

The New Probate Court Rules of Procedure

Hosted by Salisbury Bank Wealth Advisory Services

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New Probate Court Rules of Procedure:

- Effective July 1, 2013
- Probate Practice Book is now obsolete
- Now “Probate Court Rules of Procedure”
- New Forms Being Promulgated



Today's Topics:

- Highlights of some rules applicable to all cases
- Rules regarding Decedent's Estates
- Rules governing Conservatorships
- Rules governing Trust matters
- Fees/Forms





Provisions Relevant to All Probate Matters

Appearance of Attorney (Rule 5):

- ❖ Attorney must send to each attorney and self-represented party and certify same to the Court
- ❖ Appearance must indicate if filed in lieu of or in addition to appearance on file
- ❖ Notice of withdrawal must be filed at least 3 business days before hearing and be sent to each attorney and self-represented party



Provisions Relevant to All Probate Matters

Probate Fees (Rule 6):

- ❖ Matter is not commenced until probate court fee paid (pay at time of filing petition)
- ❖ No refund of fee once notices mailed if matter withdrawn



Provisions Relevant to All Probate Matters

Signatures (Rule 7):

- ❖ Filing must bear original signature of filer
- ❖ Attorney may sign a “request, motion, petition or other document on behalf of a client unless it is required to be signed under oath or penalty of false statement” (Rule 7.4(c))
- ❖ Co-fiduciaries must both/all sign unless filing states why the signature of the co-fiduciary could not be obtained



Provisions Relevant to All Probate Matters

Notice/Streamline Procedure (Rule 8):

- ❖ Rules intended to expand use of streamline procedure
- ❖ Court *shall* use streamline procedure for:
 - ▶ Decedent's Estates
 - ▶ Trusts

Unless:

- ▶ Matter is contested or requires legal testimony or argument
- ▶ Public notice required to protect interests of parties
- ▶ Circumstances require a hearing with party in attendance
- ▶ Is a matter involving cy pres or equitable deviation or construction of a document affecting charitable beneficiary



Provisions Relevant to All Probate Matters

Notice/Streamline Procedure (Rule 8):

- ❖ Court *may* use streamline procedure for:
 - ▶ Accountings of Guardian of minor's estate
 - ▶ Accountings of Conservators of the estate
 - ▶ Motion to modify visitation orders
 - ▶ Transfer of probate file to another court
 - ▶ Transfer of contested children's matter to Superior Court
 - ▶ Transfer of conservatorship matter to or from another state



Rules Governing Decedents' Estates

Rule 30:

- Notice of Petition to Admit Will Sent to:
 - ❖ Heirs
 - ❖ Beneficiaries under submitted will
 - ❖ Current and remainder beneficiaries of testamentary trust
 - ❖ Attorney General (if charity involved)
 - ❖ *Beneficiaries under any other will in Court's custody*



Rules Governing Decedents' Estates

Rule 30:

Significant change!

- ❖ Petitioner must send copy of petition and will to interested parties (those getting notice) & certify to court that copies have been sent (*Section 30.7*)
- ❖ Fiduciary must send copy of the **Inventory (including substitute or supplemental) & each financial report or account** to each party & attorney of record & certify to court that copies have been sent (*Section 30.12*)



Rules Governing Decedents' Estates

Rules 36 and 37

- *Accounting vs. Financial Report*
 - ❖ Any fiduciary (including a fiduciary of a decedent's estate) may submit a "financial report" in lieu of an accounting unless an accounting is otherwise required under the Rules (see Section 36.3) (i.e. where distinguishing between income and principal is necessary)



Rules Governing Decedents' Estates

Rules 30, 36 and 37

- Form of Financial Report
 - ❖ Simplified form of accounting
 - ❖ Similar to statement in lieu (but replaces)
 - ❖ Separation of income and principal not required
 - ❖ Assets may be reported at current fmv rather than book value
 - ❖ Financial report need not balance!
- *See Section 37.1 for specific requirements for financial reports for a decedent's estate



Rules Governing Decedents' Estates

Rule 30.21

- Status Updates by Fiduciary
 - ❖ Fiduciary of estate required to file status update with the Court within three months of one-year anniversary of appointment
 - ❖ Status Update must include:
 - ▶ approximate amount of distributions made
 - ▶ reasons why administration not complete
 - ▶ Approximate estate on hand



Rules Governing Decedents' Estates

Rule 31- Estate Tax Matters

- Valuation in Nontaxable Estates:
 - ❖ Substantiate fmv of real property by:
 - ▶ Comparative market analysis
 - ▶ Municipal assessment adjusted to 100%
 - ▶ Written appraisal
- Written proof of actual sale within six months of death



Rules Governing Conservatorships

Rule 33

- Term used in rules “person under conservatorship”
 - ❖ Includes both a conserved person or person under voluntary representation



Rules Governing Conservatorships

Rule 33

- Voluntary Conservatorships:
 - ❖ Respondent may file petition for voluntary conservatorship before court decides involuntary petition
 - ❖ Court shall decide voluntary petition before acting on involuntary petition
 - ❖ Court may determine voluntary petition without notice of another hearing if:
 - ▶ Respondent present *and*
 - ▶ Other necessary parties are present or waive notice



Rules Governing Conservatorships

Rule 33.3 Appointment of Temporary Conservator

- Court may appoint Temporary Conservator without notice and a hearing (in accordance with C.G.S. § 45a-654(d))
- If Court deems it necessary to meet with the petitioner:
 - ❖ Court must make a recording
 - ❖ If a hearing becomes necessary, Judge who met with petitioner disqualified from conducting hearing



Rules Governing Conservatorships

Rule 33.7

- Court Review of Proposed Conservator
 - ❖ If no designation of conservator by respondent Court *must* receive and consider evidence of factors listed in C.G.S. § 45a-650(h)
 - ❖ Court may order criminal background check for proposed conservator and others

*See Falvey v. Zurolo, 130 Conn. App. 243 (2011)



Rules Governing Conservatorships

Rule 33.9

- Joint Assets & Liabilities
 - ❖ Conservator may petition for instruction regarding proper administration of joint assets or liabilities
 - ❖ Court shall consider factors listed in Rule 33.9



Rules Governing Conservatorships

Rule 33.10

- Establishment & Funding Trust by Conservator
 - ❖ When filing petition to establish and fund trust (per C.G.S. § 45a-655(e), conservator shall:
 - ▶ Make diligent effort to obtain estate planning documents & submit same to Court
 - ▶ File copy of proposed trust
 - ▶ File written explanation of benefits of proposed trust
 - ▶ File statement regarding any beneficial interest of conservator
 - ▶ Current & presumptive remainder beneficiaries of estate planning documents and heirs



Rules Governing Conservatorships

Rule 33.12 – Sale of Real Property

- Court may approve sale of conservatorship property if:
 - ❖ Sale in best interests of conserved person;
and
 - ❖ Sale of property necessary or conserve person consents



Rules Governing Conservatorships

Rule 33.14, 33.17 and 37.3

- Accounting vs. Financial Report
 - ❖ See above description of financial report
 - ❖ Conservator must file financial report following first year after appointment or first year after receipt of funds (with approval)
 - ❖ Thereafter conservator shall file triennial accountings, unless Court requires more frequent filing
 - ❖ Court may waive final account if determination of Title 19 eligibility



Rules Governing Conservatorships

Rule 33.14, 33.17 and 37.3

- Form of Financial Report
 - ❖ Value of property at beginning of period
 - ❖ Total additional assets received
 - ❖ Total income received in each major category
 - ❖ Net capital gains & losses realized
 - ❖ Total administration expenses in each major category
 - ❖ Total distributions to or for the benefit of conserved person in each major category
 - ❖ Total value of assets on hand at end of period
- *See Section 37.3 for specific requirements for financial reports for conservatorships



Rules Governing Trusts

Rule 32

- Notice (Rule 32.2) given to:
 - ❖ Settlor
 - ❖ Each current beneficiary
 - ❖ Each presumptive remainder beneficiary
 - ❖ Attorney General if charitable beneficiaries or if involves special needs trust
 - ❖ No notice to contingent remainder beneficiaries unless their interest conflicts with presumptive remainder beneficiaries



Rules Governing Trusts

Rule 32.5, 32.7 and 37.2

- Accounting vs. Financial Report (testamentary trusts)
 - ❖ Triennial accounts required unless excused by will
 - ❖ Trustee shall submit final financial report or account when trust terminates or any beneficiary's interest in trust terminates or when fiduciary resigns or removed
 - ❖ Court may waive final report if:
 - ▶ Will waives accountings; and
 - ▶ Current and presumptive remainder beneficiaries waive final account



Rules Governing Trusts

- ❖ Form of Financial Report:
 - ▶ Aggregate value of estate at beginning of accounting
 - ▶ Total amount of additional assets received
 - ▶ Net capital gains & losses realized
 - ▶ Total administration expenses in each category
 - ▶ Total distributions for each beneficiary *including basis for discretionary distributions
 - ▶ Total value of assets on hand at end of period



Attorney & Fiduciary Fees

Rule 39 Fiduciary & Attorney's Fees

- Court may approve proposed fee arrangement for fiduciary or fiduciary's attorney, or fees for services already performed without an account
- Court may approve proposed fee arrangement or fees for services already performed by attorney for attorney not representing fiduciary
- Court may review fees regardless of existence of an objection



Attorney & Fiduciary Fees

Rule 39 Fiduciary & Attorney's Fees

- Court may require a Task Statement (Rule 39.2)
 - ❖ Task statement shall include *Hayward v. Plant* factors
 - ❖ Task statement *shall* include copy of engagement letter and address other factors in 39.2 including length of relationship, etc.



Case Conferences

Rule 60

- Two types of conferences:
 - ❖ **Status conference** (uncontested matter)
 - ▶ Facilitate progress
 - ▶ No orders to be issued unless adequate notice
 - ❖ **Hearing management conference**
 - ▶ Can address case as a whole or specific matters
 - Including discovery motions, scheduling etc.