

Minutes
Criminal Practice Commission
Committee Regarding Proposed Revisions to the Rules of Professional Conduct
Attorney Conference Room-Supreme Court
June 24, 2009
2:00 p.m.

Members in attendance: Hon. Joette Katz, Chair, Hon. Patrick Clifford, Attorney Kevin Kane, Attorney Patricia Froehlich, Attorney Thomas Ullmann, Attorney William Nardini

Guest in Attendance: Attorney Michael Courtney, Attorney Charity Hemingway

The meeting was called to order at 2:05 p.m.

The purpose of this committee was discussed. Proposed revisions to the Rules of Professional Conduct, Rule 3.8 "Special Responsibilities of a Prosecutor and Rule 4.2 "Communication with Person Represented by Counsel" were originally proposed several years ago by the Connecticut Bar Association based on revisions made by the American Bar Association (ABA). The committee does not know why these proposals were resurrected. Justice Katz stated that the Practice Book Committee does not have a vested interest in these proposal revisions.

Issues regarding Rule 3.8 "Special Responsibilities of a Prosecutor

- Back door attempt at altering substantive criminal law through ethics rules
- Whether state ethics rules can be used to limit the authority of the federal grand jury to issue subpoenas
- Whether imposing ethical restrictions on attorneys to do certain things that are otherwise legal (such as seeking waivers of Miranda rights) would encourage law enforcement personnel to do those things without consulting attorneys; and in what circumstances attorneys would still be ethically responsible for actions of law enforcement personnel on an agency theory
- Why can't defendant sign a waiver of rights in order to speak to prosecutor?
- Practical problem for GA courts: can't speak to prosecutor prior to court opening
- Possibly change bond form to include notice of rights
- Changes may need to be made regarding the rights of an accused but ethical violations is not the best way to make these changes
 - Changes should be made via the Practice Book not the Rules of Professional Conduct

Issues regarding Rule 4.2 "Communication with Person Represented by Counsel"

- In 2006, the Public Defender's Office supported the ABA change from 'party' to 'person'
- Malpractice insurance issue?
- Habeas issues regarding ineffective assistance of counsel
- One word change has a lot of ramifications-change to person affects both sides

For the next meeting, Attorney Nardini is going to find out how other jurisdictions have interpreted the scope of "important pretrial rights" for purposes of Rule 3.8. The Public Defender's are going to find out the position of their office on proposed rule 3.8 (6).

The Rules Committee would like a recommendation on the proposed revisions by September.

The next meeting is scheduled for Monday, July 20, 2009 at 2:00 p.m. in the Attorney Conference Room at the Supreme Court.

The meeting adjourned at 3:30 p.m.