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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.