Practice Book Revisions

Superior Court

Rules of Professional Conduct

Forms

Code of Evidence Revisions

July 5, 2011

NOTICE

SUPERIOR COURT

Notice is hereby given that on June 20, 2011, the judges of the Superior Court adopted the revisions to the Practice Book and to the Code of Evidence which are contained herein.

These revisions become effective on January 1, 2012, except that the amendments to Sections 25-31, 25-34, and 25-60 and new Sections 25-2A, 25-32A, 25-32B, and 25-60A become effective on August 15, 2011, and that the amendment to Section 2-5A becomes effective on September 1, 2011.

Attest:

Carl E. Testo
Director of Legal Services

INTRODUCTION

Contained herein are amendments to the Superior Court rules and forms, to the Rules of Professional Conduct, and to the Code of Evidence. These amendments are indicated by brackets for deletions and underlines for added language. The designation "NEW" is printed with the title of each new rule. This material should be used as a supplement to the Practice

Book and the Code of Evidence until the next editions of these publications become available.

With regard to the Practice Book revisions herein, the Amendment Notes to the Rules of Professional Conduct and the Commentaries to the Superior Court rules and Form 205 are for informational purposes only.

Rules Committee of the
Superior Court

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.15. Safekeeping Property

(a) As used in this Rule, the terms below shall have the following meanings:

(1) ''Allowable reasonable fees'' for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.

(2) An ''eligible institution'' means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or (ii) an openend investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection (h) (3) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (h) (4) below, subject to the dispute resolution process provided in subsection (h) (4) (E) below.

(3) ''Federal Funds Target Rate'' means the target level for the federal funds rate set by the Federal Open Market

Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term ''Federal Funds Target Rate'' means the upper limit of such range.

(4) ''Interest- or dividend-bearing account'' means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is ''well-capitalized'' or ''adequately capitalized'' as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a ''money market fund'' as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least $250,000,000.

(5) ''IOLTA account'' means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (h) (6) below. The

determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (h) (4) below.

(6) ''Non-IOLTA account'' means an interestor dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) ''U.S. Government Securities'' means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

(b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank

service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes.

(d) Absent a written agreement with the client otherwise, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to

the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure

such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

(h) An IOLTA account may only be established at an eligible institution that meets the following requirements:

(1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.

(2) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

(3) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter

and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or

law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General

Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice;

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.

(5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have

approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection (h) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection (h) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

(i) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust

accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account

number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(10) copies of those portions of client files that are reasonably related to client trust account transactions.

(j) With respect to client trust accounts required by this Rule:

(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals shall be made only by check payable to a named payee or by authorized electronic transfer and not to cash.

(k) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(*l*) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable

arrangements for the maintenance of client trust account records specified in this Rule.

(m) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices [and comply with the requirements of Practice Book Section 2-27].

While normally it is impermissible to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold

funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful claims against specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

The word ''interests'' as used in subsection (f) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A ''lawyers' fund'' for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

Subsection (h) requires lawyers and law firms to participate in the statutory IOLTA program. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

Subsection (i) lists the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Rules of Professional Conduct.

Subsection (i) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements,

records of deposit, pre-numbered canceled checks, and substitute checks for a period of at least seven years after termination of each particular legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. § 5001 *et. seq.*, recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. § 5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number years.

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial

institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (i)(8).

There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection (i)(8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in a "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web

environment. Subsection (i)(8) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection (i) (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in paragraphs (1) through (9) of subsection (h) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (10) of subsection (h) because it is

"reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

Subsection (j) lists minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in this jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorized to make electronic transfers from a client trust account. While it is permissible to grant limited non-lawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who

misappropriate client funds. See, Rules 5.1 and 5.3 of the Rules of Professional Conduct.

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

The requirements in paragraph (2) of subsection (j) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

Subsection (k) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by subsection (i) shall be readily accessible and shall be readily available to be

produced upon request by the client or third person who has an interest as provided in Rule 1.15 of the Rules of Professional Conduct, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

Subsections (*l*) and (m) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTES: The above revisions are based on the ABA Model Rules for Client Trust Account Records.

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CHAPTER 44
GENERAL PROVISIONS

APPENDIX OF FORMS

AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 1-1. Scope of Rules; Definitions

(a) The rules for the superior court govern the practice and procedure in the superior court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. These rules also relate to the admission, qualifications, practice and removal of attorneys.

(b) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to civil, family, criminal and juvenile matters in the superior court.

(c) (1) The term ''judicial authority,'' as used in the rules for the superior court, means the superior court, any judge thereof, each judge trial referee when the superior court has referred a case to such trial referee pursuant to General Statutes § 52-434, and for purposes of the small claims rules only, any magistrate appointed by the chief court administrator pursuant to General Statutes § 51-193/.

(2) Except as otherwise provided, the words "write," "written" and "writing" as used in the rules for the superior court shall mean typed or printed either on paper or, when electronically submitted or issued, in a digital format that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to section 4-4.

(3) Except as otherwise provided, the words "paper" and "document" as used in the rules for the superior court shall include an electronic submission that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to section 4-4 and a paper or document converted to a digital format by the judicial branch.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 1-10B. Media Coverage of Court Proceedings; In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court should be allowed subject to the limitations set out in this section and in Sections 1-11 through 1-11[C] B, inclusive.

(b) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

(1) Family relations matters as defined in General Statutes § 46b-1;

(2) Juvenile matters as defined in General Statutes § 46b-121;

(3) Proceedings involving sexual assault;

[(3)] (4) Proceedings involving trade secrets;

[(4)] (5) In jury trials, all proceedings held in the absence of the jury unless the trial court determines that such coverage does not create a risk to any party's rights or other fair trial risks under the circumstances;

[(5)] (6) Proceedings which must be closed to the public to comply with the provisions of state law;

[(6)] (7) Any proceeding that is not held in open court on the record.

(c) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting, televising, recording or photographing of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or photographing of the process of jury selection nor of any juror.

COMMENTARY: The above changes prohibit the broadcasting, televising, recording or photographing of certain proceedings.

[Sec. 1-11. Media Coverage of Criminal Proceedings

(a) Except as otherwise provided by this section and as provided in Sections 1-11A and 1-11C, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in criminal proceedings.

(b) No broadcasting, televising, recording or photographing of sentencing hearings, except in trials that have been previously broadcast, televised, recorded or photographed, or of trials or proceedings involving sexual offense charges shall be permitted.

(c) A judicial authority may permit broadcasting, televising, recording or photographing of criminal trials in courtrooms of the superior court except as hereinafter excluded. As used in this rule, the word ''trial'' in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

(d) Any media or pool representative seeking permission to broadcast, televise, record or photograph a criminal trial shall, at least three days prior to the commencement of the trial, submit a written request to the administrative judge of the judicial district where the case is to be tried. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall refer the request to the trial judge who shall approve or disapprove such request. Disapproval by the trial judge shall be final. Before the trial judge approves of such request, the judge shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to such judge. Approval of the request, however, shall not be

effective unless confirmed by the administrative judge. Any media organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the administrative judge and shall be allowed to participate in the pool arrangement only with the approval of the trial judge.

(e) The trial judge in his or her discretion, upon the judge's own motion, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge may also, at the request of a participant, prohibit in his or her discretion the broadcasting, televising, recording or photographing of that participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. ''Participant'' for the purpose of this section shall mean any party, lawyer or witness.

(f) (1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only. Videotape recording equipment and other equipment which is not a component part

of the television camera shall be located outside the courtroom.

(2) Only one still camera photographer, carrying not more than two still cameras with one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio system for televising, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the trial judge.

(g) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

(h) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the trial. The operator of such equipment

shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the trial judge and other appropriate authority.

(i) The judicial authority in its discretion may require pooling arrangements by the media. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the trial.

(j) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

(k) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(*l*) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such

conference the trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.]

COMMENTARY: The above section is deleted in light of the revisions to Section 1-11C, which will become Section 1-11.

Sec. 1-11A. Media Coverage of Arraignments

(a) The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments in the manner set forth in this section, as implemented by the judicial authority. [The judicial authority shall articulate the reasons for its decision on a request for electronic coverage of an arraignment and such decision shall be final. The judicial authority in its discretion may require pooling arrangements by the media.]

(b) Any media representative desiring to broadcast, televise, record or photograph an arraignment shall send an e-mail request for electronic coverage to a person designated by the chief court administrator. Said designee shall promptly transmit any such request to the administrative judge, presiding judge of criminal matters, arraignment judge, clerk and the supervising marshal. The administrative judge shall ensure that notice is provided to the state's attorney and the attorney for the defendant or, where the defendant is unrepresented, to the defendant. Electronic coverage shall not be permitted until the state's attorney and the attorney for the defendant, or the defendant if he or she has no attorney, have

had an opportunity to object to the request on the record and the judicial authority has ruled on the objection. If a request for coverage is denied or is granted over the objection of any party, the judicial authority shall articulate orally or in writing the reasons for its decision on the request and such decision shall be final.

(c) Broadcasting, televising, recording or photographing of the following are prohibited:

(1) any criminal defendant who has not been made subject to an order for electronic coverage and, to the extent practicable, any person other than court personnel or other participants in the arraignment for which electronic coverage is permitted;

(2) conferences involving the attorneys and the judicial authority at the bench or communications between the defendant and his or her attorney or other legal representative;

(3) close ups of documents of counsel, the clerk or the judicial authority;

(4) the defendant while exiting or entering the lockup;

(5) to the extent practicable, any restraints on the defendant;

(6) to the extent practicable, any judicial marshals or department of correction employees escorting the defendant while he or she is in the courtroom; and

(7) proceedings in cases transferred from juvenile court prior to a determination by the adult court that the matter was properly transferred.

(d) Only one (1) still camera, one (1) television camera and one (1) audio recording device which do not produce a distracting sound or light shall be employed to cover the arraignment, unless otherwise ordered by the judicial authority.

(e) The operator of any camera, television or audio recording equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom.

(f) All personnel and equipment shall be situated in an unobtrusive manner within the courtroom. The location of any such equipment and personnel shall be determined by the judicial authority. The location of the camera, to the extent possible, shall provide access to optimum coverage. Once the judicial authority designates the position for a camera, the operator of the camera must remain in that position and not move about until the arraignment is completed.

(g) Videographers, photographers and equipment operators must conduct themselves in the courtroom quietly and discreetly, with due regard for the dignity of the courtroom.

(h) If there are multiple requests to broadcast, televise, record or photograph the same arraignment, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority.

(i) On-camera reporting and interviews shall only be conducted outside of the courthouse.

COMMENTARY: The revisions to this section delineate the specific procedures that must be followed and implemented in connection with the authorization by the judicial authority of media coverage of arraignments. Any media representative desiring to cover such arraignments must send an e-mail request for electronic coverage to a person designated by the chief court administrator. Electronic coverage shall not be permitted until the parties have had an opportunity to object to the request and the judicial authority has ruled on the objection. The decision on the objection is final. The persons and events that are prohibited from being broadcast, televised, recorded or photographed are specifically delineated in the rule as revised. The number and types of recording devices, and the manner and location of their operation are also set out in the rule. If there are multiple requests for electronic coverage, pooling arrangements are required, and on-camera reporting and interviews shall only be conducted outside of the courthouse.

Sec. 1-11[C]. [Pilot Program for] Media Coverage of Criminal Proceedings

(a) Except as authorized by section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in 1-10B. [Notwithstanding the provisions of Section 1-11, and except as otherwise provided in Section 1-11A regarding media coverage of arraignments, the broadcasting,

televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B, in a single judicial district of the superior court to be chosen by the chief court administrator based on the following considerations:

(1) the age of the courthouse facility, its ability to accommodate the media technology involved, and security and cost concerns;

(2) the volume of cases at such facility and the assignment of judges to the judicial district;

(3) the likelihood of significant criminal trials of interest to the public in the judicial district;

(4) the proximity of the judicial district to the major media organizations; and to the organization or entity providing coverage;

(5) the proximity of the courthouse facility to the Judicial Branch administrative offices.]

(b) No broadcasting, televising, recording or photographing of trials or proceedings involving sexual offense charges shall be permitted.

(c) As used in this rule, the word ''trial'' in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness. "Criminal proceeding" shall mean any hearing or testimony, or any portion thereof, in open

court and on the record except an arraignment subject to section 1-11A.

(d) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice, and the judicial authority shall allow such coverage except as otherwise provided.

[d] (e) Any party, attorney, witness or other interested person may object in advance of electronic coverage of a criminal proceeding or trial if there exists a substantial reason to believe that such coverage will undermine the legal rights of a party or will significantly compromise the safety of a witness or other person or impact significant privacy concerns. In the event that the media request camera coverage and, [T]to the extent practicable, notice that an objection to the electronic coverage has been filed, and the date, time and location of the hearing on such objection shall be posted on the Judicial Branch website. Any person, including the media, whose rights are at issue in considering whether to allow electronic

coverage of the proceeding or trial, may participate in the hearing to determine whether to limit or preclude such coverage. When such objection is filed by any party, attorney, witness or other interested person, the burden of proving that electronic coverage of the [civil] criminal proceeding or trial should be limited or precluded shall be on the person who filed the objection.

[(e)] (f) The judicial authority, in deciding whether to limit or preclude electronic coverage of a criminal proceeding or trial, shall consider all rights at issue and shall limit or preclude such coverage only if there exists a compelling reason to do so, there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

[(f)] (g) If the judicial authority has a substantial reason to believe that the electronic coverage of a criminal proceeding or trial will undermine the legal rights of a party or will significantly compromise the safety or privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected to such coverage, the judicial authority shall schedule a hearing to consider limiting or precluding such coverage. To the extent practicable, notice that the judicial authority is considering limiting or precluding electronic coverage of a criminal proceeding or trial, and the date, time and location of the hearing thereon shall be given to the parties and others whose interests may be directly affected by a decision so that they

may participate in the hearing and shall be posted on the Judicial Branch website.

[(g)] (h) Objection raised during the course of a criminal proceeding or trial to the photographing, videotaping or audio recording of specific aspects of the proceeding or trial, or specific individuals or exhibits will be heard and decided by the judicial authority, based on the same standards as set out in subsection [(e)] (f) of this section used to determine whether to limit or preclude coverage based on objections raised before the start of a criminal proceeding or trial.

[(h)] (i) The judge presiding over the proceeding or trial in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. ''Participant'' for the purpose of this section shall mean any party, lawyer or witness.

[(i)] (j) The judicial authority shall articulate the reasons for its decision on whether or not to limit or preclude electronic coverage of a criminal proceeding or trial, and such decision shall be final.

[(j) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the

courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the proceeding or trial.]

(k)(1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. Microphones, related wiring and equipment essential for the broadcasting, televising or recording shall be unobtrusive and shall be located in places designated in advance by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only.

(2) Only one still camera photographer shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio recorder shall be permitted in the courtroom for purposes of recording the proceeding or trial. Microphones, related wiring and equipment essential for the recording shall be unobtrusive and shall be located in places designated in advance by the trial judge.

[(k)] (/) Only still camera, television and audio equipment which does not produce distracting sound or light shall be

employed to cover the proceeding or trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the judge presiding over the proceeding or trial and other appropriate authority.

[*///*] (m) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

[(m)] (n) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

[(n)] (o) The judicial authority in its discretion may require pooling arrangements by the media. Pool representatives should ordinarily be used for video, still cameras and radio, with each pool representative to be decided by the relevant media group. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the proceeding or trial.

[(o) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice, and the judicial authority shall allow such coverage except as otherwise provided. Any news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a separate written notice to the administrative judge and shall be allowed to participate in the pool arrangement.]

[(p)] (o) To evaluate and resolve prospective problems where broadcasting, televising, recording or photographing by media of a criminal proceeding or trial will take place, and to ensure compliance with these rules during the proceeding or trial, the judicial authority who will hear the proceeding or preside over the trial may require the attendance of attorneys and media personnel at a pretrial conference.

[(q) The Rules Committee shall evaluate the efficacy of this rule at the end of a two year period and shall receive

recommendations from the Judicial-Media Committee and other sources.]

COMMENTARY: The above revisions permit broadcasting, televising, recording or photographing of criminal trials around the state. Such coverage will no longer be limited to the pilot area in Hartford.

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to [Canon 3 (c)] Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council. When the judicial authority has been made aware of the filing of such lawsuit or complaint, he or she shall so advise the attorneys and parties to the proceeding and either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification

issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.

COMMENTARY: The above change is in light of the new Code of Judicial Conduct, which became effective January 1, 2011.

Sec. 2-4. —Regulations by Examining Committee

The committee shall have the power and authority to implement these rules by regulations relevant thereto and not inconsistent therewith. Such regulations may be adopted at any regular meeting of the committee or at any special meeting called for that purpose. They shall be effective ninety days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee or by the judges of the superior court. A copy shall be [mailed] provided to the chief justice.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 2-5A. –Good Moral Character and Fitness to Practice Law

(a) Good moral character shall be construed to include, but not be limited to, the following:

(1) The qualities of honesty, fairness, candor and trustworthiness;

(2) Observance of fiduciary responsibility;

(3) Respect for and obedience to the law; and

(4) Respect for the legal rights of others and the judicial process, as evidenced by conduct other than merely initiating or pursuing litigation.

(b) Fitness to practice law shall be construed to include the following:

(1) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and solving ethical dilemmas;

(2) The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities, with or without the use of aids or devices; and

(3) The capability to perform legal tasks in a timely manner.

COMMENTARY: The above change makes clear what good moral character entails.

Sec. 2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut or would have entitled him or her to take the examination in Connecticut at the time

of his or her admission to the bar of which he or she is a member, and that at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section, shall satisfy the [appropriate standing committee on recommendations for admission] state bar examining committee that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood in [such] reciprocal jurisdictions for at least five of the [seven] ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood in such reciprocal jurisdiction for at least five of the [seven] ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed

Connecticut examination; (3) is a citizen of the United States or an alien lawfully residing in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut [and to devote the major portion of his or her working time to the practice of law in Connecticut,] and/or to supervise law students within a clinical law program at an accredited Connecticut law school while a member of the faculty of such school may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining committee shall from time to time determine, upon compliance with the following requirements: Such application, duly verified, shall be filed with the administrative director of the bar examining committee and shall set forth his or her qualifications as hereinbefore provided. There shall be filed with such application the following [certificates or] affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the [standing committee on recommendations for admission to the bar] state bar examining committee, his or her practice of law as defined under (2) of this section; where applicable, an affidavit from the dean of the accredited Connecticut law school at which the applicant has accepted employment attesting to the employment relationship and term; affidavits from two members of the bar of Connecticut of at least five years' standing certifying that the applicant is of good moral

character and is fit to practice law[, and a certificate from the state bar examining committee that his or her educational qualifications are such as would entitle the applicant to take the examination in Connecticut or would have entitled the applicant to take the examination in Connecticut at the time of his or her admission to the bar of which the applicant is a member]; and an affidavit from the applicant certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the state bar examining committee.

(b) For the purpose of this rule, the "practice of law" shall include the following activities, if performed in a reciprocal jurisdiction after the date of the applicant's admission to that jurisdiction:

(1) representation of one or more clients in the practice of law;

(2) service as a lawyer with a state, federal, or territorial agency, including military services; however, such service for a federal agency, including military service, need not be performed in a reciprocal jurisdiction;

(3) teaching law at an accredited law school, including supervision of law students within a clinical program;

(4) service as a judge in a state, federal, or territorial court of record;

(5) service as a judicial law clerk; or

(6) any combination of the above.

[(b)] (c) An attorney who, within the [7] ten years immediately preceding the date of application, was engaged in the supervision of law students within a clinical law program of one or more accredited law schools in another jurisdiction or jurisdictions while a member of the faculty of such school or schools, whether or not any such jurisdiction is a reciprocal jurisdiction, may apply such time toward the satisfaction of the requirement of subdivision (a) (2) (A) of this section. If such time is so applied, the attorney shall file with his or her application an affidavit from the dean of the law school or schools of each such other jurisdiction attesting to the employment relationship and the period of time the applicant engaged in the supervision of law students within a clinical program at such school. [An attorney so engaged for 5 of the 7 years immediately preceding the date of application will be deemed to satisfy the threshold requirement of subdivision (a) (2) of this section if such attorney is duly licensed to practice law before the highest court of any state or territory of the United States or in the District of Columbia whether or not such jurisdiction is reciprocal to Connecticut.]

COMMENTARY: The above changes substitute the state bar examining committee for the standing committees on recommendations for admission in the admission without

examination process. Additionally, the change expands the 5 of 7 years requirement to 5 of 10 years to allow for intervening, legitimate periods of time away from the practice of law. Finally, the requirement that each applicant must have the intent to devote the major portion of working time to the practice of law in Connecticut is repealed.

New subsection (b) above provides a definition of the practice of law that is consistent with ABA recommendations and the term as defined in other jurisdictions.

[Sec. 2-14. —Action by Bar; Temporary License

Upon the filing of such application, certificates and affidavits, the administrative director of the bar examining committee shall send a copy thereof to the chair of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify the clerk of the superior court for the county in which the applicant seeks admission who shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting endorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the

bar of the county. Such admission shall, however, be upon a temporary license for a period of one year.]

COMMENTARY: The above rule is repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

[Sec. 2-15. —Permanent License

(a) Not less than thirty nor more than sixty days before the expiration of such temporary license the applicant may file a motion that such license be made permanent with the clerk, who shall forthwith give notice thereof to the standing committee on recommendations for admission. Said committee shall claim the motion for the short calendar as soon as it is prepared to make recommendations thereon to the court. If it shall appear to the court at a hearing thereon that said applicant has, since admission, devoted the major portion of his or her working time to the practice of the law in the state of Connecticut and intends to continue so to practice, and that the applicant's good moral character and fitness to practice law remain satisfactory, such license shall be made permanent; but if the applicant shall fail to make such motion or if the court shall upon the hearing thereon refuse to make such finding, then said temporary license shall terminate upon its expiration, but the court may for good cause shown continue said hearing and extend said license for a period of not more than three months from the original date of its expiration.

(b) Provided, however, that whenever, during the period for which such temporary license may have been issued, such licensee has entered the military or naval service of the United States and by reason thereof has been unable to continue in practice in Connecticut, the period between such entrance and final discharge from such service, or other termination thereof, shall not be included in computing the term of such temporary license; and upon satisfactory proof to the court hearing said motion for a permanent license of such entrance and discharge or other termination, and of compliance with the other requirements of this section, the court may make such license permanent.]

COMMENTARY: The above rule is repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying

whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, (c) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, [(c)] (d) agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and [(d)] (e) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first appeared pro hac vice in this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is

to be tried. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action. Any person granted permission to appear in a matter pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 and shall pay such fee when due as prescribed by those sections for each year such person appears in the matter. If the clerk for the judicial district or appellate court in which the matter is pending is notified that such person has failed to pay the fee as required by this section, the court shall determine after a hearing the appropriate sanction, which may include termination of the privilege of appearing in the matter.

COMMENTARY: The revisions require an attorney seeking permission to appear pro hac vice in a matter before the court to certify that the attorney has paid the client security fund fee required by Practice Book Section 2-70 for the calendar year in which the application is made, and, if the

application is granted, to pay the annual fee for each subsequent year in which the attorney appears in the matter. The revisions also provide that if the clerk for the judicial district or appellate court in which the matter is pending is notified that the attorney has failed to pay the fee as required, the court shall determine the appropriate sanction after a hearing, which may include termination of the privilege of appearing in the matter.

Sec. 2-27. Clients' Funds; Lawyer Registration

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct, each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Rule 1.15 of the Rules of Professional Conduct and Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required [under this section] by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after [final distribution of such funds or any portion thereof] termination of the representation. [Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

(3) at least quarterly, a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.]

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to [subsection (b) of this section] Rule 1.15 of the Rules of Professional Conduct, shall be made available upon request of the statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the statewide grievance committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each lawyer shall register with the statewide grievance committee, on a form devised by the committee, the address of the lawyer's office or offices maintained for the

practice of law, the lawyer's office e-mail address and business telephone number, the name and address of every financial institution with which the lawyer maintains any account in which the funds of more than one client are kept and the identification number of any such account[, and any other information requested on such form]. Such registrations will be made on an annual basis and at such time as the lawyer changes his or her address or addresses or location or identification number of any such trust account in which the funds of more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the statewide grievance committee from these forms shall be public, except the following: trust account identification numbers; the lawyer's home address; the lawyer's office e-mail address; and the lawyer's birth date. Unless otherwise ordered by the court, all non-public information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the lawyer, to any other

person. The registration requirements of this subsection shall not apply to judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The statewide grievance committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to [subsection (b) of this section] Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the Rule and this section [and Rule 1.15 of the Rules of Professional Conduct]. If any random inspection or audit performed under this subsection discloses an apparent violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the superior court. Any lawyer whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6 (a) of the Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule 1.15 of the Rules of Professional Conduct or of this section, or probable cause is found by the grievance panel, the statewide grievance committee or a reviewing committee. Contemporaneously with

the commencement of a presentment or the filing of a grievance complaint, notice shall be given in writing by the statewide grievance committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records shall be subject to the client or third person having thirty days from the issuance of the notice to seek a court order restricting publication of any such records disclosing confidential information. During the thirty day period, or the pendency of any such motion, any document filed with the court or as part of a grievance record shall refer to such clients or third persons by pseudonyms or with appropriate redactions, unless otherwise ordered by the court.

(f) Violation of this section shall constitute misconduct.

COMMENTARY: The financial record keeping requirements previously set forth in subsection (b) have been moved to Rule 1.15 (i) of the Rules of Professional Conduct.

The above changes to subsection (d) will assist the Statewide Grievance Committee in locating, identifying and communicating with members of the bar.

Sec. 2-74. —Regulations of Client Security Fund Committee

The client security fund committee shall have the power and authority to implement these rules by regulations relevant to and not inconsistent with these rules. Such regulations may be adopted at any regular meeting of the client security fund committee or at any special meeting called for that purpose.

The regulations shall be effective sixty days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee. A copy shall be [mailed] provided to the chief justice, the chief court administrator, and the executive committee of the superior court.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be [typed or printed on size 81/2 x 11 inch paper] filed on judicial branch form JD-CL-12, (2) [be headed with] include the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number. This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 3-4. Filing Appearance [with the Clerk—Copies]

Appearances shall be filed with the clerk of the court location where the matter is pending.

(a) Whenever an appearance is filed in any civil or family action [returnable to a judicial district of the superior court], including appearances filed in addition to or in place of another appearance, [only an original need be filed and the clerk with whom it is filed shall cause notice thereof to be given to all other counsel and pro se parties of record in the action] a copy shall be mailed or delivered to all counsel and self-represented parties of record. [Whenever an appearance is filed in any criminal case or juvenile matter, only the original need be filed. Whenever an appearance is filed in any civil action returnable to a geographical area of the superior court, an original and sufficient copies for each party to the action must be filed. This section shall not apply to appearances entered pursuant to Section 3-1.]

(b) Whenever an appearance is filed in summary process actions, the attorney for the defendant, or, if there is no such attorney, the defendant himself or herself, shall mail or deliver a copy of the appearance to the attorney for the

plaintiff, or if there is no such attorney, to the plaintiff himself or herself.

(c) Whenever an appearance is filed in delinquency, family with service needs or youth in crisis proceedings, the attorney or GAL for the respondent, or for any other interested party, shall mail or deliver a copy of their appearance to the prosecutorial official and all other counsel and self- represented parties of record; in child protection proceedings, the attorney or GAL for the child, respondent, or any other interested party, shall mail or deliver a copy of their appearance to the attorney for the petitioner and to all other counsel and self-represented parties of record.

(d) Whenever an appearance is filed in criminal cases, the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

COMMENTARY: The above revision shifts the obligation to provide notice of the filing of an appearance from the clerk's office to the party filing the appearance in many instances.

Sec. 3-5. Service of Appearances on Other Parties [—When Required]

[(a) In summary process actions the attorney for the defendant or, if there is no such attorney, the defendant himself or herself, in addition to complying with Section 3-4, shall mail or deliver a copy of the appearance to the attorney for the plaintiff or, if there is no such attorney, to the plaintiff himself or herself.

(b) In delinquency and family with service needs proceedings, such attorney shall mail or deliver a copy of the appearance to the juvenile prosecutor; in other juvenile proceedings, such attorney shall mail or deliver a copy of the appearance to the attorney for the petitioner and to all other attorneys and pro se parties.

(c) In criminal cases the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

(d)] Service of [such] appearances shall be made in accordance with Sections 10-12 through 10- 17. Proof of service shall be endorsed on the appearance filed with the clerk. This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above revision reflects the consolidation of provisions regarding on whom copies of appearances must be served in section 3-4.

Sec. 4-1. Form of Pleading

(a) All [papers] documents filed in paper format shall be typed or printed on size 81/2 by 11 inch paper and shall have no back or cover sheet. Those subsequent to the complaint shall be headed with the title and number of the case, the name of the court, and the date and designation of the particular pleading, in conformity with the applicable form in the rules of practice which is set forth in the Appendix of Forms in this volume.

(b) At the bottom of the first page of each paper, a blank space of approximately two inches shall be reserved for notations of receipt or time of filing by the clerk and for statements by counsel pursuant to Section 11-18 (a) (2)[, and at the top of each page a blank space of two inches shall be reserved]. Papers shall be punched with two holes two and twelve-sixteenths inches apart, each centered seven-sixteenths of an inch from the upper edge, one being two and fourteen-sixteenths inches from the left-hand edge and the other being the same distance from the right-hand edge, and each four-sixteenths of an inch in diameter.

(c) All documents filed electronically shall be in substantially the same format as required by subsection (a) of this section.

(d) The clerk may require a party to correct any filed paper which is not in compliance with this section by substituting a paper in proper form.

[(d)] (e) This section shall not apply to forms supplied by the judicial branch.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 5-11. Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining Order, Standing Criminal Protective Order or Standing Criminal Restraining Order Issued on Behalf of Party or Child

(a) In any court proceeding in a family relations matter, as defined in section 46b-1 of the general statutes, or in any proceeding pursuant to section 46b-38c, the court may, except as otherwise required by law and within available resources, upon motion of any party, order that the testimony of a party or a child who is a subject of the proceeding be taken outside the physical presence of any other party if a protective order, restraining order, standing criminal protective order or standing criminal restraining order has been issued on behalf of the party or child, and the other party is subject to the protective order or restraining order. Such order may provide for the use of alternative means to obtain the testimony of any party or child, including, but not limited to, the use of a secure video connection for the purpose of conducting hearings by videoconference. Such testimony may be taken outside the courtroom or at another location inside or outside the state. The court shall provide for the administration of an oath to such party or child prior to the taking of such testimony as required by law.

(b) Nothing in this section shall be construed to limit any party's right to cross-examine a witness whose testimony is taken pursuant to an order under subsection (a) hereof.

(c) An order under this section may remain in effect during the pendency of the proceedings in the family relations matter.

COMMENTARY: The addition of "standing criminal protective order" is based on the substitution of that term for

"standing criminal restraining order" in C.G.S. §§ 17b-90, 18-81m, 46b-15c, 53a-40e and 53a-223a by Public Act 10-144.

AMENDMENTS TO THE CIVIL RULES

Sec. 7-5. Notice to Attorneys and Pro Se Parties

The clerk shall give notice, by mail or by electronic delivery, to the attorneys of record and pro se parties unless otherwise provided by statute or these rules, of all judgments, nonsuits, defaults, decisions, orders and rulings unless made in their presence. The clerk shall record in the court file the date of the issuance of the notice.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 10-36. —Reasons in Request to Revise

The request to revise shall set forth, for each requested revision, the portion of the pleading sought to be revised, the requested revision, and the reasons therefor, and, except where the request is served electronically in accordance with Section 10-13, in a format that allows the recipient to insert electronically the objection and reasons therefore, [followed by] provide sufficient space in which the party to whom the request is directed can insert an objection and reasons therefor.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 10-37. —Granting of and Objection to Request to Revise

(a) Any such request, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and such request shall be deemed to have been automatically granted by the judicial authority on the date of filing and shall be complied with by the party to whom it is directed within thirty days of the date of filing the same, unless within thirty days of such filing the party to whom it is directed shall file objection thereto.

(b) The objection and the reasons therefor shall be inserted on the request to revise in the space provided under the appropriate requested revision. In the event that a reason for objection requires more space than that provided on the request to revise, it shall be continued on a separate sheet of paper which shall be attached to that document, except where the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the objection and reasons therefor. The request to revise on which objections have been inserted shall be appended to a cover sheet which shall comply with Sections 4-1 and 4-2 and

the objecting party shall specify thereon to which of the requested revisions objection is raised. The cover sheet with the appended objections shall be filed with the clerk within thirty days from the date of the filing of the request for the next short calendar list. If the judicial authority overrules the objection, a substitute pleading in compliance with the order of the judicial authority shall be filed within fifteen days of such order.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing [and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary]. A motion to extend time to plead, respond to written discovery, object to written discovery, or respond to Requests for Admissions shall state the date through which the moving party is seeking the extension.

(a) For civil matters, with the exception of housing and small claims matters, when any motion, application or objection is filed either electronically or on paper, no order

page should be filed unless an order of notice and citation is necessary.

(b) For family, juvenile, housing and small claims matters, when any motion, application or objection is filed in paper format, an order shall be annexed to the filing until such cases are incorporated into the Judicial Branch's electronic filing system. Once these case types are incorporated into such electronic filing system, no order page should be filed unless an order of notice and citation is necessary.

(c) Whether filed under subsection (a) or (b), [S]such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

COMMENTARY: Motions for extension of time are frequently filed asking "for 30 days." As a result, it is unclear whether the movant is requesting an extension which ends thirty days after the file date of the motion or thirty days after the motion is granted. That difference can be a month or more, resulting in confusion for the parties and unnecessary motion practice to sort out the confusion.

The new subsections (a) (b) and (c) are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-13. Short Calendar; Need for List; Case Assigned for Trial; Reclaims

(a) Unless otherwise provided in these rules or ordered by the judicial authority, questions as to the terms or form of a decree or judgment to be rendered on the report of a committee or of auditors, or on an award of arbitrators, foreclosures where the only question is as to the time to be limited for redemption, all motions and objections to requests when practicable, and all issues of law must be placed on the short calendar list. No motions will be heard which are not on said list and ought to have been placed thereon; provided that any motion in a case on trial, or assigned for trial, may be disposed of by the judicial authority at its discretion, or ordered upon the short calendar list on terms, or otherwise.

(b) [Whenever] Unless it is filed electronically, whenever a short calendar matter or reclaim slip is filed in a case which has been assigned for trial, the filing party shall place the words ''assigned for trial'' on the bottom of the first page of the document and on any short calendar reclaim slip. The moving party at a short calendar hearing shall, when applicable, inform the judicial authority that the case has been assigned for trial.

(c) If a motion has gone off the short calendar without being adjudicated any party may claim the motion for adjudication. If an objection to a request has gone off the short calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. If a case is on the docket management list, any

party may claim any motion or objection for adjudication when the motion or objection must be resolved to close the pleadings.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-18. —Oral Argument of Motions in Civil Matters

(a) Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready [for adjudication] in accordance with the procedure [indicated in the notice] that [accompanies] appears on the short calendar on which the motion appears, [and] or

[(2) the movant indicates at the bottom of the first page of the motion or on a reclaim slip that oral argument or testimony is desired or

(3)] (2) a nonmoving party files and serves on all other parties pursuant to Sections 10-12 through 10-17, with proof of service endorsed thereon, a written notice stating the

party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date and shall contain (A) the name of the party filing the motion and (B) the date of the short calendar on which the matter appears.

(b) As to any motion for which oral argument is of right and as to any other motion for which the judicial authority grants or, in its own discretion, requires argument or testimony, the date for argument or testimony shall be set by the judge to whom the motion is assigned.

(c) If a case has been designated for argument as of right or by the judicial authority but a date for argument or testimony has not been set within thirty days of the date the motion was marked ready, the movant may reclaim the motion.

(d) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.

(e) Notwithstanding the above, all motions to withdraw appearance, except those under Section 3-9 (b), and any other motions designated by the chief court administrator in the civil short calendar standing order shall be set down for oral argument.

(f) For those motions for which oral argument is not a matter of right, oral argument may be requested in accordance with the procedure that is printed on the short calendar on which the motion appears.

COMMENTARY: The above amendments are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

The addition of new subsection (f) more clearly reflects updated short calendar procedures.

Sec. 11-20. Closure of Courtroom in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch website. A [copy of] notice of such motion being placed on the short calendar [page containing the

aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(f) With the exception of any provision of the General Statutes under which the judicial authority is authorized to close courtroom proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a courtroom proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-20A. Sealing Files or Limiting Disclosure of Documents in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents,

or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent

to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The judicial

authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(h) (1) Pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. The judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion

of the record. The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order. An agreement of the parties that pseudonyms be used shall not constitute a sufficient basis for the issuance of such an order. The authorization of pseudonyms pursuant to this section shall be in place of the names of the parties required by Section 7-4A.

(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.

(3) After commencement of the action, a motion for permission to use pseudonyms shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. Leave of the court may be sought to file the motion under seal pending a disposition of the motion by the judicial authority.

(4) Any order allowing the use of a pseudonym in place of the name of a party shall also require the parties to use such pseudonym in all documents filed with the court.

(i) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch website. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 13-1. Definitions

For purposes of this chapter, (1) ''statement'' means (A) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (B) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital

of an oral statement by the person making it and which is contemporaneously recorded; (2) ''party'' means (A) a person named as a party in the action, or (B) an agent, employee, officer, or director of a public or private corporation, partnership, association, or governmental agency, named as a party in the action; (3) ''representative'' includes agent, attorney, consultant, indemnitor, insurer, and surety; (4) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; (5) "electronically stored information" means information that is stored in an electronic medium and is retrievable in perceivable form.

COMMENTARY: The newly added subsections (4) and (5) that set forth definitions of the terms "electronic" and "electronically stored information", respectively, were made in connection with the adoption of electronic discovery rules in Section 13-1 *et seq.* These definitions are based upon the Uniform Rules Relating to the Discovery of Electronically Stored Information ("Uniform ESI Rules") and Federal Civil Rule Amendments. The Uniform ESI Rules were drafted by the National Conference of Commissioners on Uniform State Laws and were approved and recommended for enactment in all states at its annual conference in 2007. The definition of "electronically stored information" is intended to encompass future developments in computer technology. The definitions are intended to be sufficiently broad to cover all types of

computer-based information, and sufficiently flexible to encompass future technological changes and development.

Sec. 13-2. Scope of Discovery; In General

In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain in accordance with the provisions of this chapter discovery of information or disclosure, production and inspection of papers, books, [or] documents and electronically stored information material to the subject matter involved in the pending action, which are not privileged, whether the discovery or disclosure relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed. Discovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. It shall not be ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section.

COMMENTARY: In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, the term "electronically stored information," as defined in Section 13-1, has been added to the scope of discovery.

Sec. 13-5. —Protective Order

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judicial authority; (6) that a deposition after being sealed be opened only by order of the judicial authority; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judicial authority; (9) specified terms and conditions relating to the discovery of electronically stored information including the allocation of expense of the

discovery of electronically stored information, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

COMMENTARY: In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, the drafters' designed subsection (9) to address the unique issues raised by the difficulties in locating, retrieving and providing discovery of electronically stored information. This new subsection is based upon a modified version of the considerations contained in Uniform ESI Rules 8 (c) and (d) (see Commentary to Section 13-1).

Under these new electronic discovery rules, a responding party should permit discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The decision whether to require the responding party to search for and produce information that is from sources that are not reasonably accessible depends not only on the burden and expense of doing so, but also on whether the burden and expense can be justified in the circumstances of one case. Appropriate considerations may include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available from more easily accessed sources; (4) the likelihood of finding relevant responsive information

that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of the further information; and (6) a party's willingness to voluntarily bear the cost of discovery. If the court orders discovery after these considerations, the court may allocate, in its discretion, the expense, in whole or in part, of discovery.

Sec. 13-7. Answers to Interrogatories

(a) Any such interrogatories shall be answered under oath by the party to whom directed and such answers shall not be filed with the court but shall be served within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the interrogatories or, if applicable, the notice of interrogatories on the answering party, unless:

(1) Counsel file with the court a written stipulation extending the time within which answers or objections may be served; or

(2) The party to whom the interrogatories are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the interrogatories or the notice of interrogatories shall file objection thereto. A party shall be

entitled to one such request for each set of interrogatories directed to that party; or

(3) Upon motion, the judicial authority allows a longer time; or

(4) Objections to the interrogatories and the reasons therefor are filed and served within the thirty-day period.

(b) [The party answering interrogatories shall attach a cover sheet to the answers. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the party has answered all of the interrogatories or shall set forth those interrogatories to which the party objects and the reasons for objection. The cover sheet and the answers shall not be filed with the court unless the responding party objects to one or more interrogatories, in which case only the cover sheet shall be so filed.] A party objecting to one or more interrogatories shall file an objection in accordance with Section 13-8.

(c) Objection by a party to certain of the interrogatories directed to such party shall not relieve that party of the obligation to answer the interrogatories to which he or she has not objected within the thirty-day period. All answers to interrogatories shall repeat immediately before each answer the interrogatory being answered. Answers are to be signed by the person making them. The party serving the interrogatories or the notice of interrogatories may move for an order under Section 13-14 with respect to any failure to answer.

COMMENTARY: The rules of practice required a party objecting to interrogatories to file a cover sheet, setting forth

the interrogatory to which the filer objects and the reasons for the objection. In practice, the cover sheet was filed together with a document titled Objection to Request for Interrogatories, which repeated the same information as was already contained in the cover sheet, but also included a proposed order and certification. The requirement for filing a separate cover sheet required duplication on the part of the person objecting to an interrogatory. The revision deletes the reference in this section to a cover sheet and provides that objections be filed in accordance with Sec. 13-8.

Sec. 13-8. Objections to Interrogatories

(a) Objections to interrogatories shall [be set forth on a cover sheet and] be immediately preceded by the interrogatory objected to, shall set forth reasons for the objection, shall be signed the attorney or pro se party making them and shall be filed with the court pursuant to Section 13-7. No objection may be filed with respect to interrogatories which have been set forth in Forms 201, 202 and/or 203 of the rules of practice for use in connection with Section 13-6.

(b) No objections to interrogatories shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit

shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein or, if no conference has been held, the reasons for the failure to hold such a conference. If any objection to an interrogatory is overruled, the interrogatory shall be answered, and the answer served within twenty days after the judicial authority ruling unless otherwise ordered by the judicial authority.

(c) An interrogatory otherwise proper is not objectionable merely because it involves more than one fact or relates to the application of law to facts.

COMMENTARY: The revision to this section eliminates the reference to a cover sheet and adds the requirement that the objection set forth the reasons for the objection immediately preceded by the interrogatory to which the objection is made.

Sec. 13-9. Requests for Production, Inspection and Examination; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 upon any other party a request to afford the party submitting the request the opportunity to inspect, copy, photograph or otherwise reproduce designated documents (including, but not limited to, writings, drawings, graphs, charts, photographs, [and] phonograph records and electronically stored information as provided in subsection (d))

or to inspect and copy, test or sample any tangible things in the possession, custody or control of the party upon whom the request is served or to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. Such requests will be governed by the provisions of Sections 13-2 through 13-5. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the requests for production shall be limited to those set forth in Forms 204, 205 and/or 206 of the rules of practice, unless, upon motion, the judicial authority determines that such requests for production are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume.

(b) Requests for production may be served upon any party without leave of court at any time after the return day. In lieu of serving the requests for production set forth in Forms 204, 205 and/or 206 on a party who is represented by counsel, the moving party may serve on such party a notice of requests for production, which shall not include the actual requests, but shall instead set forth the number of the Practice Book form containing such requests and the name of the party to whom the requests are directed.

(c) The request shall clearly designate the items to be inspected either individually or by category. The request or, if

applicable, the notice of requests for production shall specify a reasonable time, place and manner of making the inspection. Unless the judicial authority orders otherwise, the frequency of use of requests for production in all actions except those for which requests for production have been set forth in Forms 204, 205, and/or 206 of the rules of practice is not limited.

(d) If [data] information has been electronically stored, [the judicial authority may for good cause shown order disclosure of the data in an alternative format provided the data is otherwise discoverable. When the judicial authority considers a request for a particular format, the judicial authority may consider the cost of preparing the disclosure in the requested format and may enter an order that one or more parties shall pay the cost of preparing the disclosure.] and if a request for production does not specify a form for producing a type of electronically stored information, the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form.

(e) The party serving such request or notice of requests for production shall not file it with the court.

(f) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and

make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which Forms 204 and 205 of the rules of practice apply.

COMMENTARY: The former subsection (d) has been virtually eliminated in light of the adoption of electronic discovery rules in Section 13-1 *et seq.* that now permit the discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The new language of subsection (d) is designed to more clearly address the form of production of electronically stored information. The form of production is more important to the exchange of electronically stored information than it is to the exchange of paper documents. The rule recognizes that electronically stored information may exist in multiple forms, and that different forms of production may be appropriate for different types of electronically stored information. The rule allows the requesting party to specify the form and allows the responding party to object, and creates a default rule for production if no form is specified.

Sec. 13-10. Responses to Requests for Production; Objections

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the request or, if applicable, the notice of requests for production on the responding party, unless:

(1) Counsel file with the court a written stipulation extending the time within which responses may be served; or

(2) The party to whom the requests for production are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the requests for production or the notice of requests for production shall file objection thereto. A party shall be entitled to one such request for each set of requests for production served upon that party; or

(3) Upon motion, the court allows a longer time.

(b) The response of the party shall be inserted directly on the original request served in accordance with Section 13-9 and shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request or any part thereof is objected to. [, in which event the reasons for objection shall be stated on a cover sheet as provided herein.] If, pursuant to subsection (b) of Section 13-9, a notice of requests for production is served in lieu of requests for production, the party to whom such notice is directed shall in his or her response set forth each request for production immediately followed by that party's

response thereto. No objection may be filed with respect to requests for productions set forth in Forms 204, 205 and/or 206 of the rules of practice for use in connection with Section 13-9. Where a request calling for submission of copies of documents is not objected to, those copies shall be appended to the copy of the response served upon the party making the request. [The responding party shall attach a cover sheet to the response. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the responding party objects to one or more requests, in which case only the cover sheet shall be so filed.] A party objecting to one or more requests shall file an objection to the request. Objections to requests for production shall be immediately preceded by the request objected to, shall set forth reasons for the objection, shall be signed by the attorney or pro se party making them and shall be filed with the court. Objection by a party to certain parts of the request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the thirty-day period. The party serving the request or the notice of requests for production may move for an order under Section 13-14 with respect to any failure on the part of the party to whom the request or notice is addressed to respond.

(c) No objection to any such request shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the

objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein, or, if no conference has been held, the reasons for the failure to hold such a conference. If an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

COMMENTARY: The revisions to this section eliminate the reference to a cover sheet and add the requirement that the objection set forth the reasons for the objection immediately preceded by the production request to which the objection is made.

Sec. 13-13. Disclosure of Assets in Cases in Which Prejudgment Remedy Sought

(a) The judicial authority may, on motion, order any appearing party against whom a prejudgment remedy has been granted to disclose property in which the party has an interest or debts owing to the party sufficient to satisfy a prejudgment remedy. The existence, location and extent of a party's interest in such property or debts shall be subject to disclosure after hearing on the motion for disclosure. The form and terms of disclosure shall be determined by the judicial authority.

(b) A motion to disclose pursuant to this section may be made by [attaching] filing it [to] with the application for a

prejudgment remedy or may be made at any time after the filing of the application.

(c) The judicial authority may order disclosure at any time prior to final judgment after it has determined that the party filing the motion for disclosure has, pursuant to either General Statutes §§ 52-278d, 52-278e or 52-278i, probable cause sufficient for the issuance of a prejudgment remedy.

(d) Any party, in lieu of disclosing assets pursuant to subsection (a), may move the judicial authority for substitution either of a bond with surety substantially in compliance with General Statutes §§ 52-307 and 52-308 or of other sufficient security.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 13-14. Order for Compliance; Failure to Answer or Comply with Order

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of

Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require.

(b) Such orders may include the following:

(1) The entry of a nonsuit or default against the party failing to comply;

(2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;

(3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;

(5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

(c) The failure to comply as described in this section may not be excused on the ground that the discovery is objectionable unless written objection as authorized by Sections 13-6 through 13-11 has been filed.

(d) The failure to comply as described in this section shall be excused and the judicial authority may not impose sanctions on a party for failure to provide information,

including electronically stored information, lost as the result of the routine, good-faith operation of a system or process in the absence of a showing of intentional actions designed to avoid known preservation obligations.

COMMENTARY: Subsection (d) responds to a distinctive feature of electronic information systems, the routine modification, overwriting, and deletion of information that attends normal use. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good-faith. Good faith may require that a party intervene to modify or suspend features of the routine operation of a computer system to prevent loss of information if that information is subject to a preservation obligation.

Subsection (d) is based on Uniform ESI Rule 5 (see Commentary to Section 13-1) and Federal Rules 37(f). It restricts the impositions of sanctions. It does not prevent a court from making the kinds of adjustments frequently used in managing discovery if a party is unable to provide relevant responsive information. For example, a court could order the responding party to produce an additional witness for deposition, respond to additional interrogatories, or make similar attempts to provide substitutes or alternatives for some or all of the lost information. The revision to this section is intended to apply to a party's failure to provide any type of information, including electronically stored information. The revision is added at this time due to the increase of

electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, this rule applies to all forms of discovery and is not limited to electronically restored information.

Sec. 13-19. Disclosure of Defense

In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense [within five days of the filing of such demand, or] within ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for

judgment upon default may be served and filed simultaneously but shall be separate motions.

COMMENTARY: The above change provides that the time to disclose a defense shall be ten days from the filing of the demand in all actions within the purview of the rule.

Sec. 13-30. —Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to

enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13- 5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent certifying that the deposition is a true record of the deponent's testimony, unless the parties by stipulation

waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 13-31 (c) (4) the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then securely seal the deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked ''Deposition of (*here insert the name of the deponent*),'' shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (i) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice of deposition and (ii) if the

party electing to participate by remote electronic means is not the party noticing the deposition, such party pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall [at such party's expense provide] bear the cost of the original transcript, and any permanent electronic record including audio or video tape. Any party or the deponent may obtain a copy of the deposition transcript and [any] permanent electronic record including audio or video tape [to each adverse party] at its own expense.

COMMENTARY: The prior version of the rule provided that the party on whose behalf a deposition is taken shall, at such party's expense, provide a copy of the deposition transcript and any permanent electronic record, including audio or video tape, to each adverse party. The federal courts and the majority of states have rules requiring adverse parties to pay for their own deposition copies. In cases with multiple parties, the cost of providing these copies can be prohibitive. This revision makes Connecticut practice consistent with that

of the federal courts and the majority of the states by requiring any other party or deponent to pay for his or her own copy of the deposition or any permanent electronic record.

(NEW) Sec. 13-33. Claim of Privilege or Protection After Production

(a) If papers, books, documents or electronically stored information produced in discovery are subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subsection (a), a party shall immediately sequester the specified information and any copies it has and: (1) return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or (2) present the information to the judicial authority under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(c) If a party that received notice under subsection (b) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

COMMENTARY: This new rule is based upon Uniform ESI Rule 9 (see Commentary to Section 13-1). The risk of privilege waiver and the work necessary to avoid it add to the costs and delay of discovery. When the review is of electronically stored information, the risk of waiver and the time and effort to avoid it can increase substantially because

of the volume of electronically stored information and the difficulty of ensuring that all information to be produced has in fact been reviewed. This new rule provides a procedure for a party to assert a claim of privilege or trial-preparation material protection after information is produced in discovery, and, if the claim is contested, permits any party that received the information to present the matter to the court for resolution. The rule does not address whether the privilege or protection that is asserted after production was waived by the production or ethical implications of use of such data. These issues are left to resolution by other law or authority. This section is intended to apply to all inadvertent disclosures of privileged or protected materials and is added at this time due to the increase of electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, this rule applies to all forms of discovery and is not limited to electronically stored information.

Sec. 14-3. Dismissal for Lack of Diligence

(a) If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks' notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests.

(b) If a case [is printed] appears on a docket management calendar pursuant to the docket management program administered under the direction of the chief court administrator, and a motion for default for failure to plead is filed pursuant to Section 10-18, only those papers which close the pleadings by joining issues, or raise a special defense, may be filed by any party, unless the judicial authority otherwise orders.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 14-6. Administrative Appeals Are Civil Actions

For purposes of these rules, administrative appeals are civil actions. Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that[: (a) appeals from judgments of the superior court in administrative appeals shall be by certification only as provided by General Statutes § 51-197b as amended, and by chapter 72 of these rules; and (b)] an administrative appeal shall not be deemed an action for purposes of General Statutes §§ 52-591, 52-592 or 52-593.

COMMENTARY: The above change is made because not all appeals to the Appellate Court from judgments in administrative appeals are by certification.

Sec. 14-7. Trial List for Administrative Appeals; Briefs; Placing Cases Thereon

(a) Except as provided in subsections (b), (c) and (d) below, or except as otherwise permitted by the judicial authority in its discretion, in an administrative appeal, the record shall be filed [within the time prescribed by statute] as prescribed in Section 14-7B below or as otherwise prescribed by statute; the defendant's answer shall be filed within the time prescribed by Section 10-8; the plaintiff's brief shall be filed within thirty days after the filing of the defendant's answer or the return of the record, whichever is later; and the defendant's brief shall be filed within thirty days of the plaintiff's brief. No brief shall exceed thirty-five pages without permission of the judicial authority. A motion for extension of time within which to file the return of record, the answer, or any brief shall be made to the judicial authority before the due date of the filing which is the subject of the motion. The motion shall set forth the reasons therefor and shall contain a statement of the respective positions of the opposing parties with regard to the motion. The motion shall also state whether any previous motion for extension of time was made and the judicial authority's action thereon. If a party fails timely to file the record, answer, or brief in compliance with this subsection, the judicial authority may, on its own motion or on motion of one of the parties, and after hearing, make such order as the ends of justice require. Such orders may include but are not limited to the following or any combination thereof:

(1) An order that the party not in compliance pay the costs of the other parties, including a reasonable attorney's fees;

(2) If the party not in compliance is the plaintiff, an order dismissing the appeal;

(3) If the party not in compliance is a defendant, an order sustaining the appeal, an order remanding the case, or an order dismissing such defendant as a party to the appeal;

(4) If the board or agency has failed to file the record within the time permitted, an order allowing any other party to prepare and file a record of the administrative proceedings and an order that the board or agency pay the reasonable costs, including attorney's fees, of such party.

(b) Appeals from the employment security board of review shall follow the procedure set forth in chapter 22 of these rules.

(c) Workers' compensation appeals taken to the appellate court shall follow the procedure set forth in the Rules of Appellate Procedure.

(d) The following administrative appeals shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions:

(1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-117a and 12-119.

(2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103.

(3) Appeals from the commissioner of revenue services.

(4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139.

(5) Any other appeal in which the parties are entitled to a trial de novo.

(e) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in [subsection (f)] Section 14-7B.

[(f) All cases properly on the trial list for administrative appeals shall be privileged in respect to assignment and may be subject to pretrial conferences in accordance with Sections 14-11 through 14-14.]

COMMENTARY: C.G.S. § 8-8(i) requires that "the record" shall be transmitted to the court within 30 days, but new Section 14-7B breaks out the concept of "the record" into different tiers or steps. The revision to this section sets the stage for that by referencing the sections to follow. Subsection (f) repeats the language of C.G.S. § 8-8(m) and thus is redundant.

(NEW) Sec. 14-7B. Record in Administrative Appeals; Exceptions

(a) Except as provided in subsection (b), (c), and (d) of Section 14-7, or appeals taken pursuant to General Statutes § 4-183, for appeals from municipal land use, historic, and resource protection agencies, the board or agency shall transmit and file the record in accordance with this section. For the purposes of this Section 14-7B, the term "papers" shall include any and all documents, transcripts, exhibits, plans, minutes, agendas, correspondence, or other materials,

regardless of format, which are part of the return of record described in General Statutes § 8-8(i), including additions to the record per § 8-8(k).

(b) Within thirty days of the return date, the board or agency shall transmit a certified list of the papers in the record to all parties, and shall make the existing listed papers available for inspection by the parties.

(c) The first time that the appeal appears on the administrative appeals calendar, the court and the parties will establish, or will set up a conference to establish, which of the contents of the record are to be transmitted, and will set up a scheduling order, which will include dates for the filing of the designated contents of the record, for the submission of briefs and reply briefs, for pretrials or other appropriate conferences, and for the hearing on the administrative appeal. At the conference, the court shall also determine which, if any, of the designated contents of the record shall be transmitted to the parties and/or the court in paper format because such papers are either difficult to reproduce electronically or difficult to review in electronic format. Disputes about the contents of the records or other motions, applications or objections will be heard on the administrative appeals calendar or as otherwise scheduled by the Court. Any hearings to consider the taxation of costs in accordance with General Statute § 8-8(i) shall be conducted after the court renders its decision on the appeal.

(d) The board or agency shall transmit to the court and all parties (1) the certified list of papers in the record that was

transmitted to the parties under subsection (b) of this section; and (2) certified copies of the designated contents of the record established in accordance with subsection (c).

(e) If any party seeks to include in such party's brief or appendices papers the party deems material to its claim or position, which were not part of the designated contents of the record determined under subsection (c) but were on the certified list filed in accordance with subsection (b), such party shall file an amendment to the record as of right attaching such papers. In the event such an amendment to the record as of right is filed, the scheduling order may be adjusted to provide either party with additional time to file a brief or reply brief.

(f) No party shall include in such party's brief or appendices, papers that were neither part of the designated contents of the record under subsection (c), nor on the certified list filed in accordance with subsection (b), unless the court grants permission to supplement the records with such papers pursuant to General Statutes § 8-8(k).

COMMENTARY: This rule is limited to appeals from municipal land use and resource protection agencies, and specifically excludes appeals under the UAPA or other types of appeals. The intent of the rule is to streamline the contents of the record that must be reproduced for the parties and transmitted to the court, while assuring the parties of access to the full record for inspection. This results in more effective use of the court's time, substantial savings in producing the

contents of the record on appeal for the municipalities, and increased electronic filing and viewing of documents. In lieu of transmitting the full record to the court, the board or agency transmits to the court and the parties a certified list of what the record contains together with the contents of the record designated by the parties and the court at a pretrial conference. The rule allows the parties to agree to shorten the record submitted to the court, while retaining the ability to cite to a document that is part of the certified list of papers in the record but was not submitted to the court, per stipulation. As already allowed under C.G.S. § 8-8(k), adding items to the record that were not on the list of record items requires a motion by a party and approval by the court and no documents may be cited without such approval.

Sec. 16-15. Materials to Be Submitted to Jury

(a) The judicial authority shall submit to the jury all exhibits received in evidence.

(b) The judicial authority may, in its discretion, submit to the jury:

(1) The complaint, counterclaim and cross complaint, and responsive pleadings thereto;

(2) A copy or [tape] audio recording of the judicial authority's instructions to the jury;

(3) Upon request by the jury, a copy or [tape] audio recording of an appropriate portion of the judicial authority's instructions to the jury.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

[Sec. 16-36. Motions to Reduce Verdict

Motions to reduce the amount of a verdict or award pursuant to General Statutes §§ 52-225a or 52-216a shall be filed within ten days after the day the verdict or award is accepted and shall be heard by the judge who conducted the trial. In matters referred to an arbitrator under the provisions of Section 23-61, motions to reduce the amount of an award shall be filed within ten days after the decision of the arbitrator becomes a judgment of the court pursuant to subsection (a) of Section 23-66.]

COMMENTARY: This rule has been transferred to Chapter 17 as Section 17-2A.

(NEW) Sec. 17-2A. Motions to Reduce Verdict

Motions to reduce the amount of a verdict or award pursuant to General Statutes §§ 52-225a or 52-216a shall be filed within ten days after the day the verdict or award is accepted and shall be heard by the judge who conducted the trial. In matters referred to an arbitrator under the provisions of Section 23-61, motions to reduce the amount of an award shall be filed within ten days after the decision of the arbitrator becomes a judgment of the court pursuant to subsection (a) of Section 23-66.

COMMENTARY: This rule has been transferred from Section 16-36.

Sec. 17-7. Special Finding; Request

A request for a special finding of facts under General Statutes § 52-226, shall be by written motion filed [in duplicate] within fourteen days after the entry of judgment.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear

(a) Except as provided in subsection (b), if no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a nonsuit or default be entered for failure to appear.

(b) In an action commenced by a mortgagee prior to July 1, [2010] 2012, for the foreclosure of a mortgage on residential real property consisting of a one to four-family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to

the action may make a motion that a default be entered for failure to appear.

(c) It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(d) Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk not less than seven days from the filing of the motion and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.

(e) A motion for nonsuit for failure to appear shall be [printed] placed on the short calendar. If it is proper to grant the motion, the judicial authority shall grant it without the need for the moving party to appear at the short calendar.

(f) The granting of a motion for nonsuit for failure to appear or a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto or (2) a statement, with reasons therefore, that it is not necessary to attach a military affidavit to the motion.

COMMENTARY: The amendment to subsection (b) reflects the extension of the foreclosure mediation program by P.A. 10-181.

The amendment to subsection (e) is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-22. Notice of Judgments of Nonsuit and Default for Failure to Enter an Appearance

A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be [mailed] sent by mail or electronic delivery within ten days of the entry of judgment by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be [sent to] filed with the clerk's office. Proof of service shall be in accordance with Section 10-14.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents

and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-25. —Motion for Default and Judgment; Affidavit of Debt; Military Affidavit; Bill of Costs; Debt Instrument

(a) The plaintiff shall file a motion for default for failure to appear, judgment and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit, a bill of costs and a proposed judgment and notice to all parties. [The proposed notice of judgment shall be filed in duplicate.]

(b) If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff, and a copy of the executed instrument shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.

(c) If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, the affidavit of debt shall set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the

actual and reasonable costs which are incurred by counsel and a copy of the contract shall be attached to the affidavit.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-27. —Entry of Judgment

[Upon] Not less than seven days from receipt of the motion and affidavits, the clerk shall bring the motion and affidavits to the attention of the judicial authority. If the judicial authority orders judgment entered, the clerk shall complete the proposed judgment and notice to all parties in accordance with the terms of the judgment. The clerk shall immediately mail or electronically deliver one copy of the judgment and notice to all parties to the plaintiff or plaintiff's attorney.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-29. —Default Motion Not on Short Calendar

No motion for default and judgment filed under Sections 17-24 through 17-28 shall be [printed] placed on the short calendar, unless the judicial authority shall so order. No short

calendar claim shall be filed with this motion. Other than as provided for in those sections and in Section 17-20 no notice of a default or of a judgment after default shall be required in connection with any such motion.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 19-1. Application of Chapter

The provisions of this chapter shall govern the procedure in matters, except dissolution of marriage or civil union, legal separation, annulment, and juvenile matters, referred to committees, state referees and senior judges, attorney trial referees, special assignment probate judges, and, so far as applicable, to auditors, appraisers or other persons designated to make reports to the court.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

(NEW) Sec. 19-3A. Reference to Special Assignment Probate Judge

The court may refer any appeal filed under General Statutes § 45a-186, except those matters described in subdivision (h) (3) of that statute, to a special assignment

probate judge appointed in accordance with General Statutes § 45a-79b who is assigned by the Probate Court Administrator for the purposes of such appeal, except that such appeal shall be heard by the court if any party files a demand for such hearing in writing with the court not later than twenty days after service of the appeal.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-4. Attorney Trial Referees and Special Assignment Probate Judges; Time to File Report

An attorney trial referee or special assignment probate judge to whom a case has been referred shall file a report with the clerk of the court, with sufficient copies for all counsel, within one hundred and twenty days of the completion of the trial before such referee or special assignment probate judge.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-7. Pleadings

No case shall be referred to a committee [or], attorney trial referee or special assignment probate judge until the issues are closed and a certification to that effect has been filed pursuant to Section 14-8. Thereafter no pleadings may be

filed except by agreement of all parties or order of the court or the attorney trial referee or special assignment probate judge. Such pleadings shall be filed with the clerk and a copy filed with the committee [or], the attorney trial referee or the special assignment probate judge.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-8. Report

(a) The report of a committee [or], attorney trial referee or special assignment probate judge shall state, in separate and consecutively numbered paragraphs, the facts found and the conclusions drawn therefrom. It should not contain statements of evidence or excerpts from the evidence. The report should ordinarily state only the ultimate facts found; but if the committee [or], attorney trial referee or special assignment probate judge has reason to believe that the conclusions as to such facts from subordinate facts will be questioned, it may also state the subordinate facts found proven; and any committee, [or] attorney trial referee or special assignment probate judge having reason to believe that the rulings will be questioned may state them with a brief summary of such facts as are necessary to explain them; and the committee [or], attorney trial referee or special assignment probate judge

should state such claims as were made by the parties and which either party requests be stated.

(b) The committee [or], attorney trial referee or special assignment probate judge may accompany the report with a memorandum of decision including such matters as it may deem helpful in the decision of the case, and, in any case in which appraisal fees may be awarded by the court, shall make a finding and recommendation as to such appraisal fees as it deems reasonable.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-9. Request for Finding

Either party may request a committee [or], attorney trial referee or special assignment probate judge to make a finding of subordinate facts or of its rulings, and of the claims made, and shall include in or annex to such request a statement of the facts, or rulings, or claims, the party desires the committee [or], attorney trial referee or special assignment probate judge to incorporate in the report.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-10. Alternative Report

If alternative claims are made before the committee [or], attorney trial referee or special assignment probate judge, or the committee [or], attorney trial referee or special assignment probate judge deems it advisable, it may report all the facts bearing upon such claims and make its conclusions in the alternative, so that the judgment rendered will depend upon which of the alternative conclusions the facts are found legally to support.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-11. Amending Report

A committee [or], attorney trial referee or special assignment probate judge may, at any time before a report is accepted, file an amendment to it or an amended report.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-14. Objections to Acceptance of Report

A party may file objections to the acceptance of a report on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the committee [or], attorney trial referee or

special assignment probate judge erred in rulings on evidence or other rulings or that there are other reasons why the report should not be accepted. A party objecting on these grounds must file with the party's objections a transcript of the evidence taken before the committee, except such portions as the parties may stipulate to omit.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-15. Time to File Objections

Objections to the acceptance of a report shall be filed within twenty-one days after the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 19-16. Judgment on the Report

After the expiration of twenty-one days from the mailing or electronic delivery of the report, either party may, without written motion, claim the case for the short calendar for judgment on the report of the committee [or], attorney trial referee or special assignment probate judge, provided, if the

parties file a stipulation that no objections will be filed, the case may be so claimed at any time thereafter.

The court may, on its own motion and with notice thereof, schedule the matter for judgment on the report and/or hearing on any objections thereto, anytime after the expiration of twenty-one days from the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

COMMENTARY: The above amendments are intended to do the following: (1) to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment; and (2) to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-17. Function of the Court

(a) The court shall render such judgment as the law requires upon the facts in the report. If the court finds that the committee [or], attorney trial referee or special assignment probate judge has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report and refer the matter to the same or another committee [or], attorney trial referee or special assignment probate judge, as the case may be, for a new trial or revoke the reference and leave the case to be disposed of in court.

(b) The court may correct a report at any time before judgment upon the written stipulation of the parties or it may upon its own motion add a fact which is admitted or undisputed or strike out a fact improperly found.

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 21-13. Semiannual Summary of Orders

Every receiver shall, on the first Tuesdays of April and October of each year, file a summary statement of all orders made in said cause during the six months preceding, and the doings thereunder. The clerk shall [hand] refer the statement to the judge holding the term or session then pending, or held next thereafter, who shall, upon examination of the same, make such further orders in said cause as are deemed necessary, and may direct that the cause be placed on the short calendar for an order approving the statement.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 24-29. —Decision in Small Claims; Time Limit

(a) A written decision stating the reasons for the decision shall be required in matters in which a contested

hearing is held, in which a counterclaim is filed or in which a judgment is entered in an amount other than the amount claimed. Nothing in this section precludes the judicial authority from filing a written decision in any matter when such judicial authority deems it appropriate.

(b) Judgments shall be rendered no later than forty-five days from the completion of the proceedings unless such time limit is waived in writing by the parties or their representatives. The judgment of the judicial authority shall be recorded by the clerk and notice of the judgment and written decision shall be [mailed] sent by mail or electronic delivery to each party or representative, if any[, in a sealed envelope].

COMMENTARY: The above change makes this rule consistent with Section 24-14.

AMENDMENTS TO THE FAMILY RULES

(NEW) Sec. 25-2A. Premarital and Postnuptial Agreements

(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party's claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.

(b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.

COMMENTARY: This rule requires that a party seeking to enforce or to avoid enforcement of a premarital agreement or postnuptial agreement give notice of that intention by filing appropriate claims for relief before the case management date.

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

[(a) 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:

(1) Neither party shall sell, transfer, encumber (except for the filing of a lis pendens), conceal, 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, individually or jointly held by the parties, 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.

(2) 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.

(3) 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, in accordance with the uniform child support guidelines.

(4) 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.

(5) 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.

(6) The parties, if they share a minor child or children, shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(7) Neither party shall cause the other party or 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.

(8) 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.

(9) 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.

(10) If the parties share a child or children, 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 there is a prior, contradictory order of a judicial authority.

(11) If the parents of minor children live apart during this dissolution 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 there is a prior, contradictory order of a judicial authority.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) 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 uppercase 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.

(c) The automatic orders of a judicial authority as enumerated in subdivisions (a) (1), (2), and (3) shall not apply in custody and visitation cases.]

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.

(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.

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 uppercase 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: The automatic orders have been reorganized and, in some instances, clarified. The reorganization regroups existing orders into cases that involve three circumstances: (1) those that involve a child or children whether or not the parties are married or in a civil union; (2) those that involve a marriage or civil union, whether or not there are children; and (3) all cases. The purpose of new subsections (b) (2), (3) and (4) is to emphasize and strengthen orders that preserve and protect assets.

(NEW) Sec. 25-5A. Automatic Orders upon Service of Petition for Child Support

(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with

service of process of a petition for child support. 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 petitioner or the applicant upon the signing of the document initiating the action (whether it be complaint, petition or application), and with regard to 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:

Neither party shall cause the other party or the children who are the subject of the complaint, application or petition 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.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) shall be set forth immediately following the party's requested relief in any complaint, petition or application, and shall set forth the following language in uppercase letters: IF YOU DO NOT FOLLOW OR OBEY THESE ORDERS YOU MAY BE PUNISHED BY CONTEMPT OF COURT. IF YOU OBJECT TO THESE ORDERS OR WOULD LIKE TO HAVE THEM CHANGED OR MODIFIED WHILE YOUR CASE IS PENDING, YOU HAVE THE RIGHT TO A HEARING BY A JUDICIAL AUTHORITY WITHIN A REASONABLE TIME. The clerk shall not accept for filing any complaint, petition or application that does not comply with this subsection.

COMMENTARY: This section corresponds to Section 25a-7 and will provide for consistent automatic orders between IV-D and Non-IV-D support petitions.

Sec. 25-31. Discovery and Depositions

The provisions of Sections 13-1 through [13-11] 13-10 inclusive, 13-13 through 13-16 inclusive, and 13-17 through 13-32 of the rules of practice inclusive, shall apply to family matters as defined in Section 25-1.

COMMENTARY: Section 13-11 no longer applies to family matters.

(NEW) Sec. 25-32A. Discovery Noncompliance

If a party fails to comply with a discovery request or a discovery order in any manner set forth in Sec. 13-14(a), the party who requested such discovery or in whose favor the discovery order was made may move to compel compliance with the request or order. The moving party shall specify in a memorandum in support of his or her motion, the discovery sought and the remedy sought. The party to whom the discovery request or order was directed shall, in a memorandum, specify why the discovery has not been provided or why such party has not complied with the discovery order. If the party to whom the discovery request or order was directed claims that the discovery has been provided or order has been complied with, he or she shall detail with specificity what discovery was provided and how compliance with the discovery order was made.

COMMENTARY: The purpose of this new rule is to clarify and improve the discovery process in Family Cases. It is

not the intent of this rule to have the actual disclosure documents provided, but rather a detailed list of the items provided.

(NEW) Sec. 25-32B. Discovery - Special Master

The judicial authority may appoint a Discovery Special Master to assist in the resolution of discovery disputes. When such an appointment is made, the judicial authority shall specify the duties, authority and compensation of the Discovery Special Master and how that compensation shall be allocated between the parties.

COMMENTARY: This rule provides for the appointment of a discovery special master in family cases by the judicial authority.

Sec. 25-34. Procedure for Short Calendar

(a) With the exception of matters governed by Chapter 13, [O]oral argument on any motion or the presentation of testimony thereon shall be allowed if the appearing parties have followed administrative policies for marking the motion ready and for screening with family services. Oral argument and the presentation of testimony on motions made under Chapter 13 are at the discretion of the judicial authority.

(b) If the judicial authority has determined that oral argument or the presentation of testimony is necessary on a motion made under Chapter 13, the judicial authority shall set the matter for oral argument or testimony on a short calendar date or other date as determined by the judicial authority.

(c) If the judicial authority has determined that oral argument or the presentation of testimony is necessary on a

motion made under Chapter 13 and has not set it down on a hearing date, the movant may reclaim the motion within 30 days of the date the motion appeared on the calendar.

(d) [(b)] If the matter will require more than one hour of court time, it may be specifically assigned for a date certain.

(e) [(c)] Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise. Unless for good cause shown, no motion may be reclaimed after a period of three months from the date of filing. This subsection shall not apply to those motions where counsel appeared on the date set by the judicial authority and entered into a scheduling order for discovery, depositions and a date certain for hearing.

COMMENTARY: These matters are very similar to civil matters and should be nonarguable in most instances. The amendments to this section create a process that will result in a more appropriate use of judicial resources by enabling the judicial authority to have greater control of the short calendar. The amendments are also likely to result in counsel and litigants communicating more fully, thereby narrowing discovery disputes before they are presented to the judicial authority for adjudication.

Sec. 25-59. Closure of Courtroom in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch web site. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the

judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or filed in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of

the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(h) Sworn statements of current income, expenses, assets and liabilities filed with the court pursuant to Section 25-30 shall be under seal and be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any guardians ad litem and attorneys appointed for any minor children involved in the matter, except as otherwise ordered by the judicial authority. When such sworn statements are filed the clerk shall place them in a sealed envelope clearly identified with the words ''Financial Affidavit.'' All such sworn statements that are filed in a case may be placed in the same sealed envelope. Any person may file a motion to unseal these documents. When such motion is filed, the provisions of paragraphs (a) through (e) of this section shall apply and the party who filed the documents shall have the burden of proving that they should remain sealed. The judicial authority shall order that the automatic sealing pursuant to this paragraph shall terminate with respect to all

such sworn statements then on file with the court when any hearing is held at which financial issues are in dispute. This shall not preclude a party from filing a motion to seal or limit disclosure of such sworn statements pursuant to this section.

(i) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch web site. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

COMMENTARY: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 25-60. [Family Division] Evaluations and Studies

(a) Whenever, in any family matter, an evaluation or study has been ordered pursuant to Section 25-60A or Section 25-61, the case shall not be disposed of until the report has been filed as hereinafter provided, and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard, unless the judicial authority [shall] orders that the case be heard before the report is filed, [subject to modification on the filing of the report].

(b) Any report of an evaluation or study pursuant to Section 25-60A or Section 25-61 shall be made in quadruplicate, shall be filed with the clerk, who will impound such reports, and shall be mailed to counsel of record, guardians ad litem and self represented parties unless otherwise ordered by the judicial authority. Said report shall be available for inspection [only] to counsel of record, guardians ad litem, and to the parties to the action, unless otherwise ordered by the judicial authority.

(c) [Said] Any report prepared pursuant to Section 25-61 shall be admissible in evidence provided the author of the report is available for cross-examination.

COMMENTARY: These revisions clarify that this section applies to evaluations conducted by family relations counselors and state licensed mental health professionals appointed to conduct court-ordered evaluations. The revision in subsection (b) extends the existing provisions to cover self represented parties and guardians ad litem, unless otherwise ordered by the judicial authority, not just counsel of record.

(NEW) 25-60A. Court-Ordered Evaluations

(a) If the court orders an evaluation of any party or any child in a family proceeding where custody, visitation or parental access is at issue, a state licensed mental health professional shall conduct such evaluation.

(b) Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the

guardian ad litem or, where there is no guardian ad litem, by court personnel.

(c) Until a court-ordered evaluation is filed with the clerk pursuant to Section 25-60 (b), counsel for the parties shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority.

(d) The provisions of subsections (a) and (b) of Section 25-60 shall apply to completed court ordered evaluations.

COMMENTARY: This new section clarifies that the judicial authority oversees the initiation and completion of court-ordered evaluators and further clarifies the evaluation procedure.

Sec. 25-62. Appointment of Guardian Ad Litem

The judicial authority may appoint a guardian ad litem for a minor involved in any family matter. Unless the judicial authority orders that another person be appointed guardian ad litem, a family relations counselor shall be designated as guardian ad litem. The guardian ad litem is not required to be an attorney. [If the guardian ad litem is not a family relations counselor, the judicial authority may order compensation for services rendered in accordance with the established judicial branch fee schedule.] With the exception of family relations counselors, no person may be appointed as guardian ad litem until he or she has completed the comprehensive training program for all family division guardians ad litem sponsored by the Judicial Branch. The judicial authority may order

compensation for services rendered by a court appointed guardian ad litem.

COMMENTARY: This revision provides notice to guardians ad litem for minors in family matters that they must complete a comprehensive training program before the judicial authority will appoint them.

(NEW) Sec. 25-62A. Appointment of Attorney for a Minor Child

The judicial authority may appoint an attorney for a minor child in any family matter. No person shall be appointed as an attorney for a minor child until he or she has completed the comprehensive training program for all family division attorneys for minor children sponsored by the Judicial Branch. The judicial authority may order compensation for services rendered by an attorney for a minor child.

COMMENTARY: This revision provides notice to an attorney for a minor child that he or she must complete a comprehensive training program before the judicial authority will appoint them.

AMENDMENTS TO THE JUVENILE RULES

Sec. 26-1. Definitions Applicable to Proceedings on Juvenile Matters

In these definitions and in the rules of practice and procedure on juvenile matters, the singular shall include the plural and the plural, the singular where appropriate.

(a) [(1) ''Child'' means any person under sixteen years of age, except that (A) for purposes of delinquency matters and proceedings, ''child'' means any person (i) under

seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining seventeen years of age, has committed a delinquent act and, subsequent to attaining seventeen years of age, (I) violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; or (II) willfully fails to appear in response to a summons under General Statutes § 46b-133, with respect to such delinquency proceeding, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age; (2) ''Youth'' means any person sixteen or seventeen years of age who has not been legally emancipated; (3) ''Youth in crisis'' means any seventeen year old youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4)] The definitions of the terms "child," "youth," "youth in crisis," ''abused,'' ''mentally deficient,'' ''delinquent,'' ''delinquent act,'' ''dependent,'' ''neglected,'' ''uncared for,'' ''alcohol-dependent child,'' ''family with service needs,'' ''drug-dependent child,'' ''serious juvenile offense,'' ''serious juvenile offender,'' and ''serious juvenile repeat offender'' shall be as set forth in General Statutes § 46b-120. The definition of

"victim" shall be as set forth in General Statutes § 46b-122.

[(5) ''Indian child'' means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.]

(b) ''Commitment'' means an order of the judicial authority whereby custody and/or guardianship of a child or youth are transferred to the commissioner of the department of children and families.

(c) ''Complaint'' means a written allegation or statement presented to the judicial authority that a child's or youth's conduct as a delinquent or situation as a child from a family with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

(d) ''Detention'' means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquent complaint.

(e) ''Family support center'' means a community-based service center for children and families involved with a complaint that has been filed with the Superior Court under General Statutes § 46b-149, that provides multiple services, or access to such services, for the purpose of preventing such children and families from having further involvement with the court as families with service needs.

(f) ''Guardian'' means a person who has a judicially created relationship with a child or youth which is intended to be permanent and self sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child or youth: protection, education, care and control of the person, custody of the person and decision making.

(g) ''Hearing'' means an activity of the court on the record in the presence of a judicial authority and shall include (1) ''Adjudicatory hearing'': A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) ''Contested hearing on an order of temporary custody'' means a hearing on an ex parte order of temporary custody or an order to appear which is held not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the respondent; (3) ''Dispositive hearing'': The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child or youth, orders whatever action is in the best interests of the child, youth or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single

hearing. (4) ''Preliminary hearing'' means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, neglected, or dependent. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order. (5) ''Plea hearing'' is a hearing at which (i) A parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

(h) ''Indian child'' means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

[(h)] (i) ''Parent'' means a biological mother or father or adoptive mother or father except a biological or adoptive mother or father whose parental rights have been terminated;

or the father of any child or youth born out of wedlock, provided at the time of the filing of the petition (1) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (2) he has acknowledged in writing to be the father of such child or youth, or (3) he has contributed regularly to the support of such child, or (4) his name appears on the birth certificate, or (5) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (6) he has been named in the petition as the father of the minor child or youth by the mother.

[(i)] (j) ''Parties'' includes: (1) The child or youth who is the subject of a proceeding and those additional persons as defined herein; (2) ''Legal party'': Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) ''Intervening party'': Any person [whose interest in the matter before the judicial authority is not of such a nature and kind as to entitle legal service or notice as a prerequisite to the judicial authority's jurisdiction to adjudicate the matter pending before it but whose participation therein, at the discretion of the judicial authority, may promote the interests of justice. An ''intervening party'' may in any proceeding before the judicial authority be given notice thereof in any manner reasonably appropriate to that end, but no such ''intervening party'' shall

be entitled, as a matter of right, to provision of counsel by the court.] who is permitted to intervene in accordance with Section 35a-4.

[(j)] (k) ''Permanency plan'' means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b (c), 46b-129 (k), 46b-141, and 46b-149(j).

[(k)] (l) ''Petition'' means a formal pleading, executed under oath, alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be filed by any one of the parties authorized to do so by statute.

[(*l*)] (m) ''Information'' means a formal pleading filed by a prosecutor alleging that a child or youth in a delinquency matter is within the judicial authority's jurisdiction.

[(m)] (n) ''Probation'' means a legal status created in delinquency cases following conviction whereby a respondent child is permitted to remain in the home or in the physical custody of a relative or other fit person subject to supervision by the court through the court's probation officers and upon such terms as the judicial authority determines, subject to the continuing jurisdiction of the judicial authority.

[(n)] (o) ''Respondent'' means a person who is alleged to be a delinquent or a child from a family with service needs, or a youth in crisis, or a parent or a guardian of a child or youth who is the subject of a petition alleging that the child is uncared for, neglected, or dependent or requesting termination of parental rights.

[(o)] (p) ''Specific steps'' means those judicially determined steps the parent or guardian and the commissioner of the department of children and families should take in order for the parent or guardian to retain or regain custody of a child or youth.

[(p)] (q) ''Staff secure facility'' means a residential facility (1) that does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein, (2) that may establish reasonable rules restricting entrance to and egress from the facility, and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

[(q)] (r) ''Supervision'' includes: (1) ''Nonjudicial supervision'': A legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) ''Protective supervision'': A disposition following adjudication in neglected, uncared for or dependent cases

created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) ''Judicial supervision'': A legal status similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

[(r)] (s) ''Take into Custody Order'' means an order by a judicial authority that a child be taken into custody and immediately turned over to a detention superintendent where probable cause has been found that the child has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

[(s) "Victim'' means the person who is the victim of a delinquent act, a parent or guardian of such person, the legal representative of such person or an advocate appointed for such person pursuant to General Statutes § 54-221.]

COMMENTARY: The revisions in subsection (a) clarify that certain additional definitions are as set forth in General Statutes §§ 46b-120 and 46b-122 (Public Act 10-43, §30). The movement of subsection (h) is to maintain consistency within the section. The revision to subsection (j)(3) is

consistent with revisions to Section 35a-4 that conform to Sections 46b-129(c) and (d), as amended by Public Act 09-185.

Sec. 30-2A. Family with Service Needs and Detention

(a) No child who has been adjudicated as a child from a family with service needs in accordance with General Statutes § 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication, and no such child who is charged or found to be in violation of any such order may be ordered detained in any juvenile detention center.

(b) No nondelinquent juvenile runaway from another state may be held in a juvenile detention center in accordance with the provisions of General Statutes § [46b-151 to 46b-151g inclusive] 46b-151h.

COMMENTARY: The above change is made to update the statutory citations in subsection (b).

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in detention for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless (1) a delinquency petition or information alleging delinquent conduct has been filed or an affidavit is filed by a police officer, probation officer or prosecutor setting forth the facts upon which they believe that a child in detention is a delinquent or non-delinquent child whose return is sought by another jurisdiction in accordance with the

Interstate Compact on Juveniles, and (2) an order for such continued detention has been signed by the judicial authority.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest. However, a judicial finding of probable cause must be made within forty-eight hours of arrest, including Saturdays, Sundays and holidays. If there is no such finding of said probable cause within forty eight hours of the arrest, the child shall be released from detention subject to an information and subsequent arrest by warrant or take into custody order.

(c) If a non-delinquent child is being held for another jurisdiction in accordance with the Interstate Compact on Juveniles, that child shall be held not more than 90 days and shall be held in a secure facility, as defined by rules promulgated in accordance with the Compact, other than a locked, state-operated detention facility.

COMMENTARY: The above revisions are made to comply with the provisions of the Interstate Compact on Juveniles and General Statutes § 46b-149(f). Regulations promulgated pursuant to the Compact at times require that the judicial authority hold a non-delinquent child whose custody is being sought by another state in a secure setting. Compact Rule 1-101 defines a secure facility as a facility approved for the holding of juveniles which is either staff-secured or locked and prohibits a juvenile in custody from leaving. General Statutes § 46b-149(f) prohibits the use of detention as a

means by which to hold a non-delinquent child in accordance with the Compact.

Sec. 30-6. Basis for Detention

No child shall be held in detention unless it appears from the available facts that there is probable cause to believe that the child is responsible for the acts alleged, that there is no less restrictive alternative available and that there is (1) a strong probability that the child will run away prior to the court hearing or disposition, or (2) a strong probability that the child will commit or attempt to commit other offenses injurious to the child or to the community [before] prior to the court disposition, or (3) probable cause to believe that the child's continued residence in the child's home pending disposition [will not safeguard the best interests of] poses a risk the child or the community because of the serious and dangerous nature of the act or acts [set forth in the attached delinquency petition or information,] the child is alleged to have committed, [or] (4) a need to hold the child for another jurisdiction, [or] (5) a need to hold the child to assure the child's appearance before the court, in view of [a] the child's previous failure to respond to the court process[.] ,or (6) the child has violated one or more of the conditions of a suspended detention order. The court in exercising its discretion to detain under General Statutes § 46b-133 (d) may consider a suspended detention order with graduated sanctions as an alternative to detention in accordance with graduated sanctions procedures established by the judicial branch.

COMMENTARY: The revisions to this section are made to conform to amendments made by Section 72(d) of Public Act 09-7 of the September Special Session.

Sec. 33a-6. Order of Temporary Custody; Ex Parte Orders and Orders to Appear

(a) If the judicial authority finds, based upon the specific allegations of the petition and other verified affirmations of fact provided by the applicant, that there is reasonable cause to believe that: (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from his or her surroundings and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety, the judicial authority shall, upon proper application at the time of filing of the petition or at any time subsequent thereto, either (A) issue an order to the respondents or other persons having responsibility for the care of the child or youth to appear at such time as the judicial authority may designate to determine whether the judicial authority should vest in some suitable agency or person the child's or youth's temporary care and custody pending disposition of the petition, or (B) issue an order ex parte vesting in some suitable agency or person the child's or youth's temporary care and custody.

(b) A preliminary hearing on any ex parte custody order or order to appear issued by the judicial authority shall be held as soon as practicable but not later than ten days after the issuance of such order.

(c) If the application is filed subsequent to the filing of the petition, a motion to amend the petition or to modify protective supervision shall be filed no later than the next business date before such preliminary hearing.

(d) Upon issuance of an ex parte order or order to appear, the judicial authority shall provide to the commissioner of the department of children and families and the respondents specific steps necessary for each to take for the respondents to retain or regain custody of the child or youth.

(e) An ex parte order or order to appear shall be accompanied by a conspicuous notice to the respondents written in clear and simple language containing at least the following information: (i) That the order contains allegations that conditions in the home have endangered the safety and welfare of the child or youth; (ii) that a hearing will be held on the date on the form; (iii) that the hearing is the opportunity to present the respondents' position concerning the alleged facts; (iv) that the respondent has the right to remain silent; (v) that an attorney will be appointed for respondents who cannot afford an attorney by the chief child protection attorney; (vi) that such respondents may apply for state paid representation by going in person to the court address on the form and are advised to go as soon as possible in order for the attorney to prepare for the hearing; [and] (vii) if such respondents have any questions concerning the case or appointment of counsel, any such respondent is advised to go to the court, or contact the clerk's office, or contact the chief child protection attorney

as soon as possible, and (viii) that such parents, or a person having responsibility for the care and custody of the child or youth, may request the Commissioner of Children and Families to investigate placing the child or youth with a person related to the child or youth by blood or marriage who might serve as a licensed foster parent or temporary custodian for such child or youth.

(f) Upon application for state paid representation, the judicial authority shall promptly determine eligibility and, if the respondent is eligible, promptly notify the chief child protection attorney who shall assign an attorney to provide representation. In the absence of such a request prior to the preliminary hearing, the chief child protection attorney shall ensure that standby counsel is available at such hearing to assist and/or represent the respondents.

COMMENTARY: The above revisions are made to conform to amendments to General Statutes Sec. 46b-129 promulgated in Public Acts 09-185, Sec. 3 regarding the assessment of relatives to serve as possible placements or temporary custodians.

Sec. 33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

(a) At the preliminary hearing on the order of temporary custody or order to appear, or at the first hearing on a petition for neglect, uncared for, dependency, or termination of parental rights, the judicial authority shall:

(1) first determine whether the necessary parties are present and that the rules governing service on or notice to

nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents, as applicable, have been complied with, and should note these facts for the record, and may proceed with respect to the parties who (i) are present and have been properly served; (ii) are present and waive any defects in service; and (iii) are not present, but have been properly served. As to any party who [not present and who] has not been properly served, the judicial authority may continue the proceedings with respect to such party for a reasonable period of time for service to be made and confirmed;

(2) inform the respondents of the allegations contained in all petitions and applications that are the subject of the hearing;

(3) inform the respondents of their right to remain silent;

(4) ensure that an attorney, and where appropriate, a separate guardian ad litem, has been assigned to represent the child or youth by the chief child protection attorney, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), 46b-136 and Section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the chief child protection attorney to assign an attorney to represent any respondent who is unable

to afford representation, as determined by the judicial authority;

(6) advise the respondents of the right to a hearing on the petitions and applications, to be held not later than ten days after the date of the preliminary hearing if the hearing is pursuant to an ex parte order of temporary custody or an order to appear;

(7) notwithstanding any prior statements acknowledging responsibility, inquire of the custodial respondent in neglect, uncared for and dependency matters, and of all respondents in termination matters, whether the allegations of the petition are presently admitted or denied;

(8) make any interim orders, including visitation, that the judicial authority determines are in the best interests of the child or youth, and order specific steps the commissioner and the respondents shall take for the respondents to regain or to retain custody of the child or youth;

(9) take steps to determine the identity of the father of the child or youth, including, if necessary, inquiring of the mother of the child or youth, under oath, as to the identity and address of any person who might be the father of the child or youth and ordering genetic testing, if necessary and appropriate, and order service of the amended petition citing in the putative father and notice of the hearing date, if any, to be made upon him;

(10) if the person named as the putative father appears, and admits that he is the biological father, provide him and the

mother with the notices which comply with General Statutes § 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms which comply with General Statutes § 17b-27, which documents shall be executed and filed in accordance with General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters; [and]

(11) in the event that the person named as a putative father appears and denies that he is the biological father of the child or youth, advise him that he may have no further standing in any proceeding concerning the child or youth, and either order genetic testing to determine paternity or direct him to execute a written denial of paternity on a form promulgated by the office of the chief court administrator. Upon execution of such a form by the putative father, the judicial authority may remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction; and[.]

(12) identify any person or persons related to the child or youth by blood or marriage residing in this state or out of state who might serve as licensed foster parents or temporary custodians, and order the commissioner of the department of children and families to investigate and determine the appropriateness of placement of the child or youth with such relative or relatives pursuant to General Statutes § 46b-129(c)

and provide a written report to the court no later than 30 days from the date of the preliminary hearing and notify all counsel of record or set a reasonable date for such a report if a relative lives outside the state.

(b) At the preliminary hearing on the order of temporary custody or order to appear, the judicial authority may provide parties an opportunity to present argument with regard to the sufficiency of the sworn statements.

(c) If any respondent fails, after proper service, to appear at the preliminary hearing, the judicial authority may enter or sustain an order of temporary custody.

(d) Upon request, or upon its own motion, the judicial authority shall schedule a hearing on the order for temporary custody or the order to appear to be held as soon as practicable but not later than ten days after the date of the preliminary hearing. Such hearing shall be held on consecutive days except for compelling circumstances or at the request of the respondents.

(e) Subject to the requirements of Section 33a-7 (a) (6), upon motion of any party or on its own motion, the judicial authority may consolidate the hearing, on the order of temporary custody or order to appear with the adjudicatory phase of the trial on the underlying petition. At a consolidated order of temporary custody and neglect adjudication hearing, the judicial authority shall determine the outcome of the order of temporary custody based upon whether or not continued removal is necessary to ensure the child's or youth's safety,

irrespective of its findings on whether there is sufficient evidence to support an adjudication of neglect or uncared for. Nothing in this subsection prohibits the judicial authority from proceeding to disposition of the underlying petition immediately after such consolidated hearing if the social study has been filed and the parties had previously agreed to sustain the order of temporary custody and waived the ten day hearing or the parties should reasonably be ready to proceed.

COMMENTARY: The above revisions are made to conform to amendments promulgated by P.A. 09-185 and 10-43, which require the judicial authority to examine the mother of the child/youth under oath to ascertain the father's identity and location, and require the judicial authority to inquire as to the existence of relatives who could serve as placements for the child or youth at the preliminary order of temporary custody hearing. Subsection (a) (1) is amended to conform to current practice.

Sec. 34a-1. Motions, Requests and Amendments

(a) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to juvenile matters in the superior court as defined by General Statutes § 46b-121.

(b) The provisions of Sections 8-2, 9-5, 9-22, 10-12 (a) and (c), 10-13, 10-14, 10-17, 10-18, 10-29, 10-62, 11-4, 11-5, 11-6, 11-7, 11-8, 11-10,11-11, 11-12, 11-13, 12-1, 12-2, 12-3, 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive, subject to Sec. 34a-20, 15-3, 15-8, 17-4, and 17-21 of the rules of practice shall apply to juvenile

matters in the civil session as defined by General Statutes § 46b-121.

(c) A motion or request, other than a motion made orally during a hearing, shall be in writing. An objection to a request shall also be in writing. A motion, request or objection to a request shall have annexed to it a proper order and where appropriate shall be in the form called for by Section 4-1. The form and manner of notice shall adequately inform the interested parties of the time, place and nature of the hearing. A motion, request, or objection to a request whose form is not therein prescribed shall state in paragraphs successively numbered the specific grounds upon which it is made. A copy of all written motions, requests, or objections to requests shall be served on the opposing party or counsel pursuant to Sections 10-12 (a) and (c), 10-13, 10-14 and 10-17. All motions or objections to requests shall be given an initial hearing by the judicial authority within fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived; any motion in a case on trial or assigned for trial may be disposed of by the judicial authority at its discretion or ordered upon the docket.

(d) A petition may be amended at any time by the judicial authority on its own motion or in response to a motion prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition justify the need for additional time to permit the parties to

respond adequately to the additional or changed facts and circumstances.

(e) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or agree that the motion may be considered without the need for oral argument or testimony and the motion states on its face that there is such an agreement, the judicial authority may consider and rule on the motion without a hearing.

COMMENTARY: Section 15-3 is added to subsection (b) because motions in limine are now common practice in juvenile matters in the civil session. The other change in subsection (b) clarifies that the civil motions referred to in this Practice Book section are applicable only to juvenile matters in the civil session as defined by General Statutes § 46b-121, and not to juvenile matters in the criminal session, such as delinquency cases.

Sec. 35a-1. Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

(a) Notwithstanding any prior statements acknowledging responsibility, the judicial authority shall inquire whether the allegations of the petition are presently admitted or denied. This inquiry shall be made of the parent(s) or guardian in neglect, uncared for or dependent matters; and of the parents in termination matters.

(b) An admission to allegations or a written plea of nolo contendere signed by the respondent may be accepted by the judicial authority. Before accepting an admission or plea of nolo contendere, the judicial authority shall determine whether

the right to [counsel] trial has been waived, and that the parties understand the content and consequences of their admission or plea. If the allegations are admitted or the plea accepted, the judicial authority shall make its adjudicatory finding as to the validity of the facts alleged in the petition and may proceed to a dispositional hearing. Where appropriate, the judicial authority may permit a noncustodial parent or guardian to stand silent as to the entry of an adjudication.

COMMENTARY: The revision reflects the fact that it is the right to trial that is being waived, not the right to counsel.

Sec. 35a-4. [Intervening Parties] Motions to Intervene

[(a) In making a determination upon a motion to intervene by any grandparent of the child or youth, the judicial authority shall consider:

(1) the timeliness of the motion as judged by all the circumstances of the case;

(2) whether the movant has a direct and immediate interest in the case.

(b) Other persons including, but not limited to, siblings may move to intervene in the dispositional phase of the case, and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or youth or in the interests of justice.

(c) In making a determination upon a motion to intervene by any other person, the judicial authority shall consider:

(1) the timeliness of the motion as judged by all the circumstances of the case;

(2) whether the movant has a direct and immediate interest in the case;

(3) whether the movant's interest is not adequately represented by existing parties;

(4) whether the intervention may cause delay in the proceedings or other prejudice to the existing parties;

(5) the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority.

(d) Upon the granting of such motion, such grandparent or other person may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to state paid representation by the chief child protection attorney.

(e) When a judicial authority grants a motion to intervene in proceedings concerning a pending neglect or uncared for petition, the judicial authority may determine at the time of disposition of the petition whether good cause exists to permit said intervenor to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.]

(a) Interventions by any person related to the child or youth by blood or marriage for temporary custody or guardianship shall be governed by General Statutes § 46b-129(c) or (d). All motions for intervention shall state with specificity the movant's interest and relief requested.

(b) Upon motion of any sibling of any child committed to the commissioner of the department of children and families pursuant to General Statutes § 46b-129, such sibling shall have the right to be heard concerning visitation with, and placement of, any such child. In awarding any visitation or modifying any placement, the judicial authority shall be guided by the best interests of all siblings affected by such determination.

(c) Other persons unrelated to the child or youth by blood or marriage, or persons related to the child or youth by blood or marriage who are not seeking to serve as a placement, temporary custodian or guardian of the child may move to intervene in the dispositional phase of the case, and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or youth or in the interests of justice.

(d) In making a determination upon a motion to intervene, the judicial authority may consider: the timeliness of the motion as judged by the circumstances of the case; whether the movant has a direct and immediate interest in the case; whether the movant's interest is not adequately represented by existing parties; whether the intervention may cause delay in the proceedings or other prejudice to the existing parties; the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority; and the best interests of the child.

(e) Any intervenor shall appear in person, with or without counsel, and shall not be entitled to court appointed counsel or the assignment of counsel by the Chief Child Protection Attorney except as provided in General Statutes §46b-136.

(f) The judicial authority, may, on motion of any party or on its own motion, after notice and a hearing, terminate any person's intervenor status if such person's participation in the case is no longer warranted or necessary. The judicial authority may determine if good cause exists to permit the intervenor to continue to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.

COMMENTARY: The above revisions make the Practice Book provisions on intervenors conform to 2009 amendments to Section 46b-129(c) and (d). (Public Act 09-185).

(NEW) Sec. 35a-12A. Motions for Transfer of Guardianship

(a) Motions to transfer guardianship are dispositional in nature, based on the prior adjudication.

(b) In cases in which a motion for transfer of guardianship seeks to vest guardianship of a child or youth in any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interest of the child. In such cases, there shall be a rebuttable presumption that the award of legal

guardianship to that relative shall be in the best interests of the child or youth and that such relative is a suitable and worthy person to assume legal guardianship. The presumption may be rebutted by a preponderance of the evidence that an award of legal guardianship to such relative would not be in the child's or youth's best interests and such relative is not a suitable and worthy person.

(c) In cases in which a motion for transfer of guardianship, if granted, would require the removal of a child or youth from any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the initial burden of proof that an award of legal guardianship to, or an adoption by, such relative would not be in the child's or youth's best interest and that such relative is not a suitable and worthy person. If this burden is met, the moving party then has the burden of proof that the movant's proposed guardian is suitable and worthy and that transfer of guardianship to that proposed guardian is in the best interest of the child.

(d) In all other cases, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interest of the child.

COMMENTARY: The requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129(j). For the requirement that transfers of guardianship must be in a child's best interest, see *In re Haley B.*, 81 Conn. App.

62, 65 (2004). The requirements regarding the presumptions incorporated in sub-sections (b) and (c) accord with General Statutes § 46b-129(j) (PA 09-185).

Sec. 35a-14. Motions for Review of Permanency Plan

(a) Motions for review of the permanency plan shall be filed nine months after the placement of the child or youth in the custody of the commissioner of the department of children and families pursuant to a voluntary placement agreement, or removal of a child or youth pursuant to General Statutes § 17a-101g or an order of a court of competent jurisdiction, whichever is earlier. At the date custody is vested by order of a court of competent jurisdiction, or if no order of temporary custody is issued, at the date when commitment is ordered, the judicial authority shall set a date by which the subsequent motion for review of the permanency plan shall be filed. The commissioner of the department of children and families shall propose a permanency plan that conforms to the statutory requirements and shall provide a social study to support said plan[, including information indicating what steps the commissioner has taken to implement it.] Nothing in this section shall preclude any party from filing a motion for revocation of commitment separate from a motion for review of permanency plan pursuant to General Statutes § 46b-129 (m) and subject to Section 35a-14A.

(b) At the time of the filing of a motion for review of permanency plan pursuant to subsection (a), the commissioner of the department of children and families shall also request a

finding that it has made reasonable efforts to achieve the goal of the existing plan. The social study filed pursuant to subsection (a) shall include information indicating what efforts the commissioner has taken to achieve the goal of the existing plan.

[(b)] (c) Once a motion for review of the permanency plan and requested findings regarding efforts to achieve the goal of the existing plan [has] have been filed, the clerk of the court shall set a hearing not later than ninety days thereafter. The [court] judicial authority shall provide notice to the child or youth, and the parent or guardian of such child or youth and any other party found entitled to such notice of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing. Any party who is in opposition to any such motion shall file a written objection and state with specificity the reasons therefor within thirty days after the filing of the commissioner of the department of children and families' motion for review of permanency plan and the objection shall be considered at the hearing. The [court] judicial authority shall hold an evidentiary hearing in connection with any contested motion for review of the permanency plan. If there is no objection or motion for revocation filed, then the motion may be granted by the judicial authority at the date of said hearing.

[(c)] (d) Whether to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made [is a] are dispositional questions,

based on the prior adjudication, and the judicial authority shall determine whether it is in the best interests of the child or youth to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made upon a fair preponderance of the evidence. The commissioner of the department of children and families shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth and that it has made reasonable efforts to achieve the goal of the existing plan.

[(d)] (e) At each hearing on a motion for review of permanency plan, the judicial authority shall review the status of the child, the progress being made to implement the permanency plan, determine a timetable for attaining the permanency plan, determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services, and determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the goal of the existing permanency plan. The judicial authority shall also determine whether the proposed goal of the permanency plan as set forth in General Statutes § 46b-129 (k) (2) is in the best interests of the child or youth by a fair preponderance of the evidence, taking into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. If a permanency plan is not approved by the judicial authority, it

shall order the filing of a revised plan and set a hearing to review said revised plan within sixty days.

[(e)] (f) As long as a child or youth remains in the custody of the commissioner of the department of children and families, the commissioner shall file a motion for review of permanency plan and for a finding regarding reasonable efforts to achieve the goal of the existing plan nine months after the prior permanency plan hearing. No later than twelve months after the prior permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with this section [subsection (d)].

[(f)] (g) Whenever an approved permanency plan needs revision, the commissioner of the department of children and families shall file a motion for review of the revised permanency plan. The commissioner shall not be precluded from initiating a proceeding in the best interests of the child or youth considering the needs for safety and permanency.

[(g)] (h) Where a petition for termination of parental rights is granted, the guardian or statutory parent of the child or youth shall report to the judicial authority not later than thirty days after the date the judgment is entered on a permanency plan and on the status of the child or youth. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. The judicial authority may convene a hearing upon the filing of a report and shall convene

and conduct a permanency hearing for the purpose of reviewing the permanency plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129 (k), whichever is earlier, and at least once a year thereafter while the child or youth remains in the custody of the commissioner of the department of children and families. At each court hearing, the judicial authority shall make factual findings whether or not reasonable efforts to achieve the permanency plan or promote adoption have been made.

COMMENTARY: The above revisions concerning the filing and hearing of motions for approval of permanency plans and findings to achieve permanency plans implement 42 U.S.C. Sec. 675(5)(C)(i) and 45 C.F.R. Sec. 1356.21.

Sec. 35a-14A. Revocation of Commitment

[A party] Where a child or youth is committed to the commissioner of the department of children and families, the commissioner, a parent or the child's attorney may file a motion seeking revocation of commitment. The judicial authority may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child or youth. Whether to revoke the commitment is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether to revoke the commitment upon a fair preponderance of the evidence. The party seeking revocation of commitment has the burden of proof that no

cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interests of the child. If a motion for revocation is denied, a new motion shall not be filed by the movant until at least six months have elapsed from the date of the filing of the prior motion unless waived by the judicial authority.

COMMENTARY: The above revisions are made to conform the above rule to the statute authorizing motions for revocation, General Statutes § 46b-129(m).

Sec. 35a-20. Motions for Reinstatement of Parent or Former Legal Guardian as Guardian or Modification of Guardianship Post-Disposition

(a) Whenever a parent or former legal guardian whose guardianship rights to a child or youth were removed and transferred to another person or an agency other than the department of children and families by the superior court for juvenile matters seeks reinstatement as that child's or youth's guardian, [or modification of guardianship post-disposition,] the parent or former legal guardian may file a motion for reinstatement of guardianship with the court that ordered the transfer of guardianship. In other post-dispositional cases concerning a child or youth whose legal guardianship was transferred to a person other than a parent or former legal guardian, or to an agency other than the department of children and families, any person permitted to intervene may move the court to modify the award of guardianship.

[(b) A parent, legal guardian or other interested party seeking guardianship of the child or youth after guardianship rights to that child or youth were transferred to another person by the superior court for juvenile matters may file a motion with the court that ordered the transfer of guardianship.]

[(c)] (b) The clerk shall assign such motion a hearing date and issue a summons to the current guardian and the nonmoving parent or parents. The moving party shall cause a copy of such motion and summons to be served on the child's or youth's current legal guardian(s) and the nonmoving parent or parents.

[(d)] (c) Before acting on such motion, the judicial authority shall determine if the court still has custody jurisdiction and shall request, if necessary, that the commissioner of the department of children and families conduct an investigation and submit a home study that sets forth written findings and recommendations before rendering a decision.

(d) The hearing on a motion for reinstatement of guardianship is dispositional in nature. The party seeking reinstatement of guardianship has the burden of proof to establish that cause for transfer of guardianship to another person or agency no longer exists. The judicial authority shall then determine if reinstatement of guardianship is in the child's or youth's best interest.

(e) The hearing on a motion for post-dispositional modification of a guardianship order is dispositional in nature.

The party seeking to modify the existing guardianship order has the burden of proof to establish that the movant's proposed guardian is suitable and worthy. The judicial authority shall then determine if transfer of guardianship to that proposed guardian is in the child's or youth's best interest.

COMMENTARY: For the requirements regarding elements and burden of proof in reinstatement of guardianship actions, see *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648 (1979). For other post-dispositional motions to transfer guardianship, the requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129(j). For the requirement that transfers of guardianship must be in a child's best interest, see *In re Haley B.,* 81 Conn. App. 62, 65 (2004).

(NEW) Sec. 35a-22. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

(a) The appearance of a person for any proceeding set forth in subsection (b) of this section may, in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that such person and his or her attorney, if any, and the judicial authority if the proceeding is in court, can see and communicate with each other simultaneously. In addition, a procedure by which such person and his or her attorney can confer in private must be provided. Nothing contained in this section shall be construed to establish a right for any person to be heard or to

appear by means of an interactive audiovisual device or to require the Judicial Branch to pay for such person's appearance by means of an interactive audiovisual device.

(b) A person may appear by means of an interactive audiovisual device in juvenile matters in the civil session as defined by General Statutes Sec. 46b-121(a) in the following proceedings or under the following circumstances:

(1) A party or a party's representative in case status and case management conferences;

(2) If a parent or guardian is incarcerated in this state, he or she may participate in plea hearings, judicial pre-trials, order of temporary custody and termination of parental rights (TPR) case management conferences, reviews of protective supervision, permanency plan hearings, case status conferences, preliminary order of temporary custody hearings, neglect plea and disposition by agreement, neglect trials, TPR plea hearings, canvass of consents to TPR, contested transfer of guardianship hearings, motions to revoke commitment, emancipation petitions, and motions to reinstate guardian;

(3) If a parent or guardian is incarcerated in a federal correctional facility or another state's correctional facility, he or she may participate in all matters set forth in (2) above and in contested hearings including, but not limited to, temporary custody hearings, neglect or uncared for proceedings or TPR trials;

(4) A foster parent, prospective adoptive parent or relative caregiver may appear and be heard on the best

interests of the child or youth pursuant to General Statutes Sec. 46b-129(o);

(5) A sibling of any child committed to the Department of Children and Families, upon motion, may appear and be heard concerning visitation with, and placement of, any such child pursuant to General Statutes Sec. 46b-129(p);

(6) A witness may testify in any proceeding in the discretion of the judicial authority.

(c) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

COMMENTARY: Practice Book Section 23-68 currently permits the use of an interactive audiovisual device in civil and family matters. The above new rule will expand the use of such technology to certain juvenile matters, consistent with recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.

AMENDMENTS TO THE CRIMINAL RULES

Sec. 44-10A. —Where Presence of Defendant May Be by Means of an Interactive Audiovisual Device

(a) Unless otherwise ordered by the judicial authority, and in the discretion of the judicial authority, a defendant may be present by means of an interactive audiovisual device for the following proceedings:

(1) Hearings concerning indigency pursuant to General Statutes § 52-259b;

(2) Hearings concerning asset forfeiture, unless the testimony of witnesses is required;

(3) Hearings regarding seized property, unless the testimony of witnesses is required;

(4) With the defendant's consent, bail modification hearings pursuant to Section 38-14; [and]

(5) [With the defendant's consent, s]Sentence review hearings pursuant to General Statutes § 51-195[.];

(6) With the consent of counsel, proceedings under General Statutes § 54-56d (k) if the evaluation under General Statutes § 54-56d (j) concludes that the defendant is not competent but is restorable and neither the state nor the defendant intends to contest that conclusion;

(7) A disposition conference held in the judicial district court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference; and

(8) With the consent of counsel, a disposition conference held in the geographical area court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference.

(b) Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided.

(c) Unless otherwise required by law or ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(d) Nothing contained in this section shall be construed to establish a right for any person to appear by means of an interactive audiovisual device.

COMMENTARY: The amendments to this section are intended to broaden the application and use of interactive audiovisual devices. These changes are taken from the recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.

Subsection (a) (6) expands the use of video and teleconferencing to proceedings under General Statutes Section 54-56d where the defendant is not competent but whose competency may be restored. In such situations, where it is expected that the result of the hearing will be that the matter will be continued to allow for the restoration process to proceed, the defendant and mental health professionals may, by agreement, appear by video from the mental health facility.

This section has been expanded to include hearings of this nature.

The change to subsection (a) (5) expands the use of videoconferencing in connection with Sentence Review Division hearings held pursuant to General Statutes § 51-195 et seq. Currently, in most instances, the defendant's physical presence is required at such hearings. One instance where such presence is clearly not required is pursuant to current Section 44-10A which provides that unless otherwise ordered by the Judicial Authority and in the discretion of the Judicial Authority a defendant may consent to being present at his or her Sentence Review Division hearing by means of an interactive audiovisual device. Another such instance is pursuant to General Statutes § 51-196(b), which provides that the Sentence Review Division may, for good cause, "waive its authority to increase the penalty [imposed] on the defendant and may, thereafter, conduct a hearing on . . . [the] application without the applicant being present." Nothing in this provision, however, "shall be construed to prohibit an applicant from having counsel present or from appearing pro se at the hearing."

A possible barrier to expanding the use of videoconferencing in Sentence Review Division hearings is that sentence review has been deemed to constitute "a critical stage of the sentencing procedure," and as such, may entitle the applicant to be physically present at the hearing on such review. *Consiglio v. Warden,* 153 Conn. 673, 677 (1966);

State v. Reyes, 19 Conn. App. 695 (1989). Whether the applicant's presence by way of video is sufficient to satisfy the applicant's right to be present, appears to be a matter of degree. Some state courts have allowed video hearings to take place during critical stages of a trial and others have not. See *Constitutional and Statutory Validity of Judicial Videoconferencing*, 115 ALR5th 509 (2005). Where crucial aspects of a defendant's physical presence such as demeanor, facial expressions and vocal inflections may be lost or misinterpreted in a televised appearance, proceeding on video may not be appropriate*. Id.*

The function of the Sentence Review Division is to afford a convicted person a limited appeal for reconsideration of that person's sentence. *State v. Spells,* 76 Conn. App. 67 (2003). The scope of review of the division is to "review the sentence imposed and determine whether the sentence should be modified because it is inappropriate or disproportionate in light of the nature of the offense, the character of the offender, the protection of the public interest, and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended." Practice Book Section 43-28. It is suggested that the Division's function can be achieved by allowing the applicant's presence at the Sentence Review Division hearing by way of an interactive audiovisual device and that such appearance will not violate the defendant's right to be present at the hearing.

The above changes also allow videoconferencing technology to be used when the individual is called back to court for a "disposition conference" held pursuant to Sections 39-11 through 39-17.

AMENDMENT TO
PRACTICE BOOK FORM

Form 205

Defendant's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the

injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) If a claim for lost wages or lost earning capacity is being made [C]copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶5 and ¶6 above.

(8) Copies of all documentation of claims of right to reimbursement provided to the Plaintiff by third party payors, and copies of, or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26..

(10) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(13) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this

lawsuit or the subject matter thereof, including any transcript of such recording.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this ___ day of _____ , 20__ to _____.

_____
(Attorney Signature)

COMMENTARY: This amendment makes Defendant's Standard Request No. 3 parallel to Defendant's Standard Request No. 4 and compliant with Practice Book Section 13-2, which limits the scope of discovery to materials relevant to the pending action. Defendant's Standard Request No. 4, for the production of tax returns, is contingent upon the making of a lost wage or lost earning capacity claim. Production of wage and employment records should likewise be contingent on the making of a lost wage or lost earning capacity claim. In the absence of a claim, such information is not necessarily relevant, and so should not be the subject of an automatic order. (In a case where the plaintiff does not make a lost wage or earning capacity claim and the defendant nonetheless claims that wage and employment records are material to the pending action, the defendant could certainly seek permission to obtain those records through additional discovery.)

AMENDMENTS TO THE CONNECTICUT CODE OF EVIDENCE

TABLE OF SECTIONS AFFECTED

Sec. 1-1. Short Title; Application

(a) Short title. These rules shall be known and may be cited as the Code of Evidence. The Code of Evidence is hereinafter referred to as the "Code."

(b) Application of the Code. The Code applies to all proceedings in the superior court in which facts in dispute are found, except as otherwise provided by the Code, the General Statutes or the Practice Book.

(c) Rules of privilege. Privileges shall apply at all stages of all proceedings in the court.

(d) The Code inapplicable. The Code, other than with respect to privileges, does not apply in proceedings such as, but not limited to, the following:

(1) Proceedings before investigatory grand juries, as provided for in General Statutes §§ 54-47b through 54-47f.

(2) Proceedings involving questions of fact preliminary to admissibility of evidence pursuant to Section 1-3 of the Code.

(3) Proceedings involving sentencing.

(4) Proceedings involving probation.

(5) Proceedings involving small claims matters.

(6) Proceedings involving summary contempt.

COMMENTARY

(b) Application of the Code.

The Connecticut Code of Evidence was adopted by the Judges of the Superior Court. In *State* v. *DeJesus*, 288 Conn. 418, 953 A.2d 45 (2008), the Connecticut Supreme Court held that it is not bound by a code adopted by the Judges of the Superior Court. The Code is broadly applicable. The Code applies to all civil and criminal bench or jury trials in the superior court. The Code applies, for example, to the following proceedings:

(1) court-ordered fact-finding proceedings conducted pursuant to General Statutes § 52-549n and Practice Book § 23-53; see General Statutes § 52-549r;

(2) probable cause hearings conducted pursuant to General Statutes § 54-46a excepting certain matters exempted under General Statutes § 54-46a (b); see *State* v. *Conn.*, 234 Conn. 97, 110, 662 A.2d 68 (1995); *In re Ralph M.*, 211 Conn. 289, 305-306, 559 A.2d 179 (1989);

(3) juvenile transfer hearings conducted pursuant to General Statutes § 46b-127 as provided in subsection (b) of that provision; *In re Michael B.*, 36 Conn. App. 364, 381, 650 A.2d 1251 (1994); *In re Jose M.*, 30 Conn. App. 381, 384-85, 620 A.2d 804, cert. denied, 225 Conn. 921, 625 A.2d 821 (1993);

(4) juvenile proceedings; however, adoption of subsection (b) is not intended to abrogate the well established rule that the court may relax its strict application of the formal rules of evidence to

reflect the informal nature of juvenile proceedings provided the fundamental rights of the parties are preserved; *In re Juvenile Appeal (85-2)*, 3 Conn. App. 184, 190, 485 A.2d 1362 (1986); see *Anonymous* v. *Norton*, 168 Conn. 421, 425, 362 A.2d 532, cert. denied, 423 U.S. 925, 96 S.Ct. 294, 46 L.Ed.2d 268 (1975); Practice Book § 34-2(a); and

(5) proceedings involving family relations matters enumerated under General Statutes § 46b-1. Because the Code is applicable only to proceedings in the court, the Code does not apply to:

(1) matters before probate courts; see *Prince* v. *Sheffield*, 158 Conn. 286, 293, 259 A.2d 621 (1968); although the Code applies to appeals from probate courts that are before the court in which a trial de novo is conducted; see *Thomas* v. *Arefeh*, 174 Conn. 464, 470, 391 A.2d 133 (1978); and

(2) administrative hearings conducted pursuant to General Statutes § 4-176e; see General Statutes § 4-178; *Jutkowitz* v. *Dept. of Health Services*, 220 Conn. 86, 108, 596 A.2d 394 (1991); *Lawrence* v. *Kozlowski*, 171 Conn. 705, 710, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S.Ct. 2930, 53 L.Ed.2d 1066 (1977); or administrative hearings conducted by agencies that are exempt from the Uniform Administrative Procedure Act, General Statutes §§ 4-166 through 4-189.

An example of a provision within subsection (b)'s "except as otherwise provided" language is Practice Book § 23-12, which states that the court "shall not be bound by the technical rules of evidence" when trying cases placed on the expedited process track pursuant to General Statutes § 52-195b.

The Code is not intended to apply to matters to which the technical rules of evidence traditionally have not applied. Thus, for example, the Code would be inapplicable to hearings on the issuance of bench warrants of arrest or search warrants conducted pursuant to General Statutes §§ 54-2a and 54-33a, respectively; see *State* v. *DeNegris*, 153 Conn. 5, 9, 212 A.2d 894 (1965); *State* v. *Caponigro*, 4 Conn. Cir.Ct. 603, 609, 238 A.2d 434 (1967).

Matters to which the Code specifically is inapplicable are set forth in subsection (d).

(c) Rules of privilege.

Subsection (c) addresses the recognition of evidentiary privileges only with respect to proceedings in the court. It does not address the recognition of evidentiary privileges in any other proceedings outside the court, whether legislative, administrative or quasi-judicial, in which testimony may be compelled.

(d) The Code inapplicable.

Subsection (d) specifically states the proceedings to which the Code, other than with respect to evidentiary privileges, is inapplicable. The list is intended to be illustrative rather than exhaustive and subsection (d) should be read in conjunction with subsection (b) in determining the applicability or inapplicability of the Code. The removal of these matters from the purview of the Code generally is supported by case law, the General Statutes or the Practice Book. They include:

(1) proceedings before investigatory grand juries; e.g., *State* v. *Avcollie*, 188 Conn. 626, 630-31, 453 A.2d 418 (1982), cert. denied, 461 U.S. 928, 103 S.Ct. 2088, 77 L.Ed.2d 299 (1983);

(2) preliminary determinations of questions of fact by the court made pursuant to Section 1-3 (a); although there is no Connecticut authority specifically stating this inapplicability, it is generally the prevailing view. E.g., Fed.R.Evid. 104(a); Unif.R.Evid. 104(a), 13A U.L.A. 93-94 (1994); 1 C. McCormick, Evidence (5th Ed. 1999) § 53, p. 234;

(3) sentencing proceedings; e.g., *State* v. *Huey*, 199 Conn. 121, 126, 505 A.2d 1242 (1986);

(4) hearings involving the violation of probation conducted pursuant to General Statutes § 53a-32 (a); *State* v. *White*, 169 Conn. 223, 239-40, 363 A.2d 143, cert. denied, 423 U.S. 1025, 96

S.Ct. 469, 46 L.Ed.2d 399 (1975); *In re Marius M.*, 34 Conn. App. 535, 536, 642 A.2d 733 (1994);

(5) proceedings involving small claims matters; General Statutes § 52-549c (a); see Practice Book § 24-23; and

(6) summary contempt proceedings; see generally Practice Book § 1-16.

Nothing in subdivision (1) abrogates the common-law rule that in determining preliminary questions of fact upon which the application of certain exceptions to the hearsay rule depends, the court may not consider the declarant's out-of-court statements themselves in determining those preliminary questions. E.g., *State* v. *Vessichio*, 197 Conn. 644, 655, 500 A.2d 1311 (1985), cert. denied, 475 U.S. 1122, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) (court may not consider coconspirator statements in determining preliminary questions of fact relating to admissibility of those statements under coconspirator statement exception to hearsay rule; see Section 8-3 [1] [D]); *Robles* v. *Lavin*, 176 Conn. 281, 284, 407 A.2d 958 (1978) (in determining whether authorized admissions against party opponent exception to hearsay rule applies, authority to speak must be established before alleged agent's declarations can be introduced; see Section 8-3 [1] [C]); *Ferguson* v. *Smazer,* 151 Conn. 226, 231, 196 A.2d 432 (1963) (in determining whether hearsay exception for statements of pedigree and family relationships applies, declarant's relationship to person to whom statement relates must be established without reference to declarant's statements; see Section 8-6 [7]).

Sec. 4-5 Evidence of Other Crimes, Wrongs or Acts Generally Inadmissible [to Prove Character Admissible for Other Purposes; Specific Instances of Other Conduct].

(a) **[Evidence of other crimes, wrongs or acts inadmissible to prove character] General Rule.** Evidence of other crimes, wrongs or acts of a person is inadmissible to prove the bad character, propensity, or criminal tendencies of that person except as provided in subsection (b).

(b) **When evidence of other sexual misconduct is admissible to prove propensity.** Evidence of other sexual misconduct is admissible in a criminal case to establish that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual misconduct if: (1) the case involves aberrant and compulsive sexual misconduct; (2) the trial court finds that the evidence is relevant to a charged offense in that the other sexual misconduct is not too remote in time, was allegedly committed upon a person similar to the alleged victim, and was otherwise similar in nature and circumstances to the aberrant and compulsive sexual misconduct at issue in the case; and (3) the trial court finds that the probative value of the evidence outweighs its prejudicial effect.

(c) **When evidence of other crimes, wrongs or acts is admissible.** Evidence of other crimes, wrongs or acts of a person is admissible for purposes other than those specified in subsection (a), such as to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, a system of criminal activity, or an element of the crime, or to corroborate crucial prosecution testimony.

[(c)](d) Specific instances of conduct when character in issue. In cases in which character or a trait of character of a person in relation to a charge, claim or defense is in issue, proof shall be made by evidence of specific instances of the person's conduct.

COMMENTARY: **(a) Evidence of other crimes, wrongs or acts generally inadmissible [to prove character].**

Subsection (a) is consistent with Connecticut common law. E.g., *State* v. *Santiago*, 224 Conn. 325, 338, 618 A.2d 32 (1992); *State* v. *Ibraimov*, 187 Conn. 348, 352, 446 A.2d 332 (1982). Other crimes, wrongs or acts evidence may be admissible for other purposes as specified in subsections (b) and (c). Although the issue typically arises in the context of a

criminal proceeding; see *State* v. *McCarthy*, 179 Conn. 1, 22, 425 A.2d 924 (1979); subsection (a)'s exclusion applies in both criminal and civil cases. See, e.g., *Russell* v. *Dean Witter Reynolds, Inc.*, 200 Conn. 172, 191–92, 510 A.2d 972 (1986).

(b) When evidence of other sexual misconduct is admissible to prove propensity.

Subsection (a) specifically prohibits the use of other crimes, wrongs or acts evidence to prove a person's propensity to engage in the misconduct with which he has been charged. However, the court may admit evidence of a defendant's uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior; *State v. DeJesus,* 288 Conn. 418 (2008)*; State v. Snelgrove,* 288 Conn. 742 (2008); *State v. Johnson,* 289 Conn. 437 (2008). Although *State v. DeJesus* involved a sexual assault charge, later, the Supreme Court, in *State v. Snelgrove*, made it clear that the DeJesus propensity rule is not limited to cases in which the defendant is charged with a sex offense. In *State v. Snelgrove*, the court stated: "We conclude that this rationale for the exception to the rule

barring propensity evidence applies whenever the evidence establishes that both the prior misconduct and the offense with which the defendant is charged were driven by an aberrant sexual compulsion, regardless of whether the prior misconduct or the conduct at issue resulted in sexual offense charges." *State v. Snelgrove, supra,* 760. The admission of the evidence of a defendant's uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior should be accompanied by an appropriate cautionary instruction limiting the purpose for which it may properly be used. *State v. DeJesus, supra*, 474.

(c) When evidence of other crimes, wrongs or acts is admissible.

Subsection (a) specifically prohibits the use of other crimes, wrongs or acts evidence to prove a person's bad character or criminal tendencies. Subsection ([b]c) however, authorizes the court, in its discretion, to admit other crimes, wrongs or acts evidence for other purposes, such as to prove:

(1) intent; e.g., *State* v. *Lizzi*, 199 Conn. 462, 468–69, 508 A.2d 16 (1986);

(2) identity; e.g., *State* v. *Pollitt*, 205 Conn. 61, 69, 530 A.2d 155 (1987);

(3) malice; e.g., *State* v. *Barlow*, 177 Conn. 391, 393, 418 A.2d 46 (1979);

(4) motive; e.g., *State* v. *James*, 211 Conn. 555, 578, 560 A.2d 426 (1989);

(5) a common plan or scheme; e.g., *State* v. *Morowitz*, 200 Conn. 440, 442–44, 512 A.2d 175 (1986);

(6) absence of mistake or accident; e.g., *State* v. *Tucker*, 181 Conn. 406, 415–16, 435 A.2d 986 (1980);

(7) knowledge; e.g., *State* v. *Fredericks*, 149 Conn. 121, 124, 176 A.2d 581 (1961);

(8) a system of criminal activity; e.g., *State* v. *Vessichio*, 197 Conn. 644, 664–65, 500 A.2d 1311 (1985), cert. denied, 475 U.S. 1122, 106 S. Ct. 1642, 90 L. Ed. 2d 187 (1986);

(9) an element of the crime [charged]; e.g., *State* v. *Jenkins*, 158 Conn. 149, 152–53, 256 A.2d 223 (1969); or

(10) to corroborate crucial prosecution testimony; e.g., *State* v. *Mooney*, 218 Conn. 85, 126–27, 588 A.2d 145, cert. denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991).

Admissibility of other crimes, wrongs or acts evidence is contingent on satisfying the relevancy standards and balancing test set forth in Sections 4-1 and 4-3, respectively. For other crimes, wrongs or acts evidence to be admissible, the court must determine that the evidence is probative of one or more of the enumerated purposes for which it is offered, and that its probative value [is not outweighed by] outweighs its prejudicial effect. E.g., *State* v. *Figueroa*, 235 Conn. 145, 162, 665 A.2d 63 (1995); *State* v. *Cooper*, 227 Conn. 417, 425–28, 630 A.2d 1043 (1993). The purposes enumerated in subsection ([b] c) for which other crimes, wrongs or acts evidence may be admitted are intended to be illustrative rather than exhaustive. Neither subsection (a) nor subsection ([b] c) precludes a court from recognizing other appropriate purposes for which other crimes, wrongs or acts evidence may be admitted, provided the evidence is not introduced to prove a person's bad character or criminal tendencies, and the probative value of its admission is not outweighed by any of the Section 4-3 balancing factors.

([c] d) Specific instances of conduct when character in issue.

Subsection ([c] d) finds support in Connecticut case law. See *State* v. *Miranda*, 176 Conn. 107, 112, 365 A.2d 104 (1978); *Norton* v. *Warner*, 9 Conn. 172, 174 (1832).