

How to Appeal a Probate Decree in the Age of E-Filing

The process of filing a Connecticut probate appeal has undergone substantial revision in the last few years. Before 2007, CGS §45a-186 required the filing of a motion for appeal of an adverse decree in the Probate Court and obtaining an order allowing the appeal. The order allowing the appeal would include an order of notice to the interested parties and directing return of service of the appeal to Superior Court. The Probate Court set the return date in the decree. The appellant served the motion seeking appeal and the order allowing the appeal on the interested parties. After receiving the sheriff's return of service, the motion for appeal and the order allowing the appeal were filed in the Superior Court. Within 10 days of the return date, the attorney filed a document entitled "Reasons of Appeal" with a copy of the will attached. Connecticut Probate Book §10-76 (1998).

With the passage of Public Act 07-116, the Connecticut General Assembly significantly amended CGS §45a-186. The appellant no longer has to seek Probate Court approval to appeal an adverse decision. The appeal is commenced by filing a Complaint in the Superior Court. CGS §45a-186(a); 3A Conn. Prac., Civil Practice Forms, Form 1004.7 (Thomson Reuters)(4th ed. 2011) (hereinafter "Form 1004.7"). The Complaint must state the reasons for the appeal and include a copy of the decree that is the subject of the appeal. CGS §45a-186(a). Unlike the old motion for appeal, the Complaint should state whether the hearing was on the record. Form 1004.7. Appeals from decisions rendered after a statutory recording of the proceedings are on the record and not trial de novo. CGS §45a-186(a). The appellant must also include a Certificate of Financial Responsibility with the Complaint. See, 3.A Conn. Prac., Civil Practice Forms, Form 101.2 (Thomson Reuters)(4th ed. 2011). Connecticut Practice Book §8-4 requires the recognizance of a third party with personal knowledge as to the financial responsibility of the plaintiff to pay the costs of the action. The attorney signing the Complaint cannot be the attorney signing the recognizance. Connecticut Practice Book §8-4(c).

Unlike filing a petition or motion in Probate Court, the filing of the Complaint to commence the probate appeal is done electronically in Superior Court. Since 2009, the Superior Court requires the e-filing of civil cases. Probate appeals are not civil actions per se but they are treated like civil cases for e-filing purposes. To e-file, attorneys and law firms enroll in E-Services (<https://eservices.jud.ct.gov> [1]) and obtain a secure password. Once enrolled, the law firm can designate an authorized individual to file case initiation documents. To e-file the Complaint, it must be converted to a pdf document and the attorney filing the Complaint must pay the filing fee (currently \$360) online by using a credit card or other acceptable method.

Care should be taken in naming the plaintiff and defendant for purposes of e-filing a probate appeal. To just name the estate does not fit the e-file format. An estate is not a legal entity that can sue or be sued in its name. *Isaac v. Mount Sinai Hospital*, 3 Conn. App. 598, 600, cert. denied, 196 Conn. 807 (1985). In a Will dispute appealed by an heir, the plaintiff should be the heir and the defendant the executor of the estate. If the executor is appealing a probate court ruling, the plaintiff should be the name of the Executor and the defendant should be opposing party. For instance, the opposing party for a claim would be the name of the creditor.

The appeal deadline is usually 30 days from the date the Probate Court mailed the decree. CGS §45a-186(a). Certain conservatorship and guardianship matters have 45-day appeal deadlines. *Id.* An adult who was not present at the hearing on which the decree was entered, who did not waive the right to the hearing, and who did not have notice of his or her right to request a hearing usually has 12 months to appeal. Public Act No. 11-128, Sec. 11; CGS §45a-187. Certain types of hearings require shorter appeal periods for persons who had no notice of the hearing (e.g.-adoptions, termination of parental rights). Counsel should confirm with the Probate Court the date that it mailed the decree so counsel knows when the appeal period commences. Once the Complaint is successfully e-filed in Superior Court, counsel should print out the Confirmation of E-Filing and retain it to prove that the appeal was filed prior to the deadline.

Once the Complaint is filed, the appellant has 15 days to electronically file in Superior Court a document containing the name, address and signature of the person making service and a statement of the date and manner in which a copy of the Complaint was served on the probate court and each interested party. CGS §45a-186(c). Service of the Complaint must be made by a state marshal, a constable, or an indifferent person. CGS §45a-186(b). Thus, it is usually the marshal's return of service that satisfies this 15-day filing requirement. Service on the Probate Court is by mail but service on interested parties is in hand or by leaving a copy at the interested party's place of residence or at the address for the interested party on file with the probate court. *Id.* Thus, it

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Published on Cipparone & Zaccaro (<https://trustsestateselderlawct.com>)

behooves the attorney filing the appeal to get the list of addresses for all interested parties from the Probate Court. What if a beneficiary lives in another state? Counsel will need to hire an indifferent person in that state to serve the Complaint on that party. Usually e-mailing a copy of the Complaint to a process server in the other state will expedite service on the out-of-state party.

Fortunately, the failure to make service on an interested party does not deprive the Superior Court of jurisdiction over the appeal. CGS §45a-186(b); *Heussner v. Hayes*, 289 Conn. 795, 802, 961 A2d 365, 369 (2008); *Godin v. Estate of Bucholz*, 2010 WL 4944269 at 1 (Conn. Super. 11/18/2010). It is the filing of the appeal with the Superior Court that confers jurisdiction. *Branch v. Grogan-Barone*, 2010 WL 2682164 at 2 (Conn. Super. 4/15/2010). If service has not been made on an interested party, the appellant can make a motion to the Superior Court for such orders of notice as are reasonably calculated to notify any party not yet served. CGS §45a-186(d).

At the time of commencing the probate appeal, counsel for the appellant must also consider two additional motions. The filing of a probate appeal does not stay enforcement of the decree. CGS §45a-186(f). Consequently, the appellant may wish to move for a stay of the decree either in Probate Court or the Superior Court. *Id.* In addition, the Superior Court can refer the probate appeal to a special assignment probate judge unless a demand for hearing by the Superior Court is filed within 20 days after service of the appeal. CGS §45a-186(a). Will a special assignment probate judge be as likely to overrule a sitting probate judge as a Superior Court judge? Maybe or maybe not but appellant's counsel must consider who they want to hear the probate appeal at the commencement of the appeal because the deadline is so soon after filing. A relic of the old procedure remains in the Connecticut Practice Book that may leave counsel wondering if the next pleading after filing the Complaint is a separate Reasons of Appeal. Connecticut Practice Book §10-76(a) states that "in all appeals from probate the appellant shall file reasons of appeal, which upon motion shall be made reasonably specific, within ten days after the return day; and pleadings shall thereafter follow in analogy to civil actions." Given that the reasons for the appeal must appear in the Complaint, however, most experienced counsel just disregard the separate filing of Reasons of Appeal required by the outdated 1998 Practice Book section. In an analogy to civil actions, an Answer is the next pleading to file after the Complaint. Thus, after the commencement of the action, the next pleading to be filed is an Answer and that is done by the appellee.

The filing requirements of a probate appeal continue to evolve. Technology, Probate Court and Superior Court changes and the increasing rights of parties have caused a revolution in the commencement of probate appeals. Unfortunately, legal treatises and the Connecticut Practice Book do not always stay current in this area that straddles two separate court systems. The practitioner must master the evolving statutes and case law of probate appeals to avoid unpleasant surprises.

Originally published in the Connecticut Bar Association Estates & Probate Newsletter, May 2012, but updated to October 2017.

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