Minutes of the Meeting
Rules Committee
January 29, 2018

On Monday, January 29, 2018, the Rules Committee met in the Supreme Court courtroom from 2:03 p.m. to 3:04 p.m.

Members in attendance were:

HON. RICHARD A. ROBINSON, CHAIR
HON. MELANIE L. CRADLE
HON. ROBERT L. GENUARIO
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, and Attorney James T. O'Connor of the Judicial Branch's Legal Services Unit. Judge Joan K. Alexander and Judge Kevin G. Dubay were not present.

1. The Committee unanimously approved the minutes of the meeting held on December 18, 2017.

2. The Committee considered a revised proposal by Attorney Martin R. Libbin, Director of Legal Services on behalf of Judge Patrick L. Carroll III, Chief Court Administrator, to amend Rule 1.11 of the Rules of Professional Conduct regarding special conflicts of interest for government officials and employees. Attorney Libbin was present and addressed the Committee.

After discussion, the Committee voted to submit to public hearing the proposed revision to Rule 1.11 of the Rules of Professional Conduct, as set forth in Appendix A attached to these minutes. Judge Sheridan voted against this proposal.

3. The Committee considered a proposal revised by Counsel and originally submitted by Attorney Martin R. Libbin, Director of Legal Services, on behalf of Judge Patrick L. Carroll III, Chief Court Administrator, to amend the Practice Book concerning disqualification of judicial officials. Attorney Libbin was present and addressed the Committee.

After discussion, the Committee tabled the matter to its next meeting and directed Counsel to redraft New Section 4-8 of the proposal.

4. The Committee considered a proposal by Attorney Michael Herman, Member, Board of Veterans' Appeals, to amend Section 2-27A (a) (1) of the MCLE rules, and considered comments on the proposal from the MCLE Commission. Attorney Fred Ury, Co-Chair of the MCLE Commission, and Attorney Michael Bowler, Counsel to the MCLE Commission, were present and addressed the Committee.

After discussion, the Committee voted to deny the request.

5. The Committee considered a proposal by the MCLE Commission to amend Section 2-27A. Attorney Fred Ury, Co-Chair of the MCLE Commission, was present and addressed the Committee.

After discussion, the Committee voted to submit to public hearing the proposed revisions to Section 2-27A, as set forth in Appendix B attached to these minutes.

6. The Committee considered a proposal by the Yale Law School Housing Clinic to amend Section 3-8(b) regarding limited scope representations and limited scope appearances, and considered comments on the proposal from Judge Abrams, Chief Administrative Judge, Civil Matters, Judge Bozzuto, Chief Administrative Judge Family Matters, and Court Operations.

After discussion, the Committee voted to deny the request.

7. The Committee considered a proposal by the Quinnipiac School of Law Civil Justice Clinic to amend Section 2-8 regarding qualifications for admission to the bar, and considered a request to table the matter to its next meeting submitted by Attorney Jessica Kallipolites, Administrative Director of the Connecticut Bar Examining Committee. Attorney Kallipolites was present and addressed the Committee. Professor Sheila Hayre of the Quinnipiac School of Law Civil Justice Clinic was also present and addressed the Committee.

After discussion, the Committee tabled the matter to its next meeting.

8. The Committee unanimously voted to recommend to the Chief Justice pursuant to Rule 7.4B of the Rules of Professional Conduct the reappointment of the following members of the Legal Specialization Screening Committee in their current capacities for new three-year terms: Attorney Rosemarie Paine, Member, and Attorney Robert F. Dwyer, Jr., Member.

Respectfully submitted,

Joseph J. Del Ciampo

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (012918)

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9 (c); and (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9; and (2) Shall not:

(i) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially; except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12 (b) and subject to the conditions stated in Rule 1.12 (b).

(e) Grievance counsel, disciplinary counsel and bar counsel as well as members of the statewide grievance committee and grievance panels shall not represent any party other than the State with respect to an unauthorized practice of law complaint or attorney grievance matter, while serving as such. In addition, such counsel and members shall not represent an individual or entity investigated or prosecuted for the unauthorized practice of law or an attorney investigated or prosecuted with respect to an attorney grievance matter if that specific unauthorized practice of law complaint or attorney grievance matter was pending in their office or with their committee or panel at the time of such counsel's or member's termination of employment or service as such grievance counsel, disciplinary counsel, bar counsel or member of the statewide grievance committee or a grievance panel.

[(e)**]** (f) As used in this Rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENTARY: A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0 (f) for the definition of informed consent.

Subsections (a) (1), (a) (2) and (d) (1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, subsection (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subsection (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subsections (a) (2) and (d) (2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subsection (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subsection (d). As with subsections (a) (1) and (d) (1), Rule 1.10 is not applicable to the conflicts of interest addressed by these subsections.

This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary, obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subsection (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subsections (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subsection (d), the latter agency is not required to screen the lawyer as subsection (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Commentary to Rule 1.13.

Subsections (b) and (c) contemplate a screening arrangement. See Rule 1.0 (*l*) (requirements for screening procedures). These subsections do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subsection (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subsections (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

<u>For purposes of subsection (e) , an "unauthorized practice of law complaint" means a complaint alleging conduct covered by Connecticut General Statutes § 51-88. "Attorney grievance matter" means any grievance complaint, investigation, presentment, interim suspension, disability, resignation, reinstatement, reciprocal discipline, discipline following a finding of guilt of a serious crime or inactive status matter.</u>

For purposes of subsection **[**(e)**]**<u>(f)</u> of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

AMENDMENT NOTE: The reason for the amendment to this provision is to establish rules to avoid conflicts of interest and appearances of such conflicts by those engaged in the disciplinary process. Currently, the subsection does not prohibit a grievance counsel, bar counsel or committee member from appearing before a local grievance panel or the statewide grievance committee while he or she continues to serve as counsel or a panel member. The proposal also will prohibit individuals involved in the disciplinary process from representing someone with respect to a matter that was pending in their office or before their committee at the time that they terminated their employment or service.

The provisions of subsection (e) should be prospective to the extent that it would only apply to those who held a position subject to its terms on the date the amendment becomes effective. As a result, if a current member of the statewide grievance committee wished to be exempt from this provision, he or she could resign prior to the effective date of the amendment to Rule 1.11 taking effect. The prospective effect of this provision would be analogous to the prospective effect of Rule 2-47B adopted in 2015, which imposed restrictions on the activities of deactivated attorneys, but only applied to attorneys who were deactivated on or after January 1, 2016, the effective date of the rule.

APPENDIX B (012918)

Sec. 2-27A. Minimum Continuing Legal Education

(a) On an annual basis, each attorney admitted in Connecticut shall certify, on the registration form required by Section 2-27 (d), that the attorney has completed in the last calendar year no less than twelve credit hours of appropriate continuing legal education, at least two hours of which shall be in ethics/professionalism. The ethics and professionalism components may be integrated with other courses. This rule shall apply to all attorneys except the following:

(1) Judges and senior judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, family support magistrate referees, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges;

(2) Attorneys who are disbarred, resigned pursuant to Section 2-52, on inactive status pursuant to Section 2-56 et seq., or retired pursuant to Sections 2-55 or 2-55A;

(3) Attorneys who are serving on active duty in the armed forces of the United States for more than six months in such year;

(4) Attorneys for the calendar year in which they are admitted;

(5) Attorneys who earn less than $1000 in compensation for the provision of legal services in such year;

(6) Attorneys who, for good cause shown, have been granted temporary or permanent exempt status by the statewide grievance committee.

(b) Attorneys may satisfy the required hours of continuing legal education:

(1) By attending legal education courses provided by any local, state or special interest bar association in this state or regional or national bar associations recognized in this state or another state or territory of the United States or the District of Columbia (hereinafter referred to as ``bar association"); any private or government legal employer; any court of this or any other state or territory of the United States or the District of Columbia; any organization whose program or course has been reviewed and approved by any bar association or organization that has been established in any state or territory of the United States or the District of Columbia to certify and approve continuing legal education courses; and any other nonprofit or for-profit legal education providers,

including law schools and other appropriate continuing legal education providers, and including courses remotely presented by video conference, webcasts, webinars, or the like by said providers.

(2) By self-study of appropriate programs or courses directly related to substantive or procedural law or related topics, including professional responsibility, legal ethics, or law office management and prepared by those continuing legal education providers in subsection (b) (1). Said selfstudy may include viewing and listening to all manner of communication, including, but not limited to, video or audio recordings or taking online legal courses. The selection of self-study courses or programs shall be consistent with the objective of this rule, which is to maintain and enhance the skill level, knowledge, ethics and competence of the attorney and shall comply with the minimum quality standards set forth in subsection (c) (6).

(3) By publishing articles in legal publications that have as their primary goal the enhancement of competence in the legal profession, including, without limitation, substantive and procedural law, ethics, law practice management and professionalism.

(4) By teaching legal seminars and courses, including the participation on panel discussions as a speaker or moderator.

(5) By serving as a full-time faculty member at a law school accredited by the American Bar Association or approved by the Connecticut Bar Examining Committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein.

(6) By serving as a part-time or adjunct faculty member at a law school accredited by the American Bar Association or approved by the Connecticut Bar Examining Committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein at the rate of one hour for each hour of classroom instruction and one hour for each two hours of preparation.

(7) By serving as a judge or coach for a moot court or mock trial course or competition that is part of the curriculum at or sanctioned by a law school accredited by the American Bar Association or approved by the Connecticut Bar Examining Committee.

(c) Credit Computation:

(1) Credit for any of the above activities shall be based on the actual instruction time, which may include lecture, panel discussion, and question and answer periods. Credit for the activity listed in subsection (b) (7) shall be based upon the actual judging or coaching time, up to 4 hours for each activity per year. Self-study credit shall be based on the reading time or running time of the selected materials or program.

(2) Credit for attorneys preparing for and presenting legal seminars, courses or programs shall be based on one hour of credit for each two hours of preparation. A maximum of six hours of credit may be credited for preparation of a single program.

Credit for presentation shall be on an hour for hour basis. Credit may not be earned more than once for the same course given during a **[**twelve month period**]** calendar year.

(3) Credit for the writing and publication of articles shall be based on the actual drafting time required. Each article may be counted only one time for credit.

(4) Continuing legal education courses ordered pursuant to Section 2-37 (a) (5) or any court order of discipline shall not count as credit toward an attorney's obligation under this section.

(5) Attorneys may carry forward no more than two credit hours in excess of the current annual continuing legal education requirement to be applied to the following year's continuing legal education requirement.

(6) To be eligible for continuing legal education credit, the course or activity must: (A) have significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as a lawyer; (B) constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession; and (C) be conducted by an individual or group qualified by practical or academic experience.

(d) Attorneys shall retain records to prove compliance with this rule for a period of seven years. (e) Violation of this section shall constitute misconduct.

(f) Unless it is determined that the violation of this section was wilful, a noncompliant attorney must be given at least sixty days to comply with this section before he or she is subject to any discipline.

(012918) Appendix B Sec. 2-27A.

(g) A minimum continuing legal education commission (``commission") shall be established by the judicial branch and shall be composed of four superior court judges and four attorneys admitted to practice in this state, all of whom shall be appointed by the chief justice of the supreme court or his or her designee and who shall serve without compensation. The charge of the commission will be to provide advice regarding the application and interpretation of this rule and to assist with its implementation including, but not limited to, the development of a list of frequently asked questions and other documents to assist the members of the bar to meet the requirements of this rule.

(Adopted June 24, 2016, to take effect Jan. 1, 2017.)

COMMENTARY 2017: It is the intention of this rule to provide attorneys with relevant and useful continuing legal education covering the broadest spectrum of substantive, procedural, ethical and professional subject matter at the lowest cost reasonably feasible and with the least amount of supervision, structure and reporting requirements, which will aid in the development, enhancement and maintenance of the legal knowledge and skills of practicing attorneys and will facilitate the delivery of competent legal services to the public.

The rule also permits an attorney to design his or her own course of study. The law is constantly evolving and attorneys, like all other professionals, are expected to keep abreast of changes in the profession and the law if they are to provide competent representation.

Subsection (a) provides that Connecticut attorneys must complete twelve credit hours of continuing legal education per calendar year. Subsection (a) also lists those Connecticut attorneys, who are exempt from compliance, including, among others: judges, senior judges, attorneys serving in the military, new attorneys during the year in which they are admitted to practice, attorneys who earn less than $1000 in compensation for the provision of legal services in the subject year, and those who obtain an exempt status for good cause shown. The subsection also provides an exemption for attorneys who are disbarred, resigned, on inactive status due to disability, or are retired. The exemption for attorneys who earn less than $1000 in compensation in a particular year is not intended to apply to attorneys who claim that they were not paid as a result of billed fees to a client. All compensation received for the provision of legal services, whether the result of billed fees or otherwise, must be counted. There is no exemption for attorneys who are suspended or on administrative suspension. Subsection (d) requires an attorney to maintain adequate records of compliance. For continuing legal education courses, a certificate of attendance shall be sufficient proof of compliance. For self-study, a contemporaneous log identifying and describing the course listened to or watched and listing the date and time the course was taken, as well as a copy of the syllabus or outline of the course materials, if available, and, when appropriate, a certificate from the course provider, shall be sufficient proof of compliance. For any other form of continuing legal education, a file including a log of the time spent and drafts of the prepared material shall provide sufficient proof of compliance.

COMMENTARY: The changes to this section were submitted by the Minimum Continuing Legal Education Commission and expand or clarify the manner by which attorneys may satisfy the required hours of continuing legal education.