

Minutes of the Meeting  
Rules Committee  
February 24, 2014

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On Monday, February 24, 2014, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:00 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR  
HON. JON M. ALANDER  
HON. WILLIAM M. BRIGHT, JR.  
HON. HENRY S. COHN  
HON. KARI A. DOOLEY  
HON. NINA F. ELGO  
HON. ROBIN L. WILSON  
HON. ROBERT E. YOUNG

The Honorable Marshall K. Berger was not in attendance at this meeting. The Honorable Robin L. Wilson joined the meeting in progress as noted.

Also in attendance was Joseph J. Del Ciampo, Counsel to the Rules Committee and Attorney Denise K. Poncini of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the meeting held on January 27, 2014, with revisions noted.

2. The Committee considered a letter from Attorney Paul Ruszczyk (Small Claims Magistrate) concerning the Rules Committee's response to Attorney Ruszczyk's inquiry regarding Section 24-24 and its 2011 Commentary, additional comments from Attorney Olshan and the Connecticut Bar Association, and a proposed revision to Section 24-24 to incorporate the 2011 Commentary in the rule. Attorney Olshan and Attorney Russell London were present and addressed the Committee. Judge Wilson arrived during the discussion of this matter.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 24-24, as revised by the Committee, as set forth in Appendix A attached to these minutes.

3. The Committee considered a report of the Legal Specialization Screening Committee (LSSC) on the Application of the National Board of Legal Specialty Certification (NBLSC) for authority to certify lawyers in the area of Family and Matrimonial law, and comments from the

Connecticut Bar Association on that application. Attorney Mark A. Dubois, President – Elect, Connecticut Bar Association was present and addressed the Committee.

After discussion, the Committee tabled the item until the fall and directed Counsel to write to the NBLSC to ask them to speak with the CBA concerning its application.

4. The Committee considered a proposal by the Professional Ethics Committee of the Connecticut Bar Association to amend the Rules of Professional Conduct, Rules 1.1 and 5.3, and Rule 1.12. Attorney Marcy Stovall was present and addressed the Committee.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to the Rules of Professional Conduct, Rules 1.1 and 5.3, and Rule 1.12, as revised by the Committee, as set forth in Appendix B attached to these minutes.

5. The Committee considered a suggestion by Judge Gerard Adelman that the Rules Committee consider amending Section 13-4(c)(2) to allow expert witnesses appointed by the court to charge the party taking the deposition for the expert's time spent preparing for the deposition. In connection with this item, the Committee also considered comments from the Civil Commission, the Family Commission, and the Connecticut Bar Association, and it considered proposed amendments to Sections 25-31 and 25-33.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendments to Sections 25-31 and 25-33, as set forth in Appendix C attached to these minutes.

6. The Committee considered a proposal by Justice Christine Vertefeuille to consider adopting a rule that would prohibit a judge who conducts a pretrial conference in a case, from thereafter conducting or presiding at the trial in the case, whether the trial is to the court or a jury. The Committee also considered correspondence on this proposal from Attorney Pontacoloni and comments from Judge Lager, Judge Bozzuto, Judge Conway and the Connecticut Bar Association.

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

7. The Committee considered a proposal submitted on behalf of the Judges Advisory Committee on E-Filing to amend Section 25-60 to make technical changes to accommodate e-filing, and to update the rule to include the other confidential reports that are filed by Family Services.

After discussion, the Committee tabled the proposal and decided to invite Judge Bozzutto to its next meeting to address the Committee's questions concerning the proposal.

8. The Committee considered a proposal by Judge Conway to amend Section 35a-1 of the juvenile rules concerning a noncustodial parent or guardian standing silent as to the entry of an adjudication.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 35a-1, as set forth in Appendix D attached to these minutes.

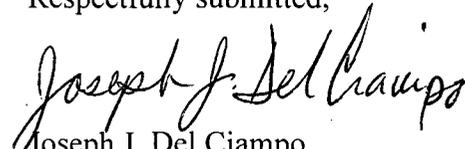
9. The Committee considered an editorial entitled: *Law Student Volunteers And The Unauthorized Practice of Law*.

After discussion, the Committee took no action on this matter.

10. The Committee considered a proposal submitted by Judge Linda K. Lager, Chief Administrative Judge, Civil Division, on behalf of the Civil Commission, to consider new Practice Book Section 1-25 concerning actions subject to sanctions, a revision to proposed new Section 1-25 submitted by Judge Lager, on behalf of the Civil Commission and comments from Judges Bozzuto, Conway and Devlin.

After discussion, the Committee tabled the matter until its March meeting.

Respectfully submitted,

  
Joseph J. Del Ciampo  
Counsel to the Rules Committee

Attachments

## APPENDIX A (022414mins)

### **Sec. 24-24. Judgments in Small Claims; When Presence of the Plaintiff or Representative is Not Required for Entry of Judgment**

(a) In any action based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest and reasonable attorney's fees, if the defendant has not filed an answer by the answer date and the judicial authority has not required that a hearing be held concerning any request by the defendant for more time to pay, the judicial authority may render judgment in favor of the plaintiff without requiring the presence of the plaintiff or representative before the court, provided the plaintiff has complied with the provisions of this section and Section 24-8. Nothing contained in this section shall prevent the judicial authority from requiring the presence of the plaintiff or representative before the court prior to rendering any such default and judgment if it appears to the judicial authority that additional information or evidence is required prior to the entry of judgment.

(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a judgment whether by default, stipulation or other method, the following affidavits must have been filed by the plaintiff:

(1) An affidavit of debt signed by the plaintiff or representative who is not the plaintiff's attorney. A small claims writ and notice of suit signed and sworn to by the plaintiff or representative who is not the plaintiff's attorney shall be considered an affidavit of debt for purposes of this section only if it sets forth either the amount due or the principal owed as of the date of the writ and contains an itemization of interest, attorneys fees and other lawful charges. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based. In those matters involving the collection of credit card and other debt owed to a financial institution and subject to federal requirements for the charging off of accounts, the federally authorized charge-off balance may be treated as the "principal" for purposes of this section and itemization regarding such debt is required only from the date of the charge-off balance.

(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by

the plaintiff and a copy of the executed instrument shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt while also referencing the attached chain of title in the affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt. If applicable, the allegations shall comply with General Statutes § 52-118.

(B) The affidavit shall simply state the basis upon which the plaintiff claims the statute of limitations has not expired.

(C) If the plaintiff has claimed any lawful fees or charges based on a provision of the contract, the plaintiff shall attach to the affidavit of debt a copy of a portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

(D) If a claim for a reasonable fee for an attorney at law is made, the plaintiff shall include in the affidavit the reasons for the specific amount requested. Any claim for reasonable fees for an attorney at law must be referred to the judicial authority for approval prior to its inclusion in any default judgment.

(2) A military affidavit as required by Section 17-21.

COMMENTARY: The amendment to this rule incorporates the Rules Committee's intention, as noted in its 2011 Commentary to the rule, as regards treatment for purposes of this rule of the federally authorized charge-off balance.

## APPENDIX B (022414mins)

### Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**COMMENTARY: Legal Knowledge and Skill.** In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest. A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

**Thoroughness and Preparation.** Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of

methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2 (c).

**Retaining or Contracting With Other Lawyers.** Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5 (b) (scope of representation, basis or rate of fee and expenses), 1.5 (e) (fee sharing), 1.6 (confidentiality), and 5.5 (a) (unauthorized practice of law). Client consent may not be necessary when a nonfirm lawyer is hired to perform a discrete and limited task and the task does not require the disclosure of information protected by Rule 1.6. The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

**Maintaining Competence.** To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. HISTORY—2014: In 2014, “including the benefits and risks associated with relevant technology” was added to the commentary, under the heading “Maintaining Competence,” following “changes in the law and its practice.”

### **Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral**

(a) Except as stated in subsection (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

COMMENTARY: This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. Participation on the merits or in settlement discussions is considered personal and substantial. Nominal or ministerial responsibility is not considered personal and substantial.

Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0 (c) and (f). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subsection (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subsection are met.

Requirements for screening procedures are stated in Rule 1.0 (f). Subsection (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

**Rule 5.3. Responsibilities regarding Nonlawyer [Assistants]Assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENTARY: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Subdivision (1) requires lawyers with managerial authority within a law firm to make reasonable efforts to [establish internal policies and procedures designed to provide] insure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm [will] and nonlawyers outside the firm who work on firm matters act in a way compatible with the [Rules of Professional Conduct] professional obligations of the lawyer. See Commentary to Rule 1.1 and first paragraph of Commentary to Rule 5.1. Subdivision (2) applies to lawyers who have supervisory authority over [the work of a nonlawyer] such

nonlawyers within or outside the firm. Subdivision (3) specifies the circumstances in which a lawyer is responsible for the conduct of [a nonlawyer] such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

**Nonlawyers Outside the Firm.** A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4 (a) (professional independence of the lawyer), and 5.5 (a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer may need to consult with the client to determine how the outsourcing arrangement should be structured and who will be responsible for monitoring the performance of the nonlawyer services. Unless the client expressly agrees that the client will be responsible for monitoring the nonlawyer's services, the lawyer will be responsible for monitoring the nonlawyer's services. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these rules.

**APPENDIX C (022414mins)**

**Sec. 25-31. Discovery and Depositions**

Except as otherwise provided in Section 25-33, [T] the provisions of Sections 13-1 through 13-10 inclusive, 13-13 through 13-16 inclusive, and 13-17 through 13-32 of the rules of practice inclusive, shall apply to family matters as defined in Section 25-1.

COMMENTARY: The proposed revision clarifies that Section 25-33 governs the payment of court-appointed experts in family cases, as opposed to subsection 13-4(c)(2).

### **Sec. 25-33. Judicial Appointment of Expert Witnesses**

Whenever the judicial authority deems it necessary, [on its own motion] it may appoint any expert witnesses of its own selection. The judicial authority shall give notice of its intention to appoint such expert, and give the parties an opportunity to be heard concerning such appointment. An expert witness shall not be appointed by the judicial authority unless the expert consents to act. An expert witness so appointed shall be informed of his or her duties by the judicial authority in writing, a copy of which shall be filed with the clerk, or the witness shall be informed of his or her duties at a conference in which the parties shall have an opportunity to participate. Such expert witness shall advise the parties of his or her findings, if any, and may thereafter be called to testify by the judicial authority or by any party and shall be subject to cross-examination by each party. The judicial authority may determine the reasonable compensation for such witness and direct payment out of such funds as may be provided by law or by the parties or any of them as the judicial authority may direct. Nothing in this section shall prohibit the parties from retaining their own expert witnesses.

COMMENTARY: This section has been amended to clarify that the provisions of 25-33 apply to any court-appointed expert in a family matter, whether appointed on the court's own motion or otherwise.

**APPENDIX D (022414mins)**

**Sec. 35a-1. Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere**

(a) Notwithstanding any prior statements acknowledging responsibility, the judicial authority shall inquire whether the allegations of the petition are presently admitted or denied. This inquiry shall be made of the parent(s) or guardian in neglect, abuse or uncared for matters, and of the parents in termination matters.

(b) An admission to allegations or a written plea of nolo contendere signed by the respondent may be accepted by the judicial authority. Before accepting an admission or plea of nolo contendere, the judicial authority shall determine whether the right to trial has been waived, and that the parties understand the content and consequences of their admission or plea. If the allegations are admitted or the plea accepted, the judicial authority shall make its adjudicatory finding as to the validity of the facts alleged in the petition and may proceed to a dispositional hearing. Where appropriate, the judicial authority may permit a noncustodial parent or guardian to stand silent as to the entry of an adjudication. The judicial authority shall determine whether a noncustodial parent or guardian standing silent understands the consequences of standing silent.

COMMENTARY: This revision is consistent with the holding in In re Joseph W., 301 Conn. 245, 261 (2011). The court held that: “noncustodial parents are entitled to enter a plea in neglect proceedings under Sec. 46b-129 (c) and Practice Book Sec. 35a-1.” A noncustodial parent should, therefore, understand that they have such a right and the consequences of standing silent.