Minutes of the Meeting
Rules Committee
March 26, 2018

On Monday, March 26, 2018, the Rules Committee met in the Supreme Court courtroom from 2:07 p.m. to 3:12 p.m.

Members in attendance were:

HON. RICHARD A. ROBINSON, CHAIR
HON. JOAN K. ALEXANDER
HON. MELANIE L. CRADLE
HON. KEVIN G. DUBAY
HON. ROBERT L. GENUARIO
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 Attorneys Lori A. Petruzzelli and Adam P. Mauriello of the Judicial Branch's Legal Services Unit. Judge Donna Nelson Heller was not present.

1. The Committee considered a proposal by Attorney Joseph Del Ciampo to amend the propsed amendment to Section 34a-21 passed by the Committee on February 26, 2018.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 34a-21, as revised, set forth in Appendix A, attached to these minutes.

2. The Committee approved the minutes of the meeting held on February 26, 2018. Judges Ozalis and Sheridan abstained.

3. The Committee considered revised proposals 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 officals.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendments to Rule 2.11 of the Code of Judicial Conduct and Practice Book Section 1-22, as well as the proposed adoption of Practice Book Section 4-8, set forth in Appendix B, attached to these minutes.

4. The Committee considered a proposal by Mr. Daniel M. Lynch, as drafted by counsel for the Rules Committee, to amend Section 2-52. Attorney Michael P. Bowler, Statewide Bar Counsel, was present and addressed the Committee.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 2-52, as set forth in Appendix C, attached to these minutes.

5. The Committee considered a proposal by the Rules Committee of the Connecticut Chapter of the American Academy of Matrimonial Lawyers to amend Section 25-5 (b).

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

6. The Committee considered a proposal by Judge Bernadette Conway, Chief Administrative Judge, Juvenile Matters, to amend Section 35a-12.

After discussion and consideration of technical revisions by counsel, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 35a-12, as revised, as set forth in Appendix D, attached to these minutes.

7. The Committee considered a suggestion by Justice Richard N. Palmer to amend Rule 3.7 (a) (5) of the Code of Judicial Conduct. Attorney Lori Petruzzelli of Judicial Branch Legal Services was present and addressed the Committee.

After discussion, the Committee tabled the matter to its next meeting and directed Counsel to distribute the research conducted for the subcommittee on this matter to all the members of the Committee.

8. The Committee considered a proposal by Attorney Karyl L. Carrasquilla, Chief Disciplinary Counsel, to amend Sections 2-35, 2-36, 2-42 and 2-53. Attorneys Carrasquila and Bowler were present and addressed the Committee.

After discussion, the Committee tabled the matter in order to obtain comments from the Statewide Grievance Committee, and the Connecticut Bar Association.

9. The Committee considered a recommendation from Judge John N. Newson, concerning the withdrawal of an appearance in a criminal matter under Section 3-9.

After discussion, the Committee tabled the matter to its next meeting and directed Counsel to research the issue further.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (032618)

Sec. 34a-21. Court-Ordered Evaluations

(a) The judicial authority, after hearing on a motion for a court-ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

(c) At the time of appointment of any court appointed evaluator, counsel and **[**the court services officer**]** a representative of the court shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

(d) Any party who wishes to alter, to update, to amend or to modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the

evaluation, except that the evaluator conducting a competency evaluation of a parent or guardian may have ex parte communication with said counsel of a parent or guardian prior to the completion of the competency evaluation.

(e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the pro- posed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall

not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

COMMENTARY: The changes to this section clarify existing practice and provide consistency of terms; and specify a necessary exception to the general prohibition against ex parte communication with an evaluator.

NOTE: Revisions to the proposal made by the Rules Committee on March 26, 2018, are shown by double underlines.

Appendix B (032618)

Rule 2.11. Disqualification

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) acting as a lawyer in the proceeding;

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(C) was a material witness concerning the matter.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a) (1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding. (d) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary

proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(e) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council or an administrative agency. When the judge becomes aware pursuant to Practice Book Sections 1-22 (b) or 4-8 or otherwise that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge and the judge shall thereafter proceed in accordance with Practice Book Section 1-22 (b).

(f) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears. (Effective Jan. 1, 2011.)

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a) (1) through (5) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis

for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required.

(5) The Rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(6) Subsection (d) is intended to make clear that the restrictions imposed by *Dacey* v. *Connecticut Bar Assn.*, 184 Conn. 21, 441 A.2d 49 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

AMENDMENT NOTE: Comment (7) to Rule 2.11 was adopted by the judges of the appellate court on July 15, 2010, and the justices of the supreme court on July 1, 2010. It was not, however, adopted by the judges of the superior court.

(7) A justice of the supreme court or a judge of the appellate court is not disqualified from sitting on a proceeding merely because he or she previously practiced law with the law firm or attorney who filed an amicus brief in the matter, or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney.

AMENDMENT NOTE (2018): The purpose of the amendments to this rule and to Section 1-22, and the adoption of New Section 4-8 is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with the appropriate ethical and procedural responsibilities.

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council or an administrative agency. When [the judicial authority has been made aware of the filing of such lawsuit or complaint,] such an attorney or party appears before the judicial authority, he or she shall so advise the judicial authority and other attorneys and parties to the proceeding on the record and thereafter the judicial authority shall either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.

COMMENTARY: The purpose of the amendments to this section and to Rule 2.11 of the Code of Judicial Conduct, and the adoption of New Section 4-8 is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with their ethical and procedural responsibilities.

(NEW) Sec. 4-8. Notice of Complaint or Law Suit Filed Against Judicial Authority

An attorney or party who has filed a complaint with the judicial review council or an administrative agency or has filed a lawsuit against any judicial authority other than a small claims magistrate, shall give notice of the filing of such complaint or lawsuit to the judicial authority and to all other attorneys and parties of record in any matter pending before the judicial authority or, if the attorney or party has no matter pending before the judicial authority, shall mail such notice by certified mail, return receipt requested or with electronic delivery confirmation, to the judicial authority at the location at which such judicial authority is assigned.

COMMENTARY: The purpose of this new section and the amendments to Section 1-22 of the Practice Book and to Rule 2.11 of the Code of Judicial Conduct is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with their ethical and procedural responsibilities.

Appendix C (032618)

Sec. 2-52. Resignation and Waiver of Attorney Facing Disciplinary Investigation

(a) The superior court may, under the procedure provided herein, permit an attorney to submit his or her resignation from the bar with or without the waiver of right to apply for readmission to the bar at any time in the future if the attorney's conduct is the subject of an investigation or proceeding by a grievance panel, a reviewing committee, the statewide grievance committee, the disciplinary counsel or the court.

(b) Concurrently with the written resignation, the attorney shall submit an affidavit stating the following:

(1) that he or she desires to resign and that the resignation is knowingly and voluntarily submitted, the attorney is not being subjected to coercion or duress, and is fully aware of the consequences of submitting the resignation;

(2) the attorney is aware that there is currently pending an investigation or proceeding concerning allegations that he or she has been guilty of misconduct, the nature of which shall be specifically set forth in the affidavit;

(3) either (A) that the material facts of the allegations of misconduct are true, or (B) if the attorney denies some or all of the material facts of the allegations of misconduct, that the attorney acknowledges that there is sufficient evidence to prove such material facts of the allegations of misconduct by clear and convincing evidence;

(4) the attorney waives the right to a hearing on the merits of the allegations of misconduct, as provided by these rules, and acknowledges that the court will enter a finding

that he or she has engaged in the misconduct specified in the affidavit concurrently with the acceptance of the resignation.

(c) If the written resignation is accompanied by a waiver of the right to apply for readmission to the bar, the affidavit required in (b) shall also state that the attorney desires to resign and waive his or her right to apply for readmission to the bar at any time in the future.

(d) Any resignation submitted in accordance with this section shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, with the clerk of the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, [and] one copy to the standing committee on recommendations for admission to the bar, and one copy to all complainants whose grievance complaints filed against the attorney in Connecticut resulted in the submission. Such resignation shall not become effective until accepted by the court after a hearing, at which the court has accepted a report by the statewide grievance committee, made a finding of misconduct based upon the respondent's affidavit, and made a finding that the resignation is knowingly and voluntarily made. With the exception of the statewide bar counsel and disciplinary counsel, no person or entity who, pursuant to this subsection, receives a copy of a resignation shall have the right to participate in the hearing required by this subsection.

(e) Acceptance by the court of an attorney's resignation from the bar without the waiver of the right to apply for readmission to the bar at any time in the future shall not be a bar to

any other disciplinary proceedings based on conduct occurring before or after the acceptance of the attorney's resignation.

COMMENTARY: The changes to this section require that one copy of any resignation submitted in accordance with this section be sent to, among other individuals and committees, all complainants whose grievance complaints filed against the attorney in Connecticut resulted in the submission of the resignation. With the exception of the statewide bar counsel and disciplinary counsel, no person or entity who, pursuant to this subsection, receives a copy of a resignation shall have the right to participate in the hearing required by this subsection.

Appendix D (032618)

Sec. 35a-12. Protective Supervision-Conditions, [and] Modification and Termination

(a) When protective supervision is ordered, the judicial authority will set forth any conditions of said supervision including duration, specific steps and review dates.

(b) A protective supervision order shall be scheduled for an in court review and reviewed by the judicial authority at least thirty days prior to its expiration. At said review, an updated social study shall be provided to the judicial authority.

(c) If an extension of protective supervision is being sought by the commissioner of the department of children and families or any other party in interest, including counsel for the minor child or youth, then a written motion for the same shall be filed not less than thirty days prior to such expiration. Such motion shall be heard either at the in court review of protective supervision if it is held within thirty days of such expiration or at a hearing to be held within ten days after the filing of such motion. For good cause shown and under extenuating circumstances, such written motion may be filed in a period of less than thirty days prior to the expiration of the protective supervision and the same shall be docketed accordingly. The motion shall set forth the reason(s) for the extension of the protective supervision and the period of the extension being sought. If the judicial authority orders such extension of protective supervision, the extension order shall be reviewed by the judicial authority at least thirty days prior to its expiration.

(d) Parental or guardian noncompliance with the order of protective supervision shall be a ground for a motion to modify the disposition. Upon finding that the best interests of the child so warrant, the judicial authority, on its own motion or acting on a motion of any party

and after notice is given and hearing has been held, may modify a previously entered disposition of protective supervision in accordance with the applicable General Statutes.

(e) Any party who seeks to have an order of protective supervision terminate prior to its scheduled expiration date shall file a written motion to terminate the order. The motion shall set for the reason or reasons why it is in the child's best interests for protective supervision to terminate early. If termination of protective supervion is sought on the day of a scheduled in court review hearing, such motion may be filed that day. All parties shall be afforded reasonable time to review the written motion and accompanying status reports or other relevant documents. Upon finding that the best interests of the child so warrant, the judicial authority, acting on such motion and after notice is given and a hearing has been held, may terminate an order of protective superivion prior to its scheduled expiration date.

COMMENTARY: These revisions provide a process in a child protection case for the termination of the order of protective supervision prior to the scheduled expiration date when it is in the child's best interests.