

September 24, 2007

Minutes of the Meeting
Rules Committee
September 24, 2007

On Monday, September 24, 2007 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:51 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 June 1, 2007.
2. The Committee approved the following meeting schedule:

Monday, October 29	1:00 p.m. Meeting with Judiciary Committee 2:00 p.m. Rules Committee Meeting
Monday, November 19	2:00 p.m.
Monday, December 17	2:00 p.m.
Monday, January 14	2:00 p.m.
Monday, February 25	9:30 or 10:00 a.m. Meeting with Judiciary Committee 10:30 or 11:00 a.m. Rules Committee Meeting
Monday, March 31	2:00 p.m.

3. The Committee discussed the 2007 ABA Model Code of Judicial Conduct. Justice Zarella stated that he would like the Rules Committee to review the Model Code and make recommended changes to the current Code of Judicial Conduct to the Superior Court judges at the June Annual Meeting.

At Justice Zarella's request, Judges McLachlan and Sheldon agreed to serve on a committee to review the ABA Model and make recommendations to the Rules Committee concerning changes to the current Code of Judicial Conduct. Justice Zarella will also ask Justice Schaller and Judge Keller, who expressed an interest in this matter, to also serve on this committee.

A Rules Committee member suggested that a copy of the ABA Model Code be forwarded to Judge Maureen Dennis, Chair of the Judges Association, for review and comment by the judges. Justice Zarella agreed to forward the Model Code to Judge Dennis.

4. The Committee considered a request by Attorneys Wesley Horton and Kim Knox on behalf of West Publishing Company for permission to reprint the Practice Book commentaries and amendment notes in the West Practice Books Annotated.

After discussion, the Committee decided to recommend to the Commission on Official Legal Publications that the request be approved with certain conditions.

5. The Committee considered a letter from Attorney John W. Fertig, Jr. concerning the penalties in the client security fund rules for failure to pay the client security fund fee.

After discussing the letter, the Committee decided to refer it to the Client Security Fund Committee for review and a recommendation.

6. The Committee considered a proposal by David Stamm, Director of the Bar Examining Committee, to change the language in Section 2-15A from "good moral character" to "character and fitness." Attorney Stamm also suggested that this change be made in the other bar admission rules in which "good moral character" appears.

During the Rules Committee's discussion of this proposal, the protection of applicants' privacy interests was raised as was the manner in which "fitness" should be defined.

It was pointed out that Section 2-5, which sets forth the duties, powers and authority of

the Bar Examining Committee, currently provides that that committee shall determine whether candidates for admission to the bar are qualified as to morals and fitness.

The Committee asked the undersigned to find out from Attorney Stamm whether his proposal was made on behalf of the Bar Examining Committee and, if it was not, to refer this proposal to that Committee for review and a recommendation. The Committee also asked the undersigned to provide them with a copy of the mental health questions that are on the bar exam application.

7. The Committee considered a letter from the President of the American Bar Association suggesting that states adopt Practice Book rules allowing retired or otherwise inactive attorneys to perform pro bono work.

After discussing the letter, the Committee decided to refer it for review and recommendation to the Connecticut Bar Association, the Connecticut Bar Examining Committee, and certain legal services organizations in this state.

8. The Committee considered a letter from Susan Hackett, Senior Vice President and General Counsel of the Association of Corporate Counsel, suggesting the following: that the definition of “organization” in Section 2-15A (b) (2) be amended by adding “employer sponsored entities” to the parenthetical in that provision and that that section be amended to allow authorized house counsel to engage in pro bono work.

After discussion, Justice Zarella agreed to find out from Ms. Hackett whether “benefit plans” would be acceptable in lieu of “employer sponsored entities.” The Rules Committee believes that “employer sponsored entities” is too broad.

The Committee also decided to refer the letter to the Connecticut Bar Examining Committee for review and a recommendation.

9. The Rules Committee considered a proposal by Attorney J. Charles Mokriski to amend Section 2-15A to resolve what he believes is an ambiguity in that rule by clarifying that the rule is intended to grant eligibility to apply for registration as authorized house counsel to in-house lawyers admitted to the bars of foreign jurisdictions that grant or afford substantially similar rights or privileges to lawyers who are admitted to practice and are in good standing in Connecticut. Several members of the Rules Committee opined that the reciprocity requirement is not necessary.

In connection with his above proposal, Attorney Mokriski also suggests that Rule 5.5 (d) of the Rules of Professional Conduct would have to be revised so that it is not limited to attorneys admitted to practice in other United States jurisdictions.

After discussion, the Committee decided to refer the proposal to the Bar Examining Committee for review and a recommendation.

10. The Committee considered a proposal by the deans of the law schools of Yale, the University of Connecticut, and Quinnipiac University for a new rule permitting a full time employee of an accredited Connecticut law school who is a member of the bar of a reciprocal or non-reciprocal state or territory to be admitted to the Connecticut bar without examination and without regard to that employee's prior years of practice.

After discussion, the Committee decided to refer the proposal to the Bar Examining Committee and the Legal Internship Committee for review and a recommendation.

In addition, Justice Zarella asked that some members of the Rules Committee form a subcommittee to discuss this and other proposals before the Committee that relate to exceptions to the current rules for admission to the bar. He asked the members of the Committee to let him know if they would like to serve on such a subcommittee.

11. The Committee considered proposals submitted by Judge Arthur Hiller, Chief Administrative Judge for Civil Matters, to amend the rules concerning defaults for failure to appear and plead in civil cases.

After discussion, during which some issues concerning the proposal were raised by the Rules Committee, Justice Zarella agreed to discuss the matter with Joseph D'Alesio, Executive Director of Court Operations, and to report back to the Committee concerning this at the November meeting so that the Committee may discuss the matter further.

12. The Committee considered a proposal by Ms. Maureen Teachmen that the retention schedule under Section 7-10 for withdrawals and dismissals of medical malpractice cases be extended from one year after termination or the rendition of judgment to seven to ten years.

The Committee expressed concern about how this proposal, if adopted, would impact the Judicial Branch and decided to refer it to Joseph D'Alesio for comment.

13. The Committee noted correspondence from Mr. Joseph S. Miskin concerning the

attorney grievance process.

14. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Section 43-9 concerning presentence investigation reports.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 43-9 as set forth in Appendix A attached hereto.

15. The Committee considered a letter from the American Bar Association to then Senior Associate Justice David M. Borden concerning the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

A Committee member noted that there are committees within the Judicial Branch that are looking at how the Branch should deal with disasters and suggested that this letter be considered by them.

Another Committee member suggested that this should also be reviewed by the Appellate Rules Committee. Justice Zarella agreed to forward the letter to Justice Schaller.

The Committee decided to table this matter for discussion at its meeting with the Judiciary Committee in October.

16. The Committee continued its consideration of an excerpt from U.S. Law Week concerning rules adopted in Nevada and Kansas that require lawyers to disclose on their registration forms whether they maintain malpractice insurance. In connection with this, Attorney Kathleen B. Wood, pursuant to a request by the Committee, prepared a memo concerning the ABA rule and the rules of other jurisdictions on this topic.

After discussion, the Committee decided to refer this matter to the Connecticut Bar Association for review and a recommendation.

17. The Committee discussed materials concerning electronic discovery that were submitted by Judge Susan A. Peck. The Committee tabled the matter and asked the undersigned to find out whether these materials had been forwarded to the Civil Division Task Force for comment.

18. The Committee tabled a proposal submitted by Justice Joette Katz on behalf of the Code of Evidence Oversight Committee to amend the Code of Evidence by adding a tender years

hearsay exception and commentary.

19. Judge Sheldon distributed to the Committee for consideration at a future meeting a proposal from Greater Hartford Legal Aid, Inc. to amend Rule 1.14 of the Rules of Professional Conduct to conform with recent changes in Connecticut's conservatorship laws.

20. A Rules Committee member raised an issue with regard to a Practice Book provision concerning motions to strike. The Committee agreed to discuss this matter at a future meeting when it considers the Civil Commission's proposal to amend the pleading rules.

Respectfully submitted,

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (9-24-07 mins)

Sec. 43-9. —Use and Disclosure of Reports

The presentence investigation and alternate incarceration assessment reports shall not be public records and shall not be accessible to the public. They shall be available initially to the parties designated in Section 43-7 for use in the sentencing hearing and in any subsequent proceedings wherein the same conviction may be involved, and they shall be available at all times to the following:

- (1) The [department] office of adult probation;
- (2) The correctional or mental health institution to which the defendant is committed or may be committed;
- (3) [The board of parole;
- (4)] The board of pardons and paroles;
- [(5)] (4) The sentence review division of the superior court;
- [(6)] (5) The judicial review council;
- [(7)] (6) Any court of proper jurisdiction where it is relevant to any proceeding before such court.

Such court may also order that the report be made available to counsel for the parties for the purpose of such proceeding;

- [(8)] (7) Counsel for the defendant and the prosecuting authority during negotiations relating to other offenses pending against the defendant or subsequently charged against the defendant;
- [(9)] (8) Counsel for the defendant in a sentence review hearing or habeas corpus proceeding upon counsel's request to the department of adult probation;
- [(10)] (9) Counsel for the defendant and the prosecuting authority in connection with extradition proceedings; and
- [(11)] (10) Any other person or agency specified by statute. The prosecuting authority and counsel for the defendant shall retain a copy of the presentence investigation and alternate incarceration reports and may use the same in connection with any matter pertaining to actions by the entities defined in subdivisions (1) through [(10)] (9) of this section, or for any other purpose for which permission is first obtained from any judicial authority. In all other respects, both the prosecuting authority and counsel for the defendant shall maintain the confidentiality of the information contained in the records. A defendant may obtain a copy of the presentence and alternate incarceration reports under proper application to a judicial authority in the judicial district in which sentence was imposed.

COMMENTARY: Subsections 3 and 4 are combined to reflect that the Board of Pardons and the Board of Paroles were combined into a single board effective July 1, 2004; Public Act No. 04-234; C.G.S. § 54-124a.