

Del Ciampo, Joseph

From: Albis, Michael A.
Sent: Wednesday, November 14, 2018 5:42 PM
To: Del Ciampo, Joseph
Cc: Bozzuto, Elizabeth
Subject: Proposal To Amend Section 25-5 (b) of the Practice Book regarding the purchase or sale of securities

Dear Attorney Del Ciampo,

I have now had the opportunity to review the comments submitted by the Connecticut Bar Association (CBA) regarding the proposal by the American Academy of Matrimonial Lawyers, as revised through the efforts of the Hon. Elizabeth Bozzuto and Attorney Thomas Parrino, concerning the purchase or sale of securities during the pendency of dissolution proceedings.

I believe the CBA raises a legitimate point regarding the proposed amendment’s requirement that the securities transaction be made “in the normal course of business.” As the CBA points out, the existing Section 25-5(1) already excludes sales, exchanges, or dispositions “in the usual course of business” from the transactions prohibited by the automatic orders. The inclusion of similar language in the proposed new section may create confusion, although the intent may have been to extend the concept to purchases as well, which are not included in the existing section.

But I have another concern about the language regarding the “normal” course of business. It seems clear, for example, that a party who conducts a business involving the sale of goods or property may continue to make sales in the normal course of that business without running afoul of the automatic orders. It is less clear that the term “business” applies to the management of a couple’s personal investment holdings.

The court in *O’Brien* touches upon this issue. “The regular sale of stocks might be usual for a professional stock trader but unusual for someone who invests in stock funds through a retirement account, had not previously sold any of the stocks, and had no preexisting plan to sell those stocks until retirement.” *O’Brien v. O’Brien*, 326 Conn. 81, 116 (2017). In footnote #12 of the opinion, the court observes that “the exception would appear to extend to personal transactions, but only if any such transactions are conducted in the normal course of the parties’ ordinary activities, such that both parties would fully expect the transactions to be undertaken without prior permission or approval.”

If the Rules Committee is inclined to adopt the proposal, I would respectfully suggest that it also take advantage of the opportunity to clarify the intent of the phrase “in the normal course of business” as used in the proposed new subsection. Changing it to words such as “in the normal course of the parties’ investment management” might better reflect the intent of the proponents.

I would also respectfully suggest a requirement that the party wishing to make the transaction first make a reasonable effort to seek the written consent of the other party, to the extent that time permits. The current automatic orders provide that the enumerated transactions may not occur without a prior court order or “the consent of the other party in writing.” The rationale for the proposed change is that the delay inherent in seeking a court order may cause a loss in value of an asset. However, obtaining the consent of the other party does not involve the same inherent delay. Even if an investment decision must be made within 24 hours, there is usually time for an electronic written request for consent; the transaction could proceed if the other party consented, unreasonably refused consent, or failed to reply by a stated deadline that was reasonable under the circumstances. I recognize that each additional requirement is fertile

ground for litigation, but I also believe the best way to avoid litigation about these transactions is for the parties to consent in advance rather than have one of them question the investment months later with the benefit of hindsight.

Please feel free to contact me if the Rules Committee has any questions or seeks any further comment on this matter. Thank you.

Del Ciampo, Joseph

From: Del Ciampo, Joseph
Sent: Sunday, October 28, 2018 12:56 PM
To: Albis, Michael A.; Abrams, James
Subject: Proposal To Amend Section 25-5 (b) of the Practice Book regarding the purchase or sale of securities
Attachments: Item 02-03 (101518) Prop AAML Sec 25-5(b) re purchase or sale securities.pdf

Dear Judge Albis and Judge Abrams,

At its meeting on October 15, 2018, the Rules Committee considered your request and tabled the attached proposal to amend Section 25-5 (b) of the Practice Book in order to allow you to review and consider the comments of the Connecticut Bar Association regarding the proposal. The CBA's comments were received on October 10th and are attached along with the proposal.

The next meeting of the Rules Committee is scheduled for November 19, 2018. You may send your comments directly to me on behalf of the Committee or, if you send them to Justice McDonald, please copy me. Thank you.

Joseph J. Del Ciampo
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Del Ciampo, Joseph

From: Bill Chapman <bchapman@ctbar.org>
Sent: Wednesday, October 10, 2018 4:35 PM
To: McDonald, Andrew; Del Ciampo, Joseph
Cc: Aidan Welsh; Jonathan M. Shapiro
Subject: CBA comments re. Proposed Amendment to Section 25-5 of the Practice Book
Attachments: Rules_Comments from FLS re 25-5_10-10-18.docx

Justice McDonald:

This email is regarding a **Proposed Amendment to Section 25-5 of the Practice Book** which the Rules Committee requested that the CBA Family Law section review and comment. Please see attached. If there are any questions feel free to contact me.

Bill Chapman
Government & Community Relations


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October 10, 2018

Via Email: Andrew.McDonald@connapp.jud.ct.gov

Justice Andrew J. McDonald
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

Dear Justice McDonald:

You have asked the CT Bar Association to comment on a Proposed Amendment to the Practice Book to which the CBA Family Law Section submits the following comments to the Rules Committee regarding the proposed changes to CT Practice Book Section 3-8(a) and 25-5.

Practice Book Section 3-8(a):

The CBA Family Law Section approves of the rule change proposed by Judge Adelman provided that this proposed change does not apply to limited scope representation.

✓ **Practice Book Section 25-5:**

The CBA Family Law Section provides the following comments to the proposed rule change:

- Members of the section questioned whether it is necessary to include the “*purchasing*” of securities in the proposed change. However, other members raised the issue that a day-trader and/or someone exercising stock options may need to make a “purchase”.
- Members of the section raised the issue that the additional requirements that the sale/purchase is (1) *intended to preserve the marital estate*; and (2) *is time urgent in nature* could make the rule confusing, subjective, and likely to lead to increased litigation.
- Members of the section raised the issue that the reference to the phrase “*in the normal course of business*” in the proposed change is confusing given that this language is also used in subsection (a).
- Members of the section also raised the issue that the term “*marital estate*” may be confusing, in light of Connecticut being an all-property state.

If you have any questions please contact me or the CBA Family Law section member CCd on this email (Aidan Welsh).

Sincerely,

William L. Chapman
Government & Community Relations

Cc: Joseph J. Del Ciampo
Joseph.DelCiampo@jud.ct.gov