

O'Donnell, Shanna

From: Stovall, Marcy <MStovall@PULLCOM.COM>
Sent: Friday, October 18, 2019 9:01 AM
To: Del Ciampo, Joseph
Cc: Chapman, Bill (bchapman@ctbar.org); Rinehart, Kim E.
Subject: RE: Referral from the Rules Committee [re Rule 3.8]

Dear Attorney Del Ciampo,

On behalf of the CBA Standing Committee on Professional Ethics, I write in response to the inquiry from the Rules Committee concerning a proposal from Natasha M. Pierre, from the State of Connecticut Office of the Victim Advocate (OVA), to amend Rule 3.8 of the Rules of Professional Conduct, as well as various Practice Book provisions. The OVA also indicates an intention to propose an amendment to the Code of Judicial Conduct, but no specific proposal concerning the Code of Judicial Conduct is included in the OVA's March 20, 2019, letter to the Rules Committee.

Thank you to the Rules Committee for giving the Ethics Committee the opportunity to offer comments.

The Ethics Committee views the proposed changes to the Practice Book as outside our purview and therefore provides no comment on those portions of the OVA's proposal. The Ethics Committee would also consider proposed changes to the Code of Judicial Conduct as outside our purview.

In regard to the Rules of Professional Conduct, the Ethics Committee **opposes** the proposed addition to Rule 3.8.

The OVA proposes to amend Rule 3.8 (Special Responsibilities of a Prosecutor) as follows (proposed addition underlined):

The prosecutor in a criminal trial shall:

...

(3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given a reasonable opportunity to exercise such rights.

The Ethics Committee opposes this proposed amendment. In the Committee's view, the proposed addition would have the effect of importing substantive law into the Rules of Professional Conduct; and would impose substantive obligations on prosecutors that do not currently exist. Specifically, Connecticut General Statutes Section 51-286e(b) imposes on prosecutors certain victim notification obligations, under limited circumstances. If the obligations of state prosecutors are to be expanded, it would seem the more appropriate method for doing so would be via amendment of that statutory provision, not amendment of the Rules of Professional Conduct.

In addition, the language proposed to be added to Rule 3.8 is quite vague. For example, it is unclear what would constitute “reasonable efforts” or a “reasonable opportunity.” It is also not entirely clear what rights and procedures are intended to be captured within this proposed new obligation. Thus, we believe the proposed Rule change could lead to unfounded disciplinary complaints against prosecutors in the State.

I plan to attend the October 21, 2019, meeting of the Rules Committee and will be happy to answer questions the Committee members may have.

Very truly yours,

Marcy Tench Stovall

Legislative Liaison for the Standing Committee on Professional Ethics



Standing Committee on Professional Ethics

From: Del Ciampo, Joseph [mailto:Joseph.DelCiampo@jud.ct.gov]
Sent: Monday, September 23, 2019 5:30 PM
To: Rueckert, Morgan (MRueckert@goodwin.com); trentlaliza@gmail.com; Stovall, Marcy
Subject: Referral from the Rules Committee

Dear Attorneys Rueckert, LaLima and Stovall,

Attached is a referral to you from the Rules Committee. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

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