

**Probate Practice Book Advisory Committee  
Subcommittee III**

Meeting Minutes  
Monday August 1, 2011  
3:00 p.m.

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

Judge Michael Albis, Chair of Subcommittee III, convened the meeting at 3:05 p.m.

Other members in attendance: Ms. Suzette Farrar, Judge Gerald Fox, Attorney Gabriella Kiniry, Attorney Patricia Kaplan, Judge Robert Killian, Judge Paul Knierim, Attorney Andrew Knott and Mr. Stephen Pedneault, CPA.

Also in attendance: Attorney David Biklen, Committee Reporter

**Approval of Minutes of July 11, 2011 Meeting**

The minutes of the July 11, 2011 were approved unanimously.

**Discussion of concepts for rules**

**Fiduciary Accounting**

The committee resumed its discussion of fiduciary accounting from the prior meeting. Using the original list of issues and Mr. Pedneault's list of additional considerations to guide the discussion, the committee reached the following conclusions:

- 1. Interim accounts for decedents' estates.** The committee discussed the possibility of a default rule that an interim account would be required for a decedent's estate that has not been settled within three years from the appointment of the fiduciary. The topic was deferred until discussion of decedents' estate issues and might possibly be combined with a rule that would require an executor or administrator to file an annual status report for any estate that remains open for more than one year.
  
- 2. Records.** The committee decided at the July 11, 2011 meeting that a rule should require fiduciaries to maintain all original financial records so that the fiduciary's activities can be audited if a problem arises. Mr. Pedneault will prepare a list of specific records to be included in this rule.

**3. Fiduciary acquisition value.** The committee agreed to substitute the term “fiduciary acquisition value” for “book value” to avoid confusion with the accounting concept of cost basis. The definition from Proposed Rule 6 (2004) should be modified to specify that fiduciary acquisition value is determined as follows:

- a. the fiduciary acquisition value of an asset reported in the original inventory is: (i) for a decedent’s estate, the fair market value of the asset as of the date of death; (ii) for a conservatorship of the estate or guardianship of the estate of a minor, the fair market value of the asset as of the date of the appointment of the first fiduciary and (iii) for a trust, the cost basis of the asset for income tax purposes or such other basis for value as the court determines upon consideration of the nature of the trust and the manner in which it was funded;
- b. the fiduciary acquisition value of any asset that a fiduciary purchases during the course of administration is the purchase price of the asset; and
- c. the fiduciary acquisition value of an asset shall be adjusted by the amount of any change in the income tax basis of the asset during the course of administration (e.g., sale of a partial interest, taxable capital change in a security, capital improvement to real property and principal payments or receipts on a promissory note).

**[Scribe’s note: I’ve added a couple of technical points that we did not cover in our discussion but which the committee should consider before finalizing a definition.]**

**4. Simplified form of account.** Following extensive discussion, the committee determined that a simpler account format, to be known as a “report” or “financial report,” should be an available option for fiduciaries in all types of matters, including decedents’ estates (where the statement in lieu of account is already available pursuant to § 45a-176), conservatorships, guardianships, and trusts. A financial report for a conservatorship, guardianship or trust must contain the following:

- a. The aggregate value of trust property at the beginning of the reporting period as reported on the inventory or the most recent financial report or account;
- b. An itemized list of additional property received during the reporting period;
- c. The total amount of income received in each major category (e.g., interest, dividends, pension, social security, annuity payments, wages, rent);
- d. An itemized list of realized capital gains and losses;
- e. The total amount of administration expenses in each major category (e.g., fiduciary fees, attorney’s fees, accounting expenses,

investment expenses, taxes, real property maintenance activities, probate court fees);

- f. The total amounts of distributions to or for the benefit of each beneficiary in each major category (e.g., groceries, medical expenses, clothing, rent, utilities, automobile expenses, insurance, spending money, tuition);
- g. An itemized list of assets on hand with current fair market values as of the end of the reporting period, provided that hard to value assets such as real property may be reported at fiduciary acquisition values; and
- h. If a final account, a proposed distribution and any proposed reserve.

A financial report differs from a traditional account (which we will refer to as an “account”) in the following ways:

- a. Principal and income need not be accounted separately
- b. Assets need not be tracked at fiduciary acquisition value and can instead be reported at market value
- c. Transactions can be grouped into categories rather than individually itemized
- d. An exact reconciliation of assets is not required

**[Scribe’s note: Here again, some technical additions to fill in details from our discussion.]**

#### **5. Power of court to require an account.**

- a. A court may, on the petition of an interested party or on its own motion, require a fiduciary to submit an account rather than a financial report. A court shall require a fiduciary to submit an account if it determines that principal and income must be accounted separately to accomplish the purposes of the estate or trust. Section 45a-176 also requires an account for a decedent’s estate if a trustee is a beneficiary or if the executor or administrator is not a residuary beneficiary. [Query: should would recommend a statutory change to relax these provisions?]
- b. The court may entertain a petition to require an account at any time, whether before or after a fiduciary has submitted a report. A court may not, however, require an account for any period covered by a financial report that the court has already approved, unless the court determines that the report failed to disclose a material fact.

**6. Rule regarding requirements for an account.** The provisions of Proposed Rule 6 (2004) regarding the requirements for an account will need to be incorporated into the new rule. The subcommittee does not anticipate including a model account in the updated practice book.

7. **Receipt and release.** The committee did not yet reach a conclusion as to whether probate courts should waive a financial report or account that is otherwise required if all interested parties have executed a receipt and release.
8. **Waiver of periodic accounts for testamentary trusts.** In accordance with § 45a-177(a), a court shall not require periodic financial reports or accounts for a testamentary trust if the will waives accounts. The statute does not permit waiver of the requirement of a final account.
9. **Title 19 waiver of accounting requirement.** A court may waive the requirement that a conservator of the estate file a final financial report or account if the Connecticut Department of Social Services has determined that the conserved person is eligible for Title 19. [Query: should we require the conservator to file a report indicating the date of the eligibility determination and showing the amount transferred to the conserved person or the conserved person's patient account?]
10. **Penalties for non-compliance.** The rule should include a list of the possible penalties for a fiduciary's failure to comply with record-keeping, reporting and accounting requirements, including removal of the fiduciary pursuant to § 45a-242, contempt, and such other sanctions permitted by law. The rule should also refer to the power of a court to appoint an auditor under § 45a-175(e). Subcommittee III will defer to Subcommittee II to draft rules about the exercise of contempt powers.
11. **Attorney and fiduciary fees.**
  - a. The committee was divided as to whether attorneys and fiduciaries should be required to keep records of their time and activities in light of the fact that time is only one of the factors set forth in *Hayward v. Plant*.
  - b. The rule should allow fiduciaries to petition for approval of their fees and the fees of their attorneys. A petition may seek advance approval of a fee arrangement or may seek approval of a proposed fee for services already rendered. While the petition need not be accompanied by a financial report or account, the court has the discretion to require a financial report or account before approving the fee request. An attorney whose fees are paid from the estate who is not representing a fiduciary, such as an attorney for a conserved person, may petition the court directly for approval of fees.
  - c. Fees that were not previously approved are subject to review in connection with the fiduciary's financial report or account. A court may review fees whether or not an interested party raises an objection to the fees.

- d. When considering a fee request, a court shall afford the petitioning fiduciary or attorney and the interested parties an opportunity for a hearing, although the streamline procedure may be used or a hearing may be excused if all interested parties waive notice of a hearing.
- e. Whenever a court is reviewing the fees of an attorney or fiduciary, the court may require that the attorney or fiduciary submit a “task statement” (which need not take the form of an affidavit), to provide additional information about the services performed.
  - i. A fiduciary’s task statement should address the following factors: the size of the estate, the responsibilities involved, the character of the work required, the special problems and difficulties met in doing the work, the results achieved, the knowledge, skill and judgment required, the manner and promptitude in which the manner was handled, the time required, and any other circumstances that are relevant and material. See *Hayward v. Plant*, 98 Conn. 374 (1923).
  - ii. An attorney’s task statement should address the following factors: the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the legal service properly, the likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the attorney, the fee customarily charged in the locality for similar legal services, the amount involved, the results obtained, the time limitations imposed by the client or by the circumstances, the nature and length of the professional relationship with the client, the experience, reputation and ability of the attorney performing the services and whether the fee is fixed or contingent. See Rule 1.5 of the Rules of Professional Responsibility.

### **Decedents’ Estates, Estate Tax Issues and Trusts**

In light of the time consumed with consideration of fiduciary accounting issues, discussion on the planned topics of decedents’ estates, estate tax issues and trusts was postponed until the next meeting.

### **Next Meeting**

Our next meeting will be held on Thursday September 8, 2011 at 3:00 p.m. at the New Haven Regional Children’s Probate Court.

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

Approved September 8, 2011