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Item 04-08
(121619)

PULLMAN & COMLEY 100 YEARS

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December 10, 2019

BY E-MAIL (*Joseph.Delciampo@jud.ct.gov*)

Hon. Andrew J. McDonald
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06109

Re: Rules Committee of the Superior Court; Proposed Revision to "Credit Computation" Provisions in Section 2-27A of the Rules of the Superior Court ("Minimum Continuing Legal Education")

Dear Justice McDonald:

I write in connection with certain proposed revisions to the "Credit computation" provision within the minimum continuing legal education section of the Rules of Court. (Section 2-27A(c)).

Credit Computation for Articles

I ask the Rules Committee to consider a revision to Section 2-27A(c)(3) as follows:

> Credit for the writing and publication of articles shall be based on the actual ~~drafting~~ time required [for both researching and drafting]. Each article may be counted only one time for credit.

The current rule sensibly encourages Connecticut lawyers to help promote "enhancement of competence in the legal profession" by volunteering time to publish articles on such topics as "substantive and procedural law, ethics, law practice management, and professionalism." Section 2-27A(b)(3). However, in computing MCLE credit for such writing and publication endeavors, subsection (c)(3) fails to recognize that the time an author devotes to the research and preparation of an article is just as significant, and at times, more significant, than the act of composing the article. Put another way, there does not seem to be a principled rationale for awarding MCLE credit for the time devoted to drafting, while excluding from credit computation the time devoted to preparation and research of a qualifying article.

Credit Computation for Preparing for Legal Seminars, Courses, or Programs

I join in support of the revision to subsection (c)(2) proposed by Attorney Richard A. Silver in his letter to Statewide Counsel Bowler dated November 20, 2019 (a copy of which is attached). He has proposed revising subsection (c)(2) to authorize full credit, rather than the current half credit, for time devoted to *preparing* for qualifying seminars, courses, or programs.

Respectfully yours,

David P. Atkins

DPA:mrd

Enclosure

cc: Richard A. Silver, Esq.(By E-Mail) (*RSilver@sgtlaw.com*)

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November 20, 2019

Michael P. Bowler, Esq.
Statewide Bar Counsel
Commission on Continuing Legal Education
Michael.Bowler@jud.ct.gov

Re: Suggested Changes to Continuing Legal Education

Dear Attorney Bowler:

I am writing you with some suggestions for a number of changes in the present requirements for continuing legal education.

The current §2-27A Minimum Continuing Legal Education: Section C: Credit Computation currently provides:

(2) Credit for attorneys preparing for and presenting legal seminars, courses or programs shall be based on one hour of credit for each two hours of preparation. A maximum of six hours of credit may be credited for preparation of a single program.

My suggestion is that this Section be changed as follows:

Credit for attorneys' preparation shall be based on one hour of credit for each hour of preparation up to eight hours. Preparation for seminars includes pre-seminar meetings with participants, legal research, preparation of material for the seminar, coordination with staff and such other necessary preparation as required.

My experience with the seminars I have conducted is that I have always exceeded six hours of preparation time and many times I have exceeded 12 hours in preparation and organization. I do not believe there is any justification for penalizing preparation time under the present rule. I believe 12 hours is a more reasonable restriction of time required.

The Frequently Asked Questions section and Opinion Letter state that blogs do not qualify for any educational credit - Opinion 13, June 12, 2014. It is my opinion that, under proper criteria, blogs should be allowed for educational credit. Blogs have the ability to disseminate valuable legal information. Although blogs tend to be shorter than a complete article, they often times are relevant to many current legal issues. Blogs have the advantage of being more current than articles processed through legal publications which take significantly more time to process and disseminate.

A new rule can be established to require that a blog meet the same educational criteria as published material. My suggestion is that a blog be given credit for actual time preparation but that the time be limited to two hours. I am enclosing a copy of a blog that I have written which I believe is an example of valuable legal information that would be appropriate for CLE credit: *Individual Voir Dire = Justice.*

I would appreciate your distributing this letter to the Committee. I would be delighted to attend the next meeting of the Commission to discuss these recommendations.

Very truly yours,

Richard A. Silver

RAS/mr
Enclosure

cc: Paul Slager, President, Connecticut Trial Lawyers Association
Rosemarie Payne, Esq.
Frederic S. Ury, Esq.

Individual Voir Dire = Justice

RICHARD A. SILVER

MARCH 30, 2016

Individual voir dire is an important Constitutional and statutory right in Connecticut which provides the litigants an opportunity to discover a potential juror's bias and prejudices. The fundamental purpose of voir dire is not to select appropriate jurors, but rather to eliminate potential jurors who have strong bias and prejudices that will be harmful to a party's case. Individual voir dire is a vital mechanism to ensure that each party will gain meaningful information to predicate a decision whether to exercise a peremptory challenge or a challenge for cause.

The Connecticut Constitution establishes a party's right to individually question potential jurors: "In all civil and criminal actions tried by a jury, the parties shall have the right to challenge jurors peremptorily, the number of such challenges to be established by law. The right to question each juror individually by counsel shall be inviolate" (Article 1, Section 19).

The manner for conducting individual voir dire is also proscribed by state statute. General Statutes section 51-240 provides: "either party shall have the right to examine, personally or by his counsel, each juror outside the presence of other prospective jurors," and "[t]he right of examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the action."

Some members of the bench and bar have suggested that the current practice of individual voir dire in Connecticut is time consuming and unnecessary and have called for statutory amendments to allow for questioning of potential jurors in groups rather than individually. These opponents of individual voir dire argue that conducting voir dire of potential jurors in groups rather than individually is sufficient and will expedite the jury selection process. They also note that the Connecticut Constitution and statutory protection is unique.

While group voir dire may lead to shorter jury selections, the primary concern of any jury selection process should be assembling a fair and impartial jury. Individual voir dire is the best method of ferreting out jurors who would not be suitable for the case based on impartiality. These Constitutionally and statutory guarantees should not be abandoned simply to save time.

The so-called panel examination or box voir dire, which can be conducted by agreement of the parties, has been utilized on a very limited basis and has not been widely accepted by the Connecticut trial bar. This lack of acceptance is founded on the experience of the trial bar that the box method lacks the ability to bring out the actual bias and prejudice of an individual because of the presence of other panel members.

In individual voir dire, jurors can be asked personal questions that expose juror bias and prejudice that would not be volunteered in a group with other venirepersons. For example, in a medical malpractice case, if a juror had adverse experience with a physician concerning a personal medical problem, the potential juror would not be comfortable in revealing such an

experience in an open courtroom before a panel of 20 potential jurors. The individual examination is conducted in a conducive setting on a one-to-one basis which gives the juror an opportunity to factually respond to specific questions that lead to further investigation. Thus, a juror's potential conflicts or bias is readily pursued, protecting both the plaintiff and defendant.

An in-depth study was performed to determine whether venirepersons are more forthcoming while individually sequestered or while questioned en masse. The authors concluded that bias in potential jurors is best revealed when venirepersons are examined while individually sequestered. (Id. See Nietzel and Dillehay, "The effects of variations in voir dire procedures in capital murder trials," 6 Law and Human Behavior 1, March 1982).

In another study by Judge Gregory Mize, a former trial judge of the Superior Court of the District of Columbia, and co-chair of the D.C. jury project, the judge examined the extent to which individual voir dire resulted in the discovery of juror bias warranting excusal for cause, which had been missed during group voir dire. (Mize, J., "On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room," Court Review, Spring 1999). Mize found that individual voir dire of potential jurors resulted in more complete and candid responses than voir dire in the open courtroom, without any significant increase in the consumption of time. Furthermore, Mize found that individually questioning every potential juror revealed background data and beliefs that ultimately avoided the danger of mistrials caused by impaneling biased jurors.

Box voir dire is simply inadequate at detecting juror bias. Panel voir dire requires the use of primarily leading questions as opposed to open-ended questions. The substance of a person's belief is best perceived by letting the juror respond to open-ended questions, e.g., "What is your feeling about [the relevant issue]?" and follow-up questions such as "Please tell me about that." The leading questions characteristic of group voir dire instead rely on potential jurors to identify their own biases and come forward with them in front of other potential jurors. The panel procedure is inadequate because individuals are not always self-aware enough to appreciate their own bias or willing to directly admit to their own bias, particularly in front of other potential jurors.

The box voir dire potentially introduces material that can "infect" the entire panel, such as inappropriate comments or opinions by venirepersons that can affect a whole panel, and which require dismissal of the entire panel.

The en masse voir dire requires that a judge be present during the entire proceeding, whereas the individual voir dire utilized under our present system only requires judicial intervention if a specific issue arises that might affect the panel.

In individual voir dire, pre-screening of potential jurors by the court prior to examination based on questions submitted by counsel eliminates potential disqualifications and saves an enormous amount of time. The effective utilization of an individual voir dire requires the jury panel to be pre-screened, counsel to start examining the jurors promptly each morning and have sufficient venirepersons to examine for the entire day. Significant delay in picking juries has been caused in some Connecticut jurisdictions where there were not sufficient panel presented for an entire day. Instances have occurred where there were no panel members available after 11:30

a.m. This delay in total time in jury selection is directly attributable to lack of adequate number of jurors, not to counsel's length of examination.

In 2007, the Connecticut Trial Lawyers Association presented a demonstration of both individual voir dire and box voir dire. The demonstration clearly revealed the difficulty counsel has in conducting box voir dire and the lack of adequate exposure of bias.

Clearly, any potential time saved by abandoning the constitutionally and statutory protected right of individual voir dire cannot justify the likely prejudice of allowing jurors with inappropriate bias and prejudice to sit on the jury.