

Minutes of the Meeting
Rules Committee
Monday, November 18, 2019

On Monday, November 18, 2019, the Rules Committee met in the Supreme Court courtroom from 2:02 p.m. to 2:51 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. HOLLY ABERY-WETSTONE
HON. JOAN K. ALEXANDER
HON. BARBARA N. BELLIS
HON. SUSAN QUINN COBB
HON. MELANIE L. CRADLE
HON. DONNA NELSON HELLER
HON. BARRY K. STEVENS
HON. ANTHONY D. TRUGLIA JR.

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee; Lori Petruzzelli, Counsel, Legal Services; and Shanna O'Donnell, Research Attorney, of the Judicial Branch's Legal Services Unit.

1. The Committee approved the minutes of the meeting held on October 21, 2019.

2. The Committee considered a proposal from Senator Looney, Senator Winfield, and Representative Stafstrom concerning pre-trial discovery procedure in criminal matters.

After discussion, a subcommittee was formed, comprised of Judge Alexander, Judge Cradle, and Judge Truglia, to review this proposal further and to coordinate with the various internal and external stakeholders.

The Rules Committee tabled this proposal until the February meeting, at which time the subcommittee is to provide an update on its progress.

3. The Committee considered a proposal from Natasha M. Pierre, State Victim Advocate, to amend various Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims.

Natasha M. Pierre, State Victim Advocate, was present in the audience while the Rules Committee discussed this proposal.

After discussion, the Committee tabled this proposal until the December meeting to allow for review of Judge Conway's comments and to provide Natasha M. Pierre, State Victim Advocate, with time to confer with Judge Conway.

4. The Committee considered a proposal from the Judicial-Media Committee to amend Section 1-11C concerning media coverage in criminal proceedings.

Judge Devlin was present and addressed the Rules Committee regarding this proposal.

After discussion, the Committee tabled this proposal until the January meeting to allow for comments and further review. Counsel is to coordinate with Judge Alexander to draft commentary to address concerns that there should be guidance as to the definition of "family member" and as to how the Judges should apply this proposed rule when family members do not agree about media coverage.

5. The Committee considered a proposal to amend Sections 2-27, 2-27A, and 2-65 and to adopt new Section 2-27B regarding administrative suspension of attorneys who fail to register or comply with Connecticut's Minimum Continuing Legal Education requirements.

Counsel clarified that this proposal is from the Judicial Branch administration, and had been misattributed on previous agendas and in previous minutes.

After discussion, the Committee tabled this proposal until the December meeting to allow for comments and further review, in light of information from Counsel that further comments were expected from various bar associations.

6. The Committee considered a proposal regarding standard written discovery in medical malpractice cases.

After discussion, a subcommittee was formed, comprised of Judge Bellis, Judge Cobb, and Judge Stevens, to review this proposal further and to coordinate with the various internal and external stakeholders.

Attorney Karen Noble, of Danaher Lagnese, PC, Chairman of the Connecticut Defense Lawyers Association (CDLA), was present and addressed the Rules Committee regarding this proposal.

Attorney Leah M. Nollenberger of Carmody Torrance Sandak & Hennessey LLP, a Director on the Board of CDLA, was present and addressed the Rules Committee regarding this proposal.

Attorney Kristin Connors of Carmody Torrance Sandak & Hennessey LLP, Co-chair of the Health Law Section of the Connecticut Bar Association (CBA), was present and addressed the Rules Committee regarding this proposal.

The Rules Committee tabled this proposal until the February meeting, at which time the subcommittee is to provide an update on its progress.

7. The Committee considered a proposal from Senator Fasano to reconsider changes to Section 38-8 scheduled to go into effect on January 1, 2020.

It was noted that Counsel had emailed Senator Fasano regarding his proposal and informing him that the proposal would be considered at this meeting. The Chair of the Rules Committee inquired among the audience members, and determined that neither Senator Fasano nor any representative from his office were present at the meeting.

Judge Devlin was present in the audience, at the invitation of the Chair, but did not address the Committee regarding this proposal.

After discussion, the Committee tabled this proposal until the December meeting to allow Senator Fasano another opportunity to address the Committee. Counsel was instructed to draft a formal letter to Senator Fasano inviting him to the December meeting, and outlining the Committee's position regarding its authority, or lack of authority, to delay implementation of a Practice Book revision already voted upon by the judges.

8. The Committee considered a proposal from Judge John Moore concerning the Commentary to Rule 7.1 of the Rules of Professional Conduct regarding an attorney making "misleading truthful statements."

Attorney Marcy T. Stovall, Legislative Liaison for the Professional Ethics Committee of the Connecticut Bar Association, was present and addressed the Rules Committee regarding this proposal.

After discussion, the Committee voted to submit to public hearing the amendment to the Commentary to Rule 7.1 of the Rules of Professional Conduct that will become effective January 1, 2020, regarding an attorney making "misleading truthful

statements”, as set forth in Appendix A to these minutes. Counsel is to contact Judge Moore regarding this proposal.

9. The Committee considered a proposal from Attorney Gary I. Cohen to amend Section 11-19 of the Practice Book concerning the time limit for deciding short calendar matters.

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

10. The Committee discussed making a recommendation for an individual to be appointed to the Legal Specialization Screening Committee (LSSC).

After discussion, the Committee tabled this matter until the December meeting to allow the Chair to decide on an individual to recommend for appointment to the LSSC.

Respectfully submitted,



Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (111819)

Rule 7.1. Communications concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENTARY: This Rule governs all communications about a lawyer's services, including advertising. Whatever means are used to make known a lawyer's services, statements about them must be truthful. Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that leads a reasonable person to believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented without a disclaimer indicating that the communicated result is based upon the particular facts of that case so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's

services or fees with those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4 (3).] In addition to the provisions of this Rule, see Rule 8.4 (3) defining professional misconduct to include conduct involving dishonesty, fraud, deceit, or misrepresentation. See also Rule 8.4 (5) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such

as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

Letterhead identification of the lawyers in the office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0 (d), because to do so would be false and misleading.

It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

AMENDMENT NOTE: The revision to this rule was made for clarity.