

Minutes of the Meeting
Rules Committee
Monday, September 16, 2019

On Monday, September 16, 2019, the Rules Committee met in the Supreme Court courtroom from 2:03 p.m. to 2:50 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. BARBARA N. BELLIS
HON. SUSAN QUINN COBB
HON. MELANIE L. CRADLE
HON. DONNA NELSON HELLER
HON. ANTHONY D. TRUGLIA JR.

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorney Shanna O'Donnell of the Judicial Branch's Legal Services Unit. Judges Holly Aberly-Wetstone, Joan K. Alexander, and Barry K. Stevens were not present. Judge Anthony D. Truglia joined the meeting during the discussion of the second agenda item.

1. The Committee approved the minutes of the meeting held on May 13, 2019.
2. The Committee considered a proposal from Senator Looney, Senator Winfield, and Representative Stafstrom concerning pre-trial discovery procedure in criminal matters.

Senator Martin M. Looney was present and addressed the Rules Committee regarding this proposal.

After discussion, the Committee requested that Senator Looney provide the Rules Committee with copies of relevant materials related to this proposal and to the public hearing on 2019 Senate Bill 653. The Committee referred this proposal to the

Office of the Chief State's Attorney; the Office of the Chief Public Defender; the Connecticut Criminal Defense Lawyers Association; the Criminal Justice Section of the Connecticut Bar Association; Judge Alexander, Chief Administrative Judge - Criminal; the Office of Victim Services; and the Office of the Victim Advocate to request their comments. The Chair instructed that these entities should be allowed two or three weeks to review the proposal and provide their comments. The Chair also directed Counsel to provide Judge Alexander with Senator Looney's contact information.

3. The Committee considered a proposal from Natasha M. Pierre, State Victim Advocate, to amend various Rules of Professional Conduct and various Practice Book rules to ensure the proper treatment and protection of crime victims.

After discussion, the Committee referred this proposal to the Office of the Chief State's Attorney; the Office of the Chief Public Defender; the Connecticut Criminal Defense Lawyers Association; the Criminal Justice Section of the Connecticut Bar Association; Judge Alexander, Chief Administrative Judge - Criminal; Judge Conway, Chief Administrative Judge – Juvenile; Attorney Marcy T. Stovall; Michael P. Bowler, Statewide Bar Counsel; and Brian B. Staines, Chief Disciplinary Counsel, to request their comments. The Chair instructed that these entities should be allowed three weeks to review the proposal and provide their comments. The Chair also directed Counsel to contact Natasha M. Pierre, State Victim Advocate, to inquire about any proposed revisions to the Code of Judicial Conduct, as mentioned in her proposal.

4. The Committee considered proposals from Greater Hartford Legal Aid (GHLA), New Haven Legal Assistance Association (NHLAA), and Connecticut Legal Services (CLS) and from Attorney Marcy T. Stovall to amend the commentary to Rule

7.3 of the Rules of Professional Conduct regarding “live person-to-person contact of individuals who may be especially vulnerable to coercion or duress”.

Attorney Giovanna Shay of Greater Hartford Legal Aid and Attorney Marcy T. Stovall were present and addressed the Rules Committee regarding this proposal.

After discussion, the Committee voted to submit to public hearing the amendments to the Commentary to Rule 7.3 of the Rules of Professional Conduct, subject to certain technical revisions and to replacing the term “the disabled” with “a person with a disability”, as set forth in Appendix A to these minutes.

5. The Committee considered a proposal from Kathleen Harrington, Deputy Director, Attorney Services, to amend Section 2-9 of the Practice Book concerning the conditions of admission of applicants seeking admission to the bar.

Judge Anne C. Dranginis, Chair of the Bar Examining Committee, and Kathleen B. Harrington, Deputy Directory, Attorney Services, were present and addressed the Rules Committee regarding this proposal.

After discussion, the Committee voted to submit to public hearing the amendment to Section 2-9 of the Practice Book, as set forth in Appendix B to these minutes.

6. The Committee considered a proposal from Judge Prescott to amend Section 44-30 (b) and a related proposal by Counsel to amend Sections 23-55, 23-63, 44-27 and 44-30 of the Practice Book to replace the phrases “criminal rules of evidence” and “civil rules of evidence” with the phrase “Connecticut Code of Evidence.”

After discussion, the Committee referred this proposal to the Chief Administrative Judges and the Code of Evidence Oversight Committee of the Supreme Court to request their comments.

7. The Committee considered a proposal from Judge Keller to amend Sections 16-4 (a) and 42-5 of the Practice Book to prohibit the disqualification of jurors who are deaf or hard of hearing if that person's disability can be reasonably accommodated such that his or her capacity to serve as a juror will not be compromised.

After discussion, the Committee referred this proposal to the Judicial Branch Superior Court Operations Division ADA Coordinator to request her comments. Counsel advised that Legal Services would also review this proposal.

8. The Committee considered a proposal from Judge John Moore concerning the Commentary to Rule 7.1 of the Rules of Professional Conduct regarding an attorney making "misleading truthful statements."

After discussion, the Committee referred this proposal to Attorney Marcy T. Stovall as Chair of the Connecticut Bar Association Committee on Professional Ethics and requested her comments. The Chair instructed Attorney Stovall to contact Judge Moore regarding this proposal.

9. The Committee considered a proposal from Attorney Gary I. Cohen to amend Section 11-19 of the Practice Book concerning the time limit for deciding short calendar matters.

After discussion, the Committee referred this proposal to Judge Albis, Chief Administrative Judge, Family; the Family Law Section of the Connecticut Bar Association; the American Academy of Matrimonial Lawyers; Greater Hartford Legal Aid

(GHLA); New Haven Legal Assistance Association (NHLAA); and Connecticut Legal Services (CLS).

10. The Committee discussed making a recommendation for an individual to be appointed to the Legal Specialization Screening Committee (LSSC).

The Chair instructed Counsel to compile a list of current members of the LSSC, along with their biographical information or curricula vitae and a list of their areas of legal concentration or specialization, in order to allow the Committee a better understanding of the current composition of the LSSC.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (091619)

Rule 7.3. Solicitation of Clients

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain unless the contact is:

(1) With a lawyer or a person who has a family, close personal or prior business or professional relationship with the lawyer;

(2) Under the auspices of a public or charitable legal services organization;

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization;

(4) With a person who routinely uses for business purposes the type of legal services offered by the lawyer or with a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by subsection (b) if:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer;

(2) The target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;

(3) The solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence; or

(4) The solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the solicitation is addressed or a relative of that person, unless the accident or disaster occurred more than forty days prior to the mailing of the solicitation, or the recipient is a person or entity within the scope of subsection (b) of this Rule.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Every written solicitation, as well as any solicitation by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from anyone known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written solicitation and the lower left corner of the outside envelope or container, if any, and at the beginning and ending of any solicitation by audio or video recording or other electronic means. If the written solicitation is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. Communications solicited by clients or any other person, or

if the recipient is a person or entity within the scope of subsection (b) of this Rule, need not contain such marks. No reference shall be made in the solicitation to the solicitation having any kind of approval from the Connecticut bar. Such written solicitations shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.

(f) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENTARY: Subsection (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

"Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct

interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by e-mail or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person's judgment.

The contents of live person-to-person contact can be disputed and may not be subject to a third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business,

employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Subsection (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3 (c) (3), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3 (c) (2) is prohibited. Live person-to-person [contact] solicitation of individuals who may be especially vulnerable to coercion or duress [is ordinarily not appropriate], for example, the elderly, those whose first language is not English, or [the disabled] persons with a disability, is ordinarily not appropriate when a significant motive for the solicitation is pecuniary gain.

This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients

of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

Subsection (f) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, subsection (f) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably ensure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (c).

AMENDMENT NOTE: The revisions to the Commentary to this rule are made to clarify that live, person-to-person solicitation of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate when a significant motive for the solicitation is pecuniary gain.

Appendix B (091619)

Sec. 2-9. Certification of Applicants Recommended for Admission; Conditions of Admission

(a) The committee shall certify to the clerk of the Superior Court for the county in which the applicant seeks admission and to the clerk of the Superior Court in New Haven the name of any such applicant recommended by it for admission to the bar and shall notify the applicant of its decision.

(b) The committee may, in light of the [physical or mental disability of a candidate] health diagnosis, treatment, or drug or alcohol dependence of an applicant that has caused conduct or behavior that would otherwise have rendered the [candidate] applicant currently unfit to practice law, determine that it will only recommend an applicant for admission to the bar conditional upon the applicant's compliance with conditions prescribed by the committee relevant to the [disability and the] health diagnosis, treatment, or drug or alcohol dependence or fitness of the applicant. Such determination shall be made after a hearing on the record is conducted by the committee or a panel thereof consisting of at least three members appointed by the chair, unless such hearing is waived by the applicant. Such conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued treatment, abstinence, or other support. The conditional admission period shall not exceed five years, unless the conditionally admitted attorney fails to comply with the conditions of admission, and the bar examining committee or the court determines, in accordance with the procedures set forth in Section 2-11, that a further period of conditional admission is necessary. The committee shall notify the applicant by mail of its decision and that the applicant must sign an agreement

with the bar examining committee under oath affirming acceptance of such conditions and that the applicant will comply with them. Upon receipt of this agreement from the applicant, duly executed, the committee shall recommend the applicant for admission to the bar as provided herein. The committee shall forward a copy of the agreement to the statewide bar counsel, who shall be considered a party for purposes of defending an appeal under Section 2-11A.

COMMENTARY: The changes to this section replace language referencing the disability of an applicant with language that is more neutral and inclusive.