

June 1, 2007

Minutes of the Meeting
Rules Committee
June 1, 2007

On Friday, June 1, 2007 the Rules Committee met in the Attorneys' Conference Room
from 10:00 a.m. to 11:21 a.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. JOAN K. ALEXANDER
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. ROLAND D. FASANO
HON. BARRY C. PINKUS
HON. PATTY JENKINS PITTMAN
HON. HILLARY B. STRACKBEIN
HON. GEORGE N. THIM

Also in attendance was Carl E. Testo, Counsel to the Rules Committee.

Agenda

1. The Committee approved the minutes of the meeting held on April 23, 2007.
2. The Committee considered whether it should recommend to the Superior Court judges that Practice Book Sec. 1-10(b), which concerns the possession by attorneys of certain electronic devices in court facilities, be extended for another year.

After discussion, the Committee voted to recommend to the Superior Court judges that Practice Book Section 1-10(b) be extended for another year. The vote was eight members in favor and one opposed.

3. The Committee noted a memo from Mark A. Dubois, Chief Disciplinary Counsel, in support of the proposed revisions to Rule 5.5 of the Rules of Professional Conduct concerning multi-jurisdictional practice, proposed new Section 2-15A concerning authorized house counsel, and proposed new Section 2-44A concerning the definition of the practice of law.

4. The Committee considered a proposal submitted by Attorney William H. Narwold,

President of the Connecticut Bar Foundation, to further amend the proposed revisions to Rule 1.15 of the Rules of Professional Conduct by deleting proposed new paragraph (a)(6) of Rule 1.15.

After discussion, the Committee unanimously voted to further amend the proposed revisions to Rule 1.15 of the Rules of Professional Conduct as set forth in Appendix A attached hereto.

5. The Committee considered comments from the following with regard to the proposed revision to Section 17-53 concerning summary process executions: Attorney David A. Pels, the New Haven Legal Assistance Association, Attorney Richard L. Tenenbaum on behalf of the Bridgeport Office of Connecticut Legal Services, Inc., and Attorney Raphael L. Podolsky.

After discussion, the Rules Committee unanimously voted to withdraw from submission to the Superior Court judges the proposed revision to Section 17-53.

6. The Committee considered a proposal by Attorney Daniel B. Horwitch to further amend the proposed revision to the Commentary to Section 7-2 of the Code of Evidence.

After discussion, the Committee unanimously voted to further amend the Commentary to Section 7-2 of the Code of Evidence as set forth in Appendix B attached hereto.

7. The Committee considered a proposal by Attorney R. David Stamm, Administrative Director of the Connecticut Bar Examining Committee, to further amend subsection (d)(1) of proposed new Section 2-15A, concerning authorized house counsel, by the addition of the language “fitness to practice law.” The Committee noted that fitness to practice law is not set forth in Section 2-8 as a requirement entitling an applicant to admission to the bar.

The Committee thereupon tabled the proposal and asked the undersigned to request Attorney Stamm to provide a rationale for this proposed change.

8. The Committee unanimously voted to put off the agenda a letter from Mr. Francis C.P. Knize.

9. The Committee considered proposals by the Association of Corporate Counsel to amend proposed new Section 2-15A and Rule 5.5 of the Rules of Professional Conduct.

The Committee unanimously denied the Association’s proposal to amend the grace period under proposed new Section 2-15A(g) from six months to one year.

The Committee unanimously denied the Association’s proposal to add clarifying language to the commentary to proposed new Section 2-15A(b)(1)(D).

The Committee unanimously denied the Association's proposal to amend proposed new Section 2-15A(b)(1)(D) by increasing the three month time period for filing an application under that section to six months.

The Committee unanimously denied the Association's proposal to amend the proposed revision to Rule 5.5(c) of the Rules of Professional Conduct concerning reciprocity.

The Committee unanimously denied the Association's proposal to amend proposed new Section 2-15A to provide that authorized house counsel are permitted to engage in pro bono activities in Connecticut. The Rules Committee instead unanimously voted to amend the commentary to proposed new Section 2-15A as set forth in Appendix C attached hereto to provide that Rule 6.1 of the Rules of Professional Conduct concerning pro bono publico service does not apply to attorneys who are certified as authorized house counsel.

With regard to the Association's proposal concerning proposed new Section 2-15A(c)(2), the Committee unanimously voted to further amend proposed new Section 2-15A(c)(2) as set forth in Appendix C attached hereto.

The Committee then considered a proposal by the Association to amend the definition of "organization" in proposed new Section 2-15A(b)(2) by adding "employer sponsored entities" to the parenthetical in that provision. The Committee tabled this proposal and asked the undersigned to request the Association to provide more information in support of this change.

10. The Committee noted a letter from Attorney Carla R. Walworth concerning the proposed revisions to Rule 5.5 of the Rules of Professional Conduct and proposed new Section 2-15A concerning authorized house counsel.

11. The Committee noted a letter from Attorney Kevin R. Hennessy, on behalf of the Connecticut Business and Industry Association concerning the proposed revisions to Rule 5.5 of the Rules of Professional Conduct.

12. The Committee noted a letter from the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics, with regard to proposed new Section 2-44A concerning the definition of the practice of law.

13. The Committee noted a letter from Attorneys Lewis S. Lerman and Cesar Noble, on behalf of the Connecticut Defense Lawyers Association, concerning the proposed revisions to Rules 1.2 and 1.8 of the Rules of Professional Conduct.

14. Justice Zarella advised the Committee that Justice Borden discussed with him a

provision in the camera rules that have been proposed by the Rules Committee that restricts the televising of proceedings that are held out of the hearing of the jury. Justice Borden suggested that the rule be amended to provide that the judicial authority still have discretion to decide whether such proceedings are televised.

After discussion, the Rules Committee voted unanimously not to make this change at this time, but to see how the rule works as proposed.

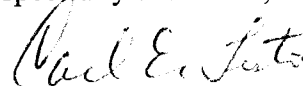
15. Judge Pittman discussed the proposal made by Mr. Pat Sheehan at the public hearing that the presiding judge be given the discretion to allow more than one camera in a courtroom to cover a trial.

The Rules Committee noted that proposed new Section 1-11C(k) will allow this in the pilot program.

16. The Rules Committee discussed a suggestion made at the public hearing that the proposed revision to Section 1-10(a) be amended to allow laptops to be brought into a courtroom for note-taking.

After discussion, the Committee unanimously voted to further amend their proposed revision to Section 1-10(a) as set forth in Appendix D attached hereto.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (June 1, 2007 mins)

Rule 1.15. Safekeeping Property

(a) As used in this rule, the terms below shall have the following meanings:

(1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.

(2) An "eligible institution" means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the federal government, or (ii) an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in [paragraph] subsection (g) (4) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (g) (5) below, subject to the dispute resolution process provided in subsection (g) (5) (E) below.

(3) "Interest- or dividend-bearing account" means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000.

(4) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (g) (7) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to [paragraph] subsection (g) (5) below.

(5) "Non-IOLTA account" means an interest- or dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall

be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for [that] those purposes.

(d) Absent a written agreement with the client otherwise, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f)[, a lawyer or], lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for (i) the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and (ii) law school scholarships based on financial need. Lawyers and law firms shall [only] place a client's or third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days in an IOLTA account and shall only establish IOLTA accounts at eligible institutions that meet the following requirements:

(1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.

(2) The IOLTA account shall include only clients' or a third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days.

(3) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such

organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

(4) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money-market fund. Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(5) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer this program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the Superior Court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice; [and]

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this rule.

(6) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection (g) (3) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by

the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(7) [A lawyer's or law firm's own funds may only be deposited in a clients' funds account in an amount that the lawyer or law firm reasonably determines to be necessary to pay financial institution fees or service charges on the account or to obtain a waiver of fees and service charges on the account.

(8)] Nothing in this subsection (g) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices and comply with the requirements of Practice Book Section 2-27.

While normally it is impermissible to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful claims against specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases[, when the third-party claim is not frivolous under applicable law,] the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the

lawyer may file an action to have a court resolve the dispute.

The word "interests" as used in subsection (f) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

A "lawyers' fund" for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

AMENDMENT NOTES: *The word "only" is deleted in subsection (g) to make the rule consistent with C.G.S. § 51-81c.*

Subsection (g) (5) (E) is a new provision that would require the entity designated to administer the program to provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an "eligible institution" under the rule.

The above change to the Commentary defines the word "interests" as used in subsection (f).

Other changes make technical corrections to the rule and make it internally consistent.

Appendix B (6-1-09mins)

Code of Evidence

Sec. 7-2. Testimony by Experts

A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.

COMMENTARY

Section 7[0]-2 imposes two conditions on the admissibility of expert testimony. First, the witness must be qualified as an expert. See, e.g., *State v. Wilson*, 188 Conn. 715, 722, 453 A.2d 765 (1982); see also, e.g., *State v. Girolamo*, 197 Conn. 201, 215, 496 A.2d 948 (1985) (bases for qualification). Whether a witness is sufficiently qualified to testify as an expert depends on whether, by virtue of the witness' knowledge, skill, experience, etc., his or her testimony will "assist" the trier of fact. See *Weinstein v. Weinstein*, 18 Conn. App. 622, 631, 561 A.2d 443 (1989); see also, e.g., *State v. Douglas*, 203 Conn. 445, 453, 525 A.2d 101 (1987) ("to be admissible, the proffered expert's knowledge must be directly applicable to the matter specifically in issue"). The sufficiency of an expert witness' qualifications is a preliminary question for the court. E.g., *Blanchard v. Bridgeport*, 190 Conn. 798, 808, 463 A.2d 553 (1983); see Section 1-3 (a).

Second, the expert witness' testimony must assist the trier of fact in understanding the evidence or determining a fact in issue. See, e.g., *State v. Hasan*, 205 Conn. 485, 488, 534 A.2d 877 (1987); *Schomer v. Shilepsky*, 169 Conn. 186,

191–92, 363 A.2d 128 (1975). Crucial to this inquiry is a determination that the scientific, technical or specialized knowledge upon which the expert’s testimony is based goes beyond the common knowledge and comprehension, i.e., “beyond the ken,” of the average juror. See *State v. George*, 194 Conn. 361, 373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 105 L. Ed. 2d 968 (1985); *State v. Grayton*, 163 Conn. 104, 111, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495 (1972); cf. *State v. Kemp*, 199 Conn. 473, 476–77, 507 A.2d 1387 (1986).

The subject matter upon which expert witnesses may testify is not limited to the scientific or technical fields, but extends to all specialized knowledge. See, e.g., *State v. Correa*, 241 Conn. 322, 355, 696 A.2d 944 (1997) (FBI agent may testify about local cocaine distribution and its connection with violence).

In *State v. Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998), the state supreme court directed trial judges, in admitting scientific evidence, to serve a gatekeeper function in determining whether such evidence will assist the trier of fact. *Id.*, 73. In *Porter*, the court opted for an approach similar to that taken by the United States supreme court in construing the relevant federal rule of evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). *State v. Porter*, *supra*, 61, 68.

In accordance with *Porter*, the trial judge first must determine that the proffered scientific evidence is reliable. *Id.*, 64. Scientific evidence is reliable if the reasoning or methodology underlying the evidence is scientifically valid. *Id.* In addition to reliability, the trial judge also must determine that the proffered scientific evidence is relevant, meaning that the reasoning or methodology underlying the scientific theory or technique in question properly can be applied to the facts in issue. *Id.*

In *Porter*, the court listed several factors a trial judge should consider in deciding whether scientific evidence is reliable. *Id.*, 84–86. The list of factors is not exclusive; *id.*, 84;

and the operation of each factor varies depending on the specific context in each case. *Id.*, 86–87.

Subsequent to both *Daubert* and *Porter*, the United States supreme court decided that, with respect to Fed. R. Evid. 702, the trial judge’s gatekeeping function applies not only to testimony based on scientific knowledge, but also to testimony based on technical and other specialized knowledge, and that the trial judge may consider one or more of the *Daubert* factors if doing so will aid in determining the reliability of the testimony. *Kumho Tire Co., Ltd. v. Carmichael*, U.S. , 119 S. Ct. 1167, 1174–75, 143 L. Ed. 2d 238 (1999). The Code takes no position on such an application of *Porter*. Thus, Section 7[0]-2 should not be read either as including or precluding the *Kumho Tire* rule.

Appendix C (6-1-07.mins)

(NEW) Sec. 2-15A –Authorized House Counsel

(a) Purpose

The purpose of this section is to clarify the status of house counsel as authorized house counsel as defined herein, and to confirm that such counsel are subject to regulation by the judges of the superior court. Notwithstanding any other section of this chapter relating to admission to the bar, this section shall authorize attorneys licensed to practice in jurisdictions other than Connecticut to be permitted to undertake these activities, as defined herein, in Connecticut without the requirement of taking the bar examination so long as they are exclusively employed by an organization.

(b) Definitions

(1) Authorized House Counsel. An "authorized house counsel" is any person who:

(A) is a member in good standing of the entity governing the practice of law of each state (other than Connecticut) or territory of the United States, or the District of Columbia in which the member is licensed;

(B) has been certified on recommendation of the bar examining committee in accordance with this section;

(C) agrees to abide by the rules regulating members of the Connecticut bar and submit to the jurisdiction of the statewide grievance committee and the superior court; and

(D) is, at the date of application for registration under this rule, employed in the state of Connecticut by an organization or relocating to the state of Connecticut in furtherance of such employment within 3 months of such application under this section and receives or shall receive compensation for activities performed for that business organization.

(2) Organization. An "organization" for the purpose of this rule is a corporation, partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization for the activities of the authorized house counsel.

(c) Activities

(1) Authorized Activities. An authorized house counsel, as an employee of an organization, may provide legal services in the state of Connecticut to the organization for which a registration pursuant to subsection (d) is effective, provided, however, that such activities shall be limited to:

(A) the giving of legal advice to the directors, officers, employees, and agents of the organization with respect to its business and affairs;

(B) negotiating and documenting all matters for the organization; and

(C) representation of the organization in its dealings with any administrative agency, tribunal or commission having jurisdiction; provided, however, authorized house counsel shall not be permitted to make appearances as counsel before any state or municipal administrative tribunal, agency, or commission, and shall not be permitted to make appearances in any court of this state, unless the attorney is specially admitted to appear in a case before such tribunal, agency, commission or court.

(2) **Disclosure.** Authorized house counsel shall not represent themselves to be members of the Connecticut bar or commissioners of the superior court licensed to practice law in this state. Such counsel may represent themselves as Connecticut authorized house counsel.

(3) **Limitation on Representation.** In no event shall the activities permitted hereunder include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice therefor unless otherwise permitted or authorized by law, code, or rule or as may be permitted by subsection (c)(1). Authorized house counsel shall not be permitted to prepare legal instruments or documents on behalf of anyone other than the organization employing the authorized house counsel.

(4) **Limitation on Opinions to Third Parties.** An authorized house counsel shall not express or render a legal judgment or opinion to be relied upon by any third person or party other than legal opinions rendered in connection with commercial, financial or other business transactions to which the authorized house counsel's employer organization is a party and in which the legal opinions have been requested from the authorized house counsel by another party to the transaction. Nothing in this subsection (c)(4) shall permit authorized house counsel to render legal opinions or advice in consumer transactions to customers of the organization employing the authorized house counsel.

(d) Registration

(1) **Filing with the Bar Examining Committee.** The bar examining committee shall investigate whether the applicant is at least eighteen years of age, is of good moral character, consistent with the requirement of Section 2-8 (3) regarding applicants for admission to the bar, and has fulfilled the educational requirements of Section 2-8 (4). In addition, the applicant shall file with the bar examining committee, and the committee shall consider, the following:

(A) a certificate from each entity governing the practice of law of a state or territory of the United States, or the District of Columbia in which the applicant is licensed to practice law certifying that the applicant is a member in good standing;

(B) a sworn statement by the applicant:

(i) that the applicant has read and is familiar with the Connecticut Rules of Professional Conduct for attorneys and Chapter 2 (Attorneys) of the Superior Court Rules, General Provisions, and will abide by the provisions thereof;

(ii) that the applicant submits to the jurisdiction of the statewide grievance committee and the superior court for disciplinary purposes, and authorizes notification to or from the entity governing the practice of law of each state or territory of the United States, or the District of Columbia in which the applicant is licensed to practice law of any disciplinary action taken against the applicant;

(iii) listing any jurisdiction in which the applicant is now or ever has been licensed to practice law; and

(iv) disclosing any disciplinary sanction or pending proceeding pertaining or relating to his or her license to practice law, including but not limited to reprimand, censure, suspension or disbarment, or has been placed on inactive status;

(C) a certificate from an organization certifying that it is qualified as set forth in subsection (b)(2); that it is aware that the applicant is not licensed to practice law in Connecticut; and that the applicant is employed or about to be employed in Connecticut by the organization as set forth in subsection (b)(1)(D);

(D) an appropriate application pursuant to the regulations of the bar examining committee;

(E) remittance of a filing fee to the bar examining committee as prescribed and set by that committee; and

(F) an affidavit from each of two members of the Connecticut bar, who have each been licensed to practice law in Connecticut for at least five years, certifying that the applicant is of good moral character and that the applicant is employed or will be employed by an organization as defined above in subsection (b) (2).

(2) **Certification.** Upon recommendation of the bar examining committee, the court may certify the applicant as authorized house counsel and shall cause notice of such certification to be published in the Connecticut Law Journal.

(3) **Annual Client Security Fund Fee.** Individuals certified pursuant to this section shall comply with the requirements of sections 2-68 and 2-70 of this chapter, including payment of

the annual fee and shall pay any other fees imposed on attorneys by court rule.

(4) Annual Registration. Individuals certified pursuant to this section shall register annually with the statewide grievance committee in accordance with section 2-26 and section 2-27(d) of this chapter.

(e) Termination or Withdrawal of Registration

(1) Cessation of Authorization to Perform Services. Authorization to perform services under this rule shall cease upon the earliest of the following events:

(A) the termination or resignation of employment with the organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another organization within 30 days of the termination or resignation, authorization to perform services under this rule shall continue upon the filing with the bar examining committee of a certificate as set forth in subsection (d) (1) (C);

(B) the withdrawal of registration by the authorized house counsel;

(C) the relocation of an authorized house counsel outside of Connecticut for a period greater than 180 consecutive days; or

(D) the failure of authorized house counsel to comply with any applicable provision of this rule.

Notice of one of the events set forth in subsections (e) (1) (A)-(C) or a new certificate as provided in subsection (e) (1) (A) must be filed with the bar examining committee by the authorized house counsel within 30 days after such action. Failure to provide such notice by the authorized house counsel shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

(2) Notice of Withdrawal of Authorization. Upon receipt of the notice required by subsection (e) (1), the bar examining committee shall forward a request to the statewide bar counsel that the authorization under this chapter be revoked. Notice of the revocation shall be mailed by the statewide bar counsel to the authorized house counsel and the organization employing the authorized house counsel.

(3) Reapplication. Nothing herein shall prevent an individual previously authorized as house counsel to reapply for authorization as set forth in subsection (d).

(f) Discipline

(1) Termination of Authorization by Court. In addition to any appropriate proceedings and discipline that may be imposed by the statewide grievance committee, the superior court may, at any time, with cause, terminate an authorized house counsel's registration, temporarily or permanently.

(2) Notification to Other States. The statewide bar counsel shall be authorized to notify each entity governing the practice of law in the state or territory of the United States, or the District of Columbia, in which the authorized house counsel is licensed to practice law, of any disciplinary action against the authorized house counsel.

(g) Transition

(1) Preapplication Employment in Connecticut. The performance of an applicant's duties as an employee of an organization in Connecticut prior to the effective date of this rule shall not be grounds for the denial of registration of such applicant if application for registration is made within 6 months of the effective date of this rule.

(2) Immunity from Enforcement Action. An authorized house counsel who has been duly registered under this rule shall not be subject to enforcement action for the unlicensed practice of law for acting as counsel to an organization prior to the effective date of this rule.

COMMENTARY: Subsection (c) (1) limits the activities of authorized house counsel to providing services to such counsel's employer organization, including advice to the organization's directors, officers, employees and agents with respect to the business and affairs of that organization. Authorized house counsel shall not render services or advice to those persons in matters unrelated to the employer organization, and may not render services to other persons on behalf of the organization. For example, authorized house counsel for a title insurance company would not be permitted to render legal services or advice to purchasers of title insurance in real estate transactions.

Subsection (c) (1) (C) prohibits authorized house counsel from appearing in the capacity of an attorney before any state or municipal administrative agency, tribunal or commission or from making appearances in any court of this state, unless the

counsel is specially admitted by such court in a case. The provision does not preclude an authorized house counsel from appearing before an administrative agency, tribunal or commission in a capacity other than as an attorney, for example as an officer or agent of the corporation.

Subsection (c) (3) clarifies the limited scope of authority of authorized house counsel set forth in subsection (c)(1) and specifically prohibits them from preparing legal instruments or documents on behalf of anyone other than the employer organization. For example, authorized house counsel employed by a bank or a title insurance company are clearly prohibited from preparing wills, trusts, or deeds for customers of their employer organizations.

The reference in subsection (d)(1) to section 2-8(3) makes clear that the bar examining committee will be required to investigate the good moral character of applicants under this rule to the same extent that it does with regard to applicants to the bar under section 2-8.

Rule 6.1 of the Rules of Professional Conduct concerning pro bono publico service does not apply to attorneys who are certified as authorized house counsel pursuant to the above section because such attorneys are not fully admitted to practice in Connecticut.

Appendix D (6-1-07 mins)

Sec. 1-10. [Cameras and Electronic Media; In General] Possession of Electronic Devices in Court Facilities

(a) Personal computers may be used for note-taking in a courtroom, but no other electronic devices shall be allowed in a courtroom unless authorized by a judicial authority or permitted by these rules. [Except as otherwise provided by these rules, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions. A judicial authority may authorize:

(1) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(3) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(A) the means of recording will not distract participants or impair the dignity of the proceedings;

(B) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(C) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(D) the reproduction will be exhibited only for instructional purposes in educational institutions.]

(b) An attorney in good standing in this state, who has in his or her possession a picture identification card authorized by the office of the chief court administrator indicating that he or she is an attorney, may possess in a court facility an electronic device, including, but not limited to, a cellular telephone, portable computer, or personal digital assistant, which device has the capacity to broadcast, record, or take photographs. Such devices shall not be used in any court facility for the purpose of broadcasting or recording audio or video, or for any photographic purposes, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use such devices in such office. Cellular telephones may be used in a court facility for telephonic purposes to transmit and receive voice signals only,

but in no event shall they be used in any courtroom, lockup, chambers, or offices, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use a cellular telephone in such office. Personal computers may be used, with the permission of the judicial authority, in a courtroom in conjunction with the conduct of a hearing or trial. A violation of this subsection may constitute misconduct or contempt. This subsection shall be in force for a period of one year from its effective date, unless terminated sooner or extended beyond said period by vote of the judges of the superior court, to enable an analysis of the effects of this subsection to be made and reported to such judges. This subsection shall not apply to attorneys who are employees of the Judicial Branch. Such attorneys shall comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities. This subsection shall not be deemed to restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees.

COMMENTARY: The amendments to this section and to Section 1-11, and the adoption of new Sections 1-10A, 1-10B, 1-11A, 1-11B and 1-11C, implement various recommendations of the Judicial Branch's Public Access Task Force relating to cameras and electronic media coverage of court proceedings.

Subsection (a) of this section has been transferred with amendments to Section 1-11 and is applicable only to media coverage of criminal trials.