

Minutes of the Meeting
Rules Committee
November 22, 2010

On Monday, November 22, 2010, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:51 p.m.

Members in attendance were:

HON. C. IAN McLACHLAN, ACTING CHAIR
HON. BARBARA N. BELLIS
HON. JULIETT L. CRAWFORD
HON. RICHARD W. DYER
HON. LESLIE I. OLEAR
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

The Hon. Maureen M. Keegan was not in attendance. Also in attendance were Carl E. Testo, Counsel to the Rules Committee; and Attorneys Denise K. Poncini and Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the October 18, 2010, meeting.
2. Judge Sheldon suggested that the revision to Section 2-5A which was approved at the October meeting, be further revised by incorporating into paragraph (a) (4) of that section the second sentence of the commentary to the section as set forth in Appendix B of the minutes to the October meeting.

After discussion, the Committee unanimously voted to submit to public hearing the further revision to Section 2-5A as set forth in Appendix A attached hereto.

3. The Committee considered correspondence from Mr. Andrew Burns with regard to various Practice Book issues.

After discussion, the Committee unanimously voted that no rules changes were required with regard to the issues raised by Mr. Burns.

4. The Committee considered a submission from Mr. Michael Nowacki concerning the Family Commission.

After discussion, the Committee unanimously voted that no changes to the rules were

required based on his comments.

5. The Committee considered a proposal by Attorney Hilary B. Miller to amend Section 2-28A concerning attorney advertising.

After discussion, the Committee referred the matter to Attorney Michael Bowler, Statewide Bar Counsel, for comment and to advise them whether the statement contained in the footnote on the first page of the proposal is accurate.

6. The Committee considered proposals by Attorney Daniel B. Horwitch to amend Section 5-11 in light of P.A. 10-144.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 5-11 as set forth in Appendix B attached hereto.

7. The Committee considered a proposal by Attorney Michael H. Agranoff to amend the rules concerning pleading in juvenile matters and a response by Judge Christine Keller, on behalf of the Child Protection Subcommittee of the Juvenile Task Force, concerning the proposals.

After discussion, the Committee, based on the recommendation of the Juvenile Task Force, unanimously decided to take no further action concerning his proposal.

8. The Committee considered a proposal by Attorney Michael H. Agranoff to add a procedure for motion for summary judgment to the juvenile rules.

After discussion, the Committee tabled the proposal until it receives a response from the Juvenile Task Force concerning it.

9. The Committee considered the ABA Standing Committee on Judicial Independence report to the House of Delegates concerning its recommendations for improving judicial disqualification practices and procedures among the states.

The Committee discussed this report and appointed a task force to obtain further information. The task force consists of Judges Olear (Chair), Prescott and Taylor. The Committee tabled its review of this report pending a report of the task force.

10. The Committee considered a proposed new juvenile rule and proposed revisions to Section 44-10A of the criminal rules concerning videoconferencing submitted by Judge Elliot N. Solomon, on behalf of the Alternatives to Court Appearances Committee. Judge Solomon was present as an invited guest to address the Committee concerning the proposed rules.

After discussion, the Committee further revised the proposed rule concerning the appearance of persons by means of an interactive audiovisual device in juvenile matters and,

with Judge Crawford opposed, voted to submit the proposed new rule as revised to public hearing as set forth in Appendix C attached hereto.

The Committee tabled further consideration of the proposed revisions to Section 44-10A to a later meeting.

11. The Committee did not reach Agenda Items 3-6 and 3-11.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl E. Testo". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Carl E. Testo
Counsel to the Rules Committee

Attachments

Appendix A (11-22-10 mins)

Sec. 2-5A. –Good Moral Character and Fitness to Practice Law

(a) Good moral character shall be construed to include, but not be limited to, the following:

- (1) The qualities of honesty, fairness, candor and trustworthiness;
- (2) Observance of fiduciary responsibility;
- (3) Respect for and obedience to the law; and
- (4) Respect for the legal rights of others and the judicial process, as evidenced by conduct other than merely initiating or pursuing litigation.

(b) Fitness to practice law shall be construed to include the following:

(1) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and solving ethical dilemmas;

(2) The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities, with or without the use of aids or devices; and

(3) The capability to perform legal tasks in a timely manner.

COMMENTARY: The above change makes clear what good moral character entails.

APPENDIX B (112210 mins)

Sec. 5-11. Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining Order, Standing Criminal Protective Order or Standing Criminal Restraining Order Issued on Behalf of Party or Child

(a) In any court proceeding in a family relations matter, as defined in section 46b-1 of the general statutes, or in any proceeding pursuant to section 46b-38c, the court may, except as otherwise required by law and within available resources, upon motion of any party, order that the testimony of a party or a child who is a subject of the proceeding be taken outside the physical presence of any other party if a protective order, restraining order, standing criminal protective order or standing criminal restraining order has been issued on behalf of the party or child, and the other party is subject to the protective order or restraining order. Such order may provide for the use of alternative means to obtain the testimony of any party or child, including, but not limited to, the use of a secure video connection for the purpose of conducting hearings by videoconference. Such testimony may be taken outside the courtroom or at another location inside or outside the state. The court shall provide for the administration of an oath to such party or child prior to the taking of such testimony as required by law.

(b) Nothing in this section shall be construed to limit any party's right to cross-examine a witness whose testimony is taken pursuant to an order under subsection (a) hereof.

(c) An order under this section may remain in effect during the pendency of the proceedings in the family relations matter.

COMMENTARY: The addition of "standing criminal protective order" is based on the substitution of that term for "standing criminal restraining order" in C.G.S. §§ 17b-90, 18-81m, 46b-15c, 53a-40e and 53a-223a by Public Act 10-144.

Appendix C (11-22-10 mins)

(NEW) Sec. 35a-22. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

(a) The appearance of a person for any proceeding set forth in subsection (b) of this section may, in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that such person and his or her attorney, if any, and the judicial authority if the proceeding is in court, can see and communicate with each other simultaneously. In addition, a procedure by which such person and his or her attorney can confer in private must be provided. Nothing contained in this section shall be construed to establish a right for any person to be heard or to appear by means of an interactive audiovisual device or to require the Judicial Branch to pay for such person's appearance by means of an interactive audiovisual device.

(b) A person may appear by means of an interactive audiovisual device in juvenile matters in the civil session as defined by General Statutes Sec. 46b-121(a) in the following proceedings or under the following circumstances:

(1) A party or a party's representative in case status and case management conferences;

(2) If a parent or guardian is incarcerated in this state, he or she may participate in plea hearings, judicial pre-trials, order of temporary custody and termination of parental rights (TPR) case management conferences, reviews of protective supervision, permanency plan hearings, case status conferences, preliminary order of temporary custody hearings, neglect plea and disposition by agreement, neglect trials, TPR plea hearings, canvass of consents to TPR, contested transfer of guardianship hearings, motions to revoke commitment, emancipation petitions, and motions to reinstate guardian;

(3) If a parent or guardian is incarcerated in a federal correctional facility or another state's correctional facility, he or she may participate in all matters set forth in (2) above and in contested hearings including, but not limited to, temporary custody hearings, neglect or uncared for proceedings or TPR trials;

(4) A foster parent, prospective adoptive parent or relative caregiver may appear and be heard on the best interests of the child or youth pursuant to General Statutes Sec.

46b-129(o);

(5) A sibling of any child committed to the Department of Children and Families, upon motion, may appear and be heard concerning visitation with, and placement of, any such child pursuant to General Statutes Sec. 46b-129(p);

(6) A witness may testify in any proceeding in the discretion of the judicial authority.

(c) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

COMMENTARY: Practice Book Section 23-68 currently permits the use of an interactive audiovisual device in civil and family matters. The above new rule will expand the use of such technology to certain juvenile matters, consistent with recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.