

Minutes
Criminal Practice Commission
Committee Regarding Proposed Revisions to the Rules of Professional Conduct
Attorney Conference Room-Supreme Court
July 20, 2009
2:00 p.m.

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

Guest in Attendance: Attorney Michael Courtney, Attorney Charity Hemingway, Jaclyn Preville-Certified Legal Intern

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

The minutes from the June 24, 2009 were revised and approved.

Lengthy discussion regarding proposed revisions to Rules of Professional Conduct. These changes would cover both Federal and State law.

Rule 3.8 "Special Responsibilities of a Prosecutor". The Chief Public Defender's Office supports the proposed revisions to all subsections. Overall, most members do not agree with the proposed revisions.

- 3.8(2) is the less troubling of the proposed changes as a waiver by the defendant could be a remedy
 - Issues considered included: What is the definition of accused? Does it pertain to both criminal and motor vehicle cases?
- 3.8 (3) puts an end to pro se parties speaking with a Prosecutor prior to the opening of court
 - Issues considered included: Can a court form be created to deal with this issue? Possibly but defendant needs to understand his/her rights.
 - Rule will shut down communication
 - Would a lawyer need to be hired for all cases?
- 3.8(5) Subpoena a lawyer, issues considered:
 - 27 states have a similar rule
 - Why is this rule needed?
 - Connecticut has the Ullmann case
 - This is a good practice book rule but not a rule of professional conduct
- 3.8(6) Prosecutor shall refrain from making extrajudicial comments
 - Modeled after the ABA standards
 - Does it add anything to existing provisions?

Rule 4.2 "Communication with Person Represented by Counsel". The Chief Public Defender's Office supports the proposed revisions.

- Changes the term 'party' to 'person'
 - 32 states have person instead of party
 - Commentary states party means person
- Add 'or a court order'
 - Some things can be done without a Judge's approval

- Statement not needed because it is included in 'authorized by law.'

Justice Katz will inform Justice Zarella, chairman of the Rules Committee, that this committee does not recommend the adoption of the proposed revisions to Rule 3.8. This committee also agreed to recommend the proposed revision to change the term 'party' to 'person' in Rule 4.2 to the Rules Committee. This committee does not think the term 'or a court order' should be adopted by the Rules Committee in Rule 4.2. Finally, a new provision submitted by The Chief Public Defender's Office will be submitted to the Ethics Committee section of the Connecticut Bar Association:

When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) promptly disclose that evidence to an appropriate court or authority, and*
- (2) if the conviction was obtained in the prosecutor's jurisdiction,*
 - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and*
 - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.*

When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

There are no further meetings scheduled at this time. The next meeting will most likely be scheduled in the fall.

The meeting adjourned at 2:55 p.m.

Recorder-Judith Lee, Caseflow Management Specialist