

Minutes of the Meeting
Rules Committee
January 27, 2014

On Monday, January 27, 2014, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:24 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. HENRY S. COHN
HON. KARI A. DOOLEY
HON. NINA F. ELGO
HON. ROBIN L. WILSON
HON. ROBERT E. YOUNG

The Honorable Marshall K. Berger and the Honorable William M. Bright, Jr. were not in attendance at this meeting. The Honorable Nina F. Elgo and the Honorable Robin L. Wilson joined the meeting in progress, as noted.

Also in attendance was Joseph J. Del Ciampo, Counsel to the Rules Committee.

1. The Committee unanimously approved the minutes of the meeting held on December 16, 2013.

2. The Committee considered a proposal by Attorney Paul Ruszczyk (Small Claims Magistrate) regarding Section 24-24 and its 2011 Commentary and comments received from Attorney Russell L. London, and from Attorney Adam J. Olshan on behalf of the Connecticut Creditor Bar Association. Attorneys London and Olshan were present and addressed the Committee concerning this proposal. Judge Elgo and Judge Wilson arrived during the discussion of this matter.

After discussion, the Committee tabled the matter until it receives comments from the Connecticut Bar Association on the proposal. While awaiting those comments, Judge Dooley offered to prepare a draft of Section 24-24 that incorporates in the rule the 2011 commentary to the rule.

3. The Committee considered a proposal from Timothy Fisher, Dean, UConn Law School, on behalf of three Connecticut Law Schools to amend Section 2-13 to ease admission by

waiver of faculty members at accredited law schools in Connecticut, a letter from Kathleen B. Harrington, Deputy Director, Attorney Services, on behalf of the Connecticut Bar Examining Committee on the proposal, comments from Attorney Michael H. Agranoff on the proposal, and a letter from the Connecticut Bar Association on the proposal. Dean Fisher, Dean Post of Yale Law School, Attorney Harrington and Attorney Mark Dubois, President-Elect of the Connecticut Bar Association were present and addressed the Committee concerning this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the amendments to Section 2-13 as set forth in Appendix A attached to these minutes.

4. The Committee considered a proposal by Patricia King, Chief Disciplinary Counsel, and Michael Bowler, Statewide Bar Counsel, to amend Sections 2-40 and 2-41 concerning discipline of attorneys. Attorneys King and Bowler were present and addressed the Committee concerning this proposal.

After discussion, the Committee voted unanimously to submit to public hearing the amendments to Sections 2-40 and 2-41, as revised by the Committee, as set forth in Appendix B attached to these minutes.

5. The Committee considered a proposal submitted by Judge Linda K. Lager, Chief Administrative Judge, Civil, on behalf of the Civil Commission, to consider a revision to a prior proposal by the Civil Commission for new Practice Book Section 1-25 concerning actions subject to sanctions.

After discussion, the Committee referred the revised proposal to all remaining Chief Administrative Judges for review and comment.

6. The Committee considered a proposal submitted by Judge Elizabeth Bozzuto, Chief Administrative Judge, Family, to amend Section 25-4 concerning actions for visitation of a minor child, and input on that proposal from Judge Bernadette Conway, Chief Administrative Judge, Juvenile.

After discussion, the Committee voted unanimously to submit to public hearing the amendments to Section 25-4 as set forth in Appendix C attached to these minutes.

7. The Committee considered a proposal by Judge Henry Cohn to amend Sections 8-3, 8-4 and 14-7A to remove the requirement of a recognizance.

After discussion, the Committee tabled the matter until it receives comments from the Civil Commission on the matter which the Committee referred to that Commission on December

16, 2013.

8. The Committee considered a recommendation by the Legal Specialization Screening Committee (LSSC) that the National Board of Legal Specialty Certification (NBLSC) be approved for recertification as a certifier in the specialty areas of Civil Trial Practice, and Criminal Law, and be approved as a certifier in the area of Family and Matrimonial law. Attorney Mark Dubois, President-Elect of the Connecticut Bar Association was present and addressed to Committee on these matters.

After discussion, the Committee voted unanimously as follows:

The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated December 12, 2013, recommending approval of the application of the National Board of Legal Specialty Certification for renewal of its authority to certify lawyers as specialists in the field of civil trial practice, unanimously approves the National Board of Legal Specialty Certification for a five year period commencing February 22, 2014 as qualified to certify lawyers as specialists in those fields. This approval is subject to the condition that the National Board of Legal Specialty Certification is required to notify promptly the Legal Specialization Screening Committee of any material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

The Committee also voted unanimously as follows:

The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated December 12, 2013, recommending approval of the application of the National Board of Legal Specialty Certification for renewal of its authority to certify lawyers as specialists in the field of criminal law, unanimously approves the National Board of Legal Specialty Certification for a five year period commencing February 22, 2014 as qualified to certify lawyers as specialists in those fields. This approval is subject to the condition that the National Board of Legal Specialty Certification is required to notify promptly the Legal Specialization Screening Committee of any material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

At the request of Attorney Dubois on behalf of the Connecticut Bar Association to give the Connecticut Bar Association time to comment on the recommendation, the Committee tabled to its February meeting consideration of the LSSC's recommendation that the NBLSC be approved as a certifier in the area of Family and Matrimonial law.

9. The Committee considered a proposal by Attorney John Weikart to amend Section 10-39 to remove redundant language.

After discussion, the Committee voted unanimously to submit to public hearing the amendment to Section 10-39 as set forth in Appendix D attached to these minutes.

10. The Committee considered a proposal by the Professional Ethics Committee of the Connecticut Bar Association to amend the Rules of Professional Conduct. Attorneys Mark Dubois, Marcy Stovall and John Logan were present and addressed the Committee on behalf of the Connecticut Bar Association concerning this proposal.

After discussion, the Committee referred the proposal to Attorney Patricia King and Attorney Michael Bowler for their review and comment and tabled the matter to its February meeting.

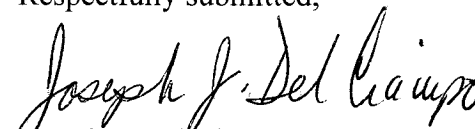
11. The Committee considered the following editorial forwarded to the Committee by Judge Bright: *Law Student Volunteers And The Unauthorized Practice of Law*.

After brief discussion, the Committee tabled the matter to its February meeting.

12. The Committee considered a proposal by the Connecticut Bar Association to amend Rule 3.8 of the Rules of Professional Conduct concerning the ethical responsibilities of prosecutors dealing with new and credible evidence creating a reasonable probability that a convicted defendant did not commit the offense, and comments from Hon. Patrick L. Carroll III, Chief Court Administrator, on the proposal. Attorneys Mark Dubois and John Logan were present and addressed the Committee on behalf of the Connecticut Bar Association concerning this matter.

After discussion, the Committee voted unanimously to submit to public hearing the amendments to Section 3.8, with technical revisions drafted by Counsel, as set forth in Appendix E attached to these minutes.

Respectfully submitted,


Joseph J. Del Ciampo
Counsel to the Rules Committee

JJD:pt

Attachments

Appendix A (012714mins)

Sec. 2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut, and that (i) at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section[,] or (ii) he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction, shall satisfy the state bar examining committee that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut, or that he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood [in reciprocal jurisdictions] for at least five of the ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood [in such reciprocal jurisdiction] for at least five of the ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; (3) is a citizen of the United States or an alien lawfully residing in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut [and/or to supervise law students within a clinical law program at an accredited Connecticut law school while a member of the faculty of such school], may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining committee shall from time to time determine, upon compliance with the

following requirements: Such application, duly verified, shall be filed with the administrative director of the bar examining committee and shall set forth his or her qualifications as hereinbefore provided. There shall be filed with such application the following affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the state bar examining committee, his or her practice of law as defined under (2) of this subsection; [where applicable, an affidavit from the dean of the accredited Connecticut law school at which the applicant has accepted employment attesting to the employment relationship and term;] affidavits from two members of the bar of Connecticut of at least five years' standing, certifying that the applicant is of good moral character and is fit to practice law; and an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the state bar examining committee.

(b) For the purpose of this rule, the "practice of law" shall include the following activities, if performed [in a reciprocal jurisdiction] after the date of the applicant's admission to [that] the jurisdiction in which the activities were performed, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

(1) representation of one or more clients in the practice of law;

(2) service as a lawyer with a state, federal, or territorial agency, including military services; [however, such service for a federal agency, including military service, need not be performed in a reciprocal jurisdiction;]

(3) teaching law at an accredited law school, including supervision of law students within a clinical program;

(4) service as a judge in a state, federal, or territorial court of record;

(5) service as a judicial law clerk; [or]

(6) service as authorized house counsel;

(7) service as authorized house counsel in Connecticut before July 1, 2008, or while certified pursuant to Section 2-15A; or

[(6)] (8) any combination of the above.

[(c) An attorney who, within the ten years immediately preceding the date of application, was engaged in the supervision of law students within a clinical law program of one or more accredited law schools in another jurisdiction or jurisdictions while a member of the faculty of such school or schools, whether or not any such jurisdiction is a reciprocal jurisdiction, may apply such time toward the satisfaction of the requirement of subdivision (a) (2) (A) of this section. If such time is so applied, the attorney shall file with his or her application an affidavit from the dean of the law school or schools of each such other jurisdiction attesting to the employment relationship and the period of time the applicant engaged in the supervision of law students within a clinical program at such school.]

COMMENTARY—The amendments to subsection (a) would allow full-time faculty members or clinical fellows at accredited Connecticut law schools to be admitted to the Connecticut bar without taking the state bar examination if they are admitted to the bar in either a reciprocal or a *nonreciprocal* jurisdiction. The requirement that an applicant practice law in a reciprocal jurisdiction for five of the immediately preceding ten years has been removed.

The amendments to subsection (b) change the requirement that the activities designated as the “practice of law” under this section be performed in a reciprocal jurisdiction. Instead, subsection (b) would require that the activities be performed in a jurisdiction where the applicant is either admitted to the bar or allowed to perform those activities as a lawyer who is not admitted. In addition, the definition of the “practice of law” in this section would be expanded to include activity as authorized house counsel, both in and out of state.

Subsection (c) is removed because under subsection (a), as amended, clinical law school faculty members would no longer need to count their work supervising law students to satisfy the requirement that the applicant engage in the practice of law for five of the immediately preceding ten years.

Appendix B (012714mins)

Sec. 2-40. Discipline of Attorneys Convicted of [a Felony and Other Matters] Serious Crimes in Connecticut

(a) [The clerk of the superior court location in this state in which an attorney is convicted of a serious crime as defined herein shall transmit, immediately upon the imposition of sentence, a certificate of the conviction to the disciplinary counsel and to the statewide grievance committee. The attorney shall also notify the disciplinary counsel in writing of his or her conviction. The disciplinary counsel or designee shall, pursuant to Section 2-47, file a presentment against the attorney predicated upon the conviction. No entry fee shall be required for proceedings hereunder. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less.] The term "serious crime," as used herein, shall mean any felony, any larceny, any crime where the attorney was or will be sentenced to a term of incarceration, or any other crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, willful failure to file tax returns, violations involving criminal drug offenses, or any attempt, conspiracy or solicitation of another to commit a "serious crime."

(b) The term "conviction," as used herein, [refers to the disposition of any charge of a serious crime as hereinafter defined] shall mean acceptance of a finding of guilty by the superior court, resulting from either a plea of guilty or nolo contendere, or from a verdict after trial [or otherwise], and regardless of the pendency of any appeal.

(c) [The term "serious crime" as used herein shall mean any felony or any larceny or any crime for which the attorney was sentenced to a term of incarceration or for which a suspended period of incarceration was imposed.] The clerk of the superior court in which an attorney is convicted of any crime shall transmit a certified copy of the judgment of conviction, docket sheet, or other proof of the conviction to the disciplinary counsel and to the statewide grievance committee.

(d) [The provisions of subsection (e) of this section notwithstanding, after sentencing an attorney who has been convicted of a serious crime, the sentencing judge

may in his or her discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the conviction. Thereafter, upon good cause shown, the judge who placed the attorney on suspension or any other judge before whom a presentment is pending may, in the interest of justice, set aside or modify the interim suspension.] Notwithstanding any obligation imposed upon the clerk by subsection (c) of this section, any attorney convicted of any crime shall send written notice of the conviction to the disciplinary counsel and the statewide grievance committee, by certified mail, return receipt requested, or with electronic delivery confirmation, within ten days of the date of the conviction. The written notice shall include the name and address of the court where the finding of guilt was made, the date of the finding of guilt, and the specific section of the applicable criminal, penal, or statutory code upon which the finding of guilt was predicated. An attorney's failure to send timely written notice of his or her conviction required by this section shall constitute misconduct.

(e) Upon receipt of proof of conviction, the disciplinary counsel shall determine whether the crime for which the attorney was convicted is a serious crime, as defined herein. If so, disciplinary counsel shall, pursuant to Section 2-47, file a presentment against the attorney predicated upon the conviction. A certified copy of the finding of guilt shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based upon the finding of guilt. No entry fee shall be required for proceedings hereunder.

[(e)](f) A presentment filed pursuant to this section shall be heard, where practical, by the judge who presided at the [sentencing] proceeding in which the attorney was convicted. A hearing on the presentment complaint [addressing] shall address the issue of the [eligibility of such attorney to continue the practice of law in this state] nature and extent of the final discipline to be imposed and shall be held within [thirty] sixty days of [sentencing or] the filing of the presentment[, whichever is later. Such hearing shall be prosecuted by the disciplinary counsel or an attorney designated pursuant to Section 2-48. At such hearing the attorney shall have the right to counsel, to be heard in his or her own defense and to present evidence and witnesses in his or her behalf. After such hearing, the judge shall enter an order dismissing the matter or imposing discipline upon such attorney in the form of a suspension for a period of time, disbarment or such other discipline as the judge deems appropriate.]

[(f) Whenever the judge enters an order suspending or disbaring an attorney pursuant to subsections (d) or (e) of this section, the judge may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.]

(g) [If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.] Immediately upon receipt of proof of conviction of an attorney of a serious crime, as defined herein, the disciplinary counsel may also apply to the court for an order of interim suspension. If the attorney was or will be sentenced to a term of incarceration, disciplinary counsel shall seek a suspension during the term of incarceration. The court may, in its discretion, enter an order immediately placing the attorney on interim suspension pending final disposition of a presentment filed pursuant to this section. Thereafter, for good cause shown, the court may, in the interests of justice, set aside or modify the interim suspension.

(h) [An attorney's failure to send the written notice required by this section shall constitute misconduct.] At the presentment hearing, the attorney shall have the right to counsel, to be heard in his or her own defense and to present evidence and witnesses in his or her behalf. After the hearing, the court shall enter an order dismissing the presentment complaint, or imposing discipline upon such attorney in the form of suspension for a period of time, disbarment or such other discipline as the court deems appropriate. If the conviction was based upon the lawyer's misappropriation of clients' funds or other property held in trust, the court shall enter an order disbaring the attorney for a minimum of twelve years pursuant to Sections 2-47A and 2-53 (g).

(i) [Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a serious crime as defined herein is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.] Whenever the court enters an order suspending or disbaring an attorney pursuant to a presentment filed under this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the interests of the attorney's clients and to secure the attorney's clients' funds accounts.

(j) If an attorney disciplined solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction was later vacated or reversed, the court shall vacate any disciplinary order entered pursuant to the conviction, and place the attorney on active status. The vacating of such disciplinary order shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(k) Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by the court. The granting of a pretrial diversion program to an attorney charged with a serious crime, as defined herein, is not a bar to disciplinary proceedings, unless otherwise ordered by the court that granted the program to the attorney.

COMMENTARY: The amendments to this section allow for the filing of a presentment and for an immediate interim suspension to be sought against an attorney who has been found guilty of a serious crime following the acceptance of a finding of guilt by plea or verdict after trial. Public confidence in the judicial system will be enhanced by the filing of a presentment and interim suspension immediately following a finding of guilt that an attorney has committed a serious crime. This amendment also substantially adopts the definition of "serious crime" promulgated by the ABA Model Rules for Lawyers Disciplinary Enforcement, Rule 19 C.

Sec. 2-41. Discipline of Attorneys [Convicted] Found Guilty of [a Felony and Other Matters] Serious Crimes in Another Jurisdiction

[(a) An attorney shall send to the disciplinary counsel written notice of his or her conviction in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined within ten days of the entry of the judgment of conviction. That written notice shall be sent by certified mail, return receipt requested or with electronic delivery confirmation.

(b) The term "conviction" as used herein refers to the disposition of any charge of a serious crime as hereinafter defined resulting from either a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(c) (a) The term "serious crime," as used herein, shall mean any felony [or], any larceny [as defined in the jurisdiction in which the attorney was convicted], or any crime [for which] where the attorney was or will be sentenced to a term of incarceration, or [for which a suspended period of incarceration or a period of probation was imposed] any other crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, willful failure to file tax returns, violations involving criminal drug offenses, or any attempt, conspiracy or solicitation of another to commit a "serious crime."

(b) The term "conviction," as used herein, shall mean acceptance of a finding of guilty by a court of competent jurisdiction, resulting from either a plea of guilty or nolo contendere, or from a verdict after trial, and regardless of the pendency of any sentencing or appeal.

(c) The term "another jurisdiction," as used herein, shall mean any state court, other than the Connecticut Superior Court, any federal court, any District of Columbia court or any court from a commonwealth or possession of the United States.

[(d) The written notice required by subsection (a) of this section shall include the name and address of the court in which the judgment of conviction was entered, the date of the judgment of conviction, and the specific section of the applicable criminal or penal code upon which the conviction is predicated.]

(d) Any attorney convicted of any crime in another jurisdiction shall send written notice of the conviction to the disciplinary counsel and the statewide grievance committee, by certified mail, return receipt requested, or with electronic delivery confirmation, within ten days of the date of the conviction. The written notice shall include the name and address of the court where the finding of guilt was made, the date of the finding of guilt, and the specific section of the applicable criminal, penal, or statutory code upon which the finding of guilt was predicated. An attorney's failure to send timely written notice of the conviction required by this section shall constitute misconduct.

(e) Upon receipt of the written notice of the conviction in another jurisdiction, the disciplinary counsel shall determine whether the crime for which the attorney was convicted is a "serious crime," as defined herein. If so, disciplinary counsel shall obtain a certified copy of the [attorney's judgment] finding of [conviction] guilt, which [certified copy] shall be conclusive evidence of the commission of that crime in any disciplinary proceeding [instituted against that attorney on the basis of] based upon the finding of [the conviction] guilt. Upon receipt of the certified copy of the [judgment] finding of [conviction] guilt, the disciplinary counsel shall, pursuant to Section 2-47, file a presentment against the attorney [with the superior court for the judicial district wherein the attorney maintains an office for the practice of law in this state, except that, if the attorney has no such office, the disciplinary counsel shall file it with the superior court for the judicial district of Hartford] predicated upon the conviction. [The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less. The sole issue to be determined in the presentment proceeding shall be the extent of the final discipline to be imposed, provided that the presentment proceeding instituted will not be brought to hearing until all appeals from the conviction are concluded unless the attorney requests that the matter not be deferred. The disciplinary counsel shall also apply to the court for an order of immediate interim suspension, which application shall contain the certified copy of the judgment of conviction. The court may, in its discretion, enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated

upon the judgment of conviction. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension. Whenever the court enters an order suspending or disbaring an attorney pursuant to this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.] No entry fee shall be required for proceedings hereunder.

(f) [If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.] A presentment filed pursuant to this section shall be filed in the judicial district where the attorney maintains an office for the practice of law in this state. If the attorney has no office for the practice of law in this state, the disciplinary counsel shall file the presentment in the superior court for the judicial district of Hartford. A hearing on the presentment complaint shall address the issue of the nature and extent of the final discipline to be imposed, and shall be held within sixty days of the filing of the presentment.

(g) [An attorney's failure to send the written notice required by this section shall constitute misconduct.] The disciplinary counsel may also apply to the court for an order of interim suspension, which application shall contain a certified copy of the finding of guilt. If the attorney was or will be sentenced to a term of incarceration, disciplinary counsel shall seek a suspension for the term of incarceration. The court may, in its discretion, enter an order immediately placing the attorney on interim suspension pending final disposition of the presentment filed pursuant to this section. Thereafter, for good cause shown, the court may, in the interests of justice, set aside or modify the interim suspension.

(h) [No entry fee shall be required for proceedings hereunder.] At the presentment hearing, the attorney shall have the right to counsel, to be heard in his or her own defense, and to present evidence and witnesses in his or her behalf. After the hearing, the court shall enter an order dismissing the presentment complaint, or imposing discipline upon such attorney in the form of suspension for a period of time, disbarment or such other discipline as the court deems appropriate. If the conviction was based on the lawyer's misappropriation of clients' funds or other property held in trust, the court shall enter an order disbaring the convicted attorney for a minimum of twelve years pursuant to Sections 2-47A and 2-53 (g).

(i) [Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a serious crime as defined herein is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.] Whenever the court enters an order suspending or disbarring an attorney pursuant to a presentment filed under this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the interests of the attorney's clients and to secure the attorney's clients' funds accounts.

(j) If an attorney disciplined solely under the provisions of this section demonstrates to the court that the attorney's conviction was later vacated or reversed, the court shall vacate any disciplinary order entered pursuant to this section. The vacating of such disciplinary order shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(k) Immunity form prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by the court. The granting of a pretrial diversion program to an attorney charged with a serious crime, as defined herein, is not a bar to disciplinary proceedings, unless otherwise ordered by the court that granted the program to the attorney.

COMMENTARY: The amendments to this section allow for the filing of a presentment and for an immediate interim suspension to be sought against an attorney who has been found guilty of a serious crime following a finding of guilt by plea or verdict after trial. This is consistent with the federal rule currently in effect and allows the court to consider disciplinary action without the delay caused by waiting for the imposition of sentence. Public confidence in the judicial system will be enhanced by the filing of a presentment and interim suspension immediately following a finding of guilt that an attorney has committed a serious crime. This amendment also substantially adopts the definition of "serious crime" promulgated by the ABA Model Rules for Lawyers Disciplinary Enforcement, Rule 19 C.

Appendix C (012714mins)

Sec. 25-4. Action for Visitation of Minor Child

Every application or verified petition in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. [The] An application brought under this section shall comply with Section 25-5. [Such] Any application or verified petition brought under this Section shall be commenced by an order to show cause. Upon presentation of the application or verified petition and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application or verified petition should not be granted. The application[,] or verified petition, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application or verified petition.

COMMENTARY : Grandparents and other third parties may initiate a visitation action by filing a verified petition. The provisions of Section 25-5 are applicable to parents only. Therefore, only an application is required to comply with that Section.

Appendix D (012714mins)

Sec. 10-39. Motion to Strike; Grounds

(a) A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint; or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56 (b), the failure to join or give notice to any interested person; or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts; or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein[, that party may do so by filing a motion to strike the contested pleading or part thereof].

(b) Each claim of legal insufficiency enumerated in this section shall be separately set forth and shall specify the reason or reasons for such claimed insufficiency.

(c) Each motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies.

(d) A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56 (b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action.

COMMENTARY: The amendment to this section deletes unnecessary language.

Appendix E (012714mins)

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(4) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

(6) When a prosecutor knows of new and credible evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall, unless a court authorizes delay:

(A) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to a court and an appropriate authority, and

(B) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant, and a court and an appropriate authority.

COMMENTARY: A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a

matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also Rule 3.3 (d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

Subdivision (3) does not apply to an accused appearing as a self-represented party with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (4) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

When a prosecutor knows of new and credible evidence creating a reasonable probability that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, subdivision (6) requires prompt disclosure to a court and other appropriate authority, such as the Office of the Chief Public Defender, the office of the Federal Defender or the chief prosecutor of the jurisdiction where the conviction occurred. When disclosure is made to the chief prosecutor of the jurisdiction, that prosecutor must then independently evaluate his or her own ethical obligations under this Rule with respect to the evidence. If the conviction was obtained in the prosecutor's jurisdiction, subdivision (6) requires the prosecutor to promptly disclose the evidence to the defendant and a court and other appropriate authority, such as the Office of the Chief Public Defender or the office of the Federal Defender. Disclosure to a court shall be by written notice to the presiding judge of the jurisdiction in which the conviction was obtained, or, where the conviction was in federal court, to the chief United States District Court Judge. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel. If a defendant is not represented, or if the prosecutor cannot determine if a defendant is represented, disclosure to the Office of the Chief Public Defender or the Office of the Federal Defender shall satisfy the requirement of notice to the defendant. The prosecutor may seek to delay disclosure by means of a protective order

or other appropriate measure to protect the safety of a witness, to secure the integrity of an on-going investigation, or other similar purpose. Knowledge denotes the actual knowledge of the prosecutor who is determining the scope of his or her own ethical duty to act. A “reasonable probability that the defendant did not commit an offense of which the defendant was convicted” is “a probability sufficient to undermine confidence in the outcome,” as articulated in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Strickland v. Washington*, 466 U.S. 668 (1984). The decision by a prosecutor to disclose information to a defendant or an appropriate authority shall not be deemed a concession that, and shall not ethically foreclose the prosecutor from contesting before a factfinder or an appellate tribunal that, the evidence is new or credible or that it creates a reasonable probability that the defendant did not commit the offense.

A prosecutor’s independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of subdivision (6), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

AMENDMENT NOTE: The above change is based on Rule 3.8 (g) of the ABA Model Rules of Professional Conduct and requires a prosecutor to disclose to a court, appropriate authority, and/or the defendant new and credible evidence creating a reasonable probability that a convicted defendant did not commit the offense.