

Minutes of the Meeting
Rules Committee
Monday, March 18, 2019

On Monday, March 18, 2019, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 2:50 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. JOAN K. ALEXANDER
HON. BARBARA N. BELLIS
HON. MELANIE L. CRADLE
HON. DONNA NELSON HELLER
HON. SHEILA A. OZALIS
HON. DAVID M. SHERIDAN
HON. BARRY K. STEVENS

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee; Attorney Lori Petruzzelli; and Attorney Shanna O'Donnell of the Judicial Branch's Legal Services Unit. Judge Kevin G. Dubay was not present.

1. The Committee approved the minutes of the meeting held on February 11, 2019.
2. The Committee considered a proposed new rule and form to include Medicare questions in standard discovery.

After discussion, the Committee voted unanimously to submit the proposal, as amended and attached to these minutes as Appendix A, to public hearing.

3. The Committee considered a proposal from Judge Albis to amend Section 25-5 (b) regarding the purchase or sale of securities in light of *O'Brien v. O'Brien*, 326 Conn. 81 (2017), which was an amended version of the previous proposal made by the CT Chapter of The American Academy of Matrimonial Lawyers (AAML).

After discussion, the Committee voted unanimously to submit the proposal, as amended and attached to these minutes as Appendix B, to public hearing.

4. The Committee considered a proposal by Judge Alexander to amend Section 37-1 regarding waiver of the presence of the defendant at arraignment.

After discussion, the Committee tabled the matter to allow Judge Alexander to meet with various stakeholders and to prepare a revised proposal.

5. The Committee considered a proposal by Judge Abrams and Court Operations to amend Section 23-68 regarding interactive audio visual devices to permit any person to appear by such device upon motion and at the discretion of the judicial authority.

Judge Abrams was present and addressed the Committee.

After discussion, the Committee voted unanimously to submit the proposal, attached to these minutes as Appendix C, to public hearing.

6. The Committee considered a proposal by Judge Conway for a new rule allowing for the presence of a detained child at certain detention hearings by means of an interactive audio visual device.

Judge Conway was present and addressed the Committee.

After discussion, the Committee tabled the matter to the next meeting to allow Judge Conway and Counsel to revise the proposed language.

7. The Committee considered a proposal by the Connecticut Sentencing Commission to amend Section 38-8 regarding ten percent cash bail.

After discussion, the Committee tabled the matter to the next meeting to enable Justice McDonald to inform the Committee of the status of related proposed legislation.

8. The Committee considered a proposal by Ms. Jennifer Zakrewski regarding oversight and regulation of paralegals.

After discussion, the Committee tabled the matter to allow the proposal to be addressed by the Connecticut Bar Association (CBA).


9. The Committee considered a proposal to amend 7.1-7.5 of the Connecticut Rules of Professional Conduct to conform those rules with the ABA's August 2018 amendments to its Model Rules of Professional conduct concerning lawyer advertising.

After discussion, the Committee tabled the matter to the next meeting for comments and a revised proposal from the Statewide Grievance Committee and Connecticut Bar Association.

10. The Committee added to the agenda a previous proposal by Judge Bright regarding standard written discovery in medical malpractice cases.

After discussion, the Committee tabled the matter to obtain a revised proposal from Judge Bright and allow for Counsel to review the revised proposal.

Respectfully submitted,


Joseph J. Del Ciampo
Counsel to the Rules Committee

APPENDIX A (031819)

(NEW) Sec. 13-12A. Disclosure of Medicare Enrollment, Eligibility and Payments Received

In any civil action involving allegations of personal injury, information on the claimant's Medicare enrollment status, eligibility or payments received, which is sufficient to allow providers of liability insurance, including self-insurance, no fault insurance, and/or worker's compensation insurance to comply with Medicare Secondary Payer obligations, including those imposed under 42 U.S.C. § 1395y (b) (2) and 42 U.S.C. § 1395y (b) (8), shall be subject to discovery by any party by interrogatory as provided in Sections 13-6 through 13-8. The interrogatories shall be limited to those set forth in Form 217. The information disclosed pursuant to this section shall not be admissible at trial solely by reason of such disclosure. Such information shall be used only for purposes of the litigation and for complying with 42 U.S.C. § 1395y (b) (8) and shall not be used or disclosed for any other purpose.

(New) Form 217

**Interrogatories
Civil Actions Alleging Personal Injury
Medicare Enrollment, Eligibility and Payments**

No. CV- : SUPERIOR COURT
(Plaintiff) : JUDICIAL DISTRICT OF
VS. : AT
(Defendant) : (Date)

The undersigned, on behalf of the _____, hereby propounds the following interrogatories to be answered under oath by the party being served within sixty (60) days of the service hereof in compliance with Practice Book Section 13-2.

Definition: "You" shall mean the party to whom these interrogatories are directed except that if suit has been instituted by the representative of the estate of a decedent, ward, or incapable person, "You" shall also refer to the party's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

In answering these interrogatories, You are required to provide all information within your knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) State the following:

- (a) your full name:
- (b) any other name(s) by which You have been known:
- (c) your date of birth:
- (d) your home address:
- (e) your business address:

(2) State whether You have ever been enrolled in a plan offered pursuant to any Medicare Part:

(a) If your answer to the previous Interrogatory (2) is affirmative, state the following:

- (i) the effective date(s):
- (ii) your Medicare claim number(s):
- (iii) your name exactly as it appears on your Medicare card:

(3) State whether a plan offered pursuant to any Medicare Part has paid any bills for treatment of any injuries allegedly sustained as a result of the incident alleged in your complaint:

(a) If your answer to the previous Interrogatory (3) is affirmative, state the amount paid:

4. If You are not presently enrolled in any Medicare Part, state whether You are eligible to enroll:

5. If You are not presently enrolled in any Medicare Part, State whether You plan to apply within the next thirty-six (36) months:

BY _____

I, _____, hereby certify that I have reviewed the above interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public/
Commissioner of the Superior Court

CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date): _____ to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

Signed (Signature of filer) Print or type name of person signing Date Signed

Mailing address (Number, street, town, state and zip code) or E-mail address, if applicable Telephone number

COMMENTARY: This new Form 217, established pursuant to (New) Section 13-12A, sets forth questions

Appendix A (031819) NEW Sec. 13-12A and NEW Form 217

regarding Medicare enrollment status, eligibility or payments received and may be used in any civil action involving allegations of personal injury. The questions are intended to allow parties' providers of liability insurance, including self-insurance, no fault insurance and worker's compensation insurance, to acquire information necessary to satisfy federal requirements regarding claimants' Medicare enrollment and reimbursement.

APPENDIX B (031819)

Sec. 25-5. Automatic Orders upon Service of Complaint or Application

The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(a) In all cases involving a child or children, whether or not the parties are married or in a civil union:

(1) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority.

(2) A party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such move, of an address where the relocated party can receive communication. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(3) If the parents of minor children live apart during this proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(4) Neither party shall cause the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) The parties shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(6) These orders do not change or replace any existing court orders, including criminal protective and civil restraining orders.

(b) In all cases involving a marriage or civil union, whether or not there are children:

(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(i) Nothing in subsection (b)(1) shall be construed to preclude a party from purchasing or selling securities, in the usual course of the parties' investment decisions, whether held in an individual or jointly held investment account, provided that the purchase or sale is: (1) intended to preserve the estate of the parties, (2) transacted either on an open and public market or at an arm's length on a private market, and (3) completed in such manner that the purchased securities or sales proceeds resulting from a sale remain, subject to the provisions and exceptions recited in subsection (b)(1), in the account in which the securities or cash were maintained immediately prior to the transaction. Nothing contained in this subsection shall be construed to apply to a party's

purchase or sale on a private market of an interest in an entity that conducts a business in which the party is or intends to become an active participant.

(ii) Notwithstanding the requirement of subsection (b)(1)(i) that the transaction be made in the usual course of the parties' investment decisions, if historically the parties' usual course of investment decisions involves their discussion of proposed transactions with each other before they are made, but a sale proposed by one party is a matter of such urgency as to timing that the party proposing the sale has a good faith belief that the delay occasioned by such discussion would result in loss to the estate of the parties, then the party proposing the sale may proceed with the transaction without such prior discussion, but shall notify the other party of the transaction immediately upon its execution; provided, that a sale permitted by this subsection (b)(1)(ii) shall be subject to all other conditions and provisions of subsection (b)(1)(i), so long as the transaction is intended to preserve the estate of the parties

(2) Neither party shall conceal any property.

(3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority.

(5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further

encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(6) Neither party shall cause the other party to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(7) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

(8) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(c) In all cases:

(1) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator within thirty days of the return day. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, including, if applicable, proposed orders in accordance with the uniform child support guidelines.

(2) The case management date for this case is . The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

(d) The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of

marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in bold letters:

Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable time.

The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

COMMENTARY: New subsection b(1)(i) is intended to allow one party to make certain investment transactions during the pendency of a dissolution action in a manner which is consistent with the parties' prior practice, without necessarily obtaining the prior consent of the other party or a court order. A transaction by one party without the consent of the other should be considered "in the usual course of the parties' investment decisions" only if the party making the transaction has historically and consistently been the sole decision-maker with regard to transactions of similar type and magnitude. If a transaction is in the usual course of the parties' investment decisions, the other requirements of new subsection b(1)(i) must also be met in order for the transaction to be permitted. The provisions of subsection b(1)(i) do not apply to a transaction that permits the sale of a business under this rule, whether the party is an active participant, or not.

New subsection b(1)(ii) is intended to allow, in the limited emergency circumstances described, a unilateral sale which meets all of the requirements of subsection b(1)(i) except that it is not of a type historically made by the sole decision of the party completing the sale.

APPENDIX C (031819)

Sec. 23-68. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

(a) Upon motion of any party, and at the discretion of the judicial authority, any party, [or] counsel, witness, or other participant in a proceeding may appear by means of an interactive audiovisual device at any proceeding in any civil matter, including all proceedings within the jurisdiction of the small claims section, or any family matter, including all proceedings within the jurisdiction of the family support magistrate division.

(b) Upon order of the judicial authority, an incarcerated individual may be required to appear by means of an interactive audiovisual device in any civil or family matter.

(c) For purposes of this section, an interactive audiovisual device must operate so that the judicial authority; any party and his or her counsel, if any[.]; and any person appearing by means of an interactive audiovisual device pursuant to a court order under this section [and the judicial authority] can see and communicate with each other simultaneously. In addition, a procedure by which an incarcerated individual and his or her counsel can confer in private must be provided.

(d) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(e) Nothing contained in this section shall be construed to limit the discretion of the judicial authority to deny a request to appear by means of an interactive audiovisual device where, in the judicial authority's judgment, the interest of justice or the presentation

of the case require that the party, [or] counsel, witness, or other participant in the proceeding appear in person.

(f) For purposes of this section, judicial authority includes family support magistrates and magistrates appointed by the chief court administrator pursuant to General Statutes § 51-193/.

COMMENTARY: The rule has been amended to permit witnesses and other participants in a proceeding to appear by means of an interactive audiovisual device upon motion and at the discretion of the judicial authority. This revision broadens the application of the rule to include appearances by means of an interactive audiovisual device by expert witnesses or other witnesses which will increase the court's flexibility in scheduling matters, minimize the inconvenience to witnesses, and reduce the costs of litigation.