

Minutes of the Meeting
Rules Committee
October 20, 2008

On Monday, October 20, 2008 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:53 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. JACK W. FISCHER
HON. C. IAN MCLACHLAN
HON. LESLIE I. OLEAR
HON. ANTONIO C. ROBAINA
HON. JANE S. SCHOLL
HON. MICHAEL R. SHELDON

Judge Thomas J. Corradino was not in attendance at this meeting.

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

Agenda

1. The members of the Committee who were present for the September 15, 2008 meeting unanimously approved with revisions the minutes of that meeting.

2. The Committee considered a proposal submitted by Attorney William H. Prout, Jr., then President of the Connecticut Bar Association, to adopt minimum continuing education rules.

The following representatives from the Connecticut Bar Association were in attendance at this meeting and addressed the Rules Committee concerning this proposal:

Attorney Livia Barndollar, President of the Connecticut Bar Association, and Attorneys William H. Prout, Jr., Norman Jaynes, Francis J. Brady, Judith Rossi, and Tim Diamond.

Among the issues discussed were the need for minimum continuing legal education in Connecticut, the cost of administering the proposal, how the administrative costs would be raised, whether courses would be offered that would be useful to attorneys with different levels

of experience and different areas of expertise, and how providers and courses would be accredited.

After discussing the proposal, the Rules Committee advised the representatives from the Connecticut Bar Association that it would consider the matter further and would get back to Attorneys Barndollar and Diemond with any questions.

3. At a prior meeting, the Committee considered a proposal by the Civil Task Force to amend the class action rules and decided to invite experts on this topic from the Task Force to address the Committee on this proposal at its October meeting.

At this meeting, Attorneys David Slossberg and Jamie Sullivan addressed the Committee concerning this proposal.

After discussing the proposal with Attorneys Slossberg and Sullivan, the Committee determined that certain changes should be made to the proposal and asked the undersigned to incorporate the changes and submit the revised proposal to it for consideration at a future meeting.

The Committee also asked the undersigned to provide it with a draft showing the differences between the proposal and the federal class action rules.

4. The Committee considered a memo from the undersigned to Judges Hiller and Mintz commenting on proposed Practice Book revisions that are being developed by the Bench-Bar Foreclosure Committee. The Committee also considered proposals by Attorney Nicholas Cimmino and Attorney Rafael Podolsky to amend the foreclosure rules in light of Public Act 08-176 and a memo from Attorney Shawn Council concerning private mortgage insurance.

The undersigned reported that he had met with Judge Mintz concerning the Bench-Bar Foreclosure Committee's proposals and that as a result of that meeting he is redrafting the

proposals for submission by Judge Mintz to the Civil Task Force for approval at a Task Force meeting to be held on October 22.

Justice Zarella advised the Rules Committee that he will forward the proposal, as approved by the Civil Task Force, to the Committee for consideration at its November meeting.

5. The Rules Committee scheduled its next meeting for 10:00 a.m. on November 20 and will meet with the Judiciary Committee at 2:00 p.m. on that date. The Rules Committee meeting previously scheduled for November 24 was cancelled.

6. The Committee unanimously denied a proposal by Mr. Marvin Steil to amend the Rules of Professional Conduct.

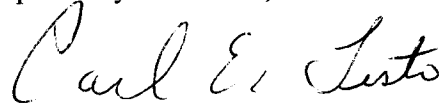
7. The Committee considered the Connecticut Bar Association's proposed changes to the American Bar Association's revisions to Rules 3.8 and 4.2 of the Rules of Professional Conduct and comments received by the Committee concerning the proposal.

After discussion, the Committee referred the proposal to the Criminal Commission for review and a recommendation.

8. The Committee considered proposals submitted by Lawrence L. D'Orsi, Deputy Director of Criminal Court Operations, to amend Sections 36-2 and 37-12.

After discussion, the Committee further revised the proposals and voted, with Judge Sheldon opposed, to submit to public hearing the revisions to Sections 36-2 and 37-12 as set forth in Appendix A attached hereto.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:cf

Appendix A (102008 mins)

Sec. 36-2. —Affidavit in Support of Application, Filing, Disclosure

(a) All affidavits submitted to the judicial authority in support of the application for an arrest warrant and from which a determination of probable cause for the issuance of an arrest warrant has been made shall be filed with the clerk of the court together with the return of the arrest warrant pursuant to Section 44-11 and thereafter remain a part of the court file.

(b) At the time the arrest warrant is issued, upon written request of the prosecuting authority and for good cause shown, the judicial authority may order that the supporting affidavits be sealed from public inspection or that disclosure be limited under such terms and conditions as it finds reasonable, subject to the further order of any judicial authority thereafter having jurisdiction of the matter. No such order shall limit their disclosure to the attorney for the accused, but the judicial authority may place reasonable restrictions on the attorney's further disclosure of the contents of the affidavits.

(c) Any order sealing such affidavits from public inspection or limiting their disclosure shall be for a specific period of time, not to exceed two weeks from the date of arrest, and within that time period the prosecuting authority may by written motion seek an extension of the period. The original order of the court sealing the affidavit or limiting its disclosure shall remain in effect until the court issues an order on the motion. The motion to extend the period and the court's order thereon shall be made in accordance with the provisions of Section 42-49A. Affidavits which [have been] are the subject of such an order shall remain in the custody of the clerk's office but shall be kept in a secure location apart from the remainder of the court file as long as the order is in effect.

(d) Unless the judicial authority issuing an arrest warrant has, upon written request of the prosecuting authority, entered an order limiting disclosure of the supporting affidavits, all affidavits filed pursuant to this section shall be open to public inspection and copy and the clerk shall provide copies to any person upon receipt of any applicable fee.

COMMENTARY: The above revisions clarify that affidavits submitted in support of an application for an arrest warrant and from which a probable cause determination is made shall, if sealed, be kept apart from the remainder of the court file only as long as the order sealing such affidavits is in effect.

Sec. 37-12. Defendant in Custody; Determination of Probable Cause

(a) If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment pursuant to Section 38-4, the judicial authority shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. Unless such a defendant is released sooner, such probable cause determination shall be made no later than forty-eight hours following the defendant's arrest. Such determination shall be made in a nonadversary proceeding, which may be ex parte based on affidavits. If no such probable cause is found, the judicial authority shall release the defendant from custody.

(b) At the time the judicial authority makes its probable cause determination pursuant to subsection (a), the judicial authority may, on its own motion or upon written request of any party and for good cause shown, order that any affidavits submitted in support of a finding of probable cause, including any police reports, be sealed from public inspection or that disclosure be limited under such terms and conditions as it finds reasonable, subject to the further order of any judicial authority thereafter having jurisdiction of the matter. If such a request has been granted, the moving party may have up to seven days to make a recommendation as to the details of the sealing order. If no such recommendation is made within that time period, the supporting affidavits shall be made public. No such order shall limit their disclosure to the attorney for the accused, but the judicial authority may place reasonable restrictions on the further disclosure of the contents of the affidavits by the attorney for the accused and the prosecuting authority.

(c) Any order sealing such affidavits from public inspection or limiting their disclosure shall be for a specific period of time, not to exceed two weeks from the date of the court's probable cause determination, and within that time period the party who obtained the order may by written motion seek an extension of the period. The original order of the court sealing such affidavits or limiting their disclosure shall remain in effect until the court issues an order on the motion. Affidavits which [have been] are the subject of such an order shall remain the custody of the clerk's office but shall be kept in a secure location apart from the remainder of the file as long as the order is in effect.

(d) Unless the judicial authority entered an order limiting disclosure of the affidavits submitted to the judicial authority in support of a finding of probable cause, whether or not probable cause has been found, all such affidavits, including any police reports, shall be made part of the court file and be open to public inspection and copying, and the clerk shall provide copies to any person upon receipt of any applicable fee.

COMMENTARY: The above revisions clarify that affidavits submitted in support of a finding of probable cause that the offense charged was committed by the defendant shall, if sealed, be kept apart from the remainder of the court file only as long as the order sealing such affidavits is in effect.