Minutes of the Meeting
Rules Committee
Tuesday, February 10, 2015

On Tuesday, February 10, 2015, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:42 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. MARSHALL K. BERGER, JR.
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. The Honorable Jon M. Alander, The Honorable William H. Bright, Jr., and The Honorable Henry S. Cohn were not in attendance at this meeting.

1. The Committee unanimously approved the minutes of the meeting held on January 12, 2015. Justice Eveleigh participated in this vote as part of the quorum.

2. The Committee considered a proposal by Ms. Susan Skipp that the provisions of Practice Book Section 25-60a [25-60A] are inadequate to ensure the confidentiality and privacy of medical records and psychiatric evaluations and comments from the Family Commission.

After discussion, the Committee tabled the matter until further comment is received from the Family Commission.

3. The Committee considered a proposal by Anonymous that a new Practice Book Section be adopted requiring that transcripts and memoranda of decisions involving children's medical conditions and treatment be redacted, and considered comments from the Family Commission on the proposal.

After discussion, the Committee tabled the matter until further comment is received from the Family Commission.

4. The Committee considered a proposal by Ms. Marisa Ringel to adopt a new rule of

practice, Section 25-70, requiring an evidentiary hearing prior to an order of supervised visitation and providing that orders of supervised visitation will not remain in place for more than three months, and considered comments from the Family Commission on the proposal.

After discussion, the Committee determined that no further action by the Committee was necessary on this matter.

5. The Committee considered a proposal by Judge Bozzuto, Chief Administrative Judge, Family Division, to amend Section 25-1 to reflect the adoption of the *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* which replaced the *Uniform Child Custody Jurisdiction Act (UCCJA)*; and to amend Section 25-57 to delete terminology used in that section that is obsolete in certain relationships. Judge Bozzuto was present and addressed questions from the Committee regarding this proposal.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 25-1 and the proposed revision to Section 25-57, as amended, as set forth in Appendix A attached to these minutes. Justice Eveleigh participated in this vote as part of the quorum.

6. The Committee considered a proposal by Judge Bozzuto, Chief Administrative Judge, Family Division, to amend Sections 25-49, 25-50 and 25-51 to enhance consistency and uniformity as to case management of dissolution cases. Judge Wilson arrived during the discussion of this matter. Judge Bozzuto was present and addressed questions from the Committee regarding this proposal.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 25-49 and 25-51 and the proposed revision to Section 25-50, as amended, as set forth in Appendix B attached to these minutes. Justice Eveleigh did not participate in this or any subsequent vote.

7. The Committee considered a proposal by Judge Carroll, Chief Court Administrator, to amend Section 3-8 to remove the pilot status of limited appearances and expand the application of such appearances to any family or civil case.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 3-8, as set forth in Appendix C attached to these minutes.

8. The Committee considered a proposal by Patricia King, Chief Disciplinary Counsel (Retired), to adopt new Practice Book Section 2-47B regarding placing restrictions on the

employment of suspended, disbarred, inactive or resigned ("deactivated") attorneys, and a redraft of the proposed new Section by Attorney King. Attorney King and First Assistant Chief Disciplinary Counsel Suzanne Sutton were present and addressed questions from the Committee regarding the proposal.

After discussion, the Committee unanimously voted to submit to public hearing the proposed new Section 2-47B, as set forth in Appendix D attached to these minutes.

9. The Committee considered a proposal by Attorney Fred Ury to implement Minimum Continuing Legal Education (MCLE), a redraft or the proposal by Attorney Ury, and comments by the Connecticut Trial Lawyers Association on the proposal. Attorney Ury and Attorneys Louis Pepe and Lawrence Morizio were present and addressed questions from the Committee regarding the proposal.

After discussion, the Committee determined that the proposal should be referred for comment to those individuals and organizations that had submitted comments on prior proposals.

10. The Committee considered the application by NBLSC for authority to certify lawyers as specialists in the area of Family and Matrimonial law, the report received from Legal Specialization Screening Committee (LSSC) on December 12, 2013, and comments on the application by Connecticut Bar Association. Attorneys Del Ciampo and Poncini provided to the Committee a procedural review of the function of the LSSC. Attorney Mark DuBois, Attorney Allen Gary Palmer and Attorney Lane Marmon were present and addressed questions from the Committee concerning the Connecticut Bar Association's comments on the application.

After discussion, the Committee decided to table the proposal to permit the Connecticut Bar Association to submit an application for specialty certification in the area of Family and Matrimonial law.

11. The Committee considered a proposal by the Connecticut Bar Association's Committee on Professional Ethics regarding changes to the Rules of Professional Conduct. Attorney Marcy Tench Stovall was present and addressed questions from the Committee regarding the proposal.

After discussion, the Committee requested that Attorney Stovall redraft and resubmit the proposal incorporating the comments made at the meeting for consideration by the Rules

Committee at its March meeting.

12. The Committee considered a proposal by Attorney Michael H. Agranoff to allow for motions for summary judgment in juvenile matters, materials previously considered by the Rules Committee related to this item, and a letter from Judge Conway, Chief Administrative Judge, Juvenile Matters, concerning the proposal.

After discussion, the Committee decided that no further action by the Committee was needed on this matter.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (021015)

Sec. 25-1. Definitions Applicable to Proceedings on Family Matters

The following shall be "family matters" within the scope of these rules: Any actions brought pursuant to General Statutes § 46b-1, including but not limited to dissolution of marriage or civil union, legal separation, dissolution of marriage or civil union after legal separation, annulment of marriage or civil union, alimony, support, custody, and change of name incident to dissolution of marriage or civil union, habeas corpus and other proceedings to determine the custody and visitation of children except those which are properly filed in the superior court as juvenile matters, the establishing of paternity, enforcement of foreign matrimonial or civil union judgments, actions related to prenuptial or pre-civil union and separation agreements and to matrimonial or civil union decrees of a foreign jurisdiction, actions brought pursuant to General Statutes § 46b-15, custody proceedings brought under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act and proceedings for enforcement of support brought under the provisions of the Uniform Interstate Family Support Act.

COMMENTARY: The Uniform Child Custody Jurisdiction Act was replaced by the Uniform Child Custody Jurisdiction and Enforcement Act. The proposed revision reflects that change.

Sec. 25-57. Affidavit concerning Children

Before the judicial authority renders any order in any matter pending before it involving the custody, visitation or support of a minor child or children, an affidavit shall be filed with the judicial authority averring (1) whether **[**the wife**]** any of the parties is believed to be pregnant; (2) the name and date of birth of any minor child born since the date of the filing of the complaint or the application; (3) information which meets the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act, General Statutes § 46b-115 et seq.; (4) that there is no other proceeding in which either party has participated as a party, witness, or otherwise concerning custody of the child in any state; and (5) that no person not a party has physical custody or claims custody or visitation rights with respect to the child. This section shall not apply to modifications of existing support orders or in situations involving allegations of contempt of support orders.

COMMENTARY: The proposed change recognizes that the existing terminology is obsolete in some relationships.

Appendix B (021015)

Sec. 25-49. Definitions

For purposes of these rules the following definitions shall apply:

(1) "Uncontested matter" means a case in which both parties are appearing and no aspect of the matter is in dispute.

(2) **[**"Limited contested matter"**]** "Financial Disputes" means a case in which **[**the matters in dispute are limited to**]** monetary awards, real property or personal property are in dispute.

(3) **[**"Contested matter"**]** "Parenting Disputes" means a case in which child custody, visitation rights, also called parenting time or access, paternity or the grounds for the action are in dispute**[**, and matters of monetary awards or the disposition of real or personal property may be in dispute**]**.

A case may contain both financial and parenting disputes.

COMMENTARY: The revisions to the definitions are consistent with current practice and reflect the substance and status of each case. The proposed last sentence makes it clear that parties may have a case with more than one type of status.

Sec. 25-50. Case Management

(a) The presiding judge or a designee shall determine by the case management date which track each case shall take and assign each case for disposition. That date shall be set on a schedule approved by the presiding judge.

(b) In all cases, unless the party or parties appear and the case proceeds to judgment under subsections (c) or (d) on the case management date, the party or parties shall file on or before the case management date;

(1) a case management agreement (JD-FM-163);

(2) sworn financial affidavits;

(3) a proposed parenting plan, if there are minor children.

If the parties or counsel have not filed these documents on or before the case management date, or in a case with parenting disputes where counsel or self-

represented parties have not come to court on the case management date, the case may be dismissed or other sanctions may be imposed.

(c) If the defendant has not filed an appearance by the case management date, the plaintiff may appear and proceed to judgment on the case management date without further notice to the defendant, provided the plaintiff has complied with the provisions of Section 25-30. Otherwise, the plaintiff must file on or before the case management date, the documents listed in subsection (b) and the clerk shall assign the matter to a date certain for disposition.

[(b)](d) If the matter is uncontested, the parties may appear and proceed to judgment on the case management date, provided the plaintiff has complied with the provisions of Section 25-30. Otherwise, the parties must file on or before the case management date, the documents listed in subsection (b) and [a form prescribed by the office of the chief court administrator has been filed,] the clerk shall assign the matter to a date certain for disposition.

[(c)](e) [With the approval of the presiding judge, a case management conference may be conducted by the filing of a stipulated scheduling order when only financial issues are outstanding. If there is a dispute with respect to financial issues,] In cases where there are financial disputes, the parties do not have to come to court on the case management date, but must file on or before the case management date the documents listed in subsection (b). Thereafter, the matter may be directed to any alternative dispute resolution mechanism, private or court-annexed, [or thereafter have assigned a date certain for] including, but not limited to family special masters and [further] judicial pretrial. [Thereafter, the matter may be assigned for trial for a date certain if not resolved.] If not resolved, the matter will be assigned a date certain for trial.

[(d)](f) In cases where there are parenting disputes [custody or visitation issues are outstanding], the parties and counsel must appear for a case management conference on the case management date. If parenting disputes [custody or visitation issues] require judicial intervention, the appointment of counsel or a guardian ad litem for the minor child, or case study or evaluation by family services or by a private

provider of services, a target date shall be assigned for completion of such study and the final conjoint thereon and thereafter a date certain shall be assigned for disposition.

[(e)](g) With respect to subsections [(c)] (e) and [(d)] (f), if a trial is required, such order may include a date certain for a trial management conference between counsel or self-represented parties for the purpose of premarking exhibits and complying with other orders of the judicial authority to expedite the trial process.

COMMENTING: The revisions to this section are intended to give direction to the litigants. The revisions also clarify that the parties may proceed to judgment on the case management date if the defendant has failed to appear by the case management date.

Sec. 25-51. When Motion for Default for Failure to Appear Does Not Apply

(a) [Any case claiming a dissolution of marriage or civil union, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50.] If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has not filed an appearance by the [date assigned for disposition] case management date, the plaintiff [case] may proceed to judgment on the case management date without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.

(b) If the defendant files an appearance by the [date assigned for disposition] case management date, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50.

COMMENT: The revisions to this section clarify that a plaintiff may proceed to judgment on the case management date if the defendant has failed to appear.

Appendix C (021015)

Sec. 3-8. Appearance for Represented Party

(a) Whenever an attorney files an appearance for a party, or the party files an appearance for himself or herself, and there is already an appearance of an attorney or party on file for that party, the attorney or party filing the new appearance shall state thereon whether such appearance is in place of or in addition to the appearance or appearances already on file.

(b) [The chief court administrator may establish, for such period or periods of time as he or she determines, a pilot program in one or more judicial districts permitting an attorney to file an appearance limited to a specific event or proceeding in matters that have been designated as being within the purview of the pilot. Limited appearances may only be filed in connection with such pilot program.] An attorney is permitted to file an appearance limited to a specific event or proceeding in any family or civil case. If an event or proceeding in a matter in which a limited appearance has been filed has been continued to a later date, for any reason, it is not deemed completed unless otherwise ordered by the court. Except with leave of court, a limited appearance may not be filed to address a specific issue or to represent the client at or for a portion of a hearing. A limited appearance may not be limited to a particular length of time or the exhaustion of a fee. Whenever an attorney files a limited appearance for a party, the limited appearance shall be filed in addition to any self-represented appearance that the party may have already filed with the court. Upon the filing of the limited appearance, the client may not file or serve pleadings, discovery requests or otherwise represent himself or herself in connection with the proceeding or event that is the subject of the limited appearance. An attorney shall not file a limited appearance for a party when filing a new action or during the pendency of an action if there is no appearance on file for that party, unless the party for whom the limited appearance is being filed files an appearance in addition to the attorney's limited appearance at the same time. A limited appearance may not be filed on behalf of a firm or corporation. A limited appearance may not be filed in criminal or juvenile cases.

(c) The provisions of this section regarding parties filing appearances for themselves do not apply to criminal cases.

COMMENTARY: The change to this section removes the pilot status of limited appearances and expands the application of such appearances to any family or civil case.

Appendix D (021015)

(NEW) Sec. 2-47B. Restrictions on the Activities of Deactivated Attorneys

(a) As used in this section:

(1) A "deactivated attorney" is an attorney who is currently disbarred, suspended, resigned, or on inactive status.

(2) A "supervising attorney" is an attorney

(A) who has been approved by the court as a supervising attorney for a deactivated attorney in accordance with subsection (e) of this section;

(B) who is in good standing with the bar of this state;

(C) who was not affiliated with the deactivated attorney as an employer, employee, partner, independent contractor or in any other employment relationship at the time of the deactivation; and

(D) who did not serve as an attorney pursuant to Section 2-64 in connection with the disbarment, suspension, resignation or placement on inactive status of the deactivated attorney.

(3) A "law-related activity" is:

(A) engaging in the practice of law as defined by Section 2-44A;

(B) representing a client in any legal matter, including discovery matters;

(C) negotiating or transacting any matter for, or on behalf of, a client with third parties, or having any contact with third parties regarding such negotiation or transaction;

(D) receiving, disbursing or exercising any control over clients' funds or other property held in trust and related accounts;

(E) using the titles "attorney" or "lawyer," or the designations "Esq.," or "J.D." to describe oneself, or

(F) communicating with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm.

(4) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.

(b)(1) No deactivated attorney shall be permitted to engage in any law-related activities or to be employed as a paralegal or legal assistant unless expressly permitted by the court as provided in this section.

(2) The court may expressly permit, by written order, a deactivated attorney to perform any of the following activities, under the supervision of a supervising attorney, as provided herein:

A. performing legal work of a preparatory nature, such as conducting legal research, assembling data and other necessary information, and drafting transactional documents, pleadings, briefs, and other similar documents; and

B. providing clerical assistance to the supervising attorney.

(c) No attorney who knows or should have known that an attorney's license has been deactivated, shall employ the deactivated attorney to engage in any law-related activities or to act as a paralegal or legal assistant, without the permission of the court, as provided in this section.

(d) A deactivated attorney shall not engage in law-related activities or be employed as a paralegal or legal assistant on behalf of any client previously represented by the deactivated attorney or for whom the deactivated attorney had previously provided any legal services in the ten year period prior to deactivation. During the period of employment of the deactivated attorney, the supervising attorney or his or her firm shall not assume representation of any matter on behalf of any client previously represented by the deactivated attorney or for whom the deactivated attorney had previously provided any legal services in the ten year period prior to deactivation.

(e)(1) An attorney desiring to become a supervising attorney shall file a written application on a form approved by the office of the chief court administrator.

(2) The application shall be filed with the court in the docket number of the matter in which the deactivated attorney was suspended, disbarred, placed on inactive status or resigned. A copy of the application shall be served by the applicant on the Office of the Chief Disciplinary Counsel.

(3) An application filed under this section shall be assigned to the same judge who presided over the matter in which the deactivated attorney resigned or was disbarred, suspended, or placed on inactive status. If that judge is no longer available,

the administrative judge in the judicial district where the deactivation proceeding was held shall assign the matter to another judge.

(f) The court shall schedule the application for a hearing to determine the following:

(1) whether the deactivated attorney should be permitted to perform the activities permitted herein;

(2) whether the attorney will be appointed to serve as the supervising attorney for the deactivated attorney; and

(3) whether any additional monitoring, conditions, or restrictions re necessary.

(g) If the relationship between the supervising attorney and the deactivated attorney terminates, the supervising attorney shall send written notice to the court within 15 days of the termination of the relationship. A copy of the written notice shall be served on the Office of the Chief Disciplinary Counsel.

(h) Violation of this section by the deactivated attorney or the supervising attorney shall constitute a violation of Rule 8.4 (4) of the Rules of Professional Conduct.

(i) In any application for reinstatement, the supervising attorney and a deactivated attorney under the supervision of a supervising attorney pursuant to this section shall certify that he or she has complied with the requirements of this section during the period of suspension, disbarment, resignation, or inactive status.

COMMENTARY: The unrestricted ability of attorneys whose licenses are deactivated due to a disciplinary proceeding or disability to practice as "paralegals" negatively impacts the public perception of our ability to regulate the practice of law. This rule will serve to increase public confidence in the regulation of the bar because it prohibits a deactivated attorney from simply returning to his or her former practice and working as a "paralegal" for his or her former firm, for the trustee, or for his or her former clients. With permission of the court, a deactivated attorney may perform the activities specified in this rule. This section shall apply to any attorney whose license is deactivated on or after the effective date of this section.