

Minutes of the Meeting
Rules Committee
October 21, 2013

On Monday, October 21, 2013, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:03 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. MARSHALL K. BERGER, JR.
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 Robin L. Wilson and the Honorable Robert E. Young joined the meeting in progress, as noted.

Also in attendance were 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 approved the minutes of the meeting held on September 16, 2013. Judge Bright abstained from this vote.

2. The Committee considered a revision to the meeting schedule, changing the Public Hearing and Meeting date from Monday, May 19, 2014, at 10:00 a.m. to Thursday, May 15, 2014, at 10:00 a.m.

The Committee unanimously approved the change.

3. The Committee considered a proposal by Patricia King, Chief Disciplinary Counsel, to amend Sections 2-40 and 2-41 concerning discipline of attorneys.

Attorney King and Attorney Michael Bowler, Statewide Bar Counsel, were present and addressed the Committee on the proposal. Judge Wilson arrived during the discussion of this matter.

After discussion, the proposal was tabled until the November meeting to permit Attorneys

King and Bowler to obtain additional information requested by the Committee and to redraft the proposal to address concerns of the Committee.

4. The Committee considered a proposal submitted by Michael Bowler, Statewide Bar Counsel, to correct citation errors in Sections 2-36 and 2-38 and to amend Sections 2-38 and 2-47 to clarify those provisions.

Attorney Bowler was present and addressed the Committee on the proposal.

After being informed by Counsel that the citation errors in Section 2-36 and some of the citation errors in Sections 2-38 and 2-47 have been corrected as technical changes by the Reporter's Office, the Committee discussed the remaining proposals. The Committee unanimously voted to submit to public hearing the proposed revisions to Sections 2-38 and 2-47, as set forth in Appendix A attached to these minutes.

5. The Committee considered a proposal submitted by Judge Linda K. Lager, Chief Administrative Judge, Civil Division, on the recommendation of the Commission on Civil Court Alternative Dispute Resolution, to consider the repeal of Sections 23-2 through 23-12 based upon the repeal of General Statutes Section 52-195b pursuant to which Sections 23-2 through 23-12 have been adopted.

After discussion, the Committee unanimously voted to submit to public hearing the repeal of Sections 23-2 through 23-12, as set forth in Appendix B attached to these minutes.

6. 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.

After discussion, the Committee decided to refer the proposal to the remaining chief administrative judges for comment and to table the proposal until the November meeting.

7. The Committee considered a proposal submitted by Judge Linda K. Lager, Chief Administrative Judge, Civil Division, on behalf of the Civil Commission, to amend Section 10-30 to remove "improper venue" as a ground to assert a motion to dismiss.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Section 10-30, as set forth in Appendix C attached to these minutes.

8. The Committee considered a proposal submitted by Judge Elizabeth A. Bozzuto,

Chief Administrative Judge, Family Division, to amend Section 25-4 concerning actions for visitation of a minor child.

After discussion, the Committee decided to refer the proposal to Judge Conway, Chief Administrative Judge for Juvenile Matters, for comment.

9. The Committee considered a proposal submitted by Justice Christine S. 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 is a jury trial.

After consideration, the Committee decided to refer this proposal to the chief administrative judges and to the Connecticut Bar Association for comment.

10. The Committee considered a proposal by Mr. Joseph Farricielli to consider an amendment to Rule 2.11 of the Code of Judicial Conduct concerning a judge's responsibility to disqualify himself or herself. Judge Young arrived during the discussion of this matter.

After discussion, the Committee decided to take no action on the proposal.

Respectfully submitted,



Joseph J. Del Ciampo
Counsel to the Rules Committee

Attachments

APPENDIX A (102113 mins)

Sec. 2-38. Appeal from Decision of Statewide Grievance Committee or Reviewing Committee Imposing Sanctions or Conditions

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee imposing sanctions or conditions against the respondent, in accordance with Section 2-37 (a). A respondent may not appeal a decision by a reviewing committee imposing sanctions or conditions against the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (k). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested or with electronic delivery confirmation, to the office of the statewide bar counsel as agent for the statewide grievance committee and to the office of the chief disciplinary counsel.

(b) Enforcement of a final decision [by the statewide grievance committee] imposing sanctions or conditions against the respondent pursuant to Section 2-35 (i) or Section 2-35 (m), including the publication of the notice of a reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. [Enforcement of a decision by a reviewing committee imposing sanctions or conditions against the respondent, including the publication of the notice of a reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g).] If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision imposing sanctions or conditions against the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the decision imposing sanctions or conditions against the

respondent. An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

(c) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the statewide bar counsel shall transmit to the reviewing court a certified copy of the entire record of the proceeding appealed from, which shall include the grievance panel's record in the case, as defined in Section 2-32 (i), and a copy of the statewide grievance committee's record or the reviewing committee's record in the case, which shall include a transcript of any testimony heard by it or by a reviewing committee which is required by rule to be on the record, any decision by the reviewing committee in the case, any requests filed pursuant to Section 2-35 (k) of this section, and a copy of the statewide grievance committee's decision on the request for review. By stipulation of all parties to such appeal proceedings, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the statewide grievance committee or reviewing committee are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument.

(e) The respondent shall file a brief within thirty days after the filing of the record by the statewide bar counsel. The disciplinary counsel shall file his or her brief within thirty days of the filing of the respondent's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

(f) Upon appeal, the court shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions, rules of practice or statutory provisions;(2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, rescind the action of the statewide grievance committee or take

such other action as may be necessary. For purposes of further appeal, the action taken by the superior court hereunder is a final judgment.

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide grievance committee in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the statewide grievance committee, except that the court may, in its discretion, award to the respondent reasonable fees and expenses if the court determines that the action of the committee was undertaken without any substantial justification. "Reasonable fees and expenses" means any expenses not in excess of \$7500 which the court finds were reasonably incurred in opposing the committee's action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

COMMENTARY: The amendments to subsection (b) consolidates the language in the first two sentences.

Sec. 2-47A. Disbarment of Attorney for Misappropriation of Funds

In any disciplinary proceeding where there has been a finding by a judge of the superior court that a lawyer has knowingly misappropriated a client's funds or other property held in trust the discipline for such conduct shall be disbarment for a minimum of twelve years.

COMMENTARY: Section 2-53(g) states that an application for reinstatement by an attorney disbarred pursuant to Section 2-47A cannot be considered until after twelve years from the date of the order of disbarment. This amendment makes it clear that a disbarment under 2-47A has to be for a minimum of twelve years.

APPENDIX B (102113 mins)

[Sec. 23-2. Expedited Process Cases

Civil actions which come within the purview of General Statutes § 52-195b (b) (2) may be placed on the expedited process track pursuant to Section 23-3. Expedited process track cases shall follow the procedures set forth in Sections 23-3 through 23-12. Such procedures are subject to any stays ordered by the judicial authority for referral of the case to an alternate dispute resolution program.]

COMMENTARY: Sections 23-2 through 23-12 are directed to the implementation of the expedited process track program for certain civil cases arising out of the ownership, maintenance or use of a private passenger motor vehicle under General Statutes § 52-195b. That statute was repealed by Section 15 of Public Act 13-194 and, as a result, Sections 23-2 through 23-12 should be repealed.

[Sec. 23-3. —Placement on the Expedited Process Track

(a) Each plaintiff may file with the complaint a form consenting to placement of the case on the expedited process track, signed by all parties to the action and their attorneys. At the time of filing such consent form and complaint the plaintiff shall file with each other party the responses to discovery required by Section 23-7 (a) (1).

(b) If the case is not brought as an expedited process track case pursuant to subsection (a) at the time the complaint is filed, the parties may at a later time file forms consenting to expedited process track placement.

(c) The consent to expedited process track placement shall be on a form prescribed by the office of the chief court administrator, or on a form substantially in compliance therewith, and shall be signed by the party and his or her attorney. Such form shall contain a statement that the case is one which may be brought as an expedited process case under General Statutes § 52-195b (b) (2), that the party consents to placement of the case on the expedited process track, and that the party waives the right to a trial by jury, the right to a record of the trial proceedings, and the right to appeal. The form to be filed by each plaintiff shall also contain a statement that the plaintiff agrees to limit the amount in demand to a maximum of \$75,000, exclusive of interest and costs. A party filing such form shall serve it on all other parties in accordance with Sections 10-12 through 10-17.

The waivers and the limit to the amount in demand shall apply only if the case is placed on the expedited process track.

(d) When all parties to the action have filed a consent to expedited track placement, the plaintiff shall file with the clerk a notice for placement on the expedited process track. Once the notice has been filed, the parties will be limited to the procedures set forth in Sections 23-5 through 23-12, even if discovery, pleadings and other filings not allowed in those sections have previously been filed.]

[Sec. 23-4. —Pleadings Allowed in Expedited Process Track Cases

Only the following pleadings may be filed in expedited process track cases: answers, special defenses, replies to special defenses, counterclaims and cross complaints. The time periods set forth in Section 10-8 for the filing of pleadings shall apply to these cases.]

[Sec. 23-5. —Motions Allowed

Only the following motions may be filed in expedited process track cases: motions for nonsuit or default for failure to appear or for failure to plead; motions to substitute, add or implead parties; motions to consolidate; motions to withdraw appearance; motions to amend the amount in demand; and motions to transfer the case from the expedited process track to the regular docket. Except as otherwise provided in Sections 17-20 and 17-32 concerning motions for default for failure to appear and for failure to plead, these motions shall be placed on short calendar. Motions to substitute, add, or implead parties and motions to consolidate shall be accompanied by a notice that the case has been placed on the expedited process track.]

[Sec. 23-6. —Discovery Allowed

Except with regard to discovery required as a result of the management conference to be held pursuant to Section 23-9, discovery in expedited process cases shall be limited to the interrogatories and requests for production set forth in forms 201, 202, 204 and 205 of the rules of practice. These forms are set forth in the Appendix of Forms in this volume. Depositions may be taken, but only of parties to the action. Requests for admission shall not be allowed; admissions of fact will be considered at the management conference.]

[Sec. 23-7. —Discovery Procedure for Expedited Process Cases

(a) The following time periods for discovery shall apply to expedited process cases.

(1) Except in cases under Section 23-3 (a) in which the plaintiff complied with discovery at the time of filing the complaint, the plaintiff shall serve on each defendant in accordance with Sections 10-12 through 10-17 responses to forms 202 and 205 of the rules of practice within ten days of the date the notice for placement on the expedited process track was filed.

(2) The defendant shall serve on the plaintiff in accordance with Sections 10-12 through 10-17 responses to forms 201 and 204 of the rules of practice within ten days of the defendant's receipt of the plaintiff's discovery.

(b) Any issues concerning discovery shall be considered by the judicial authority at the management conference; they shall not be placed on the short calendar.]

[Sec. 23-8. —Certification That Pleadings Are Closed

Once the pleadings are closed, any party to the action may file a certificate of closed pleadings pursuant to Section 14-8. Such claim shall state that the case is on the expedited process track and that it is privileged with respect to assignment for trial.]

[Sec. 23-9. —Case Management Conference for Expedited Process Track Cases

(a) A case management conference shall be scheduled after the filing of the notice of placement on the expedited process track or the certificate of closed pleadings, whichever occurs sooner. All parties and their attorneys shall attend the conference which shall be presided over by a judge or a judge trial referee. The following matters shall be considered at this conference:

(1) A discussion of the possibility of settlement.

(2) Issues concerning the discovery exchange.

(3) Simplification of the issues.

(4) Amendments to the pleadings.

(5) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(6) Inspection of hospital records and X-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into the possession of the parties or of counsel since compliance with discovery.

(8) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into the possession of counsel subsequent to the management conference.

(b) The judicial authority may make appropriate orders at the management conference, including the imposition of discovery sanctions under Section 13-14, and such orders shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. Failure to abide by any such orders may subject the offending party to a nonsuit or a default.

(c) At the management conference the judicial authority shall, at the request of any party, address any party on the record to ensure that the party voluntarily, knowingly and intelligently waived the rights to a jury trial, to a record of the trial proceedings and to appeal and that the party understands the expedited process procedure.]

[Sec. 23-10. —Transfer to Regular Docket

(a) On motion of a party or on the judicial authority's own motion, the judicial authority may order a case transferred from the expedited process track to the regular docket if any of the following apply:

(1) the movant is a substitute, added or impleaded party who became a party to the case after it was placed on the expedited process track and objects to such placement;

(2) after a case was placed on the expedited process track it was consolidated for trial with a case not eligible for that track or in which any of the parties decline to consent to having the matter proceed as an expedited process case; or (3) the judicial authority determines that good cause exists for the transfer.

(b) The judicial authority shall order a case transferred from the expedited process track to the regular docket upon the filing of an affidavit by the plaintiff or the plaintiff's attorney, with supporting documentation, stating that subsequent to the filing of plaintiff's consent to expedited process track placement the affiant has learned that the damages which may be recovered exceed \$75,000, exclusive of interests and costs.]

[Sec. 23-11. —Offers of Judgment

The rules concerning offers of judgment shall apply to cases on the expedited process track.]

[Sec. 23-12. —Trial of Cases on Expedited Process Track

Cases on the expedited process track shall be tried by a judicial authority without a jury. Witnesses shall be sworn. Medical or other expert witnesses will not be allowed, but reports and records of medical providers may be admitted into evidence. The judicial authority shall not be bound by the technical rules of evidence, but shall make inquiry, through oral testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of these rules.]

APPENDIX C (102113 mins)

Sec. 10-30. Motion to Dismiss; Grounds

(a) A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) [improper venue; (4)] insufficiency of process; and [(5)] (4) insufficiency of service of process.

(b) Any defendant, wishing to contest the court's jurisdiction, shall do so by filing a motion to dismiss within thirty days of the filing of an appearance.

(c) This motion shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record.

COMMENTARY: Section 51-351 of the Connecticut General Statutes, which became effective July 1, 1978, provides that "[n]o cause shall fail on the ground that it has been made returnable to an improper location." Since that statute became effective, the courts have found that the appropriate remedy for improper venue is the transfer of the case to the proper venue by the court upon its own motion, or upon motion or agreement of the parties. The revision to this section, therefore, removes improper venue as grounds for filing a motion to dismiss.