

Minutes of the Meeting
Rules Committee
Monday, December 15, 2014

On Monday, December 15, 2014, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:16 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. MARSHALL K. BERGER, JR.
HON. WILLIAM H. BRIGHT, JR.
HON. HENRY S. COHN
HON. ROBERT L. GENUARIO
HON. MARY E. SOMMER
HON. ROBIN L. WILSON
HON. ROBERT E. YOUNG

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Lori Petruzzelli of the Judicial Branch's Legal Services Unit. The Honorable Jon M. Alander was not in attendance at this meeting.

1. The Committee unanimously approved the minutes of the meeting held on November 17, 2014.

2. The Committee considered a proposal by Patricia King, Chief Disciplinary Counsel, to adopt new Practice Book Section 2-47B regarding placing restrictions on the employment of suspended, disbarred, inactive or resigned ("deactivated") attorneys, additional materials and a redraft from Attorney King. Attorney King and Statewide Bar Counsel Michael P. Bowler were present and addressed the Committee concerning this proposal.

After discussion, Attorney King was asked to resubmit the proposal with additional revisions for the Committee's consideration at its next meeting.

3. The Committee considered proposals by several individuals to revise various Superior Court rules and forms referred to the Rules Committee by the Supreme Court from its public hearing on rules and forms held on April 14, 2014, and comments from

the Statewide Bar Counsel and the Statewide Grievance Committee to the referral.

After discussion, the Committee determined that no further action was necessary from the Committee on these matters.

4. The Committee considered a proposed amendment to Section 25-24 concerning removal of a counsel or guardian ad litem for a minor child.

After discussion, the Committee unanimously voted to submit to public hearing the amendment to Section 25-24, as set forth in Appendix A attached to these minutes.

5. The Committee considered a proposal by Judge Robert Young to amend Sections 13-7(a)(2) and 13-10(a)(2) to remove the requirement that a party certify that the case has not been assigned for trial.

After discussion, the Committee unanimously voted to submit to public hearing the amendments to Section 13-7(a)(2) and 13-10(a)(2) with revisions to the proposed commentaries made by the Committee, as set forth in Appendix B attached to these minutes.

6. The Committee considered a proposal by Court Operations to amend Section 25-59A(h) to remove the requirement that sworn financial affidavits be placed in a sealed envelope.

After discussion, the committee unanimously voted to submit to public hearing the amendment to Section 25-59A(h), as set forth in Appendix C attached to these minutes.

7. The Committee considered a proposal by Judge William Bright to amend Sections 23-36, 23-41, 23-42, 43-35 and 62-9 in connection with habeas corpus proceedings.

After discussion, the Committee unanimously voted to submit to public hearing the amendment to Section 23-36, as set forth in Appendix D attached to these minutes. The remaining proposed amendments were tabled for review at a future meeting.

8. The Committee considered a proposal by Greater Hartford Legal Aid (GHLA) to amend Sections 17-30 and 17-53 regarding the time frames for the filing of pleadings in summary process actions. Attorney David A. Pels was present and addressed the Committee.

After discussion, the Committee unanimously voted to submit to public hearing the amendments to Sections 17-30 and 17-53, as set forth in Appendix E attached to these minutes.

Respectfully submitted,

A handwritten signature in black ink, reading "Joseph J. Del Ciampo". The signature is written in a cursive style with a large initial "J" and "D".

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (121514)

Sec. 25-24. Motions

(a) Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other equitable relief.

(b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendent lite or a postjudgment motion.

COMMENTARY: The revision to this section establishes by rule the procedure to follow in connection with seeking the removal of counsel for a minor child or a guardian ad litem for the minor child and is consistent with Section 4 of Public Act 14-3.

Appendix B (121514)

Sec. 13-7. —Answers to Interrogatories

(a) Any such interrogatories shall be answered under oath by the party to whom directed and such answers shall not be filed with the court but shall be served within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the interrogatories or, if applicable, the notice of interrogatories on the answering party, unless:

(1) Counsel file with the court a written stipulation extending the time within which answers or objections may be served; or

(2) The party to whom the interrogatories are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. [Such request shall contain a certification by the requesting party that the case has not been assigned for trial.] Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the interrogatories or the notice of interrogatories shall file objection thereto. A party shall be entitled to one such request for each set of interrogatories directed to that party; or

(3) Upon motion, the judicial authority allows a longer time; or

(4) Objections to the interrogatories and the reasons therefor are filed and served within the thirty-day period.

(b) A party objecting to one or more interrogatories shall file an objection in accordance with Section 13-8.

(c) Objection by a party to certain of the interrogatories directed to such party shall not relieve that party of the obligation to answer the interrogatories to which he or she has not objected within the thirty-day period. All answers to interrogatories shall repeat immediately before each answer the interrogatory being answered. Answers are to be signed by the person

making them. The party serving the interrogatories or the notice of interrogatories may move for an order under Section 13-14 with respect to any failure to answer.

COMMENTARY: This section currently requires a party requesting a thirty day discovery extension to state, "Such request shall contain a certification by the requesting party that the case has not been assigned for trial." With the recent amendment of Section 14-8 (a) and the advent of the individualized calendaring system (IndiCal), trial dates are being assigned shortly after the cases are filed. The revision to this section eliminates that requirement which otherwise prevents the filing of requests for extension of time.

Sec. 13-10. —Responses to Requests for Production; Objections

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the request or, if applicable, the notice of requests for production on the responding party, unless:

(1) Counsel file with the court a written stipulation extending the time within which responses may be served; or

(2) The party to whom the requests for production are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. [Such request shall contain a certification by the requesting party that the case has not been assigned for trial.] Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the requests for production or the notice of requests for production shall file objection thereto. A party shall be entitled to one such request for each set of requests for production served upon that party; or

(3) Upon motion, the court allows a longer time.

(b) The response of the party shall be inserted directly on the original request served in accordance with Section 13-9 and shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request or any part thereof is objected to. If, pursuant to subsection (b) of Section 13-9, a notice of requests for production is served in lieu of requests for production, the party to whom such notice is directed shall in his or her response set forth each request for production immediately followed by that party's response thereto. No objection may be filed with respect to requests for production set forth in Forms 204, 205, 206, 209 and/or 211 of the rules of practice for use in connection with Section 13-9. Where a request calling for submission of copies of documents is not objected to, those copies shall be appended to the copy of the response served upon the party making the request. A party objecting to one or more requests shall file an objection to the request. Objections to requests for production shall be immediately preceded by the request objected to, shall set forth reasons for the objection, shall be signed by the attorney or self-represented party making them and shall be filed with the court. Objection by a party to certain parts of the request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the thirty-day period. The party serving the request or the notice of requests for production may move for an order under Section 13-14 with respect to any failure on the part of the party to whom the request or notice is addressed to respond.

(c) No objection to any such request shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein, or, if no conference has been

held, the reasons for the failure to hold such a conference. If an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

COMMENTARY: This section currently requires a party requesting a thirty day discovery extension to state, "Such request shall contain a certification by the requesting party that the case has not been assigned for trial." With the recent amendment of Section 14-8 (a) and the advent of the individualized calendaring system (IndiCal), trial dates are being assigned shortly after the cases are filed. The revision to this section eliminates that requirement which otherwise prevents the filing of requests for extension of time.

Appendix C (121514)

Sec. 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or filed in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(h) Sworn statements of current income, expenses, assets and liabilities filed with the court pursuant to Sections 25-30 and 25a-15 shall be under seal and be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any guardians ad litem and attorneys appointed

for any minor children involved in the matter, except as otherwise ordered by the judicial authority. [When such sworn statements are filed, the clerk shall place them in a sealed envelope clearly identified with the words "Financial Affidavit." All such sworn statements that are filed in a case may be placed in the same sealed envelope.] Any person may file a motion to unseal these documents. When such motion is filed, the provisions of paragraphs (a) through (e) of this section shall apply and the party who filed the documents shall have the burden of proving that they should remain sealed. The judicial authority shall order that the automatic sealing pursuant to this paragraph shall terminate with respect to all such sworn statements then on file with the court when any hearing is held at which financial issues are in dispute. This shall not preclude a party from filing a motion to seal or limit disclosure of such sworn statements pursuant to this section. (i) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the Judicial Branch website. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

COMMENTARY: The language that has been deleted in subsection (h) was applicable to a paper file. There are, as of December 15, 2014, paperless family files for which sealing financial affidavits in an envelope is not applicable. A comparable electronic process "seals" those affidavits in accordance with the other provisions of this section.

Appendix D (121514)

Sec. 23-36. — The Expanded Record

A party may [file with the court any portion of], consistent with the rules of evidence, offer as an exhibit, or the habeas court may take judicial notice of, the transcript and any portion of the superior court, appellate court or supreme court record or clerk's file [as part of the record before the habeas court] from the petitioner's criminal matter which is the subject of the habeas proceeding.

COMMENTARY: The amendments to this section allow for the creation of an "expanded record" in the habeas court from materials from the underlying criminal case. This will reduce confusion as to what materials are before the court and what the parties are relying on. It will also reduce record keeping issues that are created when a trial is over and some of the criminal court records were delivered as part of the expanded record, but never marked as exhibits.

Appendix E (121514)

Sec. 17-30. Summary Process; Default and Judgment for Failure to Appear or Plead

(a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions.

(b) If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs.

(c) In summary process actions a motion for judgment by default that is sent to the court either electronically or is hand-delivered to the court shall be deemed to be filed on the third business day following such delivery unless the party filing the motion for judgment by default certifies that the motion has also been sent electronically or hand-delivered on the same day to all opposing parties or their counsel.

COMMENTARY: When motions for judgment are sent electronically or hand-delivered to the court and then mailed to the opposing parties or their counsel, there is significant chance that by the time the motion is received by the opposing parties or their counsel judgment will have entered. This amendment to this

section is intended to avoid that situation.

Sec. 17-53. Summary Process Executions

Whenever a summary process execution is requested because of a violation of a term in a judgment by stipulation or a judgment with a stay of execution beyond the statutory stay, a hearing shall be required. If the violation consists of nonpayment of a sum certain, an affidavit with service certified in accordance with Sections 10-12 through 10-17 shall be accepted in lieu of a hearing unless an objection to the execution is filed by the defendant prior to the issuance of the execution. The execution shall issue on the third business day after the filing of the affidavit.

An affidavit asserting non-payment of a sum certain that is sent to the court either electronically or is hand-delivered to the court shall be deemed to be filed on the third business day following such delivery unless the party filing the affidavit certifies that the affidavit has also been sent electronically or hand-delivered on the same day to all opposing parties or their counsel.

COMMENTARY: When affidavits of non-compliance are sent electronically or hand-delivered to the court and then mailed to the opposing parties or their counsel, there is a significant chance that by the time the affidavit is received by the opposing parties or their counsel an execution will have issued. The amendment to this section is intended to avoid that situation.