

January 29, 2007

Minutes of the Meeting
Rules Committee
January 29, 2007

On Monday, January 29, 2007 the Rules Committee met in the Supreme Court Conference Room from 2:00 p.m. to 3:32 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. JOAN K. ALEXANDER
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. ROLAND D. FASANO
HON. BARRY C. PINKUS
HON. PATTY JENKINS PITTMAN
HON. HILLARY B. STRACKBEIN
HON. GEORGE N. THIM

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

Agenda

1. The Committee approved the minutes of the meeting held on December 18, 2006.
2. The Rules Committee continued its discussion of the Report of the CBA Task Force on Multi-Jurisdictional Practice and General Agreement on Trade Services. That report recommended revisions to Rule 5.5 of the Rules of Professional Conduct, concerning the unauthorized practice of law, and the adoption of new Practice Book Sections 2-15A, concerning authorized house counsel, and new Section 2-44a, concerning the definition of the practice of law. At its October meeting the Committee made various revisions to the Task Force proposals.

At this meeting Justice Zarella updated the Rules Committee concerning a proposed further revision to paragraph A.(5) of proposed new Practice Book Section 2-44a concerning the definition of the practice of law. This further revision was forwarded to the Committee for consideration at this meeting.

Attorney Peter Costas then addressed the Rules Committee concerning the CBA Task

Force proposals. He stated that the Real Estate Section of the CBA unanimously approved the further revision to Section 2-44aA.(5) that was forwarded to the Committee for this meeting.

After discussion, the Rules Committee unanimously voted to submit to public hearing the revisions to Rule 5.5 of the Rules of Professional Conduct and proposed new Practice Book Sections 2-15A and 2-44a, which includes the further revision that was forwarded to the Committee for consideration at this meeting, as set forth in Appendix A attached hereto. The vote concerning Section 2-44a is subject to grammatical revisions to that section to be made by Judge Pittman.

3. The Rules Committee continued its consideration of the following matters: (1) Justice Borden's letter to Justice Zarella setting forth Public Access Task Force recommendations that Justice Borden requests the Rules Committee to consider implementing by Practice Book rule and (2) proposed Practice Book revisions submitted by Attorney Nicholas J. Cimmino to implement these recommendations.

Justice Zarella noted that the Rules Committee has already taken action concerning the following Public Access Task Force Recommendations that were the subject of Justice Borden's letter: Recommendations Fourteen, Fifteen, Sixteen, Twenty, Twenty-One and Thirty-Three.

With regard to Recommendations Twenty-Seven, Thirty, Thirty-One and Thirty-Two, concerning media access to court proceedings, the Rules Committee had asked the undersigned to compile the trial court camera rules of other jurisdictions and to request those jurisdictions to provide any policies adopted by them in connection with those rules, and any studies that have been conducted regarding the impact of the rules on those jurisdictions. The undersigned distributed this report to the Committee at this meeting.

The Committee thereupon formed two subcommittees concerning these recommendations. One subcommittee will review the report distributed by the undersigned and report back to the Rules Committee with proposals concerning cameras in the courtroom. The members of this subcommittee are Justice Zarella and Judges Corradino, Dyer, Fasano, Pittman and Thim.

A second subcommittee will look into how "media" should be defined in the rules and report back to the Rules Committee with a recommendation. The members of this subcommittee are Justice Zarella and Judges Alexander, Pinkus and Strackbein.

The subcommittees will forward their recommendations to the Rules Committee for

consideration at the April meeting.

With regard to Public Access Task Force Recommendation Thirty-Eight, which concerns the sealing of financial affidavits in family matters, the Committee agreed to table this matter until the Identity Theft Task Force issues its report. The Committee will take this up at each meeting for an update on the progress of the Task Force.

4. The Committee considered a proposal by Attorney James F. Sullivan to amend the Practice Book rules concerning class actions.

After discussion, the Committee unanimously voted to refer this to the Civil Task Force for review and a recommendation.

5. The Committee considered proposals by the Statewide Grievance Committee to amend various sections of the attorney grievance rules.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Sections 2-16, 2-27, 2-35, 2-38, 2-50 and 2-52 as set forth in Appendix B attached hereto.

6. At a prior meeting the Committee considered a proposal by the Bar Examining Committee (BEC) to amend Section 2-8 concerning review of foreign and non-approved legal education and asked the undersigned to request the BEC to provide the rationale for the proposed changes regarding applicants who wish to sit for the Connecticut Bar Exam who do not have a traditional education and law degree.

At this meeting the Committee considered a response from Judge Barbara M. Quinn, a member of the BEC, concerning this matter.

The Committee noted that the BEC is also recommending significant revisions to the provisions in Section 2-8 concerning the alternate procedure in the rule for satisfying the BEC that the applicant has met the BEC's educational requirements. The Committee tabled the matter and asked the undersigned to request the BEC to provide the rationale for these changes.

7. The Committee considered a proposal by Judge Samuel Sferrazza to clarify Sections 13-30(d) and 13-31 concerning depositions.

After discussion, the Committee unanimously voted to refer this to the Civil Task Force for review and a recommendation.

8. The Committee considered a letter from the Connecticut Trial Lawyers Association raising concerns with regard to the Commentary to Rule 1.15(f) of the Rules of Professional

Conduct. The Committee also considered a proposed revision to that Commentary suggested by Justice Zarella which was approved by the CBA Ethics Committee, the Connecticut Trial Lawyers Association, the Connecticut Defense Lawyers Association, Statewide Bar Counsel Michael Bowler and Chief Disciplinary Counsel Mark Dubois.

After discussion, the Committee unanimously voted to submit to public hearing the revision to the Commentary to Rule 1.15 of the Rules of Professional Conduct as set forth in Appendix C attached hereto.

9. At Justice Zarella's request, the undersigned distributed to the Rules Committee at this meeting a letter to Justice Zarella from Attorney Joseph R. Mirrione raising concerns with regard to Rule 1.5(a) of the Rules of Professional Conduct concerning reasonable fees. Attorney Mirrione is concerned that this section may be interpreted in a way that will make contingent fees subject to the reasonable fee analysis of the rule.

The Committee tabled the matter and agreed to solicit the view of the CBA Ethics Committee on this issue and to find out from the Statewide Grievance Committee if they have in the past interpreted Rule 1.5 to provide that contingent fees are subject to the reasonableness test.

10. The Committee tabled to its next meeting a proposal by Attorney Lewis S. Lerman, submitted on behalf of the Connecticut Defense Lawyers Association, to amend Rules 1.2 and 1.8 of the Rules of Professional Conduct with regard to the informed consent requirement of those rules.

11. The Rules Committee considered proposals submitted by Justice Joette Katz, Chair of the Evidence Oversight Committee, to amend the Code of Evidence and a letter from Senior Assistant State's Attorney Susann E. Gill, on behalf of the Division of Criminal Justice, concerning the Evidence Oversight Committee's recommendation to amend Section 4-4(a).

The Committee tabled the proposals so that it can be determined in advance of the next meeting whether proposals 1 and proposals 3 through 7 contain substantive changes to the rules that are not the result of legislative changes or Supreme Court decisions.

Justice Zarella did not take part in any discussion at this meeting concerning proposal 2 of the Evidence Oversight Committee to amend Section 4-4(a).

12. The Committee scheduled its next meeting for February 26 at 2:00 p.m.

Respectfully submitted,

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments