

Minutes of the Meeting
Rules Committee
Monday, October 20, 2014

On Monday, October 20, 2014, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 2:45p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. MARSHALL K. BERGER, JR.
HON. WILLIAM H. BRIGHT, JR.
HON. HENRY S. COHN
HON. ROBERT L. GENUARIO
HON. MARY E. SOMMER
HON. ROBIN L. WILSON
HON. ROBERT E. YOUNG

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorney Denise K. Poncini of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the meeting held on September 22, 2014.

2. The Committee considered a proposal by Judge Eddie Rodriguez, Jr. concerning Notice of Administrative Suspension of Attorneys and comments on the matter from Attorneys Michael Bowler, Christopher Blanchard and Patricia King.

After discussion, the Committee determined that a rule change was not required and the Client Security Fund Committee was best able to determine how to capture the information sought. The Committee unanimously voted to refer the matter to the Client Security Fund Committee to determine how to capture this information.

3. The Committee considered a proposal by Judge Alander to amend Section 40-13(a) to add to that section the obligation of a prosecutor to make "a reasonable affirmative effort" to obtain the criminal history of a state's witness, as required by *State v. Siano*, 216 Conn. 273 (1990) and another proposal to amend Section 40-11 to eliminate the requirement that the defendant make a written request that the state disclose exculpatory information and materials.

The Committee also considered comments on those matters from Judge Devlin, Chief Administrative Judge, Criminal Division.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 40-11, as amended by the Committee, and the proposed revision to Section 40-13, as submitted, as set forth in Appendix A attached to these minutes.

4. The Committee considered a proposal by Attorney Petruzzelli on behalf of Judge Bishop and the Evidence Oversight Committee of the Supreme Court to amend Section 1-9A to remove the references to the Rules Committee in relation to the Code of Evidence.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 1-9A, as set forth in Appendix B attached to these minutes.

5. The Committee considered a proposal by Patricia King, Chief Disciplinary Counsel, to adopt new Practice Book Section 2-47B regarding placing restrictions on the employment of suspended, disbarred, inactive or resigned (“deactivated”) attorneys.

Patricia King, Chief Disciplinary Counsel, and Michael Bowler, Statewide Bar Counsel, were present and addressed the Committee. After discussion, the Committee asked for additional information from the Chief Disciplinary Counsel and put the matter over to the next meeting of the Committee.

6. The Committee considered a proposal by Judge Bernadette Conway, Chief Administrative Judge, Juvenile Division, to adopt New Section 23-6 regarding the electronic filing of juvenile matters proceedings.

After discussion, the Committee unanimously voted to table the matter to determine the Judicial Branch timeframes for e-filing in juvenile matters.

7. The Committee considered comments from the Connecticut Bar Association on the report of the Legal Specialization Screening Committee (LSSC) on the Application of the National Board of Legal Specialty Certification (NBLSC) for authority to certify lawyers in the area of Family and Matrimonial law.

After discussion, and input from representatives from the CBA who were present, the Committee tabled the matter to permit the CBA until January 30, 2015, to respond to the matter.

8. The Committee considered a response from Judge Lager, Chief Administrative Judge, Civil Division, on the referral by Rules Committee regarding the impact of Public Act 14-156 on Practice Book Section 23-61.

After discussion, the Committee unanimously voted to not pursue the matter further and marked the matter “off.”

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph J. Del Ciampo". The signature is written in black ink and is positioned above the printed name.

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (102014)

Sec. 40-11. Disclosure by the Prosecuting Authority

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose in writing the existence of, provide photocopies of, and allow the defendant in accordance with Section 40-7, to inspect, copy, photograph and have reasonable tests made on any of the following items:

(1) [Exculpatory information or materials;

(2)] Any books, tangible objects, papers, photographs, or documents within the possession, custody or control of any governmental agency, which the prosecuting authority intends to offer in evidence in chief at trial or which are material to the preparation of the defense or which were obtained from or purportedly belong to the defendant;

[(3)](2) Copies of the defendant's prior criminal record, if any, which are within the possession, custody, or control of the prosecuting authority, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting authority;

[(4)](3) Any reports or statements of experts made in connection with the offense charged including results of physical and mental examinations and of scientific tests, experiments or comparisons which are material to the preparation of the defense or are intended for use by the prosecuting authority as evidence in chief at the trial;

[(5)](4) Any warrant executed for the arrest of the defendant for the offense charged, and any search and seizure warrants issued in connection with the investigation of the offense charged;

~~[(6)](5)~~ (i) Any written, recorded or oral statements made by the defendant or a codefendant, before or after arrest to any law enforcement officer or to a person acting under the direction of or in cooperation with a law enforcement officer concerning the offense charged; or

(ii) Any relevant statements of coconspirators which the prosecuting authority intends to offer in evidence at any trial or hearing.

(b) In addition to the foregoing, the [defendant shall be entitled to disclosure of] prosecuting authority shall disclose to the defendant in accordance with any applicable constitutional and statutory provisions any exculpatory information or materials that the prosecuting authority may have whether or not a request has been made therefor [in accordance with any applicable constitutional and statutory provisions].

COMMENTARY: The revisions to this rule conform the rule to the statutory and constitutional requirement that prosecutors disclose any exculpatory information and material to defendants whether or not a request has been made for such information or material.

Sec. 40-13. Names of Witnesses; Prior Record of Witnesses; Statements of Witnesses

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the defendant the names and, subject to the provisions of subsections (f) and (g) of this section, the addresses of all witnesses that the prosecuting authority intends to call in his or her case-in-chief, [and] The prosecuting authority shall additionally make a reasonable affirmative effort to obtain a record of the witness' felony convictions and pending misdemeanor and felony charges, and shall disclose any such convictions and

pending charges to the defendant [any record of felony convictions of the witnesses known to the prosecuting authority and any record of felony or misdemeanor charges pending against the witnesses known to the prosecuting authority].

(b) Upon written request by the prosecuting authority, filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the defendant, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the prosecuting authority the names and, subject to the provisions of subsection (g) of this section, the addresses of all witnesses whom the defendant intends to call in the defendant's case-in-chief and shall additionally disclose to the prosecuting authority any statements of the witnesses other than the defendant in the possession of the defendant or his or her agents, which statements relate to the subject matter about which each witness will testify.

(c) No witness shall be precluded from testifying for any party because his or her name or statement or criminal history was not disclosed pursuant to this rule if the party calling such witness did not in good faith intend to call the witness at the time that he or she provided the material required by this rule. In the interests of justice the judicial authority may in its discretion permit any undisclosed individual to testify.

(d) The provisions of this section shall apply to any additional testimony presented by any party as rebuttal evidence pursuant to Section 42-35 (3) and the statements and criminal histories of such witnesses shall be provided to the opposing party before the commencement of any such rebuttal testimony.

(e) The fact that a witness' name or statement is provided under this section shall not be a ground for comment upon a failure to call a witness.

(f) Notwithstanding any provision of this section, the personal residence address of a police officer or correction officer shall not be required to be disclosed

except pursuant to an order of the judicial authority after a hearing and a showing that good cause exists for the disclosure of the information.

(g) Upon written request of a party and for good cause shown, the judicial authority may order that the address of any witness whose name was disclosed pursuant to subsections (a) or (b) of this section not be disclosed to the opposing party.

COMMENTARY: The revision to subsection (a) of this section adds the requirement that the state make a reasonable affirmative effort to obtain the criminal record of state's witnesses for disclosure to the defendant.

Appendix B (102014)

Sec. 1-9A. —Judiciary Committee; Placement of Rules Information on Judicial Branch Website

(a) Each year the Rules Committee shall make itself available to meet with the members of the Judiciary Committee of the General Assembly (the Judiciary Committee) as soon as practicable after the first Rules Committee meeting in September to advise the Judiciary Committee as to the Rules Committee's anticipated agenda for the upcoming year.

(b) As soon as practicable after the convening of each regular legislative session, the chair of the Rules Committee shall invite the Senate and House chairs and the ranking members of the Judiciary Committee, and such other members of that Committee as the chairs may designate, to attend a meeting with the Rules Committee to confer and consult with respect to the rules of practice, pleadings, forms and procedure for the superior court and with respect to legislation affecting the courts pending before or to be introduced in the General Assembly.

(c) The chair of the Rules Committee shall forward to the Judiciary Committee for review and comment all proposed revisions to the Practice Book [and to the Code of Evidence] which the Rules Committee has decided to submit to public hearing at least 35 days in advance of the public hearing thereon. If the chair of the Rules Committee shall receive any comments from the Judiciary Committee with respect to such proposed revisions, he or she shall forward such comments to the members of the Rules Committee for their consideration in connection with the public hearing.

(d) The agendas and minutes of Rules Committee meetings, any proposed revisions to the Practice Book [and to the Code of Evidence] which the Rules Committee has decided to submit to public hearing, any comments by the Judiciary Committee with respect to such proposed revisions, and any proposed revisions that are adopted by the superior court judges shall be placed on the Judicial Branch website.

COMMENTARY: Public Act 14-120, "An Act Concerning Adoption of the Connecticut Code of Evidence by the Supreme Court" authorized the Supreme Court to adopt the Code of Evidence and established the Code of Evidence Oversight Committee of the Supreme Court. That committee makes recommendations directly to the Supreme Court and reports annually to the legislature concerning changes to the Code of Evidence. The proposed revisions comport with the Public Act.