Minutes of the Meeting
Rules Committee
February 25, 2008

On Monday, February 25, 2008 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:18 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. C. IAN MCLACHLAN
HON. BARRY C. PINKUS
HON. RICHARD A. ROBINSON
HON. MICHAEL R. SHELDON

Judges Roland D. Fasano and Patty Jenkins Pittman were not in attendance at this meeting.

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

Agenda

1. The Rules Committee continued its consideration of a proposal submitted by Judge Pellegrino on behalf of the Civil Commission to amend the civil pleading rules.

Attorneys Gallagher and Dorney, who participated in the development of the Commission's proposal, attended the meeting and addressed the Rules Committee concerning it. They pointed out that the proposal is a compromise between the current rules and notice pleading and that change is desired because of the amount of time it currently takes to get through the pleading process and because in that process motions are acted on by more than one judge. While the proposal was unanimously approved by the Civil Commission, some attorneys believe that it puts too much of a burden up front on defense attorneys.

Justice Zarella pointed out that the problem really seems to be that the request to revise is being abused. He suggested attacking that problem and keeping the other rules as they currently are.

He also liked the provision in the proposed revisions that each count of the complaint be

labeled with the legal theory and the party to whom it pertains.

After discussion, the Rules Committee decided that it would make further changes to the Civil Commission's proposal and forward those changes to the Commission.

2. The Committee approved the minutes of the meeting held on January 14, 2008.

3. The Committee considered a proposal by Judge Barbara M. Quinn, Chief Court Administrator, to amend the rules concerning conditional admission to the bar.

After discussion, the Committee determined that proposed new Section 2-11A which sets forth the procedure for appealing from a decision of the Bar Examining Committee concerning conditions of admission should be amended so that the Statewide Bar Counsel does not have a right to appeal. Justice Zarella will contact Judge Quinn concerning this. The Rules Committee asked the undersigned to revise Section 2-11A in this regard and to submit it to the Committee for consideration at a future meeting.

4. The Rules Committee considered a recommendation of the Legal Specialization Screening Committee that the Rules Committee approve the application of the American Board of Certification to be recertified as a certifier in the specialty areas of consumer bankruptcy law and business bankruptcy law.

After discussion, the Rules Committee unanimously approved the American Board of Certification's application by the following vote:

> The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated February 14, 2008, recommending approval of the application of the American Board of Certification for renewal of its authority to certify lawyers as specialists in the fields of consumer bankruptcy law and business bankruptcy law, unanimously approves the American Board of Certification for a five year period commencing September 24, 2006 as qualified to certify lawyers as specialists in those fields. This approval is subject to the condition that the American Board of Certification is required to notify promptly the Legal Specialization Screening Committee of any material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

The Rules Committee also considered a recommendation of the Legal Specialization Screening Committee that the Rules Committee approve the application of the National Board of Legal Specialty Certification (the parent organization of the National Board of Trial Advocacy) to be recertified as a certifier in the specialty areas of civil trial practice and criminal law.

After discussion, the Rules Committee unanimously approved the National Board of Legal Specialty's application by the following vote:

> The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated February 14, 2008, recommending approval of the application of the National Board of Legal Specialty Certification for renewal of its authority to certify lawyers as specialists in the fields of civil trial practice and criminal law, unanimously approves the National Board of Legal Specialty Certification for a five year period commencing February 22, 2004 as qualified to certify lawyers as specialists in those fields. This approval is subject to the condition that the National Board of Legal Specialty Certification is required to notify promptly the Legal Specialization Screening Committee of any material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

5. The Committee tabled to its March 31 meeting proposed revisions to the juvenile rules submitted by Judge Christine Keller on behalf of the Juvenile Task Force and letters from Attorneys Jay Sicklick and Sarah Eagan of the Center for Children's Advocacy and from Chief Child Protection Attorney Carolyn Signorelli in opposition to the proposed revision to Section 32a-1 (c).

6. The Committee tabled to its March 31 meeting a submission from Judge Kari A. Dooley concerning an inconsistency between C.G.S. § 46b-138b and Practice Book Section 30a-6.

7. The Committee discussed a proposal by Greater Hartford Legal Aid to amend Rule 1.14 of the Rules of Professional Conduct to conform with recent changes in Connecticut's conservatorship laws and a report submitted by Attorney Wick R. Chambers on behalf of the CBA Committee on Professional Ethics concerning the proposal.

With regard to the recommendation in Part 3.b. on page 4 of the report to delete the proposed addition of the word "imminent" at the beginning of the phrase "risk of substantial physical, financial or other harm" in Rule 1.14 (b), the Rules Committee agreed that the word "imminent" should be deleted, but that it should be replaced with the word "substantial," because it believes that the word "risk" should be modified.

After discussion, the Committee asked the undersigned to draft a version of Rule 1.14 incorporating all of the changes proposed in the report forwarded by Attorney Chambers and the above change suggested by the Rules Committee, and to submit the draft to the Rules Committee

for consideration at its March meeting.

8. The Committee considered a letter from Attorney Mark F. Harrington in which he suggests an amendment to Section 2-28A concerning attorney advertising.

After discussion, the Committee decided not to make the suggested change and thereupon unanimously denied the proposal.

9. The Committee considered proposals by Attorney Joseph J. Del Ciampo to amend the civil discovery rules to bring them up to date in light of the computer era.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Sections 13-6, 13-10, 13-22, and 13-23 as set forth in Appendix A attached hereto.

10. The Committee considered proposals submitted by Attorney Nicholas J. Cimmino to amend Sections 4-3, 4-4, 7-1, 7-20, 11-13, and 14-4 concerning e-filing. These changes were submitted on behalf of a committee established by Joseph D. D'Alesio, Executive Director, Superior Court Operations, to address certain legal issues concerning e-filing and to make e-filing more efficient.

The Committee discussed the proposals and queried how certain electronically filed documents will be available to someone who is reviewing the paper file of a case. The Committee tabled the matter and asked me to forward its concern to the committee that proposed the changes.

11. The undersigned advised the Committee that on July 1, 2008 the terms on the Legal Specialization Screening Committee (LSSC) of Salvatore C. DePiano (Chair), Jeffrey N. Low and Francis J. Brady, will expire. Rule 7.4B (a) of the Rules of Professional Conduct provides that the Chief Justice, upon recommendation of the Rules Committee, shall appoint members of the bar of this state to the LSSC.

At this meeting the undersigned reported that the above members would like to continue to serve on the LSSC. The Committee thereupon agreed to recommend their reappointment to the Chief Justice and to designate Attorney DePiano to continue to serve as chair.

12. The Committee considered a suggestion from Attorney Robert R. Lewis to amend the reciprocity requirement of Section 2-13 concerning admission on motion.

After discussion, the Committee decided not to make the suggested change and thereupon unanimously denied the proposal.

13. The Committee considered an issue raised by Judge Sheldon concerning a conflict

between Section 6-1 and 42-34 concerning the form of decision in a criminal trial without a jury. The undersigned suggested that the matter could be resolved by amending Section 42-34 to provide that the form of decision under that section be in accordance with Section 6-1.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 42-34 as set forth in Appendix B attached hereto.

14. Justice Zarella stated that the Practice Book revisions approved at this meeting by the Rules Committee for public hearing should be added to the materials that will be forwarded to certain members of the Judiciary Committee in advance of the Rules Committee's meeting with that committee in March.

15. The Committee discussed its approval at a prior meeting of the following proposed new commentary to Section 13-30 (d): "The purpose of the provision in subsection (d) that allows the deponent to make changes in form or substance to the deposition is to allow the deponent to correct errors in the transcription. If a deponent realizes that his or her testimony was incorrect, such changes are not contemplated by this subsection."

It was suggested that if the deponent is not to be allowed to change testimony which he or she later believes was incorrect, then the oath taken by the deponent when he or she signs the deposition may be a problem. Judge Sheldon agreed to look into this issue and suggest some language at a future meeting.

Respectfully submitted,

Carl E. Testo

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (022508 mins)

Sec. 13-6. Interrogatories; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 written interrogatories, which may be in electronic format, upon any other party to be answered by the party served. Written interrogatories may be served upon any party without leave of the judicial authority at any time after the return day. Except as provided in subsection (c) or where the interrogatories are served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the answers in the transmitted document, the party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert the answer. In the event that an answer requires more space than that provided on interrogatories that were not served electronically and in a format that allows the recipient to electronically insert the answers in the transmitted document, [it] the answer shall be continued on a separate sheet of paper which shall be attached to the completed answers.

(b) Interrogatories may relate to any matters which can be inquired into under Sections 13-2 through 13-5 and the answers may be used at trial to the extent permitted by the rules of evidence. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the interrogatories shall be limited to those set forth in Forms 201, 202 and/or 203 of the rules of practice, unless upon motion, the judicial authority determines that such interrogatories are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume. Unless the judicial authority orders otherwise, the frequency of use of interrogatories in all actions except those for which interrogatories have been set forth in Forms 201, 202 and/or 203 of the rules of practice is not limited.

(c) In lieu of serving the interrogatories set forth in Forms 201, 202 and/or 203 on a party who is represented by counsel, the moving party may serve on such party a notice of interrogatories, which shall not include the actual interrogatories to be

answered, but shall instead set forth the number of the Practice Book form containing such interrogatories and the name of the party to whom the interrogatories are directed. The party to whom such notice is directed shall in his or her response set forth each interrogatory immediately followed by that party's answer thereto.

(d) The party serving interrogatories or the notice of interrogatories shall not file them with the court.

COMMENTARY: The changes to this section clarify the procedures to be followed when interrogatories are served by delivering a copy electronically to the attorney or party in accordance with Sections 10-12 through 10-17.

Sec. 13-10. —Responses to Requests for Production; Objections

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the request or, if applicable, the notice of requests for production on the responding party, unless:

(1) Counsel file with the court a written stipulation extending the time within which responses may be served; or

(2) The party to whom the requests for production are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the requests for production or the notice of requests for production shall file objection thereto. A party shall be entitled to one such request for each set of requests for production served upon that party; or

(3) Upon motion, the court allows a longer time.

(b) The response of the party shall be inserted directly on the original request served in accordance with Section 13-9 and shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the

request or any part thereof is objected to, in which event the reasons for objection shall be stated on a cover sheet as provided herein. If, pursuant to subsection (b) of Section 13-9, a notice of requests for production is served in lieu of requests for production, the party to whom such notice is directed shall in his or her response set forth each request for production immediately followed by that party's response thereto. No objection may be filed with respect to requests for production set forth in Forms 204, 205 and/or 206 of the rules of practice for use in connection with Section 13-9. Where a request calling for submission of copies of documents is not objected to, those copies shall be appended to the copy of the response served upon the party making the request. The responding party shall attach a cover sheet to the response. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the responding party will permit all inspection and related activities as requested or shall set forth those requests to which the party objects and the reasons for objection. The cover sheet and the response shall not be filed with the judicial authority unless the responding party objects to one or more requests, in which case only the cover sheet shall be so filed. Objection by a party to certain parts of the request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the thirty-day period. The party serving the request or the notice of requests for production may move for an order under Section 13-14 with respect to any failure on the part of the party to whom the request or notice is addressed to respond.

(c) No objection to any such request shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein, or, if no conference has been held, the reasons for the failure to hold such a conference. If an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

COMMENTARY: The changes to this section clarify that requests for production, inspection and examination made pursuant to Section 13-9 may be served by delivering a copy electronically to the attorney or party in accordance with Sections 10-12 through 10-17.

Sec. 13-22. Admission of Facts and Execution of Writings; Requests for Admission

(a) A party may serve in accordance with Sections 10-12 through 10-17 upon any other party a written request, which may be in electronic format, for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter of the pending action set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. The party serving a request for admission shall separately set forth each matter of which an admission is requested and unless the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the answers in the transmitted document, shall leave sufficient space following each request in which the party to whom the requests are directed can insert an answer or objection. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the judicial authority, be served upon any party at any time after the return day. Unless the judicial authority orders otherwise, the frequency of use of requests for admission is not limited.

(b) The party serving such request shall not file it with the court but shall instead file a notice with the court which states that the party has served a request for admission on another party, the name of the party to whom the request has been directed and the date upon which service in accordance with Sections 10-12 through 10-17 was made.

COMMENTARY: The changes to this section clarify that requests for admission may be served by delivering a copy electronically to the attorney or party in accordance with Sections 10-12 through 10-17 and clarify the procedures to be followed in connection with such delivery.

Sec. 13-23. —Answers and Objections to Requests for Admission

(a) Each matter of which an admission is requested is admitted unless, within thirty days after the filing of the notice required by Section 13-22 (b), or within such shorter or longer time as the judicial authority may allow, the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. Any such answer or objection shall be inserted directly on the original request. In the event that an answer or objection requires more space than that provided on a request for admission that was not served electronically and in a format that allows the recipient to electronically insert the answers in the transmitted document, it shall be continued on a separate sheet of paper which shall be attached to the response. Documents sought to be admitted by the request shall be filed with the response by the responding party only if they are the subject of an answer or objection. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, such party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why he or she cannot admit or deny it. The responding party shall attach a cover sheet to the response which shall comply with Sections 4-1 and 4-2 and shall specify those requests to which answers and objections are addressed.

(b) The party who has requested the admission may move to determine the sufficiency of the answer or objection. No such motion shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the motion

and that counsel have been unable to reach an accord. Unless the judicial authority determines that an objection is justified, it shall order that an answer be served. If the judicial authority determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The judicial authority may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial.

COMMENTARY: The changes to this section clarify the procedures to be followed when answers or objections to requests for admission are served by delivering a copy electronically to the attorney or party in accordance with Sections 10-12 through 10-17.

APPENDIX B (022508Mins)

Sec. 42-34. Trial without Jury

In a case tried without a jury the judicial authority shall, in accordance with Section 6-1, render a finding of guilty, not guilty, or not guilty by reason of mental disease or defect where appropriate.

COMMENTARY: The above change makes this section consistent with Section 6-1.