

Approval of the minutes of the meeting held on February 11, 2019.

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Minutes of the Meeting  
Rules Committee  
Monday, February 11, 2019

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On Monday, February 11, 2019, the Rules Committee met in the Supreme Court courtroom from 2:02 p.m. to 2:50 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR  
HON. JOAN K. ALEXANDER  
HON. BARBARA N. BELLIS  
HON. MELANIE L. CRADLE  
HON. KEVIN G. DUBAY  
HON. DONNA NELSON HELLER  
HON. SHEILA A. OZALIS  
HON. DAVID M. SHERIDAN  
HON. BARRY K. STEVENS

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Shanna O'Donnell of the Judicial Branch's Legal Services Unit.

1. The Committee approved the minutes of the meeting held on January 22, 2019, as amended. Judges Bellis and Cradle abstained.
2. The Committee considered a proposed new rule and form to include Medicare questions in standard discovery.

After discussion, the Committee tabled the matter to the next meeting to enable Judge Stevens to consider the comments received by the Committee.

3. The Committee considered a proposal by the CT 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 (2017).

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

proposed language received from Judge Albis, and to allow Judge Albis to solicit additional comments from the family court judges.

4. The Committee considered a proposal by Attorney Richard P. Weinstein regarding extensions of time under Gen. Stat. Section 51-183b.

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

5. The Committee considered a proposal by Judge Alexander to amend Section 37-1 regarding waiver of the presence of the defendant at arraignment.

After discussion, the Committee tabled the matter to the next meeting. The Committee directed Counsel to work on an amendment to submit for a final vote by the Committee at the next meeting and to share Counsel's research on Judge Alexander's proposal with the Committee's prior to the next meeting.

6. The Committee considered a proposal by Judge Alexander to amend Sections 23-42 and 43-36 regarding sealing of memoranda of decisions on a motion to withdraw, filed by appointed counsel where that counsel determines that an appeal is frivolous.

After discussion, the Committee voted unanimously to adopt for public hearing the revised proposal from Judge Alexander, attached to these minutes as Appendix A.

7. The Committee considered a proposal by Judge Abrams and Court Operations to amend Section 23-68 regarding interactive audio visual 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. The Committee directed Counsel to provide Judge Abrams and Court Operations the research presented to the Committee on this proposal, and to forward the matter to Judge Albis for review and comment.

8. The Committee considered a proposal by the Connecticut Sentencing Commission to amend Section 38-8 regarding ten percent cash bail.

After discussion, the Committee tabled the matter to the next meeting to enable Judge Alexander to inform the Committee of the status of related proposed legislation.

9. The Committee considered a petition to sit for the Connecticut Bar Examination submitted by Eugene Willis, Jr.

Lisa Valko, Assistant Administrative Director of the Connecticut Bar Examining Committee (CBEC) was present and addressed the Committee regarding the petition.

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

10. The Committee considered a proposal to amend 7.1-7.5 of the Connecticut Rules of Professional Conduct to conform those rules with the ABA's August 2018 amendments to its Model Rules of Professional conduct concerning lawyer advertising.

Marcy Tench Stovall, Chair of the CBA Committee on Professional Ethics, was present and addressed the Committee regarding the proposal.

After discussion, the Committee tabled the matter to the next meeting to receive feedback from the Statewide Grievance Committee and the Office of Chief Disciplinary Counsel, to be received no later than March 11, 2019. The Committee directed Counsel to send materials related to this proposal to the Statewide Grievance Committee, to the

Office of Chief Disciplinary Counsel, and to Statewide Bar Counsel. The Committee scheduled a tentative meeting on March 27, 2019 at 2:00 p.m., to be held only if there is additional action required to submit this proposal for public hearing in May 2019.

Respectfully submitted,

Joseph J. Del Ciampo  
Counsel to the Rules Committee

## Appendix A (021119)

### **Sec. 23-42. –Judicial Action on Motion for Permission To Withdraw Appearance**

(a) The presiding judge shall fully examine the memoranda of law filed by counsel and the petitioner, together with any relevant portions of the records of prior trial court, appellate and postconviction proceedings. If, after such examination, the presiding judge concludes that the submissions establish that the petitioner's case is wholly frivolous, such judge shall grant counsel's motion to withdraw and permit the petitioner to proceed as a self-represented party. A memorandum shall be filed under seal setting forth the basis for granting any motion under Section 23-41.

(b) If, after the examination required in subsection (a), the presiding judge does not conclude that the petitioner's case is wholly frivolous, such judge may deny the motion to withdraw, may appoint substitute counsel for further proceedings under Section 23-41, or may allow the withdrawal on other grounds and appoint new counsel to represent the petitioner.

COMMENTARY: The change to this section includes the explicit requirement that the presiding judge's memorandum of decision on motions for leave to withdraw, filed by appointed counsel pursuant to this section, is to be filed under seal. This requirement brings the rule into conformity with the Rules of Appellate Procedure, wherein the trial court's decision on a motion for leave to withdraw, filed by appointed counsel pursuant to Section 62-9 (d) (3), is sealed, in cases in which an appeal has already been filed.

### **Sec. 43-36. –Finding That Appeal Is Frivolous**

The presiding judge shall fully examine memorandum of law of counsel and the defendant, together with any relevant portions of the record and transcript of the trial. If,

after such examination, the presiding judge concludes that the defendant's appeal is wholly frivolous, such judge may grant counsel's motion to withdraw and permit the defendant to proceed as a self-represented party. The presiding judge shall file a memorandum under seal setting forth the basis for the finding that the appeal is wholly frivolous.

COMMENTARY: The change to this section includes the explicit requirement that the presiding judge's memorandum of decision on motions for leave to withdraw, filed by appointed counsel pursuant to this section, is to be filed under seal. This requirement brings the rule into conformity with the Rules of Appellate Procedure, wherein the trial court's decision on a motion for leave to withdraw, filed by appointed counsel pursuant to Section 62-9 (d) (3), is sealed, in cases in which an appeal has already been filed.