2-1. Approval of the minutes of the meeting held on September 17, 2018.

Minutes of the Meeting
Rules Committee
September 17, 2018

On Monday, September 17, 2018, the Rules Committee met in the Supreme Court courtroom from 2:00 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. DAVID M. SHERIDAN
HON. BARRY K. STEVENS

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorneys Lori A. Petruzzelli and Adam P. Mauriello of the Judicial Branch's Legal Services Unit. Judge Sheila A. Ozalis was not present.

1. The Committee approved the minutes of the meeting held on May 14, 2018. Justice McDonald and Judge Bellis abstained.

2. The Committee considered the proposed Rules Committee Meeting Schedule for 2018/2019. Judge Stevens was not present for this vote. After discussion the Committee unanimously approved the following schedule:

Monday, September 17, 2018	-	2:00 p.m.
Monday, October 15, 2018	-	2:00 p.m.
Monday, November 19, 2018	-	2:00 p.m.
Monday, December 17, 2018	-	2:00 p.m.
Monday, January 14, 2019	-	2:00 p.m.
Monday, February 11, 2019	-	2:00 p.m.

Monday, March 18, 2019	-	2:00 p.m.
Monday, May 13, 2019	-	10:00 a.m. Public Hearing and Rules Committee Meeting

Thereafter, with Judge Stevens in attendance, the Committee considered a proposal to revise the Rules Committee Meeting Schedule. After discussion, the Committee unanimously approved the following amendment to the schedule: In lieu of the meeting previously scheduled for Monday, December 17, 2018, the Rules Committee will meet on Tuesday, December 18, 2018 at 2:00 p.m.

3. The Committee considered comments by Judge Bernadette Conway, Chief Administrative Judge, Juvenile Matters, in response to a proposal by Attorney Michael H. Agranoff to amend Section 34a-1 to require fact pleading in juvenile matters cases. Attorney Agranoff was present and addressed the Committee.

After discussion, the Committee tabled the matter in order to obtain comments from the Department of Children and Families and to allow Attorney Agranoff to submit a reply to Judge Conway's comments.

4. The Committee considered a proposal by the Rules Committee of the Connecticut Chapter of the American Academy of Matrimonial Lawyers to amend Section 25-5 (b) regarding the purchase or sale of securities.

After discussion, the Committee tabled the matter to its next meeting in order to obtain comments from the Connecticut Bar Association and from Judge Michael A. Albis, Chief Administrative Judge, Family Matters.

5. The Committee considered a proposal by Attorney Paul Ruszczyk to revise the procedures applicable to the Servicemembers Civil Relief Act.

After discussion, the Committee tabled the matter in order to obtain comments from Judge James W. Abrams, Chief Administrative Judge, Civil Matters.

6. The Committee considered comments by Judge Joan K. Alexander, Chief Administrative Judge, Criminal Matters, on a proposal by Judge John M. Newson concerning the withdrawal of an appearance in criminal matters under Section 3-9.

After discussion, the Committee tabled the matter in order to obtain comments from the Connecticut Criminal Defense Lawyers Association (CCDLA).

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

After discussion, the Committee tabled the matter to refer it to Judges Albis and Abrams, and to obtain comments from the Connecticut Trial Lawyers Association, the Connecticut Chapter of the American Academy of Matrimonial Lawyers, and the family law section of the Connecticut Bar Association. The Committee requested Counsel to report on the status of the referral to the Connecticut Trial Lawyers Association, the Connecticut Chapter of the American Academy of Matrimonial Lawyers, and the family law section of the Connecticut Bar Association at the next meeting and to direct such groups to submit comments by the third week in October for consideration at the November 19, 2018 Committee meeting.

8. The Committee considered a proposal by Ms. Maureen M. Martowska to amend Section 25-60 of the Practice Book.

After discussion, the Committee tabled the matter to its next meeting in order to obtain comments from Judge Albis. Justice McDonald recused himself from the decision to table the matter.

9. The Committee considered a recommendation by the Legal Specialization Screening Committee (LSSC) to amend Rule 7.4C of the Rules of Professional Conduct to remove the requirement that "an original and six copies of" an application be filed with the Committee.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Rule 7.4C, as set forth in Appendix A, attached to these minutes.

10. The Committee considered a proposal by Attorney Lori Petruzzelli to amend Sections 16-4, 16-8, 16-16, 42-5, 42-10, 42-14, 42-21 and 42-22 to substitute the terms "deaf or hearing impaired juror" with "a juror who is deaf or hearing impaired," to be consistent with P.A. 17-202.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 16-4, 16-8, 16-16, 42-5, 42-10, 42-14, 42-21 and 42-22, as set forth in Appendix B, attached to these minutes.

11. The Committee considered a proposal by Attorney Lori Petruzzelli to amend Rules of Professional Conduct, Rules 1.3, 1.17 and 5.4 and/or the commentaries thereto, and Section 8-2, to substitute certain terms with "person first language," consistent with Public Act 17-202.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Rules of Professional Conduct Rules 1.3, 1.17 and 5.4 and/or the commentaries thereto, and Section 8-2, as set forth in Appendix C, attached to these minutes.

12. The Committee considered a proposal by Attorney Richard P. Weinstein regarding extensions of time under General Statutes § 51-183b concerning the time period within which judgment in a civil action shall be rendered.

After discussion, the Committee referred the matter to Judges Abrams and Albis for further study. The Committee also directed Counsel to ascertain whether the matter should be referred to other Chief Administrative Judges for further study.

13. The Committee considered a proposal by Stephen Morelli, Chairman of the Workers' Compensation Commission, to amend Section 2-27A (a) (1) to exempt Workers' Compensation Commissioners from the requirements of MCLE.

After discussion, the Committee tabled the matter in order for the Workers' Compensation Commission to provide the Rules Committee with further information regarding how the Commission's education and training programs or other such educational programs undertaken by each workers' compensation commissioner are an adequate substitute for MCLE.

14. The Committee considered a proposal by Judge Conway to amend various sections of the Practice Book to conform to the provisions of Public Act 18-31, *An Act Concerning the Recommendations of the Juvenile Justice Policy and Oversight Committee and Concerning the Transfer of Juvenile Services from the Department of Children and Families to the Court Support Services Division of the Judicial Branch.*

After consideration, the Committee tabled the matter to the next meeting to further study the submission.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (091718)

Rule 7.4C. Application by Board or Entity to Certify Lawyers as Specialists

Any board or entity seeking the approval of the Rules Committee of the superior court for authority to certify lawyers practicing in this state as being specialists in a certain field or fields of law as set forth in Rule 7.4A (e), shall file [an original and six copies of] its application with the Legal Specialization Screening Committee pursuant to Rule 7.48 on form JD-ES-63. The application materials shall be filed in a format prescribed by the Legal Specialization Screening Committee, which may require them to be filed electronically.

COMMENTARY: The amendment to this rule removes an inconsistency between the language of the first and second sentences of this rule, and clarifies that the Legal Specialization Screening Committee will prescribe the format of the application submission, rather than to have the rule require the application to be filed in multiple hard copies. This amendment is also consistent with the Regulations of the Legal Specialization Screening Committee, which were updated in January, 2016 to require that applicants file one hard copy and one electronic copy of their applications.

Appendix B (091718)

Sec. 16-4. Disqualification of Jurors and Selection of Panel

(a) A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair this person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or being hard of hearing **[**impairment**]**.

(b) The clerks shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct.

(c) The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required of the panel, designate by lot those who shall compose the panel.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Sec. 16-8. Oath and Admonitions to Trial Jurors

(a) The judicial authority shall cause the jurors selected for the trial to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall admonish the jurors not to read, listen to or view news reports of the case or to discuss with each other or with any person not a member of the jury the cause under consideration, except that after the case has been submitted to the jury for deliberation the jurors shall discuss it among themselves in the jury room.

(b) In the presence of the jury, the judicial authority shall instruct any interpreter for a **[**deaf or hearing impaired**]** juror who is deaf or hard of hearing to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or

visual, with any member of the jury except for the literal translation of jurors' remarks made during deliberations.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Sec. 16-16. Jury Deliberations

After the case has been submitted to the jury, the jurors shall be in the custody of an officer who shall permit no person to be present with them or to speak to them when assembled for deliberations except a qualified interpreter assisting a **[**deaf or hearing impaired**]** juror who is deaf or hard of hearing. The jurors shall be kept together for deliberations as the judicial authority reasonably directs. If the judicial authority permits the jury to recess its deliberations, the judicial authority shall admonish the jurors not to discuss the case until they reconvene in the jury room. The judicial authority shall direct the jurors to select one of their members to preside over the deliberations and to deliver any verdict agreed upon, and the judicial authority shall admonish the jurors that until they are discharged in the case they may communicate upon subjects connected with the trial only while they are convened in the jury room. If written forms of verdict are submitted to the jury, the member of the jury selected to deliver the verdict shall sign any verdict agreed upon.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Sec. 42-5. Disqualification of Jurors and Selection of Panel

A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair that person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or being hard of hearing

[impairment]. The clerk shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct. The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required for the panel, designate by lot those who shall compose the panel.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Sec. 42-10. Selection of Jury; [Deaf or Hearing Impaired] Jurors Who Are Deaf or Hard of Hearing

At the request of a [deaf or hearing impaired] juror who is deaf or hard of hearing or at the request of the judicial authority, an interpreter or interpreters provided by the [commission on the deaf and hearing impaired] Judicial Branch and qualified under General Statutes § 46a-33a shall assist such juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts and recognize that the Commission on the Deaf and Hearing Imparied was dissolved and no longer provides interpreters to the Branch for people who are deaf or hard of hearing.

Sec. 42-14. Oath and Admonitions to Trial Jurors

(a) The judicial authority shall cause the jurors selected for the trial to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall admonish the jurors not to read, listen to or view news reports of the case or to discuss with each other or with any person not a member of the jury the cause under consideration, except

that after the case has been submitted to the jury for deliberation the jurors shall discuss it among themselves in the jury room.

(b) In the presence of the jury, the judicial authority shall instruct any interpreter for a [deaf or hearing impaired] juror who is deaf or hard of hearing to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or visual, with any member of the jury except for the literal translation of jurors' remarks made during deliberations.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Sec. 42-21. Jury Deliberations

After the case has been submitted to the jury, the jurors shall be in the custody of an officer who shall permit no person to be present with them or to speak to them when assembled for deliberations except a qualified interpreter assisting a [deaf or hearing impaired] juror who is deaf or hard of hearing. The jurors shall be kept together for deliberations as the judicial authority reasonably directs. If the judicial authority permits the jury to recess its deliberations, the judicial authority shall admonish the jurors not to discuss the case until they reconvene in the jury room. The judicial authority shall direct the jurors to select one of their members to preside over the deliberations and to deliver any verdict agreed upon, and the judicial authority shall admonish the jurors that until they are discharged in the case they may communicate upon subjects connected with the trial only while they are convened in the jury room. If written forms of verdict are submitted to the jury pursuant to Section 42-23, the member of the jury selected to deliver the verdict shall sign any verdict agreed upon.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts

Sec. 42-22. Sequestration of Jury

If a case involves the penalty of capital punishment or imprisonment for life or is of such notoriety or its issues are of such a nature that, absent sequestration, highly prejudicial matters are likely to come to the jury's attention, the judicial authority, upon its own motion or the motion of either party, may order that the jurors remain together in the custody of an officer during the trial and until they are discharged from further consideration of the case. Such order shall include an interpreter or interpreters assisting a **[**deaf or hearing impaired**]** juror who is deaf or hard of hearing. A motion to sequester may be made at any time. The jury shall not be informed which party requested sequestration.

COMMENTARY: The changes to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts

APPENDIX C (091718)

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENTARY: A lawyer must pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's work load must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has

served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4 (a) (2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased lawyer or **[**disabled**]** a lawyer with disabilities).

AMENDMENT NOTE: The revisions to the commentary conform it to the provisions of No. 17-202 of the 2017 Public Acts.

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in Connecticut;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

AMENDMENT NOTE: The revisions to the commentary conform it to the provisions of No. 17-202 of the 2017 Public Acts.

COMMENTARY: The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller. The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of

the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation.

The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17 (a).

This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5 (e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice. Negotiations between a seller and a prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6 (c) (5). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within ninety days. If nothing is heard from the client within that time, consent to the sale is presumed.

A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation.

Preservation of client confidences requires that the petition for a court order be considered in camera. This procedure is contemplated as an in camera review of privileged materials.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements between Client and Purchaser. The sale may not be financed by increases in fees charged exclusively to the clients of the purchased practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0 for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule. This Rule applies to the sale of a law practice by representatives of a **[**deceased, disabled or disappeared**]** lawyer <u>with disabilities or a lawyer who is deceased or has disappeared</u>. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of

a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

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 <u>with disabilities or a lawyer who is deceased or has disappeared</u> 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.

(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.

AMENDMENT NOTE: The revisions to this rule conform it to the provisions of No. 17-202 of the 2017 Public Acts.

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).

Sec. 8-2. Waiver of Court Fees and Costs

(a) Prior to the commencement of an action, or at any time during its pendency, a party may file with the clerk of the court in which the action is pending, or in which the party intends to return a writ, summons and complaint, an application for waiver of fees payable to the court and

for payment by the state of the costs of service of process. The application shall set forth the facts which are the basis of the claim for waiver and for payment by the state of any costs of service of process; a statement of the applicant's current income, expenses, assets and liabilities; pertinent records of employment, gross earnings, gross wages and all other income; and the specific fees and costs of service of process sought to be waived or paid by the state and the amount of each. The application and any representations shall be supported by an affidavit of the applicant to the truth of the facts recited.

(b) The clerk with whom such an application is filed shall refer it to the court of which he or she is clerk. If the court finds that a party is indigent and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

(c) There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance or (2) such person's income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five percent or less of the federal poverty level. For purposes of this subsection, "public assistance" includes, but is not limited to, state administered general assistance, temporary family assistance, aid to [the aged, blind and disabled] persons who are elderly, persons who are blind or visually impaired or persons with disabilities, food stamps and supplemental security income.

(d) Nothing in this section shall preclude the court from (1) finding that a person whose income does not meet the criteria of subsection (c) of this section is indigent and unable to pay a fee or fees or the cost of service of process, or (2) denying an application for the waiver of the payment of a fee or fees or the cost of service of process when the court finds that (A) the applicant has repeatedly filed actions with respect to the same or similar matters, (B) such filings establish an extended pattern of frivolous filings that have been without merit, (C) the

application sought is in connection with an action before the court that is consistent with the applicant's previous pattern of frivolous filings, and (D) the granting of such application would constitute a flagrant misuse of Judicial Branch resources.

If an application for the waiver of the payment of a fee or fees or the cost of service of process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application. Nothing in this section shall affect the inherent authority of the court to manage its docket.

COMMENTARY: The revisions to this section conform it to the provisions of No. 17-202 of the 2017 Public Acts.