

Minutes of the Meeting
Rules Committee
February 27, 2012

On Monday, February 27, 2012, the Rules Committee met in the Supreme Court Courtroom from 2:00 p.m. to 3:53 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. WILLIAM M. BRIGHT, JR.
HON. JULIET L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
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 unanimously approved the minutes of the January 23, 2012, meeting; Judge Keegan entered the meeting subsequent to this vote.

2. The Committee considered a proposal by Attorney M. Dean Montgomery to amend the discovery rules to specifically address metadata. Attorney Charles Howard was present as an invited guest to discuss this item with the Committee.

After discussion, the Committee decided that no action was needed concerning this proposal.

3. The Committee considered revised proposed Minimum Continuing Legal Education rules submitted by CBA President Keith Bradoc Gallant and comments from various attorneys and bar associations. Invited guests CBA President Gallant, New Haven County Bar Association MCLE Task Force Chair Victor Bolden and Attorney David Schaefer were present to discuss this item with the Committee. Additionally, Acting Chief Disciplinary Counsel Patricia King and Attorney Mark Dubois were in attendance at the meeting and responded to questions from the Committee.

After extensive discussion, the Committee tabled this matter to its March meeting in

order to obtain additional information on the topic.

4. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee to amend Rule 7.2 of the Rules of Professional Conduct concerning attorney advertising and comments from the CBA Professional Discipline Committee concerning the proposal.

After discussion, the Committee further revised the proposal and unanimously voted to submit to public hearing the amendment to Rule 7.2 as set forth in Appendix A attached hereto.

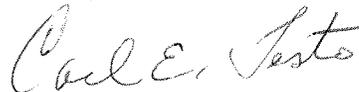
5. The Committee considered a proposal by Judge Cara Eschuk to amend Section 35a-22 which permits the presence of a person to be by means of an interactive audio visual device in certain juvenile proceedings.

Judge Bright reported to the Committee that he talked with Judge Eschuk concerning further changes the Rules Committee suggested at a prior meeting and she agreed to redraft the proposal and resubmit it.

6. The Committee tabled to its next meeting a proposal by the Bar Examining Committee to amend Section 2-13 to bring the educational qualifications for admission without examination in line with current Bar Examining Committee standards for admission by examination.

7. The March 26 Rules Committee meeting was rescheduled to March 22 at 2:00 p.m.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

Attachment

APPENDIX A (022712 mins)

Rule 7.2. Advertising

(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) (1) A copy or recording of an advertisement or communication shall be kept for three years after its last dissemination along with a record of when and where it was used. An electronic advertisement or communication shall be copied once every three months on a compact disc or similar technology and kept for three years after its last dissemination.

(2) A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any advertisement or communication made pursuant to this Rule shall include the name of at least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

(e) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media.

(f) Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent

on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee and, if broadcast, shall appear for the same duration as the information regarding the lawyer's fee. If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(i) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of Rule 7.3, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail addresses and domain names, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(10) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(j) Notwithstanding the provisions of subsection (d), a lawyer and service may participate in an internet-based client to lawyer matching service provided the service otherwise complies with the Rules of Professional Conduct. If the service provides an exclusive referral to a lawyer or law firm for a particular practice area in a particular geographical region, then the service must comply with subsection (d).

COMMENTARY: To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; whether and to what extent the client will be responsible for any court costs and expenses of litigation; lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting

television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising. Subsection (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer. A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation.

A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service.

Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction

and address client complaints; and [iv] do not refer prospective clients to lawyers who own, operate or are employed by the referral service).

A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow inperson, telephonic, or real-time contacts that would violate Rule 7.3.

AMENDMENT NOTE: The above change sets forth the circumstances under which a lawyer may participate in an internet-based client to lawyer matching service.