

December 17, 2007

Minutes of the Meeting
Rules Committee
December 17, 2007

On Monday, December 17, 2007 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:39 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. ROLAND D. FASANO
HON. C. IAN MCLACHLAN
HON. BARRY C. PINKUS
HON. PATTY JENKINS PITTMAN
HON. RICHARD A. ROBINSON
HON. MICHAEL R. SHELDON

Also in attendance was Carl E. Testo, Counsel to the Rules Committee.

Agenda

1. The Committee approved the minutes of the meeting held on November 19, 2007.
2. At its November 19, 2007 meeting the Committee approved certain revisions to Sections 17-14 and 17-18 in light of Section 16 of Public Act 07-141 concerning offers of compromise.

At this meeting the undersigned suggested further revisions to Section 17-18.

After discussion, the Committee further amended the proposed revision to Section 17-18 and unanimously voted to submit to public hearing the revisions to Section 17-18 as set forth in Appendix A attached hereto.

3. At prior meetings the Rules Committee considered a proposal by the Civil Division Task Force to amend Practice Book Section 13-4 concerning the discovery of experts and decided that, because the proposal does not include any discussion of the problems it is meant to resolve, it would invite someone from the task force to attend a Rules Committee meeting to

discuss the proposal.

At this meeting Attorney Steven Ecker addressed the Committee concerning this proposal.

After discussing the proposal with Attorney Ecker, the Committee decided that certain revisions should be made to it which it asked the undersigned to incorporate into the proposal and submit to the Committee for consideration at its next meeting.

4. The Committee considered a submission from Nancy B. Alisberg, Managing Attorney for the Office of Protection and Advocacy for Persons with Disabilities, with regard to Practice Book Section 2-44A concerning the definition of the practice of law.

The Committee decided that Attorney Alisberg should be advised that pursuant to Section 2-44A it is up to an administrative agency to determine whether it will allow nonattorneys to appear before it.

5. The Committee tabled to its February meeting a proposal by Attorney James F. Sullivan to amend the rules concerning class actions and a report of the Civil Division Task Force concerning this matter, including a proposal by the Task Force to amend the class action rules.

6. At a prior meeting the Rules Committee considered a proposal from Judge Samuel Sferrazza to amend Sections 13-30 (d) and 13-31 concerning depositions and a comment from the Civil Division Task Force concerning the proposal that there is no need to change the rules and that cross-examination is an acceptable method to address deposition changes.

At that meeting the Committee decided that instead of amending the rules a commentary should be added to Section 13-30 stating that the purpose of subsection (d) of that rule, which allows the deponent to make changes in form or substance to the deposition, is to allow the deponent to correct errors in the transcription. If a deponent realizes that his or her testimony was incorrect, such changes are not contemplated by this section. The commentary should also state that there is a continuing duty to disclose and that an attorney has a duty to correct perjury. The Committee asked the undersigned to draft an appropriate commentary for their consideration.

At this meeting the Committee considered the commentary drafted by the undersigned and unanimously voted to submit to public hearing the commentary to Section 13-30 as set forth in Appendix B attached hereto.

Although commentaries to Practice Book rules are usually printed in only one edition of the Practice Book, the Rules Committee decided that this commentary will be permanent.

Even though commentaries to Practice Book rules are not adopted by the judges of the Superior Court and are not subject to the provisions of Practice Book Section 1-9, the Committee decided that this commentary should be submitted to public hearing and then forwarded to the judges for their information and comment at the annual meeting. The judges should also be advised that this commentary will be printed in all future editions of the Practice Book.

7. The Committee referred to the Civil Division Task Force a proposal by Attorney James F. Sullivan to amend Practice Book Section 13-30 concerning objections at depositions.

8. The Committee considered a proposal submitted by the Statewide Grievance Committee to amend Rule 7.4 of the Rules of Professional Conduct concerning communication of fields of practice by lawyers.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Rule 7.4 of the Rules of Professional Conduct as set forth in Appendix C attached hereto.

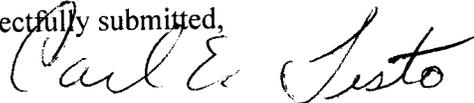
9. The Committee considered a proposal by Attorney Joseph J. Del Ciampo to amend Practice Book Sections 25-2 and 25-36 concerning civil unions.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Sections 25-2 and 25-36 as set forth in Appendix D attached hereto.

10. At the request of Justice Zarella, the undersigned submitted to the Rules Committee a proposed new Practice Book Section 1-9A, which incorporates a resolution adopted by the Superior Court judges at their meeting on June 29, 2007 concerning the interaction between the Rules Committee and the Judiciary Committee.

After discussion, the Committee unanimously voted to submit to public hearing proposed new Section 1-9A as set forth in Appendix E attached hereto.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (12-17-07 MINS)

Further changes are shown by double-underlines.

Sec. 17-18. —Judgment where Plaintiff Recovers an Amount Equal to or Greater than Offer

After trial the judicial authority shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the judicial authority ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in that plaintiff's offer of compromise, the judicial authority shall add to the amount so recovered 8 percent annual interest on said amount[.]. In the case of a counterclaim plaintiff under General Statutes § 8-132 the judicial authority shall add to the amount so recovered 8 percent annual interest on the difference between the amount so recovered and the sum certain specified in the counterclaim plaintiff's offer of compromise. Any such interest shall be computed as provided in General Statutes § 52-192a[.]. The judicial authority may award reasonable attorney's fees in an amount not to exceed \$350, and shall render judgment accordingly. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.

COMMENTARY: The changes to this section are intended to adopt the provisions of General Statutes § 52-192a(c) as amended by Public Act 07-141 §16.

APPENDIX B (12-17-07 MINS)

Sec. 13-30. — Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Any objection during a deposition must be stated concisely and in a nonargumentative manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 13-31 (c) (4) the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then securely seal the deposition in an envelope endorsed with the title of the action, the address of the court

where it is to be used and marked "Deposition of (*here insert the name of the deponent*)," shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (i) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice of deposition and (ii) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party

pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall at such party's expense provide a copy of the deposition transcript and any permanent electronic record including audio or video tape to each adverse party.

COMMENTARY: The purpose of the provision in subsection (d) that allows the deponent to make changes in form or substance to the deposition is to allow the deponent to correct errors in the transcription. If a deponent realizes that his or her testimony was incorrect, such changes are not contemplated by this subsection.

Parties have a continuing duty to disclose pursuant to Section 13-15.

With regard to a lawyer's duty to correct material evidence given by the lawyer, or his or her client or witness, that the lawyer comes to know is false, see Rule 3.3 (a) (3) of the Rules of Professional Conduct.

APPENDIX C (12-17-07 MINS)

Rule 7.4. Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. [A lawyer shall not state or imply that the lawyer is a specialist except as follows and as provided in Rule 7.4A:]

[(1)](b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “[p]Patent [a]Attorney” or a substantially similar designation[; and].

[(2)](c) A lawyer engaged in admiralty practice may use the designation “[a]Admiralty,” “[p]Proctor in [a]Admiralty” or a substantially similar designation.

(d) A lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

COMMENTARY: This Rule permits a lawyer to indicate [areas] fields of practice in communications about the lawyer’s services[, for example, in a telephone directory or other advertising]. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. A lawyer may indicate that the lawyer “concentrates in,” “focuses on,” or that the practice is “limited to” particular fields of practice as long as the statements are not false or misleading in violation of Rule 7.1. However, [stating that] the lawyer [is a “specialist” or that the lawyer’s practice “is limited to” or “concentrated in” particular fields is not permitted] may not use the terms “specialist,” “certified,” “board-certified,” “expert” or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A. [These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.]

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

APPENDIX D (12-17-07 Mins)

Sec. 25-2. Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment

(a) Every complaint in a dissolution of marriage or civil union, legal separation or annulment action shall state the date and place, including the city or town, of the marriage or civil union and the facts necessary to give the court jurisdiction.

(b) Every such complaint shall also state whether there are minor children issue of the marriage or civil union and whether there are any other minor children born to the wife since the date of marriage of the parties or to either party since the date of the civil union of the parties, the name and date of birth of each, and the name of any individual or agency presently responsible by virtue of judicial award for the custody or support of any child. These requirements shall be met whether or not a child is issue of the marriage or civil union [not] and whether custody of children is sought in the action. In every case in which the state of Connecticut or any town thereof is contributing or has contributed to the support or maintenance of a party or child of said party, such fact shall be stated in the complaint and a copy thereof served on the attorney general or town clerk in accordance with the provisions of Sections 10-12 through 10-17. Although the attorney general or town clerk shall be a party to such cases, he or she need not be named in the writ of summons or summoned to appear.

(c) The complaint shall also set forth the plaintiff's demand for relief and the automatic orders as required by Section 25-5.

COMMENTARY: The changes to this section clarify its applicability to civil unions.

Sec. 25-36. Motion for Decree Finally Dissolving Marriage or Civil Union after Decree of Legal Separation

Every motion for a decree finally dissolving and terminating the marriage or civil union, after a decree of legal separation, shall state the number of the case in which the separation was granted, the date of the decree of legal separation and whether the parties have resumed [marital] relations relating to the marriage or civil union since the entry of the decree, and it shall be accompanied by an application for an order of notice to the adverse party.

COMMENTARY: The changes to this section clarify its applicability to civil unions.

APPENDIX E (121707 Mins)

Sec. 1-9A. –Judiciary Committee; Placement of Rules Information on Judicial Branch Website (NEW)

(a) Each year the Rules Committee shall make itself available to meet with the members of the Judiciary Committee of the General Assembly (the Judiciary Committee) as soon as practicable after the first Rules Committee meeting in September to advise the Judiciary Committee as to the Rules Committee's anticipated agenda for the upcoming year.

(b) As soon as practicable after the convening of each regular legislative session, the Chair of the Rules Committee shall invite the Senate and House Chairs and the Ranking Members of the Judiciary Committee, and such other members of that Committee as the Chairs may designate, to attend a meeting with the Rules Committee to confer and consult with respect to the rules of practice, pleadings, forms and procedure for the Superior Court and with respect to legislation affecting the courts pending before or to be introduced in the General Assembly.

(c) The Chair of the Rules Committee shall forward to the Judiciary Committee for review and comment all proposed revisions to the Practice Book and to the Code of Evidence which the Rules Committee has decided to submit to public hearing at least 35 days in advance of the public hearing thereon. If the Chair of the Rules Committee shall receive any comments from the Judiciary Committee with respect to such proposed revisions, he or she shall forward such comments to the members of the Rules Committee for their consideration in connection with the public hearing.

(d) The agendas and minutes of Rules Committee meetings, any proposed revisions to the Practice Book and to the Code of Evidence which the Rules Committee has decided to submit to public hearing, any comments by the Judiciary Committee with respect to such proposed revisions, and any proposed revisions that are adopted by the Superior Court judges shall be placed on the Judicial Branch website.

COMMENTARY: The above new rule is taken from a resolution adopted by the Superior Court judges at a meeting on June 29, 2007.