

Minutes of the Meeting  
Rules Committee  
Tuesday, January 22, 2019

On Tuesday, January 22, 2019, the Rules Committee met in the Supreme Court courtroom from 2:04 p.m. to 3:27 p.m.

Members in attendance were:

- HON. ANDREW J. McDONALD, CHAIR
- HON. JOAN K. ALEXANDER
- HON. KEVIN G. DUBAY
- HON. DONNA NELSON HELLER
- HON. SHEILA A. OZALIS
- HON. BARRY K. STEVENS

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorney Lori A. Petruzzelli of the Judicial Branch's Legal Services Unit. Judges Barbara N. Bellis, Melanie L. Cradle, and David M. Sheridan were not present. Judge Kevin G. Dubay was present for agenda items 5-1 through 5-3 and 5-7. Judge Barry K. Stevens joined the meeting after approval of the minutes.

1. The Committee approved the minutes of the meeting held on December 18, 2018. Judge Dubay abstained.
2. The Committee considered a proposed new rule and form to include Medicare questions in standard discovery.

Attorneys Stephen Murphy and Blake Sullivan of the Connecticut Defense Lawyers Association (CDLA) were present and addressed the Committee. After discussion, the Committee tabled the matter to enable Judges Steven and Bellis to consider the comments of the CDLA and the Connecticut Trial Lawyers Association (CTLA).

3. The Committee considered a proposal by the Connecticut Chapter of the American Academy of Matrimonial Lawyers (AAML) to amend Section 25-5 (b) regarding the

purchase or sale of securities in light of *O'Brien v. O'Brien*, 326 Conn. 81, 161 A.3d 1236 (2017).

Hon. Michael A. Albis, Chief Administrative Judge, Family Division, was present and addressed the Committee. After discussion, the Committee tabled the matter to the next meeting for Counsel to draft revisions to Section 25-5 (b), consistent with the Committee's discussion, and to receive comments from Judge Albis on the draft.

4. The Committee considered a proposal by Attorney Richard P. Weinstein regarding extensions of time under General Statutes § 51-183b.

After discussion, the Committee tabled the matter to the next meeting to receive comments from the Connecticut Bar Association (CBA).

5. The Committee considered a proposal by Attorney Deborah Gottschalk to amend the Client Security Fund Fee rules to add "individuals with disabilities" to the category of individuals who qualify for a total exemption from the fee.

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

6. The Committee considered a proposal by Ms. Maureen M. Martowska to amend Sections 25-60.

After discussion, the Committee tabled the matter until the fall of 2019 in order for Judge Albis to assess the effect of Public Act No. 18-177 on the issue and to report that assessment to the Committee.

7. The Committee considered a proposal by Judge Gerard I. Adelman to amend Section 3-8 regarding hybrid appearances.

Judge Albis was present and addressed the Committee. A working group, comprised of Judges Albis, Adelman and Heller, with input from Court Operations and Superior Court clerks, will be created to study the matter and to report its findings to the Committee. After discussion, the Committee tabled the matter for three months for the working group to study the matter and formulate a report.

8. The Committee considered a proposal by the American Civil Liberties Union of Connecticut (ACLU) to amend Rule 5.4 of the Rules of Professional Conduct, regarding the sharing of fees in connection with a referral by a qualified legal assistance organization. Attorney Dan Barrett, Legal Director of the ACLU of Connecticut, and Attorney Marcy Tench Stovall, Chair, CBA Standing Committee on Professional Ethics, were present and addressed the Committee in support of the proposals.

After discussion, the Committee voted to submit to public hearing the proposed revision to Professional Rule of Conduct 5.4 (a), as set forth in Appendix A, attached to these minutes.

9. The Committee considered a proposal by Judge Alexander to amend Section 37-1 regarding waiver of the presence of the defendant, under certain circumstances, at an arraignment.

After discussion, the Committee tabled the matter until the next meeting to obtain comments from the Connecticut Criminal Defense Lawyer's Association (CCDLA), Office of the Chief State's Attorney, the Public Defender's Office, Office of Victim Services, Office of the Victim Advocate, and domestic violence victim groups.

10. The Committee considered a proposal by Judge Alexander to amend Sections 43-36 and 23-42 regarding sealing the memorandum of decision on counsel's motion to withdraw upon a finding by the court that the underlying matter is wholly frivolous.

Justice McDonald recused himself from discussion of this matter because of a case currently pending before the Supreme Court. Judge Ozalis took the chair for the purposes of leading the discussion on this agenda item.

After discussion, the Committee, with Justice McDonald having recused himself, tabled the matter to the next meeting in order to receive comments from the CCDLA, the Office of the Chief State's Attorney, and the Public Defender's Office.

11. The Committee considered a proposal by Hon. James W. Abrams, Chief Administrative Judge, Civil Matters, to amend Section 23-68 regarding interactive audiovisual devices to permit any person to appear by such device upon motion and at the discretion of the judicial authority.

After discussion, the Committee tabled the matter to the next meeting to allow Counsel to conduct research on the matter.

Respectfully submitted,

Joseph J. Del Ciampo  
Counsel to the Rules Committee

## Appendix A (012219)

### Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price; and

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) A lawyer may share legal fees from a court award or settlement with a non-profit organization that employed, retained, or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

COMMENTARY: The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8 (f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).