Minutes of the Meeting
Rules Committee
September 19, 2011

On Monday, September 19, 2011, the Rules Committee met in the Supreme Court courtroom 2:00 p.m. to 3:48 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. WILLIAM M. BRIGHT, JR.
HON. JULIETT L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

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.

1. The Committee unanimously approved the minutes of the May 31, 2011, meeting.

2. The Committee considered a recommendation by the Legal Specialization Screening Committee that the American Board of Certification be approved for recertification as a certifier in the specialty areas of consumer bankruptcy law and business bankruptcy law.

After discussion, the Committee unanimously voted as follows:

> The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated August 22, 2011, 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, 2011, 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.

3. 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; a letter in support of the proposal from Attorney Ralph J. Monaco, then President of the CBA; and letters from other attorneys concerning this matter.

After discussion, the Committee unanimously voted to submit to public hearing the addition of "Elder Law" as a field of law in which attorneys may be certified as specialists in this state.

4. The Committee considered a proposal by Judge Robert Holzberg to amend Rule 2.2 (4) of the Code of Judicial Conduct by replacing "pro se" with "self represented" and a draft submitted by Attorney Denise Poncini at the Rules Committee's request showing all Practice Book provisions containing the term "pro se" and substituting the term "self represented."

After discussion, the Committee unanimously approved the substitution of the term "self represented" for the term "pro se" wherever that term appears in the Practice Book. (This change does not include the Rules of Appellate Procedure.)

The Committee agreed that this was a technical change and that it should be forwarded to the Reporter of Judicial Decisions for inclusion in the 2012 edition of the Practice Book.

5. The Committee discussed the standing orders that have been printed in the last two editions of Practice Book.

After discussion, the Committee unanimously voted to remove the standing orders from the 2012 edition of the Practice Book and replace them with a notice stating that the standing orders may be accessed on the Judicial Branch website and that they are provided for the convenience of the Bench and Bar, but are not adopted by the Superior Court judges and are not Practice Book rules.

6. The Committee considered a proposal by Judge Robert J. Devlin, Jr., Chief Administrative Judge of the Criminal Division, to amend the rules to provide more protection of juror privacy, and a letter from Judges Linda K. Lager and Frank M. D'Addabbo, Jr., Co-chairs of the Jury Committee, concerning the proposal.

After discussion, the Committee established a subcommittee consisting of Judges Keegan and Crawford and the undersigned to draft a proposed revision to the Practice Book concerning this matter and submit it to the Committee for consideration.

7. The Committee considered a proposal by Attorney Margaret R. George, Caseflow Management Specialist, to amend Section 2-53 concerning the fee for applications for reinstatement or readmission to the bar.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 2-53 as set forth in Appendix A attached hereto.

8. The Committee considered a letter from Ms. Susie Lockwood with regard to the rules concerning admission to the bar in Connecticut.

After discussion, the Committee tabled the matter and agreed to ask Attorney Anne Dranginis, Chair of the Bar Examining Committee, to attend a Rules Committee meeting to discuss the manner in which the Bar Examining Committee handles character and fitness issues, particularly mental health issues.

9. The Committee considered comments from Judge Heidi G. Winslow concerning proposed revisions to Section 11-1 that were the subject of a public hearing on May 31, 2011, and were subsequently adopted by the Superior Court judges, and a response from Lynda Munro, Chief Administrative Judge of Family Matters, concerning her comments.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 11-1 as set forth in Appendix B attached hereto.

10. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Sections 25-5 and 25-5A concerning automatic orders in family matters by using language in bold to provide emphasis in the text instead of uppercase language in those rules.

At the Rules Committee's request, Attorney Joseph Del Ciampo reviewed the Practice Book and identified those sections that utilize uppercase letters for emphasis.

After discussion, the Committee voted, with Judge Sheldon opposed, to replace uppercase language used for emphasis in the Practice Book with language in bold, and, since this is a technical change, that these revisions be made in the 2012 edition of the Practice Book. (This change does not include the Rules of Appellate Procedure.)

11. The Committee considered an e-mail from Judge Christine Keller, Chief Administrative Judge for Family Matters, in which she suggests amending the family rules in light of Public Act 11-51 by replacing references to the "Commission on Child Protection" with "Public Defender Services Commission" and replacing references to "Chief Child Protection Attorney" with "Chief Public Defender."

After discussion, the Committee unanimously voted to make these changes as technical revisions to the 2012 edition of the Practice Book.

12. The Committee considered a proposal by Assistant Attorney General Lawrence G. Widem to amend Sections 13-6 and 13-9 to create standard interrogatories and requests for production that can be served upon an intervening workers' compensation lien holder after the plaintiff has produced an appropriate medical records release.

After discussion, the Committee referred the matter to the Civil Commission for comment.

13. The Committee considered comments by Attorney David B. Sweet concerning recent changes to Rule 1.15 of the Rules of Professional Conduct and to Section 2-27 concerning clients' funds and attorney registration.

After discussion, the Committee unanimously voted to take no action concerning this matter.

14. The Committee considered a proposal by Judge Lynda Munro to amend Section 25-60A in response to an issue raised with her by Judge Pinkus in which he indicates that the section does not make clear that Family Relations can also perform an evaluation.

After discussion, the Committee agreed that it is not clear how her proposed change resolves the issue raised by Judge Pinkus and decided to ask Judge Munro for clarification.

15. The Committee considered a comment by Judge Jon Alander that, although the commentary to recently adopted Section 13-33 states, in part, that the rule is intended to apply to all "inadvertent" disclosures privileged or protected materials, the rule does not use the word "inadvertent." He suggests that "inadvertent" be placed in the rule.

After discussion, the Committee unanimously voted to make no change to the rule, but to have the commentary to the rule printed for two years.

16. The Committee considered a proposal by Judge Barbara Quinn, Chief Court Administrator, to amend Section 3-8 concerning appearances for represented parties by eliminating the ten day limit for a party or attorney to file an objection to being replaced when a new appearance is filed.

After discussion, the Committee determined that Section 3-9 would also need revision and asked the undersigned to draft an appropriate change to that rule for submission at a future meeting. The Committee thereupon tabled the matter.

17. The Committee considered a proposal by Judge Keller to amend Section 3-4 to provide for appearances to be filed in lieu of other attorneys in juvenile matters.

After discussion, the Committee asked the undersigned to draft an amendment to Section 3-4 that would provide for this and to submit it to them for consideration at a future meeting.

(Judge Taylor joined the meeting after the consideration of this item.)

18. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler, on behalf of the Statewide Grievance Committee, to amend Section 2-55 concerning attorney retirement.

After discussion, the Committee decided to invite Attorney Bowler to attend a future Rules Committee meeting to address this matter.

19. The Committee considered proposals by Statewide Bar Counsel Michael Bowler and Chief Disciplinary Counsel Patricia King to amend Sections 2-32, 2-34A and 2-35 concerning the attorney grievance process.

After discussion, the Committee decided (a) to invite Attorney Bowler to attend a future Rules Committee meeting to address this matter and (b) to forward the proposals to the CBA Professional Discipline Committee for comment.

20. The Committee considered an issue raised by a legislator with Judge Patrick Carroll, Deputy Chief Court Administrator, concerning whether attorneys can by rule be required to disclose annually whether they carry professional liability insurance.

After discussion, the Committee unanimously voted to take no action on this matter.

21. The Committee considered a proposal submitted by Attorney Christopher Blanchard on behalf of the Client Security Fund Committee to amend Sections 2-71 and 2-75 concerning reimbursements from the fund.

After discussion, the Committee decided to send a letter to Attorney Blanchard asking for further information concerning the proposal.

22. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Section 17-14A in light of P.A. 11-77 concerning offers of compromise.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 17-14A as set forth in Appendix C attached hereto.

23. The Committee considered a proposal by Attorney Joanne S. Faulkner concerning Sections 9-23 and 10-72 with regard to debt collection suits.

After discussion, the Committee decided that they would discuss this matter with members of the Judiciary Committee at their next meeting with them.

24. The Committee approved a meeting schedule as follows:

Monday, October 24	-	2:00 p.m.
Monday, November 21	-	2:00 p.m.
Monday, December 19	-	2:00 p.m.
Monday, January 23	-	2:00 p.m.
Monday, February 27	-	2:00 p.m.
Monday, March 26	-	2:00 p.m.
Monday, May 21	-	10:00 a.m. Public Hearing and Rules Committee Meeting

25. The Committee considered a request from Justice Christine S. Vertefeuille for feedback from the Rules Committee concerning a proposal by the Appellate Advocacy Committee of the CBA to amend Section 61-10 concerning articulations for purpose of appeal and a letter from Judge Howard T. Owens, Jr., suggesting an amendment to the rules concerning articulation.

After discussion, Justice Eveleigh agreed to convey to Justice Vertefeuille the Rules Committee's thoughts concerning this matter.

26. Judge Bright discussed with the Committee suggestions to amend the rules concerning Part B informations and to adopt a rule permitting authorized house counsel to handle pro bono matters.

Judge Bright will submit written proposals to the Committee for consideration at a future meeting.

Respectfully submitted,

Carl E. Testo

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (091911 mins)

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) No application for reinstatement or readmission shall be considered by the court unless the applicant, [inter alia] among other things, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal.

(b) The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.

(c) The court shall thereupon inform the chief justice of the supreme court of the

pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.

(d) The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.

(e) The applicant shall pay to the [clerk of the superior court] bar examining committee $200 and shall submit proof of such payment to the clerk of the superior court at the time [his or her] the application is filed with the court. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.

(f) An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.

(g) In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.

COMMENTARY: The revisions to this rule require that notice of the pendency of an application for reinstatement or readmission be given to the office of the chief disciplinary counsel in addition to the various other entities and individuals listed. The revisions also streamline the process for payment of the fee for such application. Currently, the applicant must pay the fee to the clerk of the superior court at the time the application is filed with the court. The clerk collects the fee and forwards it to the bar examining committee. Under

the rule as revised, the fee would be paid directly to the bar examining committee by the applicant, a receipt for such fee would be issued to the applicant by the bar examining committee and the applicant would submit the receipt along with the application to the clerk of the court when the application is filed.

APPENDIX B (091911 mins)

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing. A motion to extend time to plead, respond to written discovery, object to written discovery, or respond to requests for admissions shall state the date through which the moving party is seeking the extension.

(a) For civil matters, with the exception of housing, family and small claims matters, when any motion, application or objection is filed either electronically or on paper, no order page should be filed unless an order of notice and citation is necessary.

(b) For family, juvenile, housing and small claims matters, when any motion, application or objection is filed in paper format, an order shall be annexed to the filing until such cases are incorporated into the Judicial Branch's electronic filing system. Once these case types are incorporated into such electronic filing system, no order page should be filed unless an order of notice and citation is necessary.

(c) Whether filed under subsection (a) or (b), such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

COMMENTARY: The above change is made for clarity.

APPENDIX C (091911 mins)

Sec. 17-14A. —Alleged Negligence of Health Care Provider

In the case of any action to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, an offer of compromise pursuant to Section 17-14 [shall state with specificity all damages then known to the plaintiff or the plaintiff's attorney upon which the action is based] may be filed not earlier than three hundred sixty-fix days after service of process is made upon the defendant in such action and, if the offer of compromise is not accepted within sixty days and prior to the rendering of a verdict by the jury or an award by the court, the offer of compromise shall be considered rejected and not subject to acceptance unless refiled. [At least sixty days prior to filing such an offer, the plaintiff or the plaintiff's attorney shall provide the defendant or the defendant's attorney with an authorization to disclose medical records that meets the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) (HIPAA), as amended from time to time, or regulations adopted thereunder, and disclose any and all expert witnesses who will testify as to the prevailing professional standard of care. The plaintiff shall file with the court a certification that the plaintiff has provided each defendant or such defendant's attorney with all documentation supporting such damages.]

COMMENTARY: The revision to this section is based on 2011 Public Act number 11-77 which amended C.G.S. § 52-192a in a similar fashion.