Minutes of the Meeting
Rules Committee
March 30, 2009

On Monday, March 30, 2009, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 5:26 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. THOMAS J. CORRADINO
HON. JACK W. FISCHER
HON. C. IAN MCLACHLAN
HON. LESLIE I. OLEAR
HON. ANTONIO C. ROBAINA
HON. JANE S. SCHOLL
HON. MICHAEL R. SHELDON

Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorneys Denise Poncini and Joseph Del Ciampo of Legal Services.

Agenda

1. The members of the Committee who were present at the February 23, 2009 meeting unanimously approved the minutes of that meeting.

2. The Committee considered proposals submitted on behalf of the Criminal Practice Commission by Judge Patrick L. Carroll, III, Deputy Chief Court Administrator, regarding the release of certain information including law enforcement reports, affidavits and statements, by the prosecuting authority in a criminal prosecution.

Judge Patrick J. Clifford, Justice Joette Katz, Chief State's Attorney Kevin Kane, Public Defender Thomas Ullmann, and Attorney Tara Knight addressed the Committee concerning this matter.

After discussion, the Committee made certain revisions to the proposals and asked the undersigned to forward the revised proposals to the above individuals for comment.

3. The Committee considered proposed revisions to the small claims rules submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Bench/Bar Centralized Small Claims Committee.

The Committee agreed with Justice Zarella's suggestion that the matter be tabled so that the proposals can be discussed with members of the Judiciary Committee when the Rules Committee meets with them on April 7.

4. The Committee considered a letter from Attorney Martin Zeldis, Chief of Legal Services for the Office of Chief Public Defender, with regard to Sections 23-41 and 23-42 concerning habeas corpus rules that address appointed trial counsel's efforts to withdraw from a habeas corpus action when counsel believes that the action is without merit; and proposed Practice Book revisions submitted by Judge Michael Sheldon concerning this matter.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Section 23-41 and proposed new Section 23-42 as set forth in Appendix A attached hereto.

5. The Committee considered proposed revisions to the juvenile rules submitted by Judge Christine E. Keller on behalf of the Juvenile Task Force.

After discussion, the Committee made further changes to some of the proposals and unanimously voted to submit to public hearing the revisions to Sections 30a-6, 30a-8, 31a-19, 32a-7, 33a-2 and new 31a-21 as set forth in Appendix B attached hereto.

6. The Committee considered a proposal from Attorney Shawn Council concerning the procedure followed in connection with the filing of affidavits of debt in foreclosure complaints, and responses from the Bench/Bar Foreclosure Committee concerning this matter.

After discussion, the Committee unanimously denied the proposal.

7. The Committee considered a submission by Attorney Neil Ferstand, Executive Director of the Connecticut Trial Lawyers Association, with regard to the application of the revision to Section 13-4, concerning the discovery of experts, to cases pending on its effective date.

In light of a letter to Justice Zarella from Attorney Kathryn Emmett, President of the CTLA, dated March 27, 2009, in which she proposed, on behalf of the CTLA, revisions to Sections 13-4, 13-27a, 10-13, 13-11 and Form 203, the Rules Committee put consideration of this matter over to its next meeting.

8. At the February 23, 2009 Rules Committee meeting, Judge Marshall Berger addressed the Committee concerning proposals by the Committee on Judicial Information Policies to amend Sections 11-20A and 25-59A to streamline the process for removing personal identifying information from a court file when it has been inappropriately filed, and to adopt new Section 4-7 with regard to the omission or redaction of personal identifying information in court records in civil and family matters. At that meeting the Rules Committee expressed concern that the proposals do not apply to exhibits, do not include sanctions for non-compliance, and do not require parties to certify that the filed document complies with the requirements of these sections. Judge Berger stated that, if the Rules Committee wishes, his committee can add such provisions to the proposals.

At this meeting the Committee considered revisions to the proposals submitted by Judge Berger.

After discussion, the Committee further revised the proposals and unanimously voted to submit to public hearing the revisions to Section 4-2, and proposed new Sections 4-7, 11-20B and 25-59B as set forth in Appendix C attached hereto.

9. The Rules Committee agreed that it will continue this meeting after its meeting with the Judiciary Committee on April 7.

10. The Committee considered a proposal by the Deans of the Law Schools of Yale, the University of Connecticut, and Quinnipiac University to amend Section 2-13 with regard to the admission without examination of attorneys who have supervised law students within a clinical law program of an accredited law school in another jurisdiction or jurisdictions.

The Committee asked the undersigned to further revise the proposal and submit it for their consideration at the April 7 meeting.

Respectfully submitted,

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (033009 mins)

Sec. 23-41. —Motion for Leave to Withdraw Appearance of Appointed Counsel

(a) When counsel has been appointed pursuant to Section 23-26, and counsel, after conscientious investigation and examination of the case, concludes that the case is wholly frivolous, counsel shall so advise the judicial authority by filing a motion for leave to withdraw from the case.

(b) [Any motion for leave to withdraw shall be filed under seal and provided to the petitioner. Counsel shall serve opposing counsel with notice that a motion for leave to withdraw has been filed, but shall not serve opposing counsel with a copy of the motion or any memorandum of law. The petitioner shall have thirty days from the date the motion is filed to respond in writing.] At the time such motion is filed, counsel for the petitioner shall also file all relevant portions of the record of the criminal case, direct appeal and any post-conviction proceedings not already filed together with a memorandum of law outlining:

(1) the claims raised by the petitioner and any other potential claims apparent in the case;

(2) the efforts undertaken to investigate the factual basis and legal merit of the claim;

(3) the factual and legal basis for the conclusion that the case is wholly frivolous.

(c) [The judicial authority may order counsel for the petitioner to file a memorandum outlining:

(1) the claims raised by the petitioner or any other potential claims apparent in the case;

(2) the efforts undertaken to investigate the factual basis and legal merit of the claim;

(3) the factual and legal basis for the conclusion that the case is wholly frivolous.]

Any motion for leave to withdraw and supporting memorandum of law shall be filed under seal and provided to the petitioner. Counsel shall serve opposing counsel with notice that a motion for leave to withdraw has been filed but shall not serve opposing counsel with a copy of the motion or any supporting memorandum of law. The petitioner shall have

thirty days from the date the motion and supporting memorandum are filed to file a response with the court.

COMMENTARY: The changes proposed in Sections 23-41 and 23-42 will prevent a judge from ordering a dismissal of a habeas corpus petition without a hearing on a motion for leave to withdraw as appointed counsel; will require counsel who seek to withdraw their appearance to file a memorandum explaining why the case was wholly frivolous; will require a judge in ruling that a petition is wholly frivolous to state his or her reasons for that finding in a written memorandum of decision; and will provide the judge with an option either of appointing new counsel to review an Anders brief or, in the event the motion to withdraw is denied, to appoint new counsel to proceed with the petitioner's representation instead of forcing the petitioner to proceed with the same counsel who has attempted to withdraw or to proceed pro se.

Sec. 23-42. —Judicial Action on Motion for Permission to Withdraw Appearance

(a) [If the judicial authority finds that the case is wholly without merit, it shall allow counsel to withdraw and shall consider whether the petition shall be dismissed or allowed to proceed, with the petitioner pro se. If the petition is not dismissed, the judge ruling on the motion to withdraw as counsel shall not preside at any subsequent hearing on the merits of the case.] The presiding judge shall fully examine the memoranda of law filed by counsel and the petitioner, together with any relevant portions of the records of prior trial court, appellate and post-conviction proceedings. If, after such examination, the presiding judge concludes that the submissions establish that petitioner's case is wholly frivolous, such judge shall grant counsel's motion to withdraw and permit the petitioner to proceed pro se. A memorandum shall be filed setting forth the basis for granting any motion under Section 23-41.

(b) [If the judicial authority concludes that the petition is not wholly without merit, it shall not allow counsel to withdraw and may direct counsel to proceed.] If, after the examination required in subsection (a), the presiding judge does not conclude that the petitioner's case is wholly frivolous, such judge may deny the motion to withdraw, may appoint substitute counsel for further proceedings under Section 23-41, or may allow the withdrawal on other grounds and appoint new counsel to represent petitioner.

COMMENTARY: The changes proposed in Sections 23-41 and 23-42 will prevent a judge from ordering a dismissal of a habeas corpus petition without a hearing on a motion for leave to withdraw as appointed counsel; will require counsel who seek to withdraw their appearance to file a memorandum explaining why the case was wholly frivolous; will require a judge in ruling that a petition is wholly frivolous to state his or her reasons for that finding in a written memorandum of decision; and will provide the judge with an option either of appointing new counsel to review an Anders brief or, in the event the motion to withdraw is denied, to appoint new counsel to proceed with the petitioner's representation instead of forcing the petitioner to proceed with the same counsel who has attempted to withdraw or to proceed pro se.

APPENDIX B (033009 Mins)

Sec. 30a-6. —Statement on Behalf of Victim

Whenever a victim of [an alleged] a delinquent act, the parent or guardian of such victim, a General Statutes § 54-221 advocate or such victim's counsel exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case, [all parties, including the probation officer, shall be so notified. N]no statement shall be received unless the [alleged] delinquent has signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent.

COMMENTARY: The victim need not give prior notice of his or her intent to make a statement to the judicial authority.

Sec. 30a-8. Records

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court records, including the predispositional study, medical or clinical reports, school reports, police reports, or the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties [or their counsel] without the express consent of the judicial authority.

(c) Each counsel in a delinquency matter shall have access to and be entitled to copies, at his or her expense, of the entire court record, including transcripts of all proceedings without express consent of the judicial authority.

COMMENTARY: As officers of the court, attorneys should have access to the record without obtaining prior judicial approval. Parties may require more oversight, as provided in subsection (b).

Sec. 31a-19. Motion for Extension of Delinquency Commitment; Motion for Review of Permanency Plan

(a) The commissioner of the department of children and families may file a motion for an extension of a delinquency commitment beyond the eighteen month or four year period on the grounds that such extension is for the best interests of the child or the community. The clerk shall give notice to the child, the child's parent or guardian, [all] counsel of record for the parent or guardian and child at the time of disposition and, if applicable, the guardian ad litem not later than fourteen days prior to the hearing upon such motion. The judicial authority may, after hearing and upon finding such extension is in the best interests of the child or the community, continue the commitment for an additional period of not more than eighteen months.

(b) Not later than twelve months after a child is committed as a delinquent to the commissioner of the department of children and families, the judicial authority shall hold a permanency hearing. Such a hearing will be held every twelve months thereafter if the child remains committed. Such hearing may include the submission of a motion to the judicial authority by the commissioner to either modify or extend the commitment.

(c) At least sixty days prior to each permanency hearing required under subsection (b) of this section, the commissioner of the department of children and families shall file a permanency plan with the judicial authority. At each permanency hearing, the judicial authority shall review and approve a permanency plan that is in the best interests of the child and takes into consideration the child's need for permanency. The judicial authority shall also determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

COMMENTARY: Pursuant to Practice Book Section 3-9 (e), counsel has a continuing obligation to represent a child until the commitment to the Department of Children and Families expires.

(NEW) Sec. 31a-21. Petition For Child From a Family With Service Needs At Imminent Risk

(a) When a child who has been adjudicated as a child from a family with service needs is under an order of supervision or an order of commitment to the commissioner of the department of children and families and is believed to be in imminent risk of physical harm from the child's surroundings or other circumstances, a probation officer, on receipt of a complaint setting forth facts alleging such risk, or on the probation officer's own motion on the basis of his or her knowledge of such risk, may file a petition alleging that the child is in imminent risk of physical harm and setting forth facts claimed to constitute such risk. Service shall be made in accordance with subsection (d) of General Statutes § 46b-149.

(b) If it appears from the specific allegations of the petition and other verified affirmations of fact accompanying the petition, or made subsequent thereto, that there is probable cause to believe that (1) the child is in imminent risk of physical harm from the child's surroundings, (2) as a result of such condition, the child's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's safety, and (3) there is no less restrictive alternative available, the judicial authority shall enter an order that directs or authorizes a peace officer or other appropriate person to place the child in a staff-secure facility under the auspices of the Court Support Services Division of the Judicial Branch for a period not to exceed forty-five days, subject to subsection (e) of this section, with review by the judicial authority every fifteen days to consider whether continued placement is appropriate.

(c) The judicial authority will ensure that the child is provided an evidentiary hearing on the allegations contained in the petition and that counsel is assigned for the child pursuant to Section 30a-1 of these rules or that counsel of record is notified of the filing of the imminent risk petition.

(d) Not later than the end of such forty-five day period, the child shall either be (1) returned to the community for appropriate services subject to the supervision of a probation officer or an existing commitment to the commissioner of the department of children and families; or (2) committed to the commissioner of the department of children and families for a period not to exceed eighteen months if a hearing has been held and the judicial authority has found, based on clear and convincing evidence, that (i) the child is in imminent risk of physical harm from the child's surroundings, (ii) as a result of such

condition, the child's safety is endangered and removal from such surroundings is necessary to ensure the child's safety, and (iii) there is no less restrictive alternative available. Any such child shall be entitled to the same procedural protections as are afforded to a delinquent child.

(e) No child shall be held prior to a hearing on a petition under this section for more than twenty-four hours, excluding Saturdays, Sundays and holidays.

COMMENTARY: This proposed section implements provisions of Public Act 08-86, Section 3, which amends Gen. Stat. § 46b-149f.

Sec. 32a-7. Records

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including the transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court record, including the social study, medical or clinical reports, school reports, police reports and the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties [or their counsel] without the express consent of the judicial authority.

(c) Each counsel in a child protection matter shall have access to and be entitled to copies, at his or her expense, of the entire court record, including transcripts of all proceedings, without the express consent of the judicial authority.

COMMENTARY: As officers of the court, attorneys should have access to the record without obtaining prior judicial approval. Parties may require more oversight, as provided in subsection (b).

Sec. 33a-2. Service of Summons, Petitions and Ex Parte Orders

(a) A summons accompanying a petition alleging that a child or youth is neglected, uncared for or dependent, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least fourteen days before the date of the initial plea hearing on

the petition, which shall be held not more than forty-five days from the date of filing the petition.

(b) A summons accompanying a petition for termination of parental rights, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least ten days prior to the date of the initial plea hearing on the petition, which shall be held not more than thirty days after the filing of the petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(c) A summons accompanying simultaneously filed coterminous petitions, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least ten days prior to the date of the initial plea hearing on the petition, which shall be held not more than thirty days after the filing of the petitions except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(d) A summons accompanying any petition filed with an application for order of temporary custody shall be served by the petitioner on the respondents and provided to the office of the attorney general as soon as practicable after the issuance of any ex parte order or order to appear, along with such order, any sworn statements supporting the order, the summary of facts, the specific steps provided by the judicial authority, and the notice required by Section 33a-6.

(e) Whenever the commissioner of the department of children and families obtains an ex parte order of temporary custody or an order to appear and show cause from the judicial authority, he or she shall provide the clerk with a sealed envelope marked "Attention: Counsel for Child(ren)" containing the following information: the name, phone number and email of the investigation social worker; the name, phone number and email of the treatment supervisor or social worker, if known; and the child(ren)'s placement or home address and phone number, and

name of a placement contact person. The clerk shall ensure that counsel assigned to the child is provided with said envelope at the time his or her appearance is filed. In the event the placement information changes prior to the preliminary hearing, the commissioner of the department of children and families shall notify counsel for the child immediately.

COMMENTARY: Having a uniform process for notifying child's counsel of his or her minor client's whereabouts at the earliest stage possible on orders of temporary custody (OTC) is essential to the child's right to counsel and the judicial authority's ability to conduct a productive case management conference and preliminary OTC hearing. The absence of a rule and process requiring this notification leads to inefficient use of attorney time communicating with DCF staff and waiting for a response and often prevents the attorney from seeing the child before the preliminary OTC hearing.

APPENDIX C (033009 mins)

Sec. 4-2. Signing of Pleading

(a) Every pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign his or her pleadings and other papers. The name of the attorney or party who signs such document shall be legibly typed or printed beneath the signature.

(b) The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, [and] that it is not interposed for delay, and that the signer has complied with the requirements of Section 4-7 regarding personal identifying information. Each pleading and every other court-filed document signed by an attorney or party shall set forth the signer's telephone number and mailing address.

(NEW) Sec. 4-7 Personal Identifying Information to be Omitted or Redacted from Court Records in Civil and Family Matters

(a) As used in this section, "personal identifying information" means an individual's date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, other government-issued identification number, health insurance identification number, or any financial account number, security code or personal identification number (PIN). For purposes of this section, a person's name is specifically excluded from this definition of personal identifying information.

(b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or in paper format, unless otherwise required by law or ordered by the court.

(c) The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The court or the clerk of the court need not review any filed document for compliance with this rule.

COMMENTARY: The court should avoid requiring the submission of unredacted documents that contain personal identifying information and should avoid using personal identifying information in its orders and opinions except when necessary. This rule applies to all documents filed in a case, including documents offered in evidence at a hearing or trial.

(NEW) Sec. 11-20B. –Documents Containing Personal Identifying Information

The requirements of Section 11-20A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may move to have the personal identifying information redacted or to have the document sealed if the personal identifying information cannot be redacted. In response to such a motion or on its own motion, the court shall order the document temporarily sealed pending redaction, shall order the document redacted either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record.

COMMENTARY: The above section allows the judicial authority or a party or person who is identified by personal identifying information to have such information redacted or protected in a less formalistic and cumbersome method than that now mandated by Section 11-20A, including, for instance, the requirements for calendaring and notice to the public under Section 11-20A (e) and (j) and for judicial findings under Section 11-20A (c) and (d). Although not subject to these requirements, the court should nonetheless employ the most narrowly tailored method necessary to protect personal identifying information from disclosure, and a document should be sealed, pursuant to the above section, only in exceptional circumstances and on the record. It is anticipated that this section will allow the judicial authority to address immediately personal identifying information issues, whether in open court or at pretrial conferences, status conferences, conference calls and the like, and that such action would take place either on or off the record depending upon the circumstances and the agreement of the parties. As in Section 4-7, the responsibility for redacting identifying information rests solely with the person filing the document.

A person who is not a party to the action would not be required to file a motion to become an interested party or take other formal action to intervene as an interested party, in order to move that his or her personal identifying information be removed from the file.

(NEW) Sec. 25-59B. –Documents Containing Personal Identifying Information

The requirements Section 25-59A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court, with the exception of financial affidavits that are under seal. When a financial affidavit is unsealed, this section shall apply. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may move to redact the personal identifying information or to seal the document if the personal identifying information cannot be redacted. In response to such a motion or on its own motion, the court shall order the document temporarily sealed pending redaction, shall order the document redacted either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record.

COMMENTARY: The above section allows the judicial authority or a party or person who is identified by personal identifying information to have such information redacted or protected in a less formalistic and cumbersome method than that now mandated by Section 25-59A, including, for instance, the requirements for calendaring and notice to the public under Section 25-59A (e) and (i) and for judicial findings under Section 25-59A (c) and (d). Although not subject to these requirements, the court should nonetheless employ the most narrowly tailored method necessary to protect personal identifying information from disclosure, and a document should be sealed, pursuant to the above section, only in exceptional circumstances and on the record. It is anticipated that the above section will allow the judicial authority to address immediately personal identifying information issues whether in open court or at pretrial conferences, status conferences, conference calls and the like, and that such action would take place either on or off the record depending upon the circumstances and the agreement of the parties. As in Section 4-7, the responsibility for redacting personal identifying information rests solely with the person filing the document.

A person who is not a party to the action would not be required to file a motion to become an interested party or take other formal action to intervene as an interested party, in order to move that his or her personal identifying information be removed from the file.