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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). Received letter from Attorney Parrino on 2-6-18. On 2-26-18, RC referred matter to Judge Bozzuto. On 3-20-18, I received letter from AAML with explanation of proposal. On 2-26-18, RC referred to Judge Bozzuto, CAJ Family. On 3-26-18, RC tabled matter to its May meeting. On 5-14-18, RC referred matter to CBA (both original proposal and alternate language worked out by Judge Bozzuto and Attorney Parrino). To be placed on agenda for September, 2018. (Submitted to CBA on 9-9-18.) On 9-17-18, counsel made report to RC and RC tabled the matter to 10-15-18 pending review by Judge Albis and Judge Abrams and referred the matter to the CBA for comment. On 10-4-18, I received comments from Judge Albis indicating that he and Judge Abrams would like to review the CBA's comments before responding to the RC. On 10-10-18, comments received from CBA. On 10-15-18, RC tabled matter to 11-19-18 to allow Judge Albis and Judge Abrams to review CBA's comments. Received Judge Albis's comments on 11-14-18. On 12-18-18, RC tabled matter to 1-22-19 and asked Counsel to invite Judge Albis to address the RC at 1-22-19 meeting. On 1-22-19, RC tabled matter to February meeting for Counsel to draft revisions to Sec 25-5(b), consistent with the Committee's discussions and to allow Judge Albis to comment on draft. On 2-11-19, RC tabled matter to March meeting to allow Committee to review comments from Judge Albis and from CBA. **Revised proposal submitted by Judge Albis.**

Del Ciampo, Joseph

From: Albis, Michael A.
Sent: Wednesday, March 13, 2019 9:31 AM
To: Del Ciampo, Joseph
Cc: Munro, Lynda B.; Bozzuto, Elizabeth; Carroll, Patrick
Subject: Proposed amendment to Practice Book Section 25-5
Attachments: Sec 25-5 JJD final draft proposal MA-LP 2-26-19.docx

Dear Attorney Del Ciampo,

Attached to this email is the final version of the draft proposed rule and commentary regarding the above which is the product of my collaboration with Hon. Lynda Munro (Ret.) acting as a member of the Connecticut Bar Association (CBA). It is the same as the last draft that I forwarded to you on February 26, 2019. Judge Munro reports that based on her review of the draft with a group of CBA members and with Attorney Thomas Parrino of the American Academy of Matrimonial Lawyers, which made the original proposal for a rule on this subject, she concurs that it is appropriate to present the attached version to the Rules Committee.

Before the draft was finalized, I discussed the rule change proposal at a meeting of approximately fifteen family judges on February 21, 2019. Various opinions and suggestions were offered, but I believe a fair summary of the discussion is that most of the judges think such a rule would be appropriate and useful so long as there is a clear and limited definition of the transactions considered to be in the "normal course" and therefore covered by the rule.

Having a clearer definition of the covered transactions reduces the need, in my view, to require an attempt at obtaining advance consent from the other party, a provision I had suggested when I appeared before the Rules Committee. For that reason, and taking into consideration the bar's concerns about the requirement of seeking consent, the proposal has been revised to eliminate the consent provision but also to define more narrowly and precisely the transactions to which the rule would apply. Judge Munro and I developed language for the proposed rule, and for proposed commentary explaining it, which we believe clarifies the kinds of transactions which would be permitted under the proposed rule.

On February 26, 2019, I forwarded a copy of the attached draft to all family court presiding judges, inviting further comment from them and the other family judges in their courts. As of this writing I have received no further comments.

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

Sec. 25-5. Automatic Orders upon Service of Complaint or Application

The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(a) In all cases involving a child or children, whether or not the parties are married or in a civil union:

(1) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority.

(2) A party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such move, of an address where the relocated party can receive communication. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(3) If the parents of minor children live apart during this proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(4) Neither party shall cause the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) The parties shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(6) These orders do not change or replace any existing court orders, including criminal protective and civil restraining orders.

(b) In all cases involving a marriage or civil union, whether or not there are children:

(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(i) Nothing in subsection (b)(1) shall be construed to preclude a party from purchasing or selling securities, in the normal course of the parties' investment decisions, whether held in an individual or jointly held investment account, provided that the purchase or sale is: (1) intended to preserve the estate of the parties, (2) transacted either on an open and public market or at an arm's length on a private market, and (3) completed in such manner that the purchased securities or sales proceeds resulting from a sale remain, subject to the provisions and exceptions recited in subsection (b)(1), in the account in which the securities or cash were maintained immediately prior to the transaction. Nothing contained in this subsection shall be construed to apply to a party's

purchase or sale on a private market of an interest in an entity that conducts a business in which the party is or intends to become an active participant.

(ii) Notwithstanding the requirement of subsection (b)(1)(i) that the transaction be made in the normal course of the parties' investment decisions, if historically the parties' normal course of investment decisions involves their discussion of proposed transactions with each other before they are made, but a sale proposed by one party is a matter of such urgency as to timing that s/he has a good faith belief that the delay occasioned by such discussion would result in loss to the estate of the parties, then the party proposing the sale may proceed with the transaction without such prior discussion, but shall notify the other party of the transaction immediately upon its execution; provided, that a sale permitted by this subsection (b)(1)(ii) shall be subject to all other conditions and provisions of subsection (b)(1)(i), so long as the transaction is intended to preserve the estate of the parties

(2) Neither party shall conceal any property.

(3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority.

(5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further

encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(6) Neither party shall cause the other party to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(7) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

(8) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(c) In all cases:

(1) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator within thirty days of the return day. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, including, if applicable, proposed orders in accordance with the uniform child support guidelines.

(2) The case management date for this case is . The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

(d) The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of

marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in bold letters:

Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable time.

The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

Commentary. New subsection b(1)(i) is intended to allow one party to make certain investment transactions during the pendency of a dissolution action in a manner which is consistent with the parties' prior practice, without necessarily obtaining the prior consent of the other party or a court order. A transaction by one party without the consent of the other should be considered "in the normal course of the parties' investment decisions" only if the party making the transaction has historically and consistently been the sole decision-maker with regard to transactions of similar type and magnitude. If a transaction is in the normal course of the parties' investment decisions, the other requirements of new subsection b(1)(i) must also be met in order for the transaction to be permitted. In the provisions of b(1)(i), we are not sanctioning a transaction that permits the sale of a business under this rule, whether the party is an active participant, or not.

New subsection b(1)(ii) is intended to allow, in the limited emergency circumstances described, a unilateral sale which meets all of the requirements of

subsection b(1)(i) except that it is not of a type historically made by the sole decision of the party completing the sale.