

Minutes of the Meeting
Rules Committee
October 18, 2010

On Monday, October 18, 2010, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:20 p.m.

Members in attendance were:

HON. C. IAN McLACHLAN, ACTING CHAIR
HON. BARBARA N. BELLIS
HON. JULIETT L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. LESLIE I. OLEAR
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

Also in attendance were Carl E. Testo, Counsel to the Rules Committee; and Attorneys Denise K. Poncini and Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee tabled to its November meeting the proposed rules concerning videoconferencing submitted by Judge Elliot N. Solomon on behalf of the Alternatives to Court Appearances Committee.

2. The Committee unanimously approved the minutes of the September 27, 2010, meeting. Judge Olear abstained from this vote.

3. The Committee considered an article concerning political contributions by lawyers for the purpose of obtaining government business.

After discussion, the Committee referred the article for comment to the Statewide Grievance Committee and to the Probate Court Administrator.

4. The Committee considered documents submitted by Attorney Duncan Osborne concerning compliance by lawyers with national and international efforts to curtail money laundering and terrorist financing.

After discussion, the Committee determined that no Committee action was necessary concerning this item.

5. The Committee considered the ABA Standing Committee on Client Protection's Draft Model Rules for Client Trust Account Records.

After discussion, the Committee referred the Model Rules for comment to the Statewide Grievance Committee, the Probate Court Administrator, and the CBA Estates and Probate Committee.

6. The Committee considered proposals submitted by the Connecticut Bar Examining Committee to amend Section 2-13 and to repeal Sections 2-14 and 2-15 concerning admission to the bar without examination, and comments submitted by Attorney Richard R. Brown with regard to these proposals. Attorney Kathleen Wood, Administrative Director of the Bar Examining Committee, was present at this meeting and answered questions from the Committee concerning this proposal.

After discussion, the Committee made further revisions to the proposed revision to Section 2-13 (a) and, with Justice McLachlan abstaining, unanimously voted to submit to public hearing the revisions to Section 2-13 (a) and (c) and to repeal Sections 2-14 and 2-15 as set forth in Appendix A attached hereto.

The Committee tabled the proposed revision to Section 2-13 (b) and asked Attorney Wood to report to the Committee how other states define the practice of law in this context.

7. The Committee considered a proposal submitted by Attorney Anne C. Dranginis, Chair of the Bar Examining Committee, on behalf of that committee, to amend Section 2-5A to provide a definition for the term "good moral character." Attorney Dranginis was in attendance at the meeting and answered questions from the Committee concerning this proposal.

After discussion, the Committee made a further revision to the proposal and unanimously voted to submit to public hearing the revision to Section 2-5A as set forth in Appendix B attached hereto.

The Committee asked Attorney Wood to draft a commentary concerning this revision and to submit it to the Committee to consider at its next meeting.

8. The Committee tabled its review of standing orders for inclusion in the Practice Book. Judge Prescott opposed the tabling of this item.

9. The Committee considered a proposal by Attorney Christopher Blanchard on behalf of the Client Security Fund Committee to amend Section 2-16 to require payment of the annual

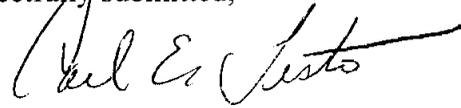
client security fund fee by attorneys appearing pro hac vice.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 2-16 as set forth in Appendix C attached hereto.

10. The Committee considered a proposal by Attorney Nicholas J. Cimmino to amend Section 14-6 concerning administrative appeals.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 14-6 as set forth in Appendix D attached hereto. Judge Dyer abstained from this vote.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl E. Testo". The signature is written in a cursive style with a long horizontal stroke at the end.

Carl E. Testo
Counsel to the Rules Committee

Appendix A (10-18-10 mins)

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 or would have entitled him or her to take the examination in Connecticut at the time of his or her admission to the bar of which he or she is a member, and that 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, shall satisfy the [appropriate standing committee on recommendations for admission] 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 and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood in [such] reciprocal jurisdictions for at least five of the [seven] 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 [seven] 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 to devote the major portion of his or her working time to the practice of law 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 [certificates or] 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 [standing committee on recommendations for admission to the bar] state bar examining committee, his or her practice of law as defined under (2) of this section; 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 a certificate from the state bar examining committee that his or her educational qualifications are such as would entitle the applicant to take the examination in Connecticut or would have entitled the applicant to take the examination in Connecticut at the time of his or her admission to the bar of which the applicant is a member]; 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) An attorney who, within the [7] 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. [An attorney so engaged for 5 of the 7 years immediately preceding the date of application will be

deemed to satisfy the threshold requirement of subdivision (a) (2) of this section if such attorney is duly licensed to practice law before the highest court of any state or territory of the United States or in the District of Columbia whether or not such jurisdiction is reciprocal to Connecticut.]

COMMENTARY: The above changes substitute the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process. Additionally, the change expands the 5 of 7 years requirement to 5 of 10 years to allow for intervening, legitimate periods of time away from the practice of law. Finally, the requirement that each applicant must have the intent to devote the major portion of working time to the practice of law in Connecticut is repealed.

[Sec. 2-14. – Action by Bar; Temporary License

Upon the filing of such application, certificates and affidavits, the administrative director of the bar examining committee shall send a copy thereof to the chair of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify the clerk of the superior court for the county in which the applicant seeks admission who shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting endorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the bar of the county. Such admission shall, however, be upon a temporary license for a period of one year.]

COMMENTARY: The above rule should be repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

[Sec. 2-15. – Permanent License

(a) Not less than thirty nor more than sixty days before the expiration of such temporary license the applicant may file a motion that such license be made permanent with

the clerk, who shall forthwith give notice thereof to the standing committee on recommendations for admission. Said committee shall claim the motion for the short calendar as soon as it is prepared to make recommendations thereon to the court. If it shall appear to the court at a hearing thereon that said applicant has, since admission, devoted the major portion of his or her working time to the practice of the law in the state of Connecticut and intends to continue so to practice, and that the applicant's good moral character and fitness to practice law remain satisfactory, such license shall be made permanent; but if the applicant shall fail to make such motion or if the court shall upon the hearing thereon refuse to make such finding, then said temporary license shall terminate upon its expiration, but the court may for good cause shown continue said hearing and extend said license for a period of not more than three months from the original date of its expiration.

(b) Provided, however, that whenever, during the period for which such temporary license may have been issued, such licensee has entered the military or naval service of the United States and by reason thereof has been unable to continue in practice in Connecticut, the period between such entrance and final discharge from such service, or other termination thereof, shall not be included in computing the term of such temporary license; and upon satisfactory proof to the court hearing said motion for a permanent license of such entrance and discharge or other termination, and of compliance with the other requirements of this section, the court may make such license permanent.]

COMMENTARY: The above rule should be repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

Appendix B (10-18-10 mins)

Sec. 2-5A. –Good Moral Character and Fitness to Practice Law

(a) Good moral character shall be construed to include, but not be limited to, the following:

(1) The qualities of honesty, fairness, candor and trustworthiness;

(2) Observance of fiduciary responsibility;

(3) Respect for and obedience to the law; and

(4) Respect for the legal rights of others and the judicial process.

(b) Fitness to practice law shall be construed to include the following:

(1) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and solving ethical dilemmas;

(2) The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities, with or without the use of aids or devices; and

(3) The capability to perform legal tasks in a timely manner.

COMMENTARY: The above change makes clear what good moral character entails. The fact that an individual has merely initiated litigation does not, in and of itself, constitute a lack of good moral character.

Appendix C (10-18-10 mins)

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, (c) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, [(c)] (d) agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and [(d)] (e) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first appeared pro hac vice in this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is to be tried. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a

specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action. Any person granted permission to appear in a matter pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 and shall pay such fee when due as prescribed by those sections for each year such person appears in the matter. If the clerk for the judicial district or appellate court in which the matter is pending is notified that such person has failed to pay the fee as required by this section, the court shall determine after a hearing the appropriate sanction, which may include termination of the privilege of appearing in the matter.

COMMENTARY: The revisions require an attorney seeking permission to appear pro hac vice in a matter before the court to certify that they have paid the client security fund fee required by Practice Book Section 2-70 for the calendar year in which the application is made, and, if the application is granted, to pay the annual fee for each subsequent year in which the attorney appears in the matter. The revisions also provide that if the clerk for the judicial district or appellate court in which the matter is pending is notified that the attorney has failed to pay the fee as required, the court shall determine the appropriate sanction after a hearing, which may include termination of the privilege of appearing in the matter.

Appendix D (10-18-10 mins)

Sec. 14-6. Administrative Appeals Are Civil Actions

For purposes of these rules, administrative appeals are civil actions. Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that: (a) appeals from judgments of the superior court in administrative appeals shall be by certification only as provided by General Statutes § 51-197b as amended, and by chapter 72 of these rules; and (b)] an administrative appeal shall not be deemed an action for purposes of General Statutes §§ 52-591, 52-592 or 52-593.

COMMENTARY: The above change is made because not all appeals to the Appellate Court from judgments in administrative appeals are by certification.