

Minutes of the Meeting
Rules Committee
January 26, 2009

On Monday, January 26, 2009 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:40 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. THOMAS J. CORRADINO
HON. JACK W. FISCHER
HON. C. IAN MCLACHLAN
HON. ANTONIO C. ROBAINA
HON. MICHAEL R. SHELDON

Judges Jane S. Scholl and Leslie I. Olear were not in attendance at this meeting.

Also in attendance was Carl E. Testo, Counsel to the Rules Committee.

Agenda

1. The members of the Committee who were present at the December 15, 2008 meeting unanimously approved the minutes of that meeting.

2. The Committee considered a letter from Attorney Martin Zeldis, Chief of Legal Services for the Office of Chief Public Defender, in which he raises due process concerns with regard to Sections 23-41 and 23-42 concerning habeas corpus rules that address appointed trial counsel's efforts to withdraw from a habeas corpus action when counsel believes that the action is without merit.

After discussion, Judge Sheldon agreed to draft a proposed revision to these rules for submission at a future meeting.

3. At its November meeting the Rules Committee considered a submission from Attorney Nancy A. Porter with regard to Section 1 of Public Act 08-67 concerning the protection of family violence victims in family relations matters. At that meeting, the Committee asked the undersigned to submit for consideration at a future meeting a proposed new rule based on

Section 1 of the Act incorporating changes suggested by the Committee and a proposed commentary to the rule.

At this meeting, the Committee considered a proposed new rule drafted by Attorney Porter incorporating the changes suggested by the Committee. The Committee determined that the language of the rule, which was based on the public act, could be made clearer, and Judge McLachlan agreed to work with Attorney Porter in making further amendments to the proposed new rule for submission to the Committee at a future meeting.

4. The Committee considered a letter submitted by Attorney Richard R. Brown on behalf of the Hartford Standing Committee on Recommendations for Admission to the Connecticut Bar, seeking a clarification of Section 2-13 (4) which requires an attorney seeking to be admitted to the Connecticut Bar on motion to satisfy the appropriate standing committee that he or she “intends, upon a continuing basis, to practice law actively in Connecticut and to devote the major portion of his or her working time to the practice of law in Connecticut”

Attorney Brown asks whether it is the intent of the rule to require the applicant to maintain an office in Connecticut, aside from attesting that he or she will devote a major portion of his or her working time to the practice of law in this state.

After discussion, the Committee was of the opinion that the rule does not require that the applicant maintain an office in Connecticut. Justice Zarella agreed to meet with Attorney Howard Emond, Deputy Director of Attorney Services, on this issue and to report back to the Rules Committee at a future meeting.

5. At prior meetings the Rules Committee considered proposals by the Bench/Bar Foreclosure Committee to amend the foreclosure rules, made revisions to some of the proposals and forwarded them to that committee for comment. The Rules Committee also considered proposals by Attorneys Rafael Podolsky and Nicholas Cimmino to amend the foreclosure rules, approved some of these proposed revisions and forwarded them to the Bench/Bar Foreclosure Committee for comment.

At this meeting, Attorney Daniel Horwitch advised the Rules Committee of the Bench/Bar Foreclosure Committee’s positions concerning the Rules Committee’s submissions to them.

After considering the Bench/Bar Foreclosure Committee’s comments, the Rules Committee made further revisions to some of the proposals and unanimously voted to submit to

public hearing the revisions to Sections 3-3, 10-12, 17-4, 17-20 and 13-19 and new Section 17-33A as set forth in Appendix A attached hereto.

The Committee decided that, instead of submitting to public hearing a revision to Section 10-8 that it had approved at a prior meeting, a new rule be proposed that provides for an automatic stay of proceedings in matters that have been claimed to mediation. This proposed new rule would be new Section 14-2A and would be placed with the bankruptcy rules in the Practice Book. The Committee asked the undersigned to prepare a draft of the rule for submission to the Committee at a future meeting.

6. The Rules Committee decided that it would allow the Judiciary Committee to select the date of the meeting held pursuant to C.G.S. § 51-15a between the two committees.

7. The Committee put over to a future meeting consideration of the Uniform Interstate Depositions and Discovery Act submitted by Attorney David D. Biklen on behalf of the Uniform Law Commissioners.

8. The Committee put over to the February meeting proposals submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Civil Commission to amend the discovery rules concerning electronically stored information; comments by Judge Barbara Bellis concerning the proposals; and Uniform Rules Relating to Discovery of Electronically Stored Information, submitted by Uniform State Law Commissioner David Biklen. Judge Bellis will invite Attorney De Luca to attend the February meeting and address the Committee concerning the Civil Commission's proposals.

9. The Rules Committee at its September meeting considered a memorandum from Attorney Shawn Council commenting on Section 3-9 (c) concerning withdrawals of appearances in certain family matters, Sections 2-44 and 2-46 concerning the suspension or disbarment of attorneys, and the procedure followed in connection with the filing of affidavits of debt and foreclosure complaints.

With regard to her issue concerning Section 3-9 (c), the Committee had asked the undersigned to find out from Court Operations how this procedure is being handled administratively by the clerks and whether it is being handled uniformly across the state. The undersigned reported at this meeting that he raised these issues with David Iaccarino, Deputy Director of Family, Support, and Juvenile Matters in Court Operations, who advised him that it is his belief that this procedure is being handled uniformly statewide. Mr. Iaccarino provided the

undersigned with a description of how this procedure is being handled which the undersigned forwarded to the Committee.

With regard to her issue concerning Section 2-46, which provides for the suspension of an attorney who is a delinquent child support obligor, the Committee had asked the undersigned to find out whether this is a statutory requirement. The undersigned reported that the rule was proposed by the Rules Committee in 1996 to make the rules regarding attorneys admitted to practice in this state conform, to the extent appropriate, to Public Act 95-310.

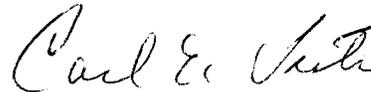
The Rules Committee had also asked the undersigned to inquire of the Statewide Bar Counsel whether attorneys have been suspended under Section 2-46. The undersigned reported at this meeting that neither the Statewide Bar Counsel nor the Chief Disciplinary Counsel is aware of any suspensions being issued under Section 2-46.

The Committee determined that no rules revisions are necessary in connection with the above issues raised by Attorney Council.

With regard to Attorney Council's issue concerning private mortgage insurance, pursuant to the Rules Committee's request at its September meeting the undersigned forwarded the matter to Judge Mintz for review by the Bench/Bar Foreclosure Committee. The undersigned reported that that committee has not yet responded concerning this matter. The Rules Committee thereupon asked the undersigned to forward the private mortgage insurance issue to the Civil Commission for comment.

10. The Committee put over to a future meeting proposals submitted by Judge Barbara M. Quinn, on behalf of the Committee on Judicial Information Policies, to amend Sections 11-20A and 25-59A to streamline the process for removing personal identifying information from a court file when it has been inappropriately filed, and to adopt new Section 4-7 with regard to the omission or redaction of personal identifying information in court records in civil and family matters.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (1-26-09 mins)

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be typed or printed on size 8-1/2" x 11" paper, (2) be headed with the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number. This section shall not apply to mortgagors filing a request for mediation under section 14-2A, in which case the request for mediation shall constitute an appearance. This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: Section 16 of Public Act 08-176 requires the court to notify each appearing party that a foreclosure mediation request has been submitted by the mortgagor. Requiring the mortgagor to file an appearance is redundant and places an unnecessary burden on the individuals section 16 of Public Act 08-176 is intended to assist. The new sentence in this section addresses this.

Sec. 10-12. Service of the Pleading and Other Papers; Responsibility of Counsel or Pro Se Party: Documents and Persons to Be Served

(a) It is the responsibility of counsel or a pro se party filing the same to serve on each other party who has appeared one copy of every pleading subsequent to the original complaint, every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper, except a request for mediation under section 14-2A. When a party is represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the judicial authority.

(b) It shall be the responsibility of counsel or a pro se party at the time of filing a motion for default for failure to appear to serve the party sought to be defaulted with a copy of the motion. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(c) Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties.

COMMENTARY: Section 16 of Public Act 08-176 requires the court to notify each appearing party that a foreclosure mediation request has been submitted by the mortgagor. Requiring the mortgagor to serve a copy on each party is redundant and places an unnecessary burden on the individuals section 16 of Public Act 08-176 is intended to assist. The new language in subsection (a) addresses this.

Sec. 13-19. Disclosure of Defense

In any action to foreclose or discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, or within ten days of the filing of such demand in any action to foreclose a mortgage, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.

COMMENTARY: The purpose of this proposal is to attempt to ensure that owners of the equity, borrowers and guarantors who have not filed a disclosure of defense and risk losing their interest in the property are given more time to protect their interests.

Sec. 17-4. Setting Aside or Opening Judgments

(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a small claims or juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.

(c) The expedited procedures set forth in this subsection may be followed with regard to a motion to open a judgment of foreclosure filed by a plaintiff in which the filing fee has been paid, the motion has been filed prior to the vesting of title or the sale date, the plaintiff states in the motion that the committee and appraisal fees have been paid or will be paid within thirty days of court approval, and the motion has been served on each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon.

(1) Parties shall have five days from the filing of the motion to file an objection with the court. Unless otherwise ordered by the judicial authority, the motion shall be heard not less than seven days after the date the motion was filed. If the plaintiff states in the motion that all appearing parties have received actual notice of the motion and are in agreement with it, the judicial authority may grant the motion without a hearing.

(2) When a motion to open judgment is filed pursuant to this subsection, the court will retain jurisdiction over the action to award committee fees and expenses and appraisal fees, if necessary. If judgment is not entered or the case has not been withdrawn within one hundred twenty days of the granting of the motion, the judicial authority shall forthwith enter a judgment of dismissal.

COMMENTARY: The purpose of this proposal is to provide an expedited mechanism to address motions to open judgments in foreclosure cases, including a procedure that allows such motions to be granted by the court without the necessity of all parties coming to court.

Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear

(a) Except as provided in subsection (b), [!]if no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a nonsuit or default be entered for failure to appear.

(b) In an action commenced by a mortgagee prior to July 1, 2010 for the foreclosure of a mortgage on residential real property consisting of a one-to-four family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to the action may make a motion that a default be entered for failure to appear.

(c) [b] It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(d) [c] Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk upon filing and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.

(e) [d] A motion for nonsuit for failure to appear shall be printed on the short calendar. If it is proper to grant the motion, the judicial authority shall grant it without the need for the moving party to appear at the short calendar.

(f) [e] The granting of a motion for nonsuit for failure to appear or a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion

shall contain either (1) a statement that a military affidavit is attached thereto, or (2) a statement, with reasons therefore, that it is not necessary to attach a military affidavit to the motion.

COMMENTARY: A new subsection (b) has been added to adopt the provisions of section 16 of Public Act 08-176.

(NEW) Sec. 17-33A. Motions for Judgment of Foreclosure

In all foreclosure actions motions for judgment shall not be filed prior to the expiration of 30 days after the return date.

COMMENTARY: The purpose of this proposal is to attempt to ensure that owners of the equity, borrowers and guarantors who have not filed an appearance and risk losing their interest in the property are given more time to protect their interests.