

Minutes of the Meeting
Rules Committee
September 28, 2009

On Monday, September 28, 2009, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:14 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. THOMAS J. CORRADINO
HON. JACK W. FISCHER
HON. LESLIE I. OLEAR
HON. JANE S. SCHOLL
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

Hon. Antonio C. Robaina was not in attendance at this meeting. Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Joseph J. Del Ciampo of the Judicial Branch's Legal Services Unit.

Agenda

1. The members of the Committee who were present for the June 1, 2009, meeting unanimously approved the minutes of that meeting.
2. The Rules Committee meeting schedule for 2009-2010 was approved as follows:

Monday, September 28 - 2:00 p.m. (Already scheduled)

Thursday, October 15 - 1:00 p.m. Meeting with Judiciary Committee

Monday, October 19 - 2:00 p.m. Rules Committee Meeting

Monday, November 23 - 2:00 p.m.

Monday, December 14 - 2:00 p.m.

Monday, January 25 - 2:00 p.m.

Monday, February 22 - 1:30 p.m. Meeting with Judiciary Committee
2:30 p.m. Rules Committee Meeting

Monday, March 29 - 2:00 p.m.

Monday, May 17 - 10:00 a.m. Public Hearing and Rules Committee Meeting

3. The Committee considered a request by Attorneys Wesley Horton and Kim Knox on behalf of West Publishing Company for permission to reprint the Practice Book commentaries and amendment notes in the West Practice Books Annotated.

After discussion, the Committee decided to recommend that the request be approved with certain conditions, subject to a determination by the Chief Court Administrator's Office as to whether additional conditions be met before permission is given.

4. The Committee considered a proposed new rule, submitted by an ad hoc committee composed of Justices Zarella and McLachlan and Judges Keller, Olear, and Sheldon, establishing a pilot program to increase public access to juvenile proceedings in connection with Section 5 of P.A. 09-194.

The Rules Committee unanimously agreed to send this draft proposal, which has not yet been approved by the Rules Committee, to the Juvenile Access Pilot Program Advisory Board for comment.

5. The Committee considered a proposal to amend Section 3-3 of the Practice Book in light of P.A. 09-209 concerning foreclosure mediation.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Section 3-3 as set forth in Appendix A attached hereto.

In response to concerns expressed by Judge Bellis regarding Practice Book rules, including Section 3-3, which are specifically tailored to paper as opposed to electronic filing, the undersigned stated that he would review the Practice Book for rules that contain such references and report back to the Committee at its October meeting with a listing of such rules.

6. The Rules Committee considered a proposal by Attorney A. Reynolds Gordon concerning foreclosure auction sale procedures and comments submitted by Judge Douglas C. Mintz on behalf of the Bench/Bar Foreclosure Committee concerning the proposal.

After discussion, the Committee unanimously voted not to submit to public hearing Attorney Gordon's proposals to adopt new rules in connection with foreclosure auction sale procedures. Justice Zarella agreed to ask Judge Mintz about the status of the Bench/Bar

Foreclosure Committee's proposal to advertise foreclosure auctions on the Judicial website and have smaller ads in newspapers.

7. The Committee considered a proposal by Attorney R. David Stamm, then Administrative Director of the Bar Examining Committee (BEC), to amend the rules concerning fitness to practice law; a report from Attorney Anne C. Dranginis, Chair of the BEC, setting forth the BEC's recommendation concerning the proposal; and materials submitted by John Bauer, a Clinical Professor of Law at the University of Connecticut School of Law, concerning this matter.

After discussion, Judge Sheldon agreed to ask Professor Bauer to provide a proposed definition of the term "fitness to practice law" that is consistent with current law and report back to the Committee.

8. The Committee considered the Connecticut Bar Association's proposed changes to the American Bar Association's (ABA) revisions to Rules 3.8 and 4.2 of the Rules of Professional Conduct; comments received by the Rules Committee and testimony given at May 22, 2006, public hearing concerning these proposals; minutes of meeting of Criminal Practice Commission concerning Rules 3.8 and 4.2; letter from Hon. Barbara Kerr Howe, Chair of the ABA Center for Professional Responsibility Policy Implementation Committee, and Robert Mundheim, Chair ABA Standing Committee on Ethics and Professional Responsibility, concerning recent amendments to Rules 1.0, 1.10 and 3.8 of the ABA Model Rules of Professional Conduct.

After discussion, the Committee appointed a subcommittee of Judges Sheldon, Taylor, Corradino, and Fischer to further examine the proposal and report back to the Rules Committee with a recommendation.

9. The Committee considered a memo from Attorney Denise Poncini concerning the differences between the revisions to Rule 1.15 of the Rules of Professional Conduct that were adopted by the judges last year and Section 6 of P.A. 09-152 concerning IOLTA.

After discussion, the Committee asked the undersigned to submit for consideration at its next meeting a revision to Rule 1.15 that incorporates provisions of the public act.

10. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee (SGC) to amend Practice Book Section 2-28A (a) (3) concerning attorney advertising.

After discussion, the Committee unanimously voted to submit to public hearing the

revisions to Section 2-28A (a) (3) as set forth in Appendix B attached hereto.

11. The Committee considered proposals submitted by Statewide Bar Counsel Michael Bowler on behalf of the SGC to amend the attorney disciplinary rules concerning the attorney registration process.

After discussion, the Committee unanimously voted not to submit the proposals to public hearing.

12. The Committee noted letters from Mr. Joseph S. Miskin concerning the attorney grievance system.

13. The Committee unanimously voted not to submit to public hearing a proposal by Attorney Ian Greber-Rainez to reduce or eliminate assessment of the Client Security Fund fee on out of state attorneys who are members of the Connecticut Bar, but who do not practice law in Connecticut.

14. The Committee considered a proposal submitted by Judge Pellegrino on behalf of the Civil Commission to amend the civil pleading rules, a letter from Attorney Edward Maum Sheehy to which he appends a proposed revision to the summary judgment rules, and submissions from Judges Corradino and Scholl concerning this matter.

Judge Corradino agreed to submit a proposed revision to the request to revise rules for consideration at a future meeting.

15. The Committee considered a letter from the ABA to Senior Associate Justice David M. Borden concerning the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

After discussion, the Committee tabled this to a future meeting. Justice Zarella stated that before proceeding with this the Committee should review the Pennsylvania and Indiana rules on this topic and should determine how the State of Connecticut plan defines “major disaster” and “emergency.”

16. The Committee considered proposals by Judge Taggart D. Adams concerning service on other parties of motions or requests that have been electronically filed with the court and concerning case captions used for pleadings, motions and requests, memoranda and court decisions pursuant to Practice Book Section 4-1 and Practice Book Form 101; and proposed revisions to Sections 4-1 and 10-13 and to Form 101 drafted by Attorney Nicholas Cimmino in light of Judge Adams’ proposals.

After discussion, the Committee tabled the proposals.

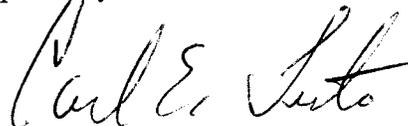
17. The Committee considered letters from Attorney Franklin Drazen, Director of the Connecticut Chapter of Elder Law Attorneys, and Lori Barbee, Executive Director of the National Elder Law Foundation, to amend Rule 7.4A(d) of the Rules of Professional Conduct to include “Elder Law” as a field of law in which attorneys may be certified as specialists in this state.

After discussion, Judge Sheldon agreed to obtain further information concerning this matter and provide a report to the Committee at a future meeting.

18. Justice Zarella advised the Committee that proposed new rules for Family Support Magistrates, submitted by Judge Lynda B. Munro on behalf of the Family Support Magistrate Rules Subcommittee, have been submitted to him and will be forwarded to members of the Rules Committee for consideration at its October meeting.

19. Justice Zarella advised the Committee that he will be adding two new appendices to the upcoming edition of the Practice Book. One appendix will set forth the statewide standing orders that have been issued for civil, family, and juvenile matters in the Superior Court. The other appendix will contain a list of official Judicial Branch forms used in civil, family, and juvenile matters, most of which are available in an electronic version.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (092809 Mins)

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be typed or printed on size 8-1/2" x 11" paper, (2) be headed with the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number. [This section shall not apply to mortgagors filing a request for mediation under section 16 of public Act 08-176, in which case the request for mediation shall constitute an appearance.] This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above change deletes language that would have become effective on January 1, 2010 to implement Section 16 of P.A. 08-176. The language should be deleted in light of P.A. 09-209, which amended General Statutes § 49-31/, effective July 1, 2009.

APPENDIX B (092809 mins)

Sec. 2-28A. Attorney Advertising; Mandatory Filing

(a) Any attorney who advertises services to the public through any media, electronic or otherwise, or through written or recorded communication pursuant to Rule 7.2 of the Rules of Professional Conduct shall file a copy of each such advertisement or communication with the statewide grievance committee either prior to or concurrently with the attorney's first dissemination of the advertisement or written or recorded communication, except as otherwise provided in subsection (b) herein. The materials shall be filed in a format prescribed by the statewide grievance committee, which may require them to be filed electronically. Any such submission in a foreign language must include an accurate English language translation.

The filing shall consist of the following:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, DVDs, audiotapes, compact disks, print media, photographs of outdoor advertising);

(2) A transcript, if the advertisement or communication is in video or audio format;

(3) A list of domain names used by the attorney primarily to offer legal services, which shall be updated quarterly;

(4) A sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(5) A statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used.

(b) The filing requirements of subsection (a) do not extend to any of the following materials:

(1) An advertisement in the public media that contains only the information, in whole or in part, contained in Rule 7.2 (i) of the Rules of Professional Conduct, provided the information is not false or misleading;

(2) An advertisement in a telephone directory;

(3) A listing or entry in a regularly published law list;

(4) An announcement card stating new or changed associations, new offices, or similar changes relating to an attorney or firm, or a tombstone professional card;

(5) A communication sent only to:

(i) Existing or former clients;

(ii) Other attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies and/or

(iii) Members of a not-for-profit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by an attorney; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the attorney who is recommended, furnished, or paid for by the organization.

(6) Communication that is requested by a prospective client.

(7) The contents of an attorney's internet website that appears under any of the domain names submitted pursuant to subparagraph (3) of subsection (a).

(c) If requested by the statewide grievance committee, an attorney shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written or recorded communications.

(d) The statewide bar counsel shall review advertisements and communications filed pursuant to this section that have been selected for such review on a random basis. If after such review the statewide bar counsel determines that an advertisement or communication does not comply with the Rules of Professional Conduct, the statewide bar counsel shall in writing advise the attorney responsible for the advertisement or communication of the noncompliance and shall attempt to resolve the matter with such attorney. If the matter is not resolved to the satisfaction of the statewide bar counsel, he or she shall forward the advertisement or communication and a statement describing the attempt to resolve the matter to the statewide grievance committee for review. If, after reviewing the advertisement or communication, the statewide grievance committee determines that it violates the Rules of Professional Conduct, it shall forward a copy of its file to the

disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(e) The procedure set forth in subsection (d) shall apply only to advertisements and communications that are reviewed as part of the random review process. If an advertisement or communication comes to the attention of the statewide bar counsel other than through that process, it shall be handled pursuant to the grievance procedure that is set forth in Sections 2-29 et seq.

(f) The materials required to be filed by this section shall be retained by the statewide grievance committee for a period of one year from the date of their filing, unless, at the expiration of the one year period, there is pending before the statewide grievance committee, a reviewing committee, or the court a proceeding concerning such materials, in which case the materials that are the subject of the proceeding shall be retained until the expiration of the proceeding or for such other period as may be prescribed by the statewide grievance committee.

(g) Except for records filed in court in connection with a presentment brought pursuant to subsection (d), records maintained by the statewide bar counsel, the statewide grievance committee and/ or the disciplinary counsel's office pursuant to this section shall not be public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(h) Violation of subsections (a) or (c) shall constitute misconduct.

COMMENTARY: This amendment clarifies that only those domain names used by an attorney "primarily to offer legal services" must be registered with the statewide grievance committee and updated quarterly.