

Minutes of the Meeting
Rules Committee
February 22, 2010

On Monday, February 22, 2010, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:27 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. THOMAS J. CORRADINO
HON. JACK W. FISCHER
HON. LESLIE I. OLEAR
HON. ANTONIO C. ROBAINA
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

The Hon. Jane Scholl was not in attendance. 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 members of the Committee who were present for the January 22 and January 25, 2010, meetings unanimously approved the minutes of those meetings.

2. The Committee considered a proposal that was submitted by Attorney Livia D. Barndollar, then President of the Connecticut Bar Association (CBA), to amend Rule 6.1 of the Rules of Professional Conduct to require lawyers in Connecticut to report, on an annual basis, the extent to which they have or have not provided pro bono legal services pursuant to that rule. This proposal had previously been denied by the Rules Committee at its meeting on November 20, 2008, and was placed on the agenda of this meeting for reconsideration at the request of the CBA.

Attorneys Francis Brady, President of the CBA, and Norman Janes addressed the Committee concerning this proposal. During its discussion of the matter, the Rules Committee advised Attorneys Brady and Janes that the information provided to the Judicial Branch as a result of the proposal would be public. The Rules Committee tabled the matter to allow the CBA bring this to the attention of its House of Delegates and to report back to the Committee.

3. The Committee considered a proposal submitted by Attorney Kathleen Wood on behalf of the Connecticut Bar Examining Committee to amend Section 2-3 to establish term limits for Bar Examining Committee members.

After discussion, the Committee tabled the matter and asked the undersigned to advise Attorney Wood that it would like more information concerning the rationale for the proposed revision.

4. The Committee considered proposals by Judge Marshal Berger to amend Sections 11-20B and 25-59B concerning documents containing personal identifying information, and comments from Judge Susan Peck concerning Section 4-7.

After discussion, the Committee decided to continue its discussion of these proposals on Wednesday, February 24, 2010, immediately following the Committee's meeting with members of the Judiciary Committee.

5. The Committee considered proposals submitted by Judge Christine E. Keller, on behalf of the Juvenile Task Force, to amend various juvenile rules in light of current procedures and recent statutory changes.

After discussion, Judge Olear agreed to look into an issue raised by the Rules Committee with regard to the proposed revision to Section 34a-21, to draft a proposed further revision to the proposal concerning Section 33a-7, and to report back to the Committee at its March meeting.

6. The Committee considered a proposal by Attorney Edward W. Gasser to amend Section 17-15 concerning offers of compromise.

After discussion, the Committee unanimously voted to deny the proposal.

7. The Committee considered proposed revisions to Section 8-10 of the Code of Evidence concerning the tender years exception to the hearsay rule, submitted by Judge Thomas A. Bishop, Chair of the Evidence Oversight Committee.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Section 8-10 of the Code of Evidence as set forth in Appendix A attached hereto.

The Committee tabled consideration of Judge Bishop's proposed revisions to Sections 1-1 and 4-5 of the Code of Evidence.

8. The Committee considered a proposal by the Judges' Advisory Committee on E-filing to amend Section 7-17.

After discussion, the Committee further amended the proposal and unanimously voted to submit to public hearing the revision to Section 7-17 as set forth in Appendix B attached hereto.

9. At its January meeting the Rules Committee considered a proposed new rule that was drafted by Justice Zarella and the undersigned that would give the Rules Committee interim authority to adopt rules on an expedited basis in the event of an emergency declared by the Governor pursuant to General Statutes §§ 19a-131a, 28-9, or both. At that meeting the Committee suggested various revisions to the proposal and asked the undersigned to incorporate them into the draft for their consideration at a future meeting.

At this meeting the Committee considered the revised new rule incorporating their suggested changes.

After discussion, the Committee further amended the proposal and unanimously voted to submit to public hearing proposed new Section 1-9B as set forth in Appendix C attached hereto.

10. The Committee considered proposed revisions to the small claims rules with an overview by Maureen P. Finn, Chief Clerk of Centralized Small Claims, and comments thereon submitted by Attorneys Abraham M. Hoffmann and Raphael Podolsky.

The Committee tabled this to its March meeting.

11. At its January meeting the Rules Committee approved for submission to public hearing various Practice Book revisions concerning fitness to practice law. At that meeting, the Committee tabled the issue of whether fitness to practice law should be included in Section 2-15A concerning authorized house counsel.

At this meeting the Committee decided that Section 2-15A should not be amended by adding fitness to practice law as a requirement in that rule.

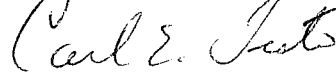
12. The Committee considered a proposal submitted by Judge Pellegrino on behalf of the Civil Commission to amend the civil pleading rules; a letter from Attorney Edward Maum Sheehy to which he appends a proposed revision to the summary judgment rules; and submissions from Judges Corradino and Scholl concerning this matter.

The Committee tabled this to its March meeting.

13. Justice Zarella announced that the March 29, 2010, meeting will start at 1:30 p.m. instead of 2:00 p.m. and will begin with a videoconferencing demonstration given by the

Committee on Alternatives to Court Appearances.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carl E. Testo".

Carl E. Testo

Counsel to the Rules Committee

APPENDIX A (2-22-10 mins)

Sec. 8-10. Hearsay Exception: Tender Years

[(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim, or any alleged act of physical abuse committed against the child by the child's parent, guardian or any other person then exercising comparable authority over the child at the time of the act, is admissible in evidence in criminal and juvenile proceedings if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness;

(2) The statement was not made in preparation for a legal proceeding; and

(3) The child either:

(A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or

(B) Is unavailable as a witness, provided that:

(i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and

(ii) The statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its trustworthiness. If the statement is in writing, the proponent must provide the adverse party a copy of the writing; if the statement is otherwise recorded by audiotape, videotape, or some other equally reliable medium, the proponent must provide the adverse party a copy in the medium in the possession of the proponent in which the statement will be proffered. Except for good cause shown, notice

and a copy must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from:

(1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act described in the first paragraph of section (a) than they do for other declarants; and

(2) admitting by way of a residual hearsay exception statements described in the first paragraph of section (a).]

“Admissibility in criminal and juvenile proceedings of statement by child under thirteen relating to sexual offense or offense involving physical abuse against child. (a) Notwithstanding any other rule of evidence or provision of law, a statement by a child under thirteen years of age relating to a sexual offense committed against that child, or an offense involving physical abuse committed against that child by a person or persons who had authority or apparent authority over the child, shall be admissible in a criminal or juvenile proceeding if: (1) The court finds, in a hearing conducted outside the presence of the jury, if any, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness, (2) the statement was not made in preparation for a legal proceeding, (3) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement including the content of the statement, the approximate time, date and location of the statement, the person to whom the statement was made and the circumstances surrounding the statement that indicate its trustworthiness, at such time as to provide the adverse party with a fair opportunity to prepare to meet it, and (4) either (A) the child testifies and is subject to cross-examination at the proceeding, or (B) the child is unavailable as a witness and (i) there is independent nontestimonial corroborative evidence of the alleged act, and (ii) the statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) Nothing in this section shall be construed to (1) prevent the admission of any statement under another hearsay exception, (2) allow broader definitions in other hearsay exceptions for statements made by children under thirteen years of age at the time of the statement concerning any alleged act described in subsection (a) of this section than is

done for other declarants, or (3) allow the admission pursuant to the residual hearsay exception of a statement described in subsection (a) of this section.” General Statutes § 54-86/.

COMMENTARY: [This section addresses the unique and limited area of statements made by children concerning alleged acts of sexual assault or other sexual misconduct against the child, or other alleged acts of physical abuse against the child by a parent, guardian or other person with like authority over the child at the time of the alleged act. It recognizes that children, because of their vulnerability and psychological makeup, are not as likely as adults to exclaim spontaneously about such events, making section 8-3 (2) unavailable to admit statements about such events; are not as likely to seek or receive timely medical diagnoses or treatment after such events, making section 8 -3 (5) unavailable; and it provides more specific guidance for this category of statements than does the residual exception, section 8 -9.

Subsection (a) defines the factual scope of the statements that may be admitted under the exception and the types of proceedings to which the exception applies. The proceedings included are criminal proceedings, with or without a jury, and juvenile proceedings; civil proceedings are not included. The rule applies to alleged acts of sexual assault or sexual misconduct committed by anyone against the child. It only applies to alleged acts of physical abuse committed by a parent, guardian or someone in a comparable position of authority at the time of the alleged act of physical abuse. It provides guidance on the test of trustworthiness the court must apply to the proffered statement (subdivision (1)); addresses the exclusion of testimonial statements prohibited by *Crawford. v. Washington*, 541 U.S. 36 (2004) (subdivisions (2) and (3)(B)(ii)); and, sets forth separate requirements when the child testifies and is subject to cross-examination and when the child is unavailable (subdivision (3)(B)).

Subsection (b) provides for notice to the adverse party of the proponents intent to offer the statement.

Subsection (c)(1) prohibits expanded interpretations of other hearsay exceptions where statements covered by this section are not admissible. It is not intended to limit exceptions that, heretofore, have been legally applied to such statements. Subsection

(c)(2), however, prohibits the use of the residual exception for statements treated by this section.]

The section was amended to harmonize it with the general statutes. As amended, and to be consistent with the 2009 amendment to General Statutes § 54-86/, it no longer explicitly provides that the cross-examination of the child may be by video telecommunication or by submitting to a recorded video deposition for that purpose; it does not require the proponent to provide the adverse party a copy of the statement in writing or in whatever other medium the original statement is in and is intended to be proffered in; and, it does not provide a good cause exception to the obligation to provide the adverse party with advance notice sufficient to permit the adverse party to prepare to meet the statement. These changes do not limit the discretion of the court to impose such requirements.

APPENDIX B (2-22-10 mins)

Sec. 7-17. Clerks' Offices

Clerks' offices shall be open each weekday from Monday to Friday inclusive, between 9 o'clock in the forenoon and 5 o'clock in the afternoon, but they shall not be open on legal holidays.

The chief court administrator may increase the hours of the clerk's office for the purpose of the acceptance of bonds or for other limited purposes for one or more court locations. If the last day for filing any matter in the clerk's office falls on a day on which such office is not open as thus provided or is closed pursuant to authorization by the administrative judge in consultation with the chief court administrator or the chief court administrator due to the existence of special circumstances, then the last day for filing shall be the next business day upon which such office is open. [A] Except as provided below, a document that is electronically received by the clerk's office for filing after 5 o'clock in the afternoon on a day on which the clerk's office is open or that is electronically received by the clerk's office for filing at any time on a day on which the clerk's office is closed, shall be deemed filed on the next business day upon which such office is open.

If a party is unable to electronically file a document because the court's electronic filing system is non-operational for thirty consecutive minutes from 9 o'clock in the forenoon to 3 o'clock in the afternoon or for any period of time from 3 o'clock to 5 o'clock in the afternoon of the day on which the electronic filing is attempted, and such day is the last day for filing the document, the document shall be deemed to be timely filed if received by the clerk's office on the next business day the electronic system is operational.

COMMENTARY: The amendment to the section provides for circumstances where a document that is required to be filed electronically cannot be filed electronically because the court's electronic filing system is not operational during the last two hours of the last day for filing the document.

APPENDIX C (2-22-10 mins)

(NEW) Sec. 1-9B. –Emergency Powers of Rules Committee

(a) In the event that the Governor declares a public health emergency pursuant to General Statutes § 19a-131a or a civil preparedness emergency pursuant to General Statutes § 28-9 or both, the Chief Justice, or if the Chief Justice is incapacitated or unavailable, the Chairperson of the Rules Committee may call a meeting of the Superior Court Rules Committee.

(b) No quorum shall be required at this meeting as long as a good faith effort has been made to contact all members of the Rules Committee to advise them of the meeting. The meeting may be held in person or by electronic means. Public notice should be given of the Rules Committee meeting, but failure to give such notice shall not impair the validity of actions taken at the meeting as long as a good faith effort has been made to provide such notice.

(c) At such meeting the Rules Committee shall have the power to adopt on an interim basis any new rules and to amend or suspend in whole or in part on an interim basis any existing rules concerning practice and procedure in the Superior Court that the committee deems necessary in light of the circumstances of the declared emergency. Any new rules and any amendments to and suspensions of existing rules adopted pursuant to this section should be published in the Connecticut Law Journal and on the Judicial Branch website, but failure to so publish shall not impair the validity of such rules as long as a good faith effort has been made to so publish.

(d) Any such new rules and amendments to and suspensions of existing rules adopted pursuant to this section shall remain in effect for the duration of the declared emergency or until such time, as soon as practicable, as a meeting of the superior court judges can be convened, in person or electronically, to consider and vote on the changes.

COMMENTARY: The above rule gives the Rules Committee authority to adopt rules on an expedited basis in the event of an emergency declared by the Governor pursuant to General Statutes §§ 19a-131a, 28-9, or both.