no changes to the proposed rule were necessary inasmuch as the court must apply the test under 16.9(a) whether or not there is a confidentiality agreement by the parties.

### **Rule 17 Confidentiality of social security numbers**

In addition to suggestions in wording which have been incorporated in the rules attached to these minutes, the committee discussed the following:

A question was raised regarding the social security numbers found on a death certificate filed in court. It was determined that this concern is addressed in Section 17.4, which provides that the original document containing the social security number could be sealed, and a copy with the number redacted could be placed in the court file.

### **Review of Drafts of Rules from prior meetings**

The committee reviewed the drafts of proposed rules from prior meetings, considering the feedback given by the judges, court staff, and the full Practice Book Advisory Committee.

## **Rule 2: Definitions**

*“Party”* Both the full committee and the judges requested clarification regarding the use and meaning of the term “party” as distinguished from the term “interested party”. While the rules will only use the term “party”, it was suggested that the following sentence be added to the definition of “party”: In these rules, the term “interested party” ,when used in the general statutes, means party.

*“Permanent record”* . Rule 3.6 contains a definition of permanent record. Since the term permanent record is used in several rules, it was agreed to add a definition of permanent record as follows: “Permanent record” means a document recorded under P.C.R. section 10.3 and required to be retained under P.C.R. Section 10.9. There was further discussion whether the rule restated the provisions of the probate court regulations. It was determined that the reference to regulation, as with a statute, is sufficient.

## **Rule 3 Probate Clerks, Files and Records.**

As noted above in Rule 2, Section 3.6 was deleted and the term “permanent record” was added as a definition. The term record was replaced by the term “permanent record” in several sections of Rule 3. Reference to Rule 8.13(b), concerning the certification by the clerk of the date a decree was mailed was added to subsection(b) of Section 3.1 Duties of the Clerk. Other suggested changes in wording have been incorporated into the draft rules attached to these minutes.

## **Rule 4 Parties.**

The committee has been wrestling with the concepts in Section 5.2, Appearance of Legal Representative of a Party in Rule 5. The Probate Practice Book Advisory Committee also asked for further clarification of section 5.2. After further thought, it was decided that the section was misplaced. The issue is who is a party, or which legal representatives may stand in the shoes of a party, not who may appear to advocate on behalf of a party. To resolve this issue, a new section will be added to Rule 4, Section 4.2 which lists the legal representatives who are deemed to be a party. Section 5.2(a) will be deleted. The proposed section 4. is found in the attached minutes.

## **Rule 5 Appearance.**

As noted above under Rule 4, Section 5.2(a) is deleted. Section 5.2(b) will now appear as Section 5.1, *Who may appear before the court*, as section 5.1(c) as follows: Nothing in this rule shall prevent a fiduciary, except a corporate fiduciary, from appearing in court without an attorney.

**Rule 6. Probate Fees.** Court staff requested clarification of the rule regarding fees for multiple applications in a matter. In response to their feedback, subsection 6.1(b) of Section 6.1 Entry fee, when payable now reads: If another petitioner files a competing application, petition, or motion under 6.1(a), an entry fee shall be charged only for the first application, petition, or motion that commences the matter.

### **Next meeting**

Our next meeting will be held on Tuesday, June 5, 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 6:05 p.m.

**Revised drafts of the rules incorporating the above-referenced changes and miscellaneous edits are attached to these minutes.**

Approved June 5, 2012

# State of Connecticut Probate Practice Book

## Rule 2 Definitions

### Section 2.1 Definitions

In these rules:

- () “Account” means a document by which a fiduciary provides detailed information about the management of an estate.
- () “Adoption” has the meaning in C.G.S. §45a-707. [May not be needed]
- () “Beneficiary of a decedent’s estate” means an individual, fiduciary or entity that is or may be entitled to a bequest or devise under a will.
- () “C.G.S” means the Connecticut General Statutes.
- () “Child-placing agency” has the meaning in C.G.S. section 45a-707.
- () “Clerk” means a chief clerk, deputy clerk or assistant clerk of the court.
- () “Corporate fiduciary” means a bank, trust company, or other corporation or business entity authorized to act as a fiduciary in this state.
- () “Corporate surety” means a corporation or other business entity authorized to enter into contracts of suretyship for probate bonds in this state.
- () “Court” means a probate court.
- () “Court file” means a file maintained by the court that contains documents filed in or generated by the court in a matter.
- () “Contingent remainder beneficiary” means a trust beneficiary who would be a presumptive remainder beneficiary on the date the beneficiary’s interest is determined if the interest of another presumptive remainder beneficiary terminated because a condition specified in the will or other governing instrument is not met.
- () “Current beneficiary” means a trust beneficiary who, on the date the beneficiary’s interest is determined, is a distributee or permissible distributee of trust income or principal.

() “Decree” means a written decision, order, grant, denial, opinion or other ruling of the court.

() “DRS” means the state of Connecticut Department of Revenue Services.

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

() “Father” has the meaning in C.G.S. section 45a-604. [May not be needed]

() “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.

() “Financial report” means a simplified form of accounting by which a fiduciary provides summary information about the management of an estate.

() “Guardian” has the meaning in C.G.S. section 45a-604.

() “Guardianship” has the meaning in C.G.S. section 45a-604. [May not be needed]

() “Heir” means an individual who would take any share of the estate of a decedent who died intestate.

() “Intestate” means having died without a valid will.

() “Minor” has the meaning in C.G.S. section 45a-604.

() “Mother” has the meaning in C.G.S. section 45a-604. [May not be needed]

() “News media coverage” means the broadcasting, televising, recording or photographing by news media of a probate court proceeding.

() “Nontaxable estate” means the estate of a decedent whose Connecticut taxable estate is less than or equal to the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.

() “Parent” has the meaning in C.G.S. section 45a-604. [May not be needed]

() “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 these rules, the term “interested party,” when used in the general statutes, means party.

- “P.C.R.” means the probate court regulations of this state. (Is this necessary?)
- “Permanent record” means a document recorded under P.C.R. section 10.3 and required to be retained under P.C.R section 10.9.
- “Personal surety” means a surety that does not meet the requirements to be a corporate surety.
- “Petition” includes an application or (motion) that commences a matter in the court.
- “Presumptive remainder beneficiary” means a trust beneficiary who would be a distributee or permissible distributee of trust income or principal on the date the beneficiary’s interest is determined if:
  - (A) the trust terminated on such date; or
  - (B) the interests of the current beneficiaries terminated on such date without causing the trust to terminate.
- “Probate bond” has the meaning set forth in C.G.S § 45a-139.
- “Probate court administrator” means the individual holding the office of the probate court administrator of this state.
- “Purported will” means, before admission to probate, an instrument purporting to be the last will and testament of a decedent and any codicil thereto.
- “Relative” has the meaning in C.G.S. §45a-707.
- “Statutory parent” has the meaning in C.G.S. §45a-707.
- “Structured settlement” means an arrangement under which a claimant accepts deferred payment of some or all of the proceeds of the settlement of a disputed or doubtful claim.
- “Taxable estate” means the estate of a decedent whose Connecticut taxable estate exceeds the amount that is exempt from the Connecticut estate tax under C.G.S. section 12-391.
- “Termination of parental rights” has the meaning in C.G.S. §45a-604. [May not be needed]
- “Testate” means having died leaving a valid will.
- “Trust beneficiary” means an individual or entity that has a present or future beneficial interest in a trust, whether vested or contingent.

() “Trust protector” means an individual or entity identified in a will or other governing instrument, charged with protecting the interests of a trust beneficiary, and identified as a trust protector, trust advisor, or beneficiary surrogate, or as an individual or entity in an equivalent role.

“Will” means an instrument that a court has determined to be the last will and testament of a decedent and any codicil thereto.

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

## **Clerks, Files and Records**

### **Section 3.1 Duties of clerk**

(a) A clerk shall:

- (1) receive papers and documents filed with the court and court files transferred from other courts;
- (2) make and maintain a record of each proceeding;
- (3) have custody of and maintain court files and permanent records of the court and any former court merged into the probate district;
- (4) schedule and provide notice of hearings;
- (5) bill and collect probate fees; and
- (6) perform all other duties as directed by the judge or required by law.

(b) The clerk shall send copies of each decree to each party and attorney of record. The clerk shall record the date the notice was mailed in accordance with section 8.13(b).

*(C.G.S. sections 45a-186 and 51-53)*

### **Section 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.

### **Section 3.3 Probate court is court of record; decrees to be in writing**

- (a) The probate court is a court of record.
- (b) Decrees shall be in writing. The court shall memorialize each oral ruling in writing.

### **Section 3.4 Safekeeping of record**

A clerk shall not permit a court file or permanent record to be taken from the court without the judge's authorization.

### **Section 3.5 Lost document**

Except for a purported will or will, if a document in the court file is mislaid, lost or destroyed, a party may substitute a copy if the clerk is satisfied that it is an accurate and complete copy of the original. The clerk shall make a notation on the substitute document that it is a copy.

## **Rule 4 Parties**

### **Section 4.1 Parties**

- (a) Except as otherwise permitted by the court, only a party may participate in a proceeding before the court.
- (b) Except for a matter that is confidential, an individual not a party may attend a court hearing.
- (c) An individual not a party may request special notice of a hearing.
- (d) The listing of an individual or entity on an order of notice does not make the individual or entity a party.

*(C.G.S section 45a-127)*

### **Section 4.2 Fiduciary as party**

- (a) A conservator is a party in a probate proceeding in which the conserved person has an interest if the subject of the proceeding is within the scope of the conservator's authority.

(b) A guardian of the estate of a minor is a party in a probate proceeding affecting the estate of the minor.

(c) A trustee is a party in a probate proceeding in which the trust has an interest.

(d) An executor or administrator of an estate is a party in a probate proceeding in which the estate has an interest.

(e) A guardian ad litem is a party in a probate proceeding in which the represented individual has an interest if the subject of the proceeding is within the scope of the guardian ad litem's appointment; and

(f) The court may recognize any other fiduciary as a party in a probate proceeding if the court determines that the subject of the proceeding is within the scope of the fiduciary's duties and participation of the fiduciary is necessary to protect the interests of the individual for whom the fiduciary acts.

*(See C.G.S. sections 45a-487a through 45a-487d regarding virtual representation in trust matters)*

## **Rule 5**

### **Appearance**

#### **Section 5.1 Who may appear before court**

(a) A party who is an individual may represent himself or herself without an attorney and without filing an appearance.

(b) Except as provided in section 5.4, only an attorney who meets the requirements of section 5.2 or 5.3 may appear for a party. An attorney appearing on behalf of a party shall file an appearance, unless the attorney has been appointed by the court.

(c) Nothing in this rule shall prevent a fiduciary, except a corporate fiduciary, from appearing in court without an attorney.

*(C.G.S. section 51-88; State Bar v CBT, 145 Conn 222 (1958), 146 Conn 556 (1959))*

## **Section 5.2 Appearance of attorney**

Except as provided in section 5.3, only an attorney licensed to practice law in Connecticut may represent a party before the court.

## **Section 5.3 Out-of-state attorney appearing pro hac vice**

(a) The court, on special and infrequent occasion and for good cause shown, may grant an attorney in good standing at the bar of another state, the District of Columbia, or Puerto Rico, permission to appear pro hac vice for a party.

(b) An attorney of this state seeking permission for an out-of-state attorney to appear pro hac vice shall file a written application with the court having jurisdiction of the matter accompanied by an affidavit of the out-of-state attorney:

(1) certifying whether the out-of-state attorney has any disciplinary matter pending against the attorney in another jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning the discipline or resignation;

(2) designating the judge of the court as the agent of the out-of-state attorney for service of process;

(3) agreeing to register with the statewide grievance committee in accordance with the provisions of the Connecticut Practice Book while appearing in the matter in this state and for two years after completion of the matter and to notify the grievance committee of the expiration of the two-year period; and

(4) identifying the number of matters in which the out-of-state attorney has appeared pro hac vice in the court and superior court of this state since the attorney first appeared pro hac vice in this state.

(c) A member of the bar of this state must be present at all proceedings with the attorney appearing pro hac vice and must sign all documents filed with the court and assume full responsibility for them and for the conduct of the matter and of the attorney to whom the privilege of appearing pro hac vice has been accorded.

(d) Good cause, under section 5.3 (a), for according the privilege of appearing pro hac vice is limited to facts or circumstances affecting the personal or financial welfare of the client of the out-of-state attorney, not the attorney. The facts or circumstances may include a showing that by reason of a long-standing attorney-client relationship predating the matter before the court, the out-of-state attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the matter or that the client has been unable to secure the services of Connecticut attorney.

(e) If the court grants an application to appear pro hac vice, the court shall immediately notify the statewide grievance committee of the grant.

*(Connecticut Practice Book section 2-16)*

#### **Section 5.4 Legal intern**

(a) On the approval of the court, a legal intern, under the supervision by an attorney licensed to practice law in Connecticut, may appear in court on behalf of a party, if the party consents, in writing, to the appearance of the intern.

(b) A legal intern must:

(1) be a student at an accredited law school; and

(2) file with the court a certification by the dean of the student's law school as being a student in good standing.

(c) The attorney supervising a legal intern shall:

(1) assume personal professional responsibility for the work of the intern;

(2) assist in the intern's preparation to the extent the supervising attorney considers necessary; and

(3) be present in court with the intern.

(d) This section does not enlarge the rights of an individual, who is not an attorney meeting the requirements of section 5.2 or 5.3, or a legal intern covered by these rules, to engage in activities customarily considered to be the practice of law.

*(Connecticut Practice Book section 3-14 et seq.)*

### **Section 5.5 Filing appearance before court**

(a) Except as provided in section 5.1(b) or by leave of the court, an attorney may not appear for a party until the attorney has filed an appearance with the court.

(b) An appearance is entered on the filing with the court an appearance in accordance with section 5.6.

(c) Provided the requirements of section 5.2 or 5.3 have been satisfied, an attorney in the appearing attorney's law firm may appear for the party for whom the appearance is filed without a filing a separate appearance.

(d) An attorney shall send notice of the appearance to each attorney and each party who is not represented by an attorney. The attorney shall certify that the notice has been sent.

### **Section 5.6 Form of appearance**

(a) An appearance filed with a court shall:

- (1) be typed or printed in ink;
- (2) list in the heading the name of the matter, the name of the probate court district and date of the appearance;
- (3) be signed by the attorney making the appearance;
- (4) contain the name and juris number of the attorney, the name of the attorney's law firm, mailing address, and telephone number; and
- (5) indicate whether the appearance is filed in lieu of or in addition to an appearance already on file.

(b) If the appearance is in lieu of an appearance already on file, the attorney filing the new appearance shall send a copy of the new appearance to the attorney whose appearance is to be replaced and certify that the copy has been sent. The requirements of this subsection are in addition to the requirements of subsection (a).

### **Section 5.7 Effect of appearance**

(a) The court shall give notice of each hearing and right to request a hearing to each attorney who has filed an appearance and to each party represented by the attorney.

(b) Filing an appearance, by itself, does not waive the right of the party to challenge jurisdiction.

### **Section 5.8 Withdrawal of appearance**

(a) If permitted under section 1.16 of the rules of professional conduct, an attorney, except for a court-appointed attorney, may withdraw the attorney's appearance by:

(1) filing a notice of withdrawal, and

(2) sending the notice to each attorney and each party who is not represented by an attorney.

(b) Except for an appearance in lieu of an appearance on file under section 5.7(b) or written waiver of notice by the party represented, the notice of withdrawal shall be filed in court and sent to each attorney and party not represented by an attorney not later than three business days before the date of a hearing.

### **Section 5.9 Change of name, composition or association of law firm**

An attorney who has entered an appearance shall notify the court of a change of name, composition, association, address, or telephone number of the firm.

## **Rule 6 Probate Fees**

### **Section 6.1 Entry fee, when payable**

(a) Except as provided in C.G.S. sections 45a-111 and 45a-112, a petitioner filing an application, petition or motion in any proceeding shall submit to the court any statutory entry fee at the time of the filing. The application, petition or motion is not filed for purposes of commencing the matter until the required fee is paid.

(b) If another petitioner files a competing application, petition or motion under subsection (a), an entry fee shall be charged only for first application, petition or motion that commences the matter.

### **Section 6.2 Waiver of fees and costs**

(a) If the court finds that a petitioner will be deprived of the right to bring an application, petition or motion by reasons of indigence or that a petitioner is otherwise unable to pay fees and costs, the court may approve a waiver of probate fees and costs of service of process.

(b) A request for a waiver of fees and costs shall be filed with the underlying application, petition or motion. The petitioner shall submit, with the request for waiver, documents and information required by statute and the court to support the waiver request. A request for waiver of fees and costs may be submitted in any matter in the court's jurisdiction except for a decedent's estate.

(c) If waiver of fees and costs has been approved, the person who was granted the waiver shall:

(1) notify the court if there is a substantial change in the financial circumstances of the person granted the waiver; or

(2) if requested by the court, file an additional application for a waiver of fees.

*(See C.G.S. section 52-259b)*

### **Section 6.3 Withdrawal of matter**

If a petitioner withdraws the application, petition or motion after notice of hearing has been sent, the petitioner is not entitled to a refund of entry fees and costs. The petitioner shall pay for costs incurred before the withdrawal is filed.

### **Section 6.4 Payment of fees and costs before final decree issued**

Except as otherwise provided by statute or the court, the court shall not issue a decree on an account or final account in a decedent's estate until all probate fees and costs have been paid.

### **Section 6.5 Copy of decree with court seal**

The court shall provide, without cost, one copy of each decree bearing the seal of the court to each party and attorney.

## **Rule 14 Referral to probate magistrate and attorney probate referee**

### **Section 14.1 Reference and designation of probate magistrate or attorney probate referee**

(a) Except for a matter involving an involuntary conservatorship, involuntary commitment and temporary custody of a minor, the court, with the consent of the parties or their attorneys, may refer a pending application, petition, motion or issue in dispute to a probate magistrate or attorney probate referee.

(b) The court shall file with the probate court administrator a notice of reference under subsection (a) and request for assignment of a probate magistrate or attorney probate referee.

(c) If sufficient funds are available and the probate court administrator determines that assignment of a probate magistrate or an attorney probate referee is appropriate, the administrator shall designate a magistrate or referee, to hear and file a report on the application, petition, motion or issue referred and notify the referring court of the designation. Designation of a magistrate or referee shall be from among the panel of magistrates or referees appointed by the chief justice of the Supreme Court of Connecticut.

(d) The court shall notify each party and attorney of record of the designation of a probate magistrate or attorney probate referee under this section.

*(C.G.S. sections 45a-123 and 45a-123a)*

### **Section 14.2 Hearing before probate magistrate or attorney probate referee; recording**

(a) Unless a continuance is granted for cause, a probate magistrate or attorney probate referee shall hold an initial hearing not later than 21 days after the designation

under section 14(1)(c). The court shall send notice of the hearing in accordance with Rule 8.

(b) A probate magistrate or attorney probate referee shall have all powers and authority conferred on a judge in conducting a hearing, including, but not limited to, procuring attendance of witnesses, contempt powers, public access to the hearing and sealing of documents.

(c) A probate magistrate or attorney probate referee shall cause an audio recording to be made of a hearing held under this section. Unless otherwise agreed by the parties under C.G.S. section 51-72, the recording shall not constitute a hearing on the record.

(d) The court shall make a copy of the recording on the request of a party. The cost of the recording shall be paid by the party requesting the recording in accordance with C.G.S. section 45a- . (109?;see S.B. 248) If the court determines that the party is unable to pay for the recording, the expense of the recording shall be paid from the probate court administration fund.

*(C.G.S. sections 45a- and 51-72)*

### **Section 14.3 Report of probate magistrate or attorney probate referee**

(a) Not later than 60 days after conclusion of the hearing on the application, petition, motion or issue referred under section 14.1, the probate magistrate or attorney probate referee shall file a report with the referring court.

(b) The report under this section shall contain, in separate and consecutively numbered paragraphs, findings of fact and conclusions of law regarding the claims and arguments presented by the parties.

(c) Not later than two business days after the report is filed in court, the court shall send a copy of the report of the probate magistrate or attorney probate referee to each party and attorney of record.

*(C.G.S. sections 45a-123)*

### **Section 14.4 Objection to report or amendment to report of probate magistrate or attorney probate referee**

(a) Not later than 21 days after a report or an amendment to a report is filed in court under section 14.3 or 14.5, a party aggrieved by a finding of fact or conclusion of law may file an objection to the report or amendment with the court. The party shall send a copy of the objection to each party and attorney of record.

(b) An objection under this section shall:

(1) be in writing;

(2) specify the finding or conclusion of law to which the party is objecting; and

(3) specify the basis of the objection.

*(C.G.S. sections 45a-123)*

**Section 14.5 Amendment to report of probate magistrate or attorney probate referee**

(a) A probate magistrate or attorney probate referee may file an amendment to the report filed with the court at any time before the court accepts, modifies or rejects the report.

(b) Not later than two business days after an amendment is filed in court, the court shall send a copy of an amendment to the report to each party and attorney of record.

(c) A party aggrieved by a finding or conclusion contained in an amendment filed under this section may file a written objection in the manner described in section 14.4.

*(C.G.S. sections 45a-123)*

**Section 14.6 Hearing on objection or amendment to report of probate magistrate or attorney probate referee; hearing on court's own motion**

(a) If an objection has been filed to a report or amendment to a report of a probate magistrate or attorney probate referee under section 14.4 or upon the court's own motion, the court shall schedule a hearing on the report and any amendment to it at least 21 days after the report or amendment has been filed. The court shall send notice of the hearing in accordance with Rule 8.

(b) The court shall not consider evidence or testimony on the objection other than the evidence or testimony presented to the probate magistrate or attorney probate referee.

The court may require a transcription of the audio recording of the proceeding or a portion of the proceeding before the magistrate or referee.

(c) Unless the party files with the court an affidavit demonstrating the party's inability to pay for a transcript filed under subsection (b), the party filing an objection under subsection 14.4 shall pay for the transcript. If the court determines that the party is unable to pay for the transcript, the expense of the transcript shall be paid from the probate court administration fund.

*(C.G.S. sections 45a-123)*

#### **Section 14.7 Court decision on the report**

(a) Not later than 30 days after a hearing held by the court under section 14.6, the court shall issue a decree accepting, amending or rejecting the report of a probate magistrate or attorney probate referee.

(b) If no objection has been filed under section 14.4 within 21 days after the report or any amendment to the report has been filed, the court, not later than 30 days after the 21 day period, may dispense with notice of hearing and issue a decree accepting the report.

(c) The court may amend or reject the report and any amendment thereto, if the court finds:

(1) that a finding or conclusion in the report of the magistrate or referee was materially in error; or

(2) there is other sufficient reason not to accept the report.

(d) If the court rejects a report of a probate magistrate or attorney probate referee, the court may hear the application, petition, motion or issue referred or refer the matter to the probate court administrator for designation of another magistrate or referee under section 14.1.

(e) The court shall send a copy of the decree accepting, amending, or rejecting a report of a probate magistrate or attorney probate referee to each party and attorney of

record and to the magistrate or referee to whom the application, petition, motion or issue had been referred under this rule.

*(C.G.S. sections 45a-123)*

**Section 14.8 Deferral of court action pending action on report of probate magistrate or attorney probate referee**

If the court determines that the issue referred under this rule must be resolved before the court hears other applications, petitions, or motions in the matter from which the issue was referred, the court may defer a hearing on the matter until receipt of a report of the probate magistrate or attorney probate referee on the issue and action by the court on the report and any amendment to the report.

**Rule 15 Disqualification of judge**

**Section 15.1 Applicability**

Rule 15 concerning disqualification of a judge applies to judges, probate magistrates and attorney probate referees.

**Section 15.2 Disqualification of judge required**

A judge shall not act in a matter if the judge is disqualified pursuant to C.G.S. section 45a-22 or canon 3E of the code of probate judicial conduct.

*(C.G.S. section 45a-22)*

**Section 15.3 Motion for disqualification of judge.**

(a) A party may seek disqualification of a judge by filing a motion for disqualification. The motion shall be:

- (1) in writing;
- (2) accompanied by an affidavit setting forth the facts relied on to show the grounds for disqualification; and
- (3) filed with the court not less than three business days before a hearing in the matter for which disqualification is sought.

(b) In the interests of justice, the court may waive the requirements of subsection (a).

(c) The court shall act on and decide a motion for disqualification before proceeding on the merits of the underlying matter before the court.

#### **Section 15.4 Hearing and decision on motion for disqualification of judge**

(a) On receipt of a motion to be disqualified from hearing a matter, the judge shall:

(1) recuse himself or herself;

(2) conduct a hearing on the issue of disqualification; or

(3) ask the probate court administrator to cite another judge of probate, without recommending or suggesting the name of a judge, to hear and decide the issue of disqualification.

(b) The court shall issue a ruling, in writing, on a motion for disqualification of a judge. If the motion is denied, the ruling shall include findings of fact with respect to the allegations contained in the motion.

#### **Section 15.5 Disqualification of judge against whom lawsuit or complaint filed**

(a) A judge is not automatically disqualified from acting on a matter merely because an attorney or party in the matter before the judge has filed a lawsuit against the judge or filed a complaint about the judge with the council on probate judicial conduct.

(b) When a judge becomes aware of a lawsuit filed against the judge or of a complaint filed about the judge with the council on probate judicial conduct, the judge shall:

(1) recuse himself or herself; or

(2) advise each party and attorney of record of the complaint filed and:

(A) conduct a hearing on the issue of disqualification; or

(B) ask the probate court administrator to cite another judge of probate, without recommending or suggesting the name of a judge, to hear and decide the issue of disqualification.

(c) If a judge discloses under subsection (b)(2) that a complaint against the judge has been filed with the council on probate judicial conduct, the disclosure is not a waiver of confidentiality of the proceedings before the council.

### **Section 15.6 Waiver of disqualification**

Disqualification of a judge may be waived by the parties if:

- (1) the judge is not disqualified from acting under C.G.S. section 45a-22 or canon 3E of the code of probate judicial conduct;
- (2) the judge discloses in writing to each party and attorney of record the basis of disqualification;
- (3) after disclosure of the basis of disqualification, each party and attorney of record is afforded the opportunity to consider the matter of possible waiver of disqualification outside the presence of the judge;
- (4) all parties waive disqualification in writing; and
- (5) the waiver is made part of the record of the proceeding.

*(C.G.S. section 45a-22)*

**Sec. 15.7 Judge to act for disqualified judge.** If a judge is disqualified under this rule, the court shall ask the probate court administrator to cite another judge to act in the matter under C.G.S. section 45a-120 without a recommendation or suggestion of the judge.

*(C.G.S. section 45a-120)*

## **Rule 16 Public access to proceedings and records**

### **Section 16.1 Presumption of public access to probate court proceedings and records**

(a) In this rule, “record” means a permanent record defined in Rule 2 and a document filed in court or maintained in a court file or any part of the document or file.

(b) Except as otherwise provided by law or this rule or Rule 17, there is a presumption that members of the public have access to probate court proceedings and records.

(c) Notwithstanding the presumption of public access under subsection (b), the court has inherent power to manage the courtroom as necessary to ensure justice and expeditious disposition of matters before the court.

*(Rule 2.\_\_, permanent record)*

### **Section 16.2 Confidential proceedings and records in general**

(a) Except as otherwise ordered by the court, a member of the public, who is not a party, shall be denied access to a proceeding or record that is confidential under law or Rule 17.

(b) Except as provided in subsection (c), section 16.4 or Rule 17, a confidential proceeding or record is open and available to a party and attorney for the party.

(c) On request of a party, the court may redact or seal the name or location of a party, and information that would reveal the name or location of the party, if the court determines that redaction or sealing is necessary to protect the safety of the party.

(i) A request for redaction or sealing under subsection (c) and an affidavit of facts in support of the request shall be filed in the court before a document containing the name or location is filed.

(ii) The court, on motion of a party or on its own motion, may unseal the name or location of the party, if:

- (1) the grounds for sealing the information no longer exist; or
- (2) the order to seal the information was improvidently made.

(f) A party and attorney for the party having access to a confidential record or proceeding are responsible for preserving confidentiality of the record or proceedings.

(g) A person who is not a party or a witness may be present at a hearing concerning a confidential matter if permitted by law or if all parties consent, and the presence of the person is permitted by the court.

### **Section 16.3 Confidential records in children's matters**

Except as otherwise provided in section 16.2(c) or 16.4 or Rule 17, a confidential record related to termination of parental rights, removal of a parent as guardian,

appointment of a statutory parent, adoption matters, temporary guardianship and emancipation of a minor children's matter may be inspected by or disclosed to only the following:

- (1) a party in the matter and attorney for the party;
- (2) the department of children and families;
- (3) a licensed child-placing agency involved in the matter before the court;
- (4) a judge of a probate court or superior court or employee of the court who, in the performance of the duties of judge or employment, requires access to the record;
- (5) the office of the probate court administrator; and
- (6) a court of another state under the Uniform Child Custody Jurisdiction and Enforcement Act, C.G.S. sections 46b-115 through 46b-115gg.

*(C.G.S. sections 45a-754 and 46b-115 through 46b-115gg)*

#### **Section 16.4 Confidentiality and disclosure of adoption record**

Access to or disclosure of an adoption record shall be in accordance with C.G.S. sections 45a-743 through 45a-753.

*(C.G.S. sections 45a-743 through 45a-753)*

#### **Section 16.5 Confidentiality and disclosure of notes of probate judge**

Except by order of a court, the notes of a probate judge are confidential and shall not be disclosed to a party, attorney for a party or a member of the public.

#### **Section 16.6 Confidentiality and disclosure of social security numbers**

A social security number in court records is confidential and may be disclosed only in accordance with Rule 17.

#### **Section 16.7 Motion to close hearing and seal record**

(a) Proceedings and records that are not confidential by law or Rule 16 or 17 are open to the public unless a motion to close a hearing or seal a record has been filed and granted by the court.

(b) A party seeking to close a hearing shall file a motion for closure not later than three business days before the hearing on the matter.

(c) A party seeking to seal a record, including the use of a pseudonym, shall file a motion to seal before filing the record in court.

(d) Except as provided in section 16.9(e), a motion to close a hearing or to seal a record is a public record.

### **Section 16.8 Hearing on motion to close hearing or seal record**

(a) The court shall give notice under Rule 8 of the hearing on a motion to close a hearing or seal a record and shall post notice of the time, date, and place of the hearing in a location in or adjacent to the office of the clerk and accessible to the public and such other means as the court directs.

(b) The parties as the court determines under Rule 2.\_\_\_\_ (Definition of Party) may present argument concerning the public and private interests at issue.

### **Section 16.9 Order to close hearing or seal record in non-confidential matters**

(a) On the written motion of a party under 16.7 or on the court's own motion, and after hearing under section 16.8, the court may order all or a part of a hearing or all or a part of a record, be closed to members of the public if the court:

(1) has considered reasonable alternatives to an order to close a hearing or seal a record, including sequestration of witnesses or redaction or use of pseudonyms;

(2) concludes that closure of a hearing or sealing a record is necessary to preserve an interest that overrides the interest of the public in access to a hearing or record; and

(3) issues an order that is no broader than necessary to protect the overriding interest.

(b) An agreement by the parties to close a hearing or seal a record is not a sufficient basis to order closure of the hearing or sealing of the record.

(c) If the court issues an order to close a hearing or seal a record, the court shall:

(1) articulate the interest being protected that overrides the public interest in open court proceedings or access to court records;

(2) specify findings underlying the order;

(3) specify the alternatives to closure or sealing considered by the court and indicate why the alternatives considered were unavailable or inadequate;

(4) make an order no broader than necessary to protect the interest that overrides the public interest; and

(5) indicate the time, date, scope and duration of the order.

(d) Except as provided in subsection (e), an order to close a hearing or seal a record, including the date, scope and duration of the order, shall be public record.

(e) If a motion to close a hearing or seal a record is granted, the court may, in extraordinary circumstances, seal part of the motion and its order to close a hearing or seal a record.

*(Rule 29.2)*

### **Section 16.11 Order unsealing court record**

(a) The court, on motion of a party or on its own motion, may unseal a court record, if:

(1) the grounds for sealing the record no longer exist;

(2) the order to seal a record was improvidently made; or

(3) the interest protected in the order no longer outweighs the public interest in access to court records.

## **Rule 17 Confidentiality of social security numbers**

### **Section 17.1 Filing; redaction**

Except as required by law, or by order of the court, or as required on a form published by the probate court administrator, a person filing a document with the court shall not include a social security number or employer identification number and shall redact any such number from the document. The responsibility for omitting or redacting social security numbers and employer identification numbers rests solely with the person filing the document. The court or the clerk need not review any filed document for compliance with this rule.

### **Section 17.2 When social security number required**

(a) If a social security number or employer identification number is required in connection with a proceeding before the court, the number shall be reported on a separate page that contains the name of the individual or entity, the number and the matter in the court to which the number relates.

(b) The separate page containing the social security number or employer identification number shall:

(1) be confidential;

(2) not be disclosed by the court to any person, including any party, except that the court may disclose the number to a person the court finds requires the number for a proper purpose related to the proceeding before the court, and

(3) not be recorded in the permanent record of the court.

### **Section 17.3 When Social Security Numbers Not Required**

(a) If a person files a document that contains a social security number or employer identification number and the court determines that the number is not required for the proceeding, the court may direct the clerk to:

(1) return the document to the party that filed the document and direct that the document be resubmitted without the number; or

(2) redact the number.

(b) Nothing in this rule shall require a court to return a document that contains a social security number or employer identification number or to redact a number.

### **Section 17.4 Original documents**

If necessary to avoid modification of an original document, the court may order that an original document containing a social security number or employer identification number be sealed and that a copy of the document with the number redacted be placed in the court file.

### **Section 17.5 Disclosure to state and federal agencies**

This rule shall not prohibit the disclosure of a social security number or employer identification number to an agency of this state, the federal government, any law enforcement agency or to a representative of the agency or government acting in the representative's official capacity.