

Minutes of the Meeting
Rules Committee
January 23, 2012

On Monday, January 23, 2012, the Rules Committee met in the Supreme Court Courtroom from 2:00 p.m. to 3:55 p.m.

Members in attendance were:

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

The Hon. Juliet L. Crawford 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 Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee approved the minutes of the December 19, 2011, meeting. Judge Bellis abstained from this vote; Judge Taylor entered the meeting after the vote was taken.
2. The Committee considered a proposal by Judge Lynda B. Munro, Chief Administrative Judge of the Family Division, to amend Section 25-60A. At the Rules Committee's request, Judge Munro attended the meeting to discuss the proposal.
After discussion, the Committee made revisions to the proposal and unanimously voted to submit to public hearing the amendment to Section 25-60A as set forth in Appendix A attached hereto. Additionally, the Committee decided that the Commentary to Section 25-60A that is in the 2012 edition of the Practice Book should be reprinted in the 2013 edition with certain revisions as set forth in Appendix A.
3. The Committee considered proposals by Statewide Bar Counsel Michael Bowler and Chief Disciplinary Counsel Pat King to amend Sections 2-32, 2-34A and 2-35 concerning the attorney grievance process and comments submitted by Attorney Richard A. Cerrato on behalf of the CBA Professional Discipline Committee. At the Committee's request, Attorneys Bowler,

King and Cerrato and Attorney John Gayle attended the meeting to discuss the proposals.

After discussion, the Committee decided that certain revisions should be made to the proposals and asked Attorneys Bowler and King to draft appropriate changes and submit them to the Committee for consideration at a future meeting.

4. The Committee considered a proposal by Chief Disciplinary Counsel Pat King to amend Sections 2-37, 2-40, 2-41 and 2-52 concerning the attorney grievance process. Attorneys King and Bowler joined the Committee in a discussion of the proposals.

After discussion, the Committee asked Attorney King to make certain revisions to Sections 2-40 and 2-41 and to submit the revisions to the Committee for consideration at a future meeting.

The Committee unanimously voted to submit to public hearing the amendments to Sections 2-37 and 2-52 as set forth in Appendix B attached hereto.

5. The Committee considered a proposal by the Client Security Fund Committee to amend Sections 2-71 and 2-75 concerning reimbursements from the fund.

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

6. The Committee considered a proposal submitted by Attorney Carl E. Testo to further amend the revisions to Sections 2-70 and 2-79 concerning the Client Security Fund fee that were approved by the Rules Committee at its December meeting.

After discussion, the Committee voted to submit to public hearing the further revisions to Sections 2-70 and 2-79 as set forth in Appendix C attached hereto. Judge Prescott opposed these further revisions, as he opposed the original amendments that were approved by the Committee at its December meeting.

7. The Committee considered a proposal by Attorney Richard P. Weinstein to amend the rules to require that if a document is e-filed with the court it must be electronically sent to all counsel of record at the same time, unless opposing counsel specifically elects not to receive electronic delivery of pleadings, and a proposal by the Judges Advisory Committee on e-filing to amend Section 10-13 to address the issue raised by Attorney Weinstein.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 10-13 as set forth in Appendix D attached hereto.

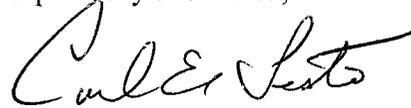
8. The Committee considered a proposal by Judge Cara Eschuk to amend Section 35a-22, which permits the presence of a person to be by means of an interactive audio visual device in certain juvenile proceedings.

Judge Bright agreed to discuss with Judge Eschuk a suggestion by the Committee to revise the proposal. He will report back to the Committee at a future meeting.

9. The Rules Committee considered the recommendations it must make concerning the members of the Legal Specialization Screening Committee whose terms will expire on July 1, 2012.

After discussion, the Committee decided to ask the administrative judges in the New Haven and Litchfield judicial districts for recommendations on possible replacements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl E. Testo". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Carl E. Testo

APPENDIX A (012312 mins)

Sec. 25-60A. Court-Ordered Private Evaluations

(a) If the court orders [an] a private evaluation of any party or any child in a family proceeding where custody, visitation or parental access is at issue, a state licensed mental health professional shall conduct such evaluation.

(b) Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the guardian ad litem or, where there is no guardian ad litem, by court personnel.

(c) Until a court-ordered evaluation is filed with the clerk pursuant to Section 25-60 (b), counsel for the parties shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority.

(d) The provisions of subsections (a) and (b) of Section 25-60 shall apply to completed private court-ordered evaluations.

COMMENTARY: This section clarifies that the judicial authority oversees the initiation and completion of court-ordered private evaluations and further clarifies the evaluation procedure.

APPENDIX B (012312 mins)

Sec. 2-37. Sanctions and Conditions Which May Be Imposed by Committees

(a) A reviewing committee or the statewide grievance committee may impose one or more of the following sanctions and conditions in accordance with the provisions of Sections 2-35 and 2-36:

- (1) reprimand;
- (2) restitution;
- (3) assessment of costs;
- (4) an order that the respondent return a client's file to the client;

(5) a requirement that the respondent attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;

- (6) an order to submit to fee arbitration;

(7) [with the respondent's consent,] in any grievance complaint where there has been a finding of a violation of Rule 1.15 of the Rules of Professional Conduct or Practice Book §2-27, an order to submit to periodic audits and supervision of the attorney's trust accounts to insure compliance with the provisions of Section 2-27 and the related Rules of Professional Conduct. Any alleged misconduct discovered as the result of such audit shall be alleged in a separate grievance complaint filed pursuant to these rules;

(8) with the respondent's consent, a requirement that the respondent undertake treatment, at his or her own expense, for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse.

(b) In connection with subsection (a) (6), a party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(c) Failure of the respondent to comply with any sanction or condition imposed by the statewide grievance committee or a reviewing committee may be grounds for presentment before the superior court.

COMMENTARY: This amendment eliminates the need for a respondent's consent before the statewide grievance committee or a reviewing committee can impose a sanction of an audit and supervision of a lawyer's trust accounts. The potential severity of harm to clients

and the public arising from a lawyer's failure to properly maintain a clients' funds account demonstrates the need for the statewide grievance committee or reviewing committee to be able to impose this sanction unconditionally.

Sec. 2-52. Resignation and Waiver of Attorney Facing Disciplinary Investigation

(a) The superior court may, under the procedure provided herein, permit [the resignation of] an attorney to submit his or her resignation from the bar with or without the waiver of right to apply for readmission to the bar at any time in the future if the attorney's conduct [whose conduct] is the subject of an investigation or proceeding by a grievance panel, a reviewing committee, [or] the statewide grievance committee, the disciplinary counsel or the court [or against whom a presentment for misconduct under Section 2-47 is pending].

(b) Concurrently with the written resignation, the attorney shall submit an affidavit stating the following:

1. that he or she desires to resign and that the resignation is knowingly and voluntarily submitted, the attorney is not being subjected to coercion or duress, and is fully aware of the consequences of submitting the resignation;

2. the attorney is aware that there is currently pending an investigation or proceeding concerning allegations that he or she has been guilty of misconduct, the nature of which shall be specifically set forth in the affidavit;

3. either (i) that the material facts of the allegations of misconduct are true, or (ii) if the attorney denies some or all of the material facts of the allegations of misconduct, that the attorney acknowledges that there is sufficient evidence to prove such material facts of the allegations of misconduct by clear and convincing evidence;

4. the attorney waives the right to a hearing on the merits of the allegations of misconduct, as provided by these rules, and acknowledges that the court will enter a finding that he or she has engaged in the misconduct specified in the affidavit concurrently with the acceptance of the resignation.

(c) If the written resignation is accompanied by a waiver of the right to apply for readmission to the bar, the affidavit required in (b) shall also state that the attorney desires to resign and waive his or her right to apply for readmission to the bar at any time in the future.

[(b)] (d) Any [Such] resignation submitted in accordance with this section shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, [to] with the clerk of the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on

recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court after a hearing, at which the court has accepted [following] a report by the statewide grievance committee, [whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time] made a finding of misconduct based upon the respondent's affidavit, and made a finding that the resignation is knowingly and voluntarily made.

(e) Acceptance by the court of an attorney's resignation from the bar without the waiver of right to apply for readmission to the bar at any time in the future shall not be a bar to any other disciplinary proceedings based on conduct occurring before or after the acceptance of the attorney's resignation.

COMMENTARY: The amendments require an attorney seeking to resign from the bar in the face of a disciplinary investigation or proceeding to submit an affidavit with the resignation that either admits to the alleged misconduct or denies the alleged misconduct but acknowledges that there is clear and convincing evidence to prove the allegations. The amendments also require the court to make a finding of misconduct before it can accept the resignation. This amendment is necessary to assure that lawyers who resign and waive here in Connecticut will be subject to a finding of misconduct, which will be useful to disciplinary authorities in other jurisdictions where the attorney is admitted or may seek admission. Currently, some states do not consider a resignation and waiver without a finding of misconduct as the imposition of discipline. As a result, attorneys who have resigned and waived here in the face of allegations of very serious misconduct have been allowed to retain their licenses in other states, such as New York.

APPENDIX C (012312 mins)

Sec. 2-70. —Client Security Fund Fee

(a) The judges of the superior court shall assess an annual fee in an amount adequate for the proper payment of claims and the provision of crisis intervention and referral assistance under these rules and the costs of administering the client security fund. Such fee, which [the judges of the superior court have set at \$110] shall be \$75.00, shall be paid by each attorney admitted to the practice of law in this state and each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner in this state. Notwithstanding the above, an attorney who is disbarred, retired, resigned, or serving on active duty with the armed forces of the United States for more than six months in such year shall be exempt from payment of the fee, and an attorney who does not engage in the practice of law as an occupation and receives less than \$450 in legal fees or other compensation for services involving the practice of law during the calendar year shall be obligated to pay one-half of such fee. No attorney who is disbarred, retired or resigned shall be reinstated pursuant to Sections 2-53 or 2-55 until such time as the attorney has paid the fee due for the year in which the attorney retired, resigned or was disbarred.

(b) An attorney or family support referee who fails to pay the client security fund fee in accordance with this section shall be administratively suspended from the practice of law in this state pursuant to Section 2-79 of these rules until such payment, along with a reinstatement fee of \$75.00, has been made. An attorney or family support referee who is under suspension for another reason at the time he or she fails to pay the fee, shall be the subject of an additional suspension which shall continue until the fee and reinstatement fee is are paid.

(c) A judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner who fails to pay the client security fund fee in accordance with this section shall be referred to the judicial review council.

COMMENTARY: The above change would reduce the Client Security Fund fee to \$75.00 and require that an additional \$75.00 fee be paid by an attorney who was administratively suspended pursuant to Section 2-79 (a) before the attorney may be reinstated.

Sec. 2-79. —Enforcement of Payment of Fee

(a) The client security fund committee shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that the attorney's license to practice law in this state may be administratively suspended unless within sixty days from the date of such notice the client security fund committee receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the client security fund committee does not receive such proof within the time required, it shall cause a second notice to be sent to the attorney advising the attorney that he or she will be referred to the superior court for an administrative suspension of the attorney's license to practice law in this state unless within thirty days from the date of the notice proof of the payment of the fee or exemption is received. The client security fund committee shall submit to the clerk of the superior court for the Hartford Judicial District a list of attorneys who did not provide proof of payment or exemption within thirty days after the date of the second notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as payment of the fee and the reinstatement fee assessed pursuant to Section 2-70 is made, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to pay the client security fund fee shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as the fee and reinstatement fee is are paid. An attorney aggrieved by an order placing the attorney on administrative suspension for failing to pay the client security fund fee may make an application to the superior court to have the order vacated, by filing the application with the superior court for the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the office of the client security fund committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

(b) If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court

administrator shall send a notice to such person that he or she will be referred to the judicial review council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

(c) Family support referees shall be subject to the provisions of subsection (a) herein until such time as they come within the jurisdiction of the judicial review council, when they will be subject to the provisions of subsection (b).

(d) The notices required by this section shall be sent by certified mail, return receipt requested or with electronic delivery confirmation to the last address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d), and to the home address of the judge, judge trial referee, state referee, family support magistrate, family support referee or workers' compensation commissioner.

COMMENTARY: The above change is made in light of the proposed revisions to Section 2-70.

APPENDIX D (012312 mins)

Sec. 10-13. —Method of Service

Service upon the attorney or upon a self-represented party, except service pursuant to Section 10-12 (c), may be by delivering a copy or by mailing it to the last known address of the attorney or party. Delivery of a copy within this section means handing it to the attorney or to the party; or leaving it at the attorney's office with a person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the usual place of abode. Delivery of a copy within this rule may also mean electronic delivery to the last known electronic address of the attorney or party, provided that electronic delivery was consented to in writing by the person served. An attorney or self-represented party who files a document electronically with the court must serve it electronically on any attorney or self-represented party who consented in writing to electronic delivery under this section. Service by mail is complete upon mailing. Service by electronic delivery is complete upon sending the electronic notice unless the party making service learns that the attempted service did not reach the electronic address of the person to be served. Service pursuant to Section 10-12 (c) shall be made in the same manner as an original writ and complaint is served or as ordered by the judicial authority.

COMMENTARY: Under this revision, attorneys and parties that have consented to accept delivery electronically must be served by electronic means whenever an attorney or party files a document with the court electronically. This change is intended to address the situation where a document is electronically filed with the court, but delivered by mail to the opposing party, which may result in the opposing party receiving the document much later than it was received by the court.