PROPOSED NEW
CODE OF JUDICIAL CONDUCT

PREAMBLE

(1) An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

(2) Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

(3) The Code of Judicial Conduct establishes standards for the ethical conduct of judges in matters affecting the performance of their judicial duties and the fair and efficient operation of the courts or other tribunals on which they serve. Although it is not intended as an exhaustive guide for the conduct of judges, who must be guided in their professional and personal lives by general ethical standards as well as by the law which includes this Code, it is intended to assist

judges in maintaining the highest standards of professional and personal conduct, as it affects their judicial work.

SCOPE

(1) The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge.

(2) The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined hereunder only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the sound personal and professional discretion of the judge in question, and no disciplinary action shall be taken for action or inaction within the bounds of such discretion.

(3) The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it

signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

(4) Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

(5) The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted in such a way as to impinge upon the essential independence of judges in making judicial decisions.

(6) Although these Rules are binding and enforceable, it is not contemplated that every transgression will necessarily result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or other persons.

(7) The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

As used in this Code, the following definitions shall apply:

"Appropriate authority" means the authority having responsibility for taking corrective action in connection with the conduct or violation to be reported under Rules 2.14 and 2.15.

"Confidential" means information that is not available to the public. Confidential information may include, but is not limited to, information that is sealed by statute, rule or court order or lodged with the court or communicated in camera. See Rule 3.5.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 3.7, and 4.1.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a spouse. See Rules 2.11, 2.13, 3.13, and 3.14.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3, 2.11, and 3.2.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is any matter a judge knows is imminent or reasonably expects to be commenced in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4 and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Knowingly," "knowledge," "known," and **"knows"** mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.2, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, decisional law, and this code. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.2, 3.4, 3.7,_3.9, 3.12, 3.13, 3.14, 3.15, 4.1, and 4.3.

"Member of the judge's family" means any relative of a judge related by consanguinity within the third degree as determined by the common law, a spouse or domestic partner or an individual related to a spouse or domestic partner within the third degree as so determined, including an individual in an adoptive relationship within the third degree. See Rules 3.5, 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any member of the judge's family or other person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections, partisan elections and nonpartisan elections. See Rule 4.3.

"Spouse" means a person to whom one is legally married or joined in a civil union. See Rules 2.11, 3.13, and 3.14.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

APPLICATION

The Application section establishes when and to whom the various Rules apply.

I. APPLICABILITY OF THIS CODE

(A) Except as provided in subsection (B), the provisions of the Code apply to all judges of the superior court, senior judges, judge trial referees, state referees, family support magistrates appointed pursuant to General Statutes § 46b-231 (f), and family support magistrate referees.

(B) State referees and family support magistrate referees are not required to comply with Rules 3.4 and 3.8.

II. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as

reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

(1) If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1

Compliance with the Law

A judge shall comply with the law.

COMMENT

(1) This rule deals with the judge's personal conduct. A judge's professional conduct in enforcing the law is covered by Rule 2.2. When applying and interpreting the law, a judge

sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule.

RULE 1.2

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

COMMENT

(1) Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety as defined in this Rule. This principle applies to both the professional and personal conduct of a judge.

(2) A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

(3) Conduct that compromises the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

(4) Judges may initiate or participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

(5) A judge may initiate or participate in community activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

(1) It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

(2) A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would

not reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

(3) Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

(4) Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Code or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

(1) To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities in such a way as to minimize the risk of conflicts that would result in disqualification. A judge's personal extrajudicial activities shall not be conducted in such a way as to interfere unduly with the duties of judicial office. See Canon 3.

(2) Although it is not a duty of judicial office, judges are encouraged to initiate or participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2

Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

COMMENT

(1) To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

(2) Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

(3) When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

(4) It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3

Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not condone such conduct by court staff, court officials, or others subject to the judge's direction and control.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

(1) A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

(2) Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and criminality; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

(3) Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

(4) Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4

External Influences on Judicial Conduct or Judgment

(A) A judge shall not be swayed in the performance of the judge's judicial duties by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge's judicial conduct or judgment.

COMMENT

(1) An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. The integrity of judicial decision making is undermined if it is based in whole or in part upon inappropriate outside influences.

RULE 2.5

Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

(1) Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

(2) A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

(3) Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

(4) In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6

Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

(1) The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

(2) The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlements do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon appropriate settlement practices for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

(3) Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7

Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

COMMENT

(1) Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) Although a judge may thank jurors for their willingness to serve, a judge shall not commend or criticize jurors with respect to their verdict in a case other than in an instruction, order or opinion in a proceeding, if appropriate.

COMMENT

(1) The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(2) Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(3) A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but shall be careful to avoid discussion of the merits of the case.

(4) This rule does not purport to prevent a judge from returning a jury for further deliberations if its verdict is insufficient in amount, inaccurate, inconsistent with the court's instructions or otherwise improper in form or substance.

RULE 2.9

Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable

opportunity to object and respond to the notice and to the written advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge serving as a factfinder shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

(1) To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(2) Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

(3) The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

(4) A judge may initiate, permit, or consider ex parte communications expressly authorized by law.

(5) A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who are disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

(6) The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic. Nothing in this rule is intended to relieve a judge of the independent duty to investigate allegations of juror misconduct. See State v. Santiago, 245 Conn. 301 (1998).

(7) A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10

Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge may consult with other judges or court staff, court officials, and others subject to the judge's direction and control whose function is to aid the judge in carrying out the judge's adjudicative responsibilities. However, a judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

COMMENT

(1) This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

(2) This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

RULE 2.11

Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may

ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding.

(D) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(E) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council. When the judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge, and shall thereafter proceed in accordance with Practice Book Section 1-22 (b).

(F) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears.

COMMENT

(1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

(5) A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for

disqualification, even if the judge believes there is no need for disqualification.

(6) The rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(7) Paragraph (D) is intended to make clear that the restrictions imposed by Dacey v. Connecticut Bar Assn., 184 Conn. 21 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

RULE 2.12

Supervisory Duties

(A) A judge shall take reasonable measures to ensure that court staff, court officials, and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

(1) A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the

judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

(2) Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13

Administrative Appointments

(A) In making or facilitating administrative appointments, a judge:

(1) shall act impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

(1) Appointees of a judge include, but are not limited to, assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and judicial marshals. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

(2) Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of

relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

RULE 2.14

Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include notifying appropriate judicial authorities, or a confidential referral to a lawyer or judicial assistance program.

COMMENT

(1) "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

(2) Taking or initiating corrective action by way of notifying judicial administrators or referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to

the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

(3) A client security fund has been established to promote public confidence in the judicial system and the integrity of the legal profession by, among other things, a lawyers assistance program providing crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems. (See Practice Book Section 2-68.)

RULE 2.15

Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall take appropriate action including informing the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall take appropriate action including informing the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(E) A judge is not required to disclose information gained by the judge while serving as a member of a committee that renders assistance to ill or impaired judges or lawyers or while serving as a member of a bar association professional ethics committee or the Judicial Branch Committee on Judicial Ethics.

COMMENT

(1) Taking appropriate action under the circumstances to address known misconduct is a judge's obligation. Except as otherwise provided in paragraph (E), paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

(2) A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D), except as otherwise provided in paragraph (E). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body.

(3) Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16

Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

(1) Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph

(A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1

Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

(1) To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

(2) Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

(3) Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices unlawful discrimination. See Rule 3.6.

(4) While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

RULE 3.2

Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

COMMENT

(1) Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may

properly share that expertise with governmental bodies and executive or legislative branch officials.

(2) In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(3) In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, a judge should state affirmatively that the judge is not acting in his or her official capacity, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3

Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

(1) A judge who, without being duly summoned, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4

Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

(1) Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

(2) A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such

representation does not constitute acceptance of a government position.

(3) This rule is intended to prohibit a judge from participation in governmental committees, boards, commissions or other governmental positions that make or implement public policy unless they concern the law, the legal system or the administration of justice.

RULE 3.5

Use of Confidential Information

A judge shall not intentionally disclose or use confidential information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties unless the judge is acting on information necessary to protect the health or safety of the judge, a member of the judge's family, court personnel, a judicial officer or any other person if consistent with other provisions of this Code.

COMMENT

(1) In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

RULE 3.6

Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices unlawful discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, physical or mental disability, or sexual orientation. When a judge learns that an organization to which the judge belongs engages in unlawful discrimination, the judge must resign immediately from the organization.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices unlawful discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

RULE 3.7

Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal,

or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

(1) The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

(2) Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

(3) Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A) 4. It is also generally permissible for

a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

(4) Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

(5) In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8

Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the

judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

(1) A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9

Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

COMMENT

(1) This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of official judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

RULE 3.10

Practice of Law

Except as provided herein, a judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

(1) A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11

Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner or advisor of any business entity except for:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties; (2) lead to frequent disqualification of the judge; (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or (4) result in violation of other provisions of this Code.

COMMENT

(1) Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend

so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

(2) As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12

Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

COMMENT

(1) A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

(2) Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13

Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

COMMENT

(1) Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the

benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

(2) Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

(3) Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred

customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

(4) Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

RULE 3.14

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge or a reasonable allowance therefor and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

(1) Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law.

Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

(2) Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. Per diem allowances shall be reasonably related to the actual costs incurred. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

(3) A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15

Reporting Requirements

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the

aggregate with other items received from the same source in the same calendar year, does not exceed $250; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $250.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.

(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the Chief Court Administrator or other office designated by law.

CANON 4

A JUDGE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1
Political Activities of Judges in General

(A) Except as permitted by law, or by Rule 4.2, and 4.3 a judge shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) seek, accept, or use endorsements from a political organization;

(7) knowingly, or with reckless disregard for the truth, make any false or misleading statement in connection with the appointment or reappointment process;

(8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under paragraph (A).

(C) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

COMMENT

General Considerations

(1) Even when subject to reappointment or when seeking elevation to a higher office, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the public, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political activities of all judges and sitting judges seeking reappointment or appointment to a higher judicial office.

Participation in Political Activities

(2) Public confidence in the independence and impartiality of the judiciary is eroded if judges are perceived to be subject to political influence. Although judges may register to vote as members of a political party, they are prohibited by

paragraph (A)(1) from assuming leadership roles in political organizations.

(3) Paragraphs (A)(2) and (A)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

(4) Although members of the families of judges are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge publicly endorsing candidates for public office. A judge must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

(5) Judges retain the right to participate in the political process as voters in both primary and general elections.

Statements and Comments Made By a Sitting Judge When Seeking Reappointment for Judicial Office or Elevation to a Higher Judicial Office

(6) Judges must be scrupulously fair and accurate in all statements made by them. Paragraph (A)(7) obligates judges to refrain from making statements that are false or misleading,

or that omit facts necessary to make the communication considered as a whole not materially misleading.

(7) Judges are sometimes the subject of false, misleading, or unfair allegations made by third parties or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a judge. In other situations, false or misleading allegations may be made that bear upon a judge's integrity or fitness for judicial office. As long as the judge does not violate paragraphs (A)(7), (A)(8), or (A)(9), the judge may make a factually accurate public response. (See Rule 2.10.)

(8) Subject to paragraph (A)(8), a judge is permitted to respond directly to false, misleading, or unfair allegations made against him or her, although it is preferable for someone else to respond if the allegations relate to a pending case.

(9) Paragraph (A)(8) prohibits judges from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

(10) The role of a judge is different from that of a legislator or executive branch official. Sitting judges seeking reappointment or elevation must conduct themselves differently from persons seeking other offices. Narrowly

drafted restrictions on the activities of judges provided in Canon 4 allow judges to provide the appointing authority with sufficient information to permit it to make an informed decision.

(11) Paragraph (A)(9) makes applicable to judges the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(12) The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the judge has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

(13) A judge may make promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A judge may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or

advocating for more funds to improve the physical plant and amenities of the courthouse.

(14) Judges may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, judges' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, judges who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially. Judges who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a judge's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2
Activities of Judges as Candidates for Reappointment or Elevation to Higher Judicial Office

A judge who is a candidate for reappointment or elevation to higher judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization, provided that such endorsement or the request therefor would not appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

COMMENT

(1) When seeking support or when communicating directly with an appointing or confirming authority, a judge must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(9).

(2) It is never acceptable to seek an endorsement of an advocacy group or a group whose interests have or are likely to come before the judge.

RULE 4.3
Activities of Judges Who Become Candidates for Public Office

(A) Upon becoming a candidate for an elective public office either in a party primary or a general election, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention.

(B) Upon becoming a candidate for an appointive public office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

(1) In campaigns for elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in public campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for elective public office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

(2) The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive public office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule. However, the judge should be careful to avoid presiding over matters affecting the entity to which the judge is seeking public office.

AMENDMENT NOTE: This proposal is a major rewrite of the Code of Judicial Conduct and it is based upon the Model Code adopted by the ABA in 2007. Our current Code, which was adopted with an effective date of October 1, 1974, was based upon the Model Code adopted by the ABA in 1972. In the early 1990s, the ABA adopted a revised model Code;

however, the major changes in the Code were not adopted by the judges.

PROPOSED 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, wire transfer fees, 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 [federal] United States government, or (ii) an open-end investment company registered with the [federal] 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 ([g]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 ([g]h) (4) below, subject to the dispute resolution process provided in subsection ([g]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 ''[moneymarket] 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.

([4]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 ([g]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 ([g]h) (4) below.

([5]6) ''Non-IOLTA account'' means an interest- or 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 [(i) such funds are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days, or (ii)] 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 [moneymarket] 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 ([g]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 ([g]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.

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 monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies 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 (g) requires lawyers and law firms to participate in the statutory IOLTA program and provides that client's or third person's funds shall be deposited in an IOLTA account if (i) such funds are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days, or (ii) the lawyer or law firm determines that the funds cannot earn income in excess of the costs incurred to secure such income. In determining whether a client's or third person's funds cannot earn income in excess of the costs incurred to secure such income, the lawyer or law firm may 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 the matter for which the funds are held;

(3) The rates of interest or yield at financial institutions where the funds are to be deposited;

(4) The cost of establishing and administering non-IOLTA accounts for the client's or third person's benefit, including service charges, the costs of the lawyer's or law firm's services, and the costs of preparing any tax reports required for income accruing to the client or third person;

(5) The capability of financial institutions, lawyers or law firms to calculate and pay income to clients or third persons; and

(6) Any other circumstances that affect the ability of the client's or third person's funds to earn a net return for the client or third person.]

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.

AMENDMENT NOTES: Some of the above changes adopt the provisions of Public Act 09-152, Section 6, which amended General Statutes § 51-81c.

The proposed change in subsection (a) (7) updates the definition of "U.S. Government Securities." Recent events demonstrated clearly that the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") are "government-sponsored enterprises" that are backed by the full faith and credit of the U.S. Government. The new language makes the rule consistent with prior revisions regarding those entities and makes moot an issue that previously had created uncertainty among some banks.

Proposed changes to subsections (a) (3) and (h) (3) (A) propose the addition of an optional method (referred to as a "safe harbor") by which banks can meet the eligibility

requirements to offer IOLTA accounts for lawyers. It allows a simple basis for rate determination for banks that wish to avoid the administrative and reporting efforts entailed in ascertaining rate comparability.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

(NEW) Sec. 1-9B. –Emergency Powers of Rules Committee

(a) In the event that the Governor declares a public health emergency pursuant to General Statutes § 19a-131a or a civil preparedness emergency pursuant to General Statutes § 28-9 or both, the Chief Justice, or if the Chief Justice is incapacitated or unavailable, the Chairperson of the Rules Committee may call a meeting of the Superior Court Rules Committee.

(b) No quorum shall be required at this meeting as long as a good faith effort has been made to contact all members of the Rules Committee to advise them of the meeting. The meeting may be held in person or by electronic means. Public notice should be given of the Rules Committee meeting, but failure to give such notice shall not impair the validity of actions taken at the meeting as long as a good faith effort has been made to provide such notice.

(c) At such meeting the Rules Committee shall have the power to adopt on an interim basis any new rules and to amend or suspend in whole or in part on an interim basis any existing rules concerning practice and procedure in the

Superior Court that the committee deems necessary in light of the circumstances of the declared emergency. Any new rules and any amendments to and suspensions of existing rules adopted pursuant to this section should be published in the Connecticut Law Journal and on the Judicial Branch website, but failure to so publish shall not impair the validity of such rules as long as a good faith effort has been made to so publish.

(d) Any such new rules and amendments to and suspensions of existing rules adopted pursuant to this section shall remain in effect for the duration of the declared emergency or until such time, as soon as practicable, as a meeting of the superior court judges can be convened, in person or electronically, to consider and vote on the changes.

COMMENTARY: The above rule gives the Rules Committee authority to adopt rules on an expedited basis in the event of an emergency declared by the Governor pursuant to General Statutes §§ 19a-131a, 28-9, or both.

(NEW) Sec. 1-11D. Pilot Program to Increase Public Access to Child Protection Proceedings

(a) Pursuant to this section, the chief court administrator shall establish a pilot program to increase public access to trial proceedings in juvenile matters in which a child is alleged to be uncared for, neglected, abused or dependent or is the subject of a petition for termination of parental rights, except as otherwise provided by law or as hereinafter precluded or limited, and subject to the limitations set forth in

section 1-10B, section 32a-7 and General Statutes § 46b-124. The pilot program shall be in a single district or session of the superior court for juvenile matters, to be chosen by the chief court administrator based on the following considerations:

(1) the age, size and ability of the courthouse facility to accommodate public access to available courtrooms, security and costs;

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

(3) the likelihood of the occurrence of significant proceedings of interest to the public in the juvenile district;

(4) the proximity of the juvenile district to the major media organizations and to the organizations or entities providing coverage; and

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

(b) As used in this section, the term "trial proceeding" shall mean the final hearing on the merits of any juvenile matter not involving evidence or allegations of the sexual abuse of a child which concerns: (1) an order of temporary custody pursuant to section 33a-7 (d) or (e); (2) a petition alleging a child to be uncared for, neglected, abused or dependent; or (3) a petition for termination of parental rights. A trial proceeding shall be deemed to include all courtroom proceedings on any contested motion for review of permanency plan, motion to revoke commitment or motion to transfer guardianship which has been consolidated with the

underlying proceeding for the final hearing on the merits. A trial proceeding shall commence with the swearing in of the first witness.

(c) Except as provided in this section or as otherwise provided by law, all trial proceedings in the pilot program shall be presumed to be open to the public.

(d) Upon written motion of any party, guardian ad litem, witness or other interested person, or upon its own motion, the judicial authority may at any time, prior to or during a trial proceeding, order that public access to all or any portion of the trial proceeding be denied or limited if the judicial authority concludes that there is good cause for the issuance of such an order. In determining if good cause has been shown to deny or limit public access to a trial proceeding under this section, the judicial authority shall consider the child's best interest, the safety, legal rights, and privacy concerns of any person which may be affected by the granting or denial of the motion, and the integrity of the judicial process. Where good cause has been shown, the court may, in fashioning its order, consider whether there is any reasonable alternative to the issuance of an order limiting or denying public access to protect the interest to be served. An agreement of the parties to deny or limit public access to the trial proceeding shall not constitute a sufficient basis for the issuance of such an order.

(e) The burden of proving that public access to any trial proceeding governed by this section should be denied or limited shall be on the person who seeks such relief.

Accordingly, any person moving for such relief, other than the judicial authority when acting upon its own motion, shall support the motion with an accompanying memorandum of law stating all known grounds upon which it is claimed that such relief should be granted. The motion and memorandum shall be served on all parties of record and be filed with the court, where they shall become parts of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. Absent good cause shown, such motion and memorandum shall be served and filed not less than fourteen days before the trial proceeding is scheduled to begin, except that if the trial proceeding concerns a contested order of temporary custody case, they shall be served and filed not less than two days before the trial proceeding is scheduled to begin.

(f) Upon the filing of any motion to deny or limit public access to a trial proceeding governed by this section, or upon the determination of the judicial authority, upon its own motion, that the ordering of such relief should be considered, the judicial authority shall schedule a hearing on the motion and shall, where practicable, post a notice of the hearing on the judicial website so that all interested persons can attend the hearing and present appropriate legal arguments in support of or opposition to the motion. Such notice shall set forth the date, time, location and the general subject matter of the hearing, and shall identify the underlying proceeding solely by reference to the first name and first initial of the last name of

the child who is the subject of the proceeding or, if the proceeding involves more than one child, by reference to the first name and first initial of the last name of the eldest of the children involved. All memoranda of law and other written submissions in support of or in opposition to the motion shall be served on all parties of record and be filed with the court, where they shall become part of the confidential record of the underlying proceeding pursuant to General Statute § 46b-124.

(g) Notwithstanding the confidentiality of the motion to deny or limit public access, the accompanying memorandum, and all memoranda of law and other written submissions in support of or in opposition to the motion, the hearing on the motion shall be conducted in open court. Any person whose rights may be affected by the granting or denial of the motion, including any media representative, may attend and be heard at the hearing in the manner permitted by the judicial authority, but shall not be allowed intervening party status. The hearing shall be conducted by the judicial authority in a manner consistent with maintaining the confidentiality of the records of the underlying proceeding and protecting the interests for which denial or limitation of public access has been sought. At the conclusion of the hearing, the judicial authority shall announce its ruling on the motion in open court. If and to the extent that the judicial authority determines that public access to the trial proceeding should be denied or limited in any way, it shall articulate the good cause upon which it finds that such relief is necessary, shall specify the facts upon which it bases

that finding, and shall order that a transcript of its decision become a part of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. If, however, and to the extent that it further determines that any such articulation of good cause or specification of factual findings would reveal information that any interested person is entitled to keep confidential, then the judicial authority shall make such articulation and specification in a signed writing, which shall be filed with the court and become part of the confidential record of the underlying proceeding pursuant to General Statute § 46b-124. The decision shall be final.

(h) Prior to the commencement of any trial proceeding accessible to the public, the judicial authority shall hold a pretrial conference with counsel for all parties to anticipate, evaluate and resolve prospective problems with the conduct of an open proceeding and to ensure compliance with the protective provisions of subsection (d).

(i) The Rules Committee shall evaluate the efficacy of this section on or before December 31, 2010, and shall receive recommendations from the chief court administrator, the juvenile access pilot program advisory board and other sources.

COMMENTARY: Pursuant to Section 5 of Public Act 09-194, the above rule provides for the establishment of a pilot program to increase public access to certain juvenile proceedings.

Sec. 2-5. —Examination of Candidates for Admission

The committee shall further have the duty, power and authority to provide for the examination of candidates for admission to the bar; to determine whether such candidates are qualified as to prelaw education, legal education, [morals and fitness] good moral character and fitness to practice law; and to recommend to the court for admission to the bar qualified candidates.

COMMENTARY: The above changes are made for clarity.

(New) Sec. 2-5A. –Fitness to Practice Law

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 rule makes clear what fitness to practice law entails.

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Sections 2-13 through 2-15 of these rules, the applicant must satisfy the committee that:

(1) The applicant is a citizen of the United States or an alien lawfully residing in the United States.

(2) The applicant is not less than eighteen years of age.

(3) The applicant is a person 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. Any inquiries or procedures used by the bar examining committee that relate to physical or mental disability must be narrowly tailored and necessary to a determination of the applicant's current fitness to practice law, in accordance with the Americans with Disabilities Act and amendment twenty-one of the Connecticut constitution, and conducted in a manner consistent with privacy rights afforded under the federal and state constitutions or other applicable law.

(4) The applicant has met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the administrative director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance

with these rules and the regulations of the committee, and has paid such application fee as the committee shall from time to time determine.

(6) The applicant has passed an examination in law in accordance with the regulations of the committee.

(7) The applicant has complied with all of the pertinent rules and regulations of the committee.

(8) As an alternative to satisfying the committee that the applicant has met the committee's educational requirements, the applicant who meets all the remaining requirements of this section may, upon payment of such investigation fee as the committee shall from time to time determine, substitute proof satisfactory to the committee that: (A) the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the commonwealth of Puerto Rico or in one or more district courts of the United States for ten or more years and at the time of filing the application is a member in good standing of such a bar; (B) the applicant has actually practiced law in such a jurisdiction for not less than five years during the seven-year period immediately preceding the filing date of the application; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant's working time to the practice of the law in Connecticut.

COMMENTARY: The changes in subsection (3) above make clear, as set forth in Section 2-5, that fitness to practice

law is a qualification for admission to practice law. Additionally, the above changes are intended to ensure that the bar admission process is administered in a way that comports with the requirements of the Americans with Disabilities Act and amendment twenty-one of the constitution of Connecticut. Inquiries, screening procedures, and requests for health or treatment information that place additional burdens on persons with disabilities have been found to violate the Americans with Disabilities Act and the Connecticut constitution's express prohibition of disability discrimination unless they can be shown to be necessary to determine current fitness, and are narrowly tailored to achieve that goal. *See, e.g., In re Petition and Questionnaire for Admission to the Rhode Island Bar*, 683 A.2d 1333 (R.I. 1996); *Clark v. Virginia Board of Bar Examiners*, 880 F.Supp. 430 (E.D. Va. 1995); *Ellen S. v. Florida Board of Bar Examiners*, 859 F.Supp. 1489, 1493-94 (S.D. Fla. 1994); *Daly v. Delponte*, 225 Conn. 499, 512-17 (Conn. 1993); *see also* ABA Resolution 110 (1994). Further, any requests for medical records or information concerning an applicant's physical or mental health or substance abuse history must be conducted in a manner that complies with constitutional privacy protections, *see e.g., O'Connor v. Pierson*, 426 F.3d 187, 201-02 (2d Cir. 2005), and complies with federal and state statutes and regulations that safeguard the confidentiality of treatment records.

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

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

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

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

COMMENTARY: The changes in subsection (b) above make clear, as set forth in Section 2-5, that fitness to practice law is a qualification for admission to practice law. Additionally, the above changes are intended to ensure that conditional admission is administered in a way that comports with the requirements of the Americans with Disabilities Act and amendment twenty-one of the constitution of Connecticut. The amended rule is consistent with the approach of the American Bar Association's Model Rule on Conditional Admission to Practice Law (as amended in 2009). The above changes clarify that the mere existence of a disability cannot justify a denial of admission or the imposition of conditions; such steps are appropriate only if the disability causes behavior that affects the applicant's current fitness to practice law. Disability-related licensure conditions and reporting requirements must be narrowly tailored and necessary to

protect the public. *See Daly v. Delponte*, 225 Conn. 499, 512-17 (1993).

Sec. 2-12. County Committees on Recommendations for Admission

(a) There shall be in each county a standing committee on recommendations for admission, consisting of not less than three nor more than seven members of the bar of that county, who shall be appointed by the judges of the superior court to hold office for three years from the date of their appointment and until their successors are appointed. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. Appointments to fill vacancies which have arisen by reasons other than revocation or suspension may be made by the chief justice until the next annual meeting of the judges of the superior court, and, in the event of the foreseen absence or the illness or the disqualification of a member of the committee, the chief justice may make a pro tempore appointment to the committee to serve during such absence, illness or disqualification.

(b) Any application for admission to the bar may be referred to the committee for the county through which the applicant seeks admission, which shall investigate the [general fitness of the applicant] applicant's moral character and fitness

to practice law and report to the bar of the county whether the applicant has complied with the rules relating to admission to the bar, is a person of good moral character, is fit to practice law and should be admitted.

COMMENTARY: The changes in subsection (b) above make clear, as set forth in Section 2-5, that fitness to practice law is a qualification for admission to practice law.

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 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 jurisdiction for at least five of the seven 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 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, 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) An attorney who, within the 7 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 changes in subsection (a) above make clear, as set forth in Section 2-5, that fitness to practice law is a qualification for admission to practice law.

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 [moral qualifications] 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 changes in subsection (a) above make clear, as set forth in Section 2-5, that fitness to practice law is a qualification for admission to practice law.

Sec. 2-17. Foreign Legal Consultants; Licensing Requirements

Upon recommendation of the bar examining committee, the court may license to practice as a foreign legal consultant, without examination, an applicant who:

(1) has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and has engaged in the practice of law in that country, and has been in good standing as an attorney or counselor at law (or the equivalent of either) in that country, for a period of not less than five of the seven years immediately preceding the date of application;

(2) possesses the good moral character and [general] fitness <u>to practice law</u> requisite for a member of the bar of this court; and

(3) is at least twenty-six years of age.

COMMENTARY: The changes in subsection (2) above make clear that fitness to practice law is a qualification for those seeking to become licensed as foreign legal consultants under this section.

Sec. 2-18. —Filings to Become Foreign Legal Consultant

(a) An applicant for a license to practice as a foreign legal consultant shall file with the administrative director of the bar examining committee:

(1) a typewritten application in the form prescribed by the committee;

(2) a certified check, cashier's check, or money order in the amount of $500 made payable to the bar examining committee;

(3) a certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as an attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

(4) two letters of recommendation, one from a member in good standing of the Connecticut bar and another from either a member in good standing of the bar of the country in which the applicant is licensed as an attorney, or from a judge of one of the courts of original jurisdiction of said country, together with a duly authenticated English translation of each letter if it is not in English.

(b) Upon a showing that strict compliance with the provisions of Section 2-17 (1) and subdivisions (3) or (4) of subsection (a) of this section is impossible or very difficult for reasons beyond the control of the applicant, or upon a

showing of exceptional professional qualifications to practice as a foreign legal consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(c) The committee shall investigate the qualifications, moral character, and [general] fitness of any applicant for a license to practice as a foreign legal consultant and may in any case require the applicant to submit any additional proof or information as the committee may deem appropriate. The committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

COMMENTARY: The changes in subsection (c) above make clear that fitness to practice law is a qualification for those seeking to become licensed as foreign legal consultants under this section.

Sec. 2-28A. Attorney Advertising; Mandatory Filing

(a) Any attorney who advertises services to the public through any media, electronic or otherwise, or through written or recorded communication pursuant to Rule 7.2 of the Rules of Professional Conduct shall file a copy of each such advertisement or communication with the statewide grievance committee either prior to or concurrently with the attorney's first dissemination of the advertisement or written or recorded communication, except as otherwise provided in subsection (b)

herein. The materials shall be filed in a format prescribed by the statewide grievance committee, which may require them to be filed electronically. Any such submission in a foreign language must include an accurate English language translation.

The filing shall consist of the following:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, DVDs, audiotapes, compact disks, print media, photographs of outdoor advertising);

(2) A transcript, if the advertisement or communication is in video or audio format;

(3) A list of domain names used by the attorney primarily to offer legal services, which shall be updated quarterly;

(4) A sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(5) A statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used.

(b) The filing requirements of subsection (a) do not extend to any of the following materials:

(1) An advertisement in the public media that contains only the information, in whole or in part, contained in Rule 7.2 (i) of the Rules of Professional Conduct, provided the information is not false or misleading;

(2) An advertisement in a telephone directory;

(3) A listing or entry in a regularly published law list;

(4) An announcement card stating new or changed associations, new offices, or similar changes relating to an attorney or firm, or a tombstone professional card;

(5) A communication sent only to:

(i) Existing or former clients;

(ii) Other attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies and/or

(iii) Members of a not-for-profit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by an attorney; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the attorney who is recommended, furnished, or paid for by the organization.

(6) Communication that is requested by a prospective client.

(7) The contents of an attorney's internet website that appears under any of the domain names submitted pursuant to subparagraph (3) of subsection (a).

(c) If requested by the statewide grievance committee, an attorney shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written or recorded communications.

(d) The statewide bar counsel shall review advertisements and communications filed pursuant to this section that have been selected for such review on a random basis. If after such review the statewide bar counsel determines that an advertisement or communication does not comply with the Rules of Professional Conduct, the statewide bar counsel shall in writing advise the attorney responsible for the advertisement or communication of the noncompliance and shall attempt to resolve the matter with such attorney. If the matter is not resolved to the satisfaction of the statewide bar counsel, he or she shall forward the advertisement or communication and a statement describing the attempt to resolve the matter to the statewide grievance committee for review. If, after reviewing the advertisement or communication, the statewide grievance committee determines that it violates the Rules of Professional Conduct, it shall forward a copy of its file to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(e) The procedure set forth in subsection (d) shall apply only to advertisements and communications that are reviewed as part of the random review process. If an advertisement or communication comes to the attention of the statewide bar counsel other than through that process, it shall be handled pursuant to the grievance procedure that is set forth in Sections 2-29 et seq.

(f) The materials required to be filed by this section shall be retained by the statewide grievance committee for a period of one year from the date of their filing, unless, at the expiration of the one year period, there is pending before the statewide grievance committee, a reviewing committee, or the court a proceeding concerning such materials, in which case the materials that are the subject of the proceeding shall be retained until the expiration of the proceeding or for such other period as may be prescribed by the statewide grievance committee.

(g) Except for records filed in court in connection with a presentment brought pursuant to subsection (d), records maintained by the statewide bar counsel, the statewide grievance committee and/ or the disciplinary counsel's office pursuant to this section shall not be public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary

counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(h) Violation of subsections (a) or (c) shall constitute misconduct.

COMMENTARY: This amendment clarifies that only those domain names used by an attorney "primarily to offer legal services" must be registered with the statewide grievance committee and updated quarterly.

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) No application for reinstatement or readmission shall be considered by the court unless the applicant, inter alia, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the

applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal.

(b) The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.

(c) The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session.

Such three judges, or a majority of them, shall determine whether the application should be granted.

[(b)] (d) The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.

[(c)] (e) The applicant shall pay to the clerk of the superior court $200 at the time his or her application is filed. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.

[(d)] (f) An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.

[(e)] (g) In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.

COMMENTARY: The above changes set forth the manner in which standing committees on recommendations for reinstatement to the bar shall conduct their hearings and file their reports with the court.

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be typed or printed on size 8-1/2'' x 11'' paper, (2) be headed with 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 mortgagors filing a request for mediation under section 16 of public Act 08-176, in which case the request for mediation shall constitute an appearance.] This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above change deletes language that would have become effective on January 1, 2010 to implement Section 16 of P.A. 08-176. The language should be deleted in light of P.A. 09-209, which amended General Statutes § 49-31*l*, effective July 1, 2009.

Sec. 3-9. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion

to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

(d) Except as provided in subsections (a), (b) and (c), no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court.

(e) All appearances in juvenile matters shall be deemed to continue during the period of delinquency probation, [or] family with service needs supervision, or [during the period of] any commitment to the commissioner of the department of children and families or protective supervision. An attorney appointed by the chief child protection attorney to represent a parent in a pending neglect or uncared for proceeding shall continue to represent the parent for any subsequent petition to terminate parental rights if the parent appears at the first hearing on the termination petition and qualifies for appointed

counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section 35a-20, and with motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

COMMENTARY: The revision to subsection (e) is recommended to clarify the practice to continue legal representation throughout these periods.

Sec. 4-7. Personal Identifying Information to Be Omitted or Redacted from Court Records in Civil and Family Matters

(a) As used in this section, "personal identifying information" means: an individual's date of birth[,]; mother's maiden name[,]; motor vehicle operator's license number[,]; Social Security number[,]; other government issued identification number except for juris, license, permit or other business-related identification numbers that are otherwise made available to the public directly by any government agency or entity[,]; health insurance identification number, or any financial account number, security code or personal identification number (PIN). For purposes of this section, a

person's name is specifically excluded from this definition of personal identifying information.

(b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or paper format, unless otherwise required by law or ordered by the court.

(c) The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The court or the clerk of the court need not review any filed document for compliance with this rule.

COMMENTARY: This amendment clarifies that juris, license, permit or other business-related identification numbers that are otherwise made available to the public directly by any government agency or entity are not considered personal identifying information for the purpose of this section.

(NEW) Sec. 5-11. Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining 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 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 above section adopts the provisions of Section 1 of Public Act 08-67 (codified as C.G.S. § 46b-15c), which expands the circumstances under which a person may testify outside the courtroom and permits the use of videoconferencing to provide such testimony.

In all cases in which a court orders testimony to be taken pursuant to this section, the manner in which and the means whereby the testimony is taken must be consistent with the right to confrontation guaranteed by the federal and

state constitutions. U.S. Const., amends VI, VIV; Conn. Const., art. I, 8. The federal and state confrontation clauses provide a criminal defendant with two protections: "the right physically to face those who testify against him, and the right to conduct cross-examination." Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987). See also, State v. Jarzbek, 204 Conn. 683, (1987).

Subsection (b) expressly protects a party's right to cross-examination.

Sec. 7-17. Clerks' Offices

Clerks' offices shall be open each weekday from Monday to Friday inclusive, between 9 o'clock in the forenoon and 5 o'clock in the afternoon, but they shall not be open on legal holidays. The chief court administrator may increase the hours of the clerk's office for the purpose of the acceptance of bonds or for other limited purposes for one or more court locations. If the last day for filing any matter in the clerk's office falls on a day on which such office is not open as thus provided or is closed pursuant to authorization by the administrative judge in consultation with the chief court administrator or the chief court administrator due to the existence of special circumstances, then the last day for filing shall be the next business day upon which such office is open. [A] Except as provided below, a document that is electronically received by the clerk's office for filing after 5 o'clock in the afternoon on a day on which the clerk's office is open or that is electronically received by the clerk's office for filing at any

time on a day on which the clerk's office is closed, shall be deemed filed on the next business day upon which such office is open. If a party is unable to electronically file a document because the court's electronic filing system is non-operational for thirty consecutive minutes from 9 o'clock in the forenoon to 3 o'clock in the afternoon or for any period of time from 3 o'clock to 5 o'clock in the afternoon of the day on which the electronic filing is attempted, and such day is the last day for filing the document, the document shall be deemed to be timely filed if received by the clerk's office on the next business day the electronic system is operational.

COMMENTARY: The amendment to the section provides for circumstances where a document that is required to be filed electronically cannot be filed electronically because the court's electronic filing system is not operational during the last two hours of the last day for filing the document.

PROPOSED AMENDMENTS TO THE CIVIL RULES

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

(a) Prior to the commencement of an action, or at any time during its pendency, a party may file with the clerk of the court in which the action is pending, or in which the party intends to return a writ, summons and complaint, an application for waiver of fees payable to the court and for payment by the state of the costs of service of process. The application shall set forth the facts which are the basis of the claim for waiver and for payment by the state of any costs of

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

(b) The clerk with whom such an application is filed shall refer it to the court of which he or she is clerk. [After such a hearing as the judicial authority determines is necessary under the particular circumstances, the judicial authority shall render its judgment on the application, which judgment shall contain a statement of the facts it has found, with its conclusions thereon.] If the court finds that a party is indigent and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

(c) There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance or (2) such person's income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five per cent or less of the federal poverty level. For purposes of this subsection, "public assistance" includes, but is not limited to, state-administered general assistance, temporary family

assistance, aid to the aged, blind and disabled, food stamps and supplemental security income.

(d) Nothing in this section shall preclude the court from finding that a person whose income does not meet the criteria of subsection (c) of this section is indigent and unable to pay a fee or fees or the cost of service of process. If an application for the waiver of the payment of a fee or fees or the cost of service of process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application.

COMMENTARY: The revisions to this Section make the section consistent with the provisions of General Statutes Section 52-259b.

Sec. 11-20B. –Documents Containing Personal Identifying Information

(a) The requirements of Section 11-20A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may [move to have] request that [the personal identifying information redacted or to have] the document containing the personal identifying information be sealed. [if the personal identifying information cannot be redacted.] In response to such [a motion] request, or on its own motion, the court shall order [the document temporarily sealed pending redaction, shall order the document redacted

either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record] that the document be sealed and that the party who filed the document submit a redacted copy of the document within ten days of such order.

(b) If the party who filed the document fails to submit a redacted copy of the document within ten days of the order, the court may enter sanctions, including a nonsuit or default, as appropriate, against said party for such failure upon the expiration of the ten day period. Upon the submission of a redacted copy of such document, the original document containing the personal identifying information shall be retained as a sealed document in the court file, unless otherwise ordered by the court.

COMMENTARY: The above changes remove the option of ordering the clerk to redact personal identifying information from a document and provide a penalty for the failure of the party who filed the document to comply with a court order to timely file a redacted copy of the document with the court.

Sec. 13-4. —Experts

(a) A party shall disclose each person who may be called by that party to testify as an expert witness at trial, and all documents that may be offered in evidence in lieu of such expert testimony, in accordance with this section. The requirements of Section 13-15 shall apply to disclosures made under this section.

(b) A party shall file with the court and serve upon counsel a disclosure of expert witnesses which identifies the name, address and employer of each person who may be called by that party to testify as an expert witness at trial, whether through live testimony or by deposition. In addition, the disclosure shall include the following information:

(1) Except as provided in subdivision (2) of this subsection, the field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; and the substance of the grounds for each such expert opinion. Disclosure of the information required under this subsection may be made by making reference in the disclosure to, and contemporaneously producing to all parties, a written report of the expert witness containing such information.

(2) If the witness to be disclosed hereunder is a health care provider who rendered care or treatment to the plaintiff, and the opinions to be offered hereunder are based upon that provider's care or treatment, then the disclosure obligations under this section may be satisfied by disclosure to the parties of the medical records and reports of such care or treatment. A witness disclosed under this subsection shall be permitted to offer expert opinion testimony at trial as to any opinion as to which fair notice is given in the disclosed medical records or reports. Expert testimony regarding any opinion as to which fair notice is not given in the disclosed medical records or reports must be disclosed [shall not be permitted unless the

opinion is disclosed] in accordance with subdivision (1) of subsection (b) of this section.

(3) Except for an expert witness who is a health care provider who rendered care or treatment to the plaintiff, or unless otherwise ordered by the judicial authority or agreed upon by the parties, the party disclosing an expert witness shall, [within thirty days of such disclosure,] upon the request of an opposing party, produce to all other parties all materials obtained, created and/or relied upon by the expert in connection with his or her opinions in the case within fourteen days prior to that expert's deposition or within such other time frame determined in accordance with the Schedule for Expert Discovery prepared pursuant to subsection (g) of this section. If any such materials have already been produced to the other parties in the case, then a list of such materials, made with sufficient particularity that the materials can be easily identified by the parties, shall satisfy the production requirement hereunder with respect to those materials. If an expert witness otherwise subject to this subsection is not being compensated in that capacity by or on behalf of the disclosing party, then that party may give written notice of that fact in satisfaction of the obligations imposed by this subsection. If such notice is provided, then it shall be the duty of the party seeking to depose such expert witness to obtain the production of the requested materials by subpoena or other lawful means.

(4) Nothing in this section shall prohibit any witness disclosed hereunder from offering nonexpert testimony at trial.

(c) (1) Unless otherwise ordered by the judicial authority upon motion, a party may take the deposition of any expert witness disclosed pursuant to subsection (b) of this section in the manner prescribed in Section 13-26 et seq. governing deposition procedure generally. Nothing contained in subsection (b) of this section shall impair the right of any party from exercising that party's rights under the rules of practice to subpoena or to request production of any materials, to the extent otherwise discoverable, in addition to those produced under subsection (b) of this section, in connection with the deposition of any expert witness, nor shall anything contained herein impair the right of a party to raise any objections to any request for production of documents sought hereunder to the extent that a claim of privilege exists.

(2) Unless otherwise ordered by the judicial authority for good cause shown, or agreed upon by the parties, the fees and expenses of the expert witness for any such deposition, excluding preparation time, shall be paid by the party or parties taking the deposition. Unless otherwise ordered, the fees and expenses hereunder shall include only (A) a reasonable fee for the time of the witness to attend the deposition itself and the witness's travel time to and from the place of deposition; and (B) the reasonable expenses actually incurred for travel to and from the place of deposition and lodging, if necessary. If the parties are unable to agree on the fees and expenses due

under this subsection, the amount shall be set by the judicial authority, upon motion.

(d) (1) A party shall file with the court a list of all documents or records that the party expects to submit in evidence pursuant to any statute or rule permitting admissibility of documentary evidence in lieu of the live testimony of an expert witness. The list filed hereunder shall identify such documents or records with sufficient particularity that they shall be easily identified by the other parties. The parties shall not file with the court a copy of the documents or records on such list.

(2) Unless otherwise ordered by the judicial authority upon motion, a party may take the deposition of any expert witness whose records are disclosed pursuant to subdivision (1) of subsection (d) of this section in the manner prescribed in Section 13-26 et seq. governing deposition procedure generally. Nothing contained in subsection (d) of this section shall impair the right of any party from exercising that party's rights under the rules of practice to subpoena or to request production of any materials, to the extent otherwise discoverable, in addition to those produced under subsection (d), in connection with the deposition of any expert witness.

(3) Unless otherwise ordered by the judicial authority for good cause shown, or agreed upon by the parties, the fees and expenses of the expert witness for any such deposition, excluding preparation time, shall be paid by the party or parties taking the deposition. Unless otherwise ordered, the fees and

expenses hereunder shall include only (A) a reasonable fee for the time of the witness to attend the deposition itself and the witness's travel time to and from the place of deposition; and (B) the reasonable expenses actually incurred for travel to and from the place of deposition and lodging, if necessary. If the parties are unable to agree on the fees and expenses due under this subsection, the amount shall be set by the judicial authority, upon motion.

(e) If any party expects to call as an expert witness at trial any person previously disclosed by any other party under subsection (b) hereof, the newly disclosing party shall file a notice of disclosure: (1) stating that the party adopts all or a specified part of the expert disclosure already on file; and (2) disclosing any other expert opinions to which the witness is expected to testify and the substance of the grounds for any such expert opinion. Such notice shall be filed within the time parameters set forth in subsection (g).

(f) A party may discover facts known or opinions held by an expert who had been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Section 13-11 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(g) Unless otherwise ordered by the judicial authority, or otherwise agreed by the parties, the following schedule shall

govern the expert discovery required under subsections (b), (c), (d) and (e) of this section.

(1) Within 120 days after the return date of any civil action, or at such other time as the parties may agree or as the court may order, the parties shall submit to the court for its approval a proposed ['']Schedule for Expert Discovery[''] which, upon approval by the court, shall govern the timing of expert discovery in the case. This schedule shall be submitted on a "Schedule for Expert Discovery" form prescribed by the Office of the Chief Court Administrator. The deadlines proposed by the parties shall be realistic and reasonable, taking into account the nature and relative complexity of the case, the need for predicate discovery and the estimated time until the case may be exposed for trial. If the parties are unable to agree on discovery deadlines, they shall so indicate on the proposed Schedule for Expert Discovery, in which event the court shall convene a scheduling conference to set those deadlines.

(2) If a party is added or appears in a case after the proposed Schedule for Expert Discovery is filed, then an amended proposed Schedule for Expert Discovery shall be prepared and filed for approval by the court within sixty days after such new party appears, or at such other time as the court may order.

(3) Unless otherwise ordered by the court, disclosure of any expert witness under subsection (e) hereof shall be made within thirty days of the event giving rise to the need for that

party to adopt the expert disclosure as its own (e.g., the withdrawal or dismissal of the party originally disclosing the expert).

(4) [Any request for modification of the approved Schedule for Expert Discovery or of any other time limitation under this section shall be made by motion stating the reasons therefor, and shall be granted if (A) agreed upon by the parties and will not interfere with the trial date; or (B) (i) the requested modification will not cause undue prejudice to any other party; (ii) the requested modification will not cause undue interference with the trial schedule in the case; and (iii) the need for the requested modification was not caused by bad faith delay of disclosure by the party seeking the modification.]

The parties, by agreement, may modify the approved Schedule for Expert Discovery or any other time limitation under this section so long as the modifications do not interfere with an assigned trial date. A party who wishes to modify the approved Schedule for Expert Discovery or other time limitation under this section without agreement of the parties may file a motion for modification with the court stating the reasons therefor. Said motion shall be granted if (i) the requested modification will not cause undue prejudice to any other party; (ii) the requested modification will not cause undue interference with the trial schedule in the case; and (iii) the need for the requested modification was not caused by bad faith delay of disclosure by the party seeking modification.

(h) A judicial authority may, after a hearing, impose sanctions on a party for failure to comply with the requirements of this section. An order precluding the testimony of an expert witness may be entered only upon a finding that (1) the sanction of preclusion, including any consequence thereof on the sanctioned party's ability to prosecute or to defend the case, is proportional to the noncompliance at issue, and (2) the noncompliance at issue cannot adequately be addressed by a less severe sanction or combination of sanctions.

(i) The revisions to this rule adopted by the judges of the superior court in June, 2008, effective on January 1, 2009, and the revisions to this rule adopted by the judges of the superior court in June, 2009 and March, 2010 shall apply to cases commenced on or after January 1, 2009. The version of this rule in effect on December 31, 2008, shall apply to cases commenced on or before that date.

COMMENTARY: The overall purpose to the proposed amendments to Practice Book 13-4 is to eliminate internal inconsistencies within the rule; to provide uniformity; to foster judicial economy; and to conform the requirements of this section to existing practice.

Subsection (b) (2) permits a party to comply with the disclosure requirements by producing medical records and/or reports of a treating health care provider. It further allows expert testimony from a treating health care provider so long as the disclosed records and/or reports give fair notice of the

expert's opinion. Under the current language, expert testimony is automatically precluded with respect to any opinion of which fair notice was not contained in the disclosed records or reports. The proposed amendment to this subsection retains the requirements that a party disclose any opinion to which fair notice is not contained in a health care provider's records or reports. Under the amended language, however, a party failing to disclose any such opinions will be subject to 13-4 (h) in the same manner as any other violation of the expert disclosure rule.

Under the production requirement contained in existing subsection (b) (3), unless otherwise ordered or agreed to, a retained expert's file must be produced within thirty days of disclosure. The proposed amendment eliminates the rigid requirement that an expert's file be produced within thirty days of disclosure. Under the proposed amendment, the parties may choose whether such production is necessary and, if it is, determine the most reasonable time for production under the circumstances of their case. The party requesting file production can do so as part of the uniform scheduling order under 13-4(g). If the parties are unable to agree to a time period for production, the rule contains a default time period of fourteen days prior to the taking of the deposition. The proposed amendment allows counsel to review a retained expert's file prior to a deposition, as was originally intended, but recognizes that in many cases it is often unnecessary to obtain an expert's complete file prior to deposition. The

proposed changes serve the underlying purpose of this subsection, reflect the realty of current practice, and provide a uniform method of scheduling any requested production.

Under existing subsection (g) (1), in order to change the time frame for submitting an expert disclosure schedule, the parties must obtain a court order. This requirement has not been widely utilized by either practitioners or the courts.

The proposed changes to 13-4(g) allow the parties to agree upon an expert disclosure scheduling order at a time frame other than 120 days from the return date. Allowing the parties to submit the schedule at a time that they agree upon, i.e. at an early intervention pretrial or a scheduling conference, conforms the Practice Book section to existing practice and saves judicial resources. The proposed amendment does not eliminate the 120 day fall back requirement but simply allows the parties to determine when, under the circumstances of their case, is the most efficient time to set a schedule for expert disclosure. In many cases there is no need for such an early determination of expert scheduling.

Additionally, the current rule provides no guidance for counsel in preparing the required schedule. To address this omission and to foster uniformity, it is proposed that the subsection be amended to incorporate the use of a uniform "Schedule for Expert Discovery" form that would be prescribed by the Office of the Chief Court Administrator.

The final proposed change to subsection (g) (4) allows the parties to modify by agreement the schedule for expert

discovery without burdening the court. The current rule requires that even when the parties agree concerning a schedule modification that will not affect the trial date, they must seek the court's approval by motion. The proposed amendment eliminates the need for judicial involvement when the parties agree and the trial date will not be affected.

Subsection (i) is amended to designate the cases to which the proposed amendments shall apply.

Sec. 13-11. —Physical or Mental Examination

(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, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in the party's custody or legal control.

(b) In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve in accordance with Sections 10-12 through 10-17 a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by

the plaintiff unless, within ten days from the filing of the request, the plaintiff files in writing an objection thereto specifying to which portions of said request objection is made and the reasons for said objection. The objection shall be placed on the short calendar list upon the filing thereof. The judicial authority may make such order as is just in connection with the request. No plaintiff shall be compelled to undergo a physical or mental examination by any physician to whom he or she objects in writing.

(c) In any other case, such order may be made only on motion for good cause shown to be heard at short calendar. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(d) If requested by the party against whom an order is made under this rule, or who has voluntarily agreed to an examination, the party causing the examination to be made shall deliver to such party a copy of a written report of the examining physician, setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made, or who has voluntarily agreed to an examination, a like report of any examination, previously or thereafter made, of the same condition. The judicial authority on motion may make an order requiring delivery by a party of a

report on such terms as are just, and if a physician fails or refuses to make a report the judicial authority may exclude the physician's testimony if offered at the trial.

(e) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives, in that action, or in any other action involving the same controversy, any privilege he or she may have regarding the testimony of every other person who has examined or may thereafter examine the party in respect to the same mental or physical condition.

(f) This section does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other section of this chapter.

COMMENTARY: This change makes clear that a plaintiff may object to a mental examination as well as to a physical examination.

Sec. 17-4. Setting Aside or Opening Judgments

(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a [small claims or] juvenile

matter, the moving party shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.

(c) The expedited procedures set forth in this subsection may be followed with regard to a motion to open a judgment of foreclosure filed by a plaintiff in which the filing fee has been paid, the motion has been filed prior to the vesting of title or the sale date, the plaintiff states in the motion that the committee and appraisal fees have been paid or will be paid within thirty days of court approval, and the motion has been served on each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon.

(1) Parties shall have five days from the filing of the motion to file an objection with the court. Unless otherwise ordered by the judicial authority, the motion shall be heard not less than seven days after the date the motion was filed. If the plaintiff states in the motion that all appearing parties have received actual notice of the motion and are in agreement with it, the judicial authority may grant the motion without a hearing.

(2) When a motion to open judgment is filed pursuant to this subsection, the court will retain jurisdiction over the action to award committee fees and expenses and appraisal fees, if necessary. If judgment is not entered or the case has not been withdrawn within 120 days of the granting of the motion, the judicial authority shall forthwith enter a judgment of dismissal.

COMMENTARY: The above change is made because Gen. Stat. § 52-259c provides that a fee shall be paid to the clerk upon the filing of a motion to open or set aside a judgment rendered in a small claims matter.

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, 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 [upon filing] 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 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 above change is made to accommodate e-filing.

Sec. 17-32. Where Defendant is in Default for Failure to Plead

(a) Where a defendant is in default for failure to plead pursuant to Section 10-8, the plaintiff may file a written motion for default which shall be acted on by the clerk [upon filing] not less than seven days from the filing of the motion, without placement on the short calendar.

(b) If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the clerk shall set aside the default. If a claim for a hearing in damages or a motion for judgment has been filed, the default may be set aside only by the judicial authority. A claim for a hearing in damages or motion for judgment shall not be filed before the expiration of fifteen days from the date of notice of issuance of the default under this subsection.

COMMENTARY: The above change is made to accommodate e-filing.

Sec. 24-3. Institution of Actions; Electronic Filing

Actions may be instituted at the option of the claimant by the procedure herein provided for, or by writ and complaint returnable to the regular civil docket of the superior court. Actions may also be instituted and papers filed, signed or

verified by electronic means in the manner prescribed in Section 4-4.

COMMENTARY: The new language clarifies that electronic filing is applicable to small claims matters.

Sec. 24-4. Where Claims Shall Be Filed

Claims shall be filed in the clerk's office serving the small claims area designated by the chief court administrator where venue exists, as set forth in General Statutes §§ 51-345, 51-346 and 51-347, except that claims concerning housing matters, as defined by General Statutes § 47a-68, which are filed in a judicial district in which a housing session has been established, shall be filed with the clerk of the housing session for that judicial district. Claims may be filed electronically pursuant to Section 24-3. [Unless (1) the defendant resides or is doing business, (2) the plaintiff resides, or (3) in housing matters, the premises is located within the small claims area where the claim is to be filed, or within the judicial district if the claim is to be filed in the housing session, the plaintiff, or representative, shall include in the statement of the claim the town where the transaction or injury occurred or other statement as to the basis for venue.] The plaintiff shall include in the statement of the claim a statement of facts that provides the basis for venue in accordance with General Statutes § 51-345 (d), § 51-345 (g) and such other statutes as are applicable.

COMMENTARY: The above changes reflect e-filing capability pursuant to Sections 4-4 and 24-3.

Sec. 24-6. Definition of "Plaintiff" and ''Representative''

(a) Except as hereinafter limited, the word ''representative'' as used in this chapter shall mean: an attorney at law; one of a number of partners; one of a number of joint plaintiffs acting for all; an officer, manager or local manager of a corporation; an employee of an unincorporated business which is not a partnership; the commissioner of administrative services or his or her authorized representative while acting in an official capacity; the chief court administrator or his or her authorized representative while acting in an official capacity. The word ''representative'' shall not mean a consumer collection agency as defined in chapter 669 of the General Statutes or an individual acting pursuant to a power of attorney.

(b) The word "plaintiff" as used in this chapter shall include "representative" as defined in subsection (a), except where otherwise indicated.

[(b)](c) It is prohibited for one who is not an attorney at law to receive a fee for the representation of any party.

Sec. 24-9. —Preparation of Writ

The small claims writ and notice of suit shall be on a form prescribed by the office of the chief court administrator. The plaintiff, or representative, shall state the nature and amount of the claim on the writ in concise, untechnical form and, if the claim seeks collection of a consumer debt, shall state the basis upon which the plaintiff claims that the statute of limitations has not expired. The [said] writ is to be signed by

either the plaintiff, or representative, under oath[, together with an affidavit as to the military status of the defendant]. The oath shall provide that the signer has read the claim, and that to the best of the signer's knowledge, information and belief there is good ground to support it. If the claim [involves items of] is more than a convenient length for entry on the writ in full, the plaintiff, or representative, shall attach [to the writ a list of such items] additional pages as needed. The plaintiff, or representative, shall also state on the writ the plaintiff's and the defendant's place[s] of residence or other address[es]. At the time of filing any writ, the plaintiff, or attorney, shall verify the defendant's address. Such verification shall include confirmation by at least one of the following methods made during the six months prior to the filing of the writ: (1) municipal record verification (e.g., from a street list or tax records); (2) verification from the Department of Motor Vehicles; (3) receipt of correspondence from the defendant with that return address; (4) other verification, specifically described by the plaintiff, from the defendant that the address is current; (5) the mailing by first class mail, at least four weeks prior to the filing of the small claims action, of a letter to the defendant at such address, which letter has not been returned by the United States Postal Service. The plaintiff shall state under oath in the writ which method of verification was employed within the last six months, the date of verification, and that the method confirmed the accuracy of the address submitted. No default judgment shall enter in the absence of

such verification or if it is apparent that the defendant did not reside at the address at the time of service.

COMMENTARY: Language has been added to the above section that requires the plaintiff to provide information regarding the age of the claim and verification of the defendant's address and that generally strengthens notice provisions. The plaintiff, or representative, shall not use an address for service that the plaintiff, or representative, knows is not the defendant's current address. The revision also removes the requirement that the military affidavit is to be filed with the writ. An affidavit as to military status is not needed if the defendant answers the claim. It is also more difficult for pro se plaintiffs to obtain a military affidavit as they normally do not have a defendant's date of birth or social security number and so are unable to use the Department of Defense Manpower Data Center to determine military status. Requiring the affidavit later in the process also reduces the risk that the affidavit will be stale.

Sec. 24-10. —Service of Small Claims Writ and Notice of Suit

[(a) Except as provided in subsection (b) of this section, the clerk shall send the writ and notice of suit and answer form by first class mail separately to each defendant who is not an out-of-state corporation to one or more of the addresses supplied by the plaintiff. The clerk shall document the mailing date, and the nondelivery of the notice if any. On or before the date the clerk mails the writ and notice of suit to each such defendant, the clerk shall send notice to each

plaintiff or representative of the docket number and answer date.]

(a) The plaintiff, or representative, shall cause service of the writ and notice of suit separately on each defendant by priority mail with delivery confirmation, by certified mail return receipt requested, by a nationally recognized courier service providing delivery confirmation, or by a proper officer in the manner in which a writ of summons is served in a civil action. The plaintiff, or representative, shall include any information required by the Office of the Chief Court Administrator. A statement of how service has been made, together with the delivery confirmation or return receipt and the original writ and notice of suit shall be filed with the clerk. The writ and notice of suit and the statement of service shall be returned to the court not later than one month after the date of service.

(b) For each defendant [who] which is an out-of-state [corporation] business entity, the plaintiff shall cause service of the writ and notice of suit and answer form to be made in accordance with the General Statutes. The officer [or other person] lawfully empowered to make service shall make return of service to the court. The clerk shall document the return of service.

(c) Upon receipt of the writ and accompanying documents, the clerk shall set an answer date and send notice to all plaintiffs or their representatives of the docket number and answer date. The clerk will send an answer form that

includes the docket number and answer date to each defendant at the address provided by the plaintiff.

COMMENTARY: The above revision shifts the obligation to make service to the plaintiff and provides four methods of service. The small claims caseload has increased. This necessitates shifting processes to reduce tasks that must be performed by staff. The revision also eliminates service by an indifferent person in small claims matters.

[Sec. 24-11. —Further Service of Claim

If the writ and notice of suit are returned to the court undelivered, the clerk shall issue a further notice setting a new answer date and give that notice to the plaintiff or representative, to be served by a proper officer or indifferent person upon the defendant in the same manner in which a writ of summons is served in a civil action, not less than fifteen nor more than thirty days before the new answer date mentioned in the notice, and make his or her return of service on the writ at least six days before the answer date. If service is not effected within 120 days from the original answer date, the case may be subject to dismissal. This section shall not apply to service made upon a defendant who is an out-of-state corporation.]

COMMENTARY: This section is not necessary in light of the revision to Section 24-10, which shifts to the plaintiff or representative the obligation to make service.

Sec. 24-12. —Answer Date

The answer date shall not be less than fifteen nor more than [thirty] forty five days after the [date notice is mailed to or service is made on the defendant pursuant to Section 24-10 or after the date service is made on the defendant pursuant to Sections 24-11 or 24-13] writ and accompanying documents are filed in the court.

[Sec. 24-13. —Alternative Method of Commencing Action

In cases where the plaintiff is represented by an attorney at law, the attorney may, in lieu of proceeding in accordance with the provisions of Section 24-3 and Sections 24-8 through 24-11, proceed in accordance with the following provisions:

(1) After obtaining the answer date from the clerk's office, the attorney shall complete a small claims writ and notice of suit in accordance with the provisions of Sections 24-9 and 24-10 and shall sign the writ as a commissioner of the superior court. Before service of the writ and notice of suit is made on the defendant, the attorney shall give or mail a copy of the completed writ and notice of suit to the clerk of the court in which the claim is to be filed accompanied by the appropriate entry fee.

(2) If the defendant is not an out-of-state corporation, the writ and notice of suit shall be sent by certified mail, return receipt requested, separately to each defendant or served by a proper officer or indifferent person in the manner in which a writ of summons is served in a civil action, not less than

fifteen nor more than thirty days before the answer date. If service is made by certified mail, a sworn affidavit stating how service has been made, together with the return receipt and the original writ and notice of suit shall be filed with the clerk as set forth below. In cases where service is made in the same manner in which a writ is served in a civil action, the officer or indifferent person shall make return of service to the court.

(3) If the defendant is an out-of-state corporation, service of the writ and notice of suit shall be made in accordance with the General Statutes. The officer or other person lawfully empowered to make service shall make return of service to the court.

(4) After service has been made, the filings required above shall be made at least six days before the answer date specified in the notice in the office of the clerk of the small claims area or housing session wherein the action is to be heard.

(5) When service, return and filing have been completed as aforesaid, the service shall be deemed to be the commencement of the action, except that service made upon an out-of-state corporation shall be effective as of the day and hour specified in the General Statutes.

(6) No attorney at law, or firm or association of attorneys at law, shall specify the same answer date for more than twenty small claims cases.]

COMMENTARY: This section is not necessary in light of the revision to Section 24-10, which shifts to the plaintiff or representative the obligation to make service.

Sec. 24-14. —Notice of Time and Place of Hearing

[Except as provided in Section 24-25, w]Whenever a hearing is [required] scheduled, the clerk shall [give or mail] send to each party or representative a notice of the time and place set for hearing. This shall include the street address of the court, [the] a telephone number [of the clerk's office] for inquiries, and the room number or other information sufficient to describe the place where the hearing will be held.

COMMENTARY: The above revisions contemplate other methods of sending notice that may be used in the future and also accommodates the centralization of small claims processing in regard to inquiries.

Sec. 24-16. Answers; Requests for Time to Pay

(a) A defendant, unless the judicial authority shall otherwise order, shall be defaulted and judgment shall enter in accordance with the provisions of Section 24-24, unless such defendant shall, personally or by representative, not later than the answer date, file an answer [notify the clerk in writing of his or her defense to the claim] or file a motion to transfer pursuant to Section 21-21. The answer should state fully and specifically, but in concise and untechnical form, such parts of the claim as are contested, and the grounds thereof, provided that an answer of general denial shall be sufficient for

purposes of this section. Each defendant shall send a copy of the answer to each plaintiff and shall certify on the answer form that the defendant has done so, including the address(es) to which a copy has been mailed. Upon the filing of an answer the clerk shall set the matter down for hearing by the judicial authority [and mail a copy of the answer to the plaintiff or representative].

(b) A defendant who admits the claim but desires time in which to pay may state that fact in the answer, with reasons to support this request, on or before the time set for answering, and may suggest a method of payment which he or she can afford. The request for a proposed method of payment shall be considered by the judicial authority in determining whether there shall be a stay of execution to permit deferred payment or an order of payment. The judicial authority in its discretion may require that a hearing be held concerning such request.

COMMENTARY: The above revision prohibits the entry of a default judgment when a motion to transfer is pending and shifts to the defendant the obligation of providing plaintiff with a copy of the answer.

Sec. 24-17. —Prohibition of Certain Filings

No [pleadings] filings other than those provided for in this chapter shall be permitted without permission of the judicial authority.

COMMENTARY: The above change is made for clarity.

Sec. 24-20A. —Request for Documents; Depositions

A party may request from the opposing party documents, or copies thereof, that are necessary or desirable for the full presentation of the case. The party requesting such documents, or copies thereof, shall make the request directly to the opposing party or the party's representative. When a party refuses to honor such request, the requesting party may bring the request to the judicial authority's attention, either orally or in writing, for a decision. No deposition shall be taken except by order of the judicial authority.

COMMENTARY: The above revision clarifies the procedure.

Sec. 24-21. Transfer to Regular Docket

(a) A case duly entered on the small claims docket of a small claims area or housing session court location shall be transferred to the regular docket of the superior court or to the regular housing docket, respectively, if the following conditions are met:

(1) The defendant, or the plaintiff if the defendant has filed a counterclaim, shall file a motion to transfer the case to the regular docket. This motion must be filed on or before the answer date with certification of service pursuant to Sections 10-12 et seq. If a motion to open claiming lack of actual notice is granted, the motion to transfer with accompanying documents and fees must be filed within [five] fifteen days after the notice granting the motion to open was sent.

(2) The motion to transfer must be accompanied by (A) a counterclaim in an amount greater than the jurisdiction of the small claims court; or (B) an affidavit stating that a good defense exists to the claim and setting forth with specificity the nature of the defense, or stating that the case has been properly claimed for trial by jury.

(3) The moving party shall pay all necessary statutory fees at the time the motion to transfer is filed, including any jury fees if a claim for trial by jury is filed.

(b) When a defendant or plaintiff on a counterclaim has satisfied one of the conditions of subsection (a) (2) herein, the motion to transfer to the regular docket shall be granted by the judicial authority, without the need for a hearing.

(c) A case [on the small claims docket of a small claims area court location] which has been properly transferred shall be transferred to the docket of the judicial district [within which the small claims area is located] which corresponds to the venue of the small claims matter, except that a housing case [filed in the housing session and] properly transferred shall remain in or be transferred to the housing session and be placed upon the regular housing docket. A case may be consolidated with a case pending in any other clerk's office of the superior court.

COMMENTARY: The above revision clarifies the transfer process in light of the centralization of small claims matters and extends one of the filing time limits.

Sec. 24-24. Judgments in Small Claims; When Presence of the Plaintiff or Representative is Not Required for Entry of Judgment

(a) In any action based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest and reasonable attorney's fees, if the defendant has not filed an answer by the answer date and the judicial authority has not required that a hearing be held concerning any request by the defendant for more time to pay, the judicial authority may render judgment in favor of the plaintiff without requiring the presence of the plaintiff or representative before the court, provided the plaintiff has complied with the provisions of this section and Section 24-8. Nothing contained in this section shall prevent the judicial authority from requiring the presence of the plaintiff or representative before the court prior to rendering any such default and judgment if it appears to the judicial authority that additional information or evidence is required prior to the entry of judgment.

(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a [default] judgment whether by default, stipulation or other method, the following affidavits must [be] have been filed by the plaintiff:

(1) An affidavit of debt signed by the plaintiff or representative who is not the plaintiff's attorney. A small claims writ and notice of suit signed and sworn to by the plaintiff or representative who is not the plaintiff's attorney

shall be considered an affidavit of debt for purposes of this section only if it sets forth either the amount due or the principal owed as of the date of the writ and contains an itemization of interest, attorneys fees and other lawful charges. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed [and], the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff and a copy of the executed instrument shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt while also referencing the attached chain of title in the affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt. If applicable, the allegations shall comply with § 52-118 of the General Statutes.

(B) The affidavit shall simply state the basis upon which the plaintiff claims the statute of limitations has not expired.

[(B)](C) If the plaintiff has claimed any lawful fees or charges based on a provision of the contract [, including reasonable fees for an attorney at law], the plaintiff shall [include in] attach to the affidavit of debt a copy of a portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

[C)](D) If a claim for a reasonable fee for an attorney at law is made, the plaintiff shall include in the affidavit the reasons for the specific amount requested. Any claim for reasonable fees for an attorney at law must be referred to the judicial authority for approval prior to its inclusion in any default judgment.

(2) A military affidavit as required by Section 17-21 of the rules of practice.

COMMENTARY: The above revisions clarify the standards of proof for entry of judgment. It should be noted that pursuant to the Security Deposit Act interest on residential security deposits is normally added to a judgment even if not claimed. Such interest is statutorily required and is not waivable, as a matter of law.

For the purposes of subsection (b) (1), in regard to credit card debts owed to a financial institution and subject to federal requirements for the charging off of accounts, it is the intention of this rule that the federally authorized charge-off balance may be treated as the "principal" and itemization regarding such debts is required only from the date of the charge-off balance.

Sec. 24-25. —Failure of the Defendant To Answer

If the defendant does not file an answer by the answer date a notice of default shall be sent to all parties or their representatives and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing and the judicial authority shall require the presence of the plaintiff or representative. Notice of the hearing shall be sent to all parties or their representatives. If a defendant files an answer at any time before a default judgment has been entered, including at the time of a scheduled hearing in damages, the default shall be vacated automatically. If the answer is filed at the time of a hearing in damages, the judicial authority shall allow the plaintiff a continuance if requested by the plaintiff, or representative.

COMMENTARY: The above revision provides that notice is to be sent to both plaintiffs and defendants when a defendant defaults for failure to answer and when a matter is scheduled for a hearing in damages. It also provides that a default for failure to file an answer shall be set aside when an answer is filed prior to the entry of judgment and that the plaintiff is entitled to a continuance for a filing at the time of hearing.

Sec. 24-27. —Dismissal for Failure To Obtain Judgment

During the months of January and July of each year, small claims cases which, within one year from the date of the institution of the action, have not gone to judgment [shall] may

be dismissed upon the order of the chief court administrator. [No notices of dismissal will be sent by the court.]

COMMENTARY: The above revision requires the court to send notices of dismissal under the small claims dormancy program. The timing of the dormancy program will be discretionary.

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 representative. The judgment of the judicial authority shall be recorded by the clerk and notice of the judgment and written decision shall be mailed to each party or representative, if any, in a sealed envelope.

COMMENTARY: The above revision requires magistrates to state reasons in a written decision after a contested hearing.

Sec. 24-30. —Satisfying Judgment

(a) The judicial authority may order that the judgment shall be paid to the prevailing party at a certain date or by specified installments[, and may stay]. Unless otherwise ordered, the issue of execution and other supplementary process shall be stayed during compliance with such order. Such stay may be modified and vacated at any time for good cause. The stay is automatically lifted by a default in post-judgment court ordered payments by the judgment debtor.

(b) When the judgment is satisfied in a small claims action, the party recovering the judgment shall file a written notice thereof within 90 days with the clerk who shall record the judgment as satisfied, identifying the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

COMMENTARY: The above revision to subsection (a) sets forth a general rule that execution on small claims judgments is stayed while there is compliance with the order of payment. It is automatically lifted upon default by the debtor. The revision to subsection (b) adds a time within which a satisfaction is to be filed with the court.

Sec. 24-31. —Opening Judgment; Costs

(a) The judicial authority may, upon motion, and after such notice by mail, or otherwise as it may order, open any

judgment rendered under this procedure[, within four months from the date thereof,] for lack of actual notice to a party, or, within four months from the date thereof, for any other cause that the judicial authority may deem sufficient, and may stay and supersede execution; except that the judicial authority may, for the reasons indicated above, open any judgment rendered by default at any time within four months succeeding the date upon which an execution was levied. The judicial authority may also order the repayment of any sum collected under such judgment, and may render judgment and issue execution therefor. Costs in an amount fixed by the judicial authority and not exceeding $100 may be awarded, in the discretion of the judicial authority, for or against either party to a motion to open the judgment, and judgment may be rendered and execution may be issued therefor; and any action by the judicial authority may be conditioned upon the payment of such costs or the performance of any proper condition.

(b) When a judgment has been rendered after a contested hearing on the merits, a motion to open shall be scheduled for hearing only upon order of the judicial authority.

COMMENTARY: The above revision removes the time limit for opening judgments for lack of actual notice to a party. The four month time limit remains for opening judgments for other reasons. The revision clarifies that subsection (b) refers to a contested hearing.

Sec. 24-33. Costs in Small Claims

The actual legal disbursements of the prevailing party for entry fee, witness' fees, [execution fees,] fees for copies, [fees of an indifferent person, and] officers' fees, and costs for service shall be allowed as costs, including any statutory costs. The recording fee paid for filing a judgment lien shall also be added to the judgment amount. The costs paid as an application fee for any execution on a money judgment shall be taxed by the clerk upon the issuance of an execution. No other costs shall be allowed either party except by special order of the judicial authority. The judicial authority shall have power in its discretion to award costs, in a sum fixed by the judicial authority, not exceeding $100 (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim, defense or counterclaim, or has made an unfair, insufficient or misleading answer, or has negligently failed to be ready for trial, or has otherwise sought to hamper a party or the judicial authority in securing a speedy determination of the claim upon its merits, and it may render judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require. In no case shall costs exceed the amount of the judgment.

COMMENTARY: The above revision removes fees for service by an indifferent person to be consistent with other revisions proposing elimination of service by an indifferent

person in small claims matters and includes "costs for service" as allowable costs.

PROPOSED AMENDMENTS TO THE FAMILY RULES

Sec. 25-59B. –Documents Containing Personal Identifying Information

(a) The requirements of Section 25-59A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court, with the exception of financial affidavits that are under seal. When a financial affidavit is unsealed, this section shall apply. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may [move to redact the personal identifying information or to seal] request that the document [if] containing the personal identifying information [cannot be redacted] be sealed. In response to such [a motion] request, or on its own motion, the court shall order [the document temporarily sealed pending redaction, shall order the document redacted either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record] that the document be sealed and that the party who filed the document submit a redacted copy of the document within ten days of such order.

(b) If the party who filed the document fails to submit a redacted copy of the document within ten days of the order, the court may enter sanctions, as appropriate, against said

party for such failure upon the expiration of the ten day period. Upon the submission of a redacted copy of such document, the original document containing the personal identifying information shall be retained as a sealed document in the court file, unless otherwise ordered by the court.

COMMENTARY: The above changes remove the option of ordering the clerk to redact personal identifying information from a document and provide a penalty for the failure of the party who filed the document to comply with a court order to timely file a redacted copy of the document with the court.

[Sec. 25-65. Family Support Magistrates; Procedure

(a) The procedure in any matter which is to be heard and determined by a family support magistrate shall conform, where applicable, to the procedure in and for the superior court except as otherwise provided herein.

(b) Any pleading or motion filed in a family support magistrate matter shall indicate, in the lower right hand corner of the first page of the document, that it is a family support magistrate matter.

(c) Matters to be heard and determined by a family support magistrate shall be placed on the family support magistrate list.

(d) Matters on the family support magistrate list shall be assigned automatically by the family support magistrate clerk without the necessity of a written claim. No such matters shall be so assigned unless filed at least five days before the opening of court on the day the list is to be called.

(e) Matters upon the family support magistrate list shall not be continued except by order of a family support magistrate.]

COMMENTARY: The substance of this section is now contained in new Chapter 25A, Section 25A-1. This section is no longer necessary and should be repealed.

[Sec. 25-66. Appeal from Decision of Family Support Magistrate

Any person who is aggrieved by a final decision of a family support magistrate may appeal such decision in accordance with the provisions of General Statutes § 46b-231. The appeal shall be instituted by the filing of a petition which shall include the reasons for the appeal.]

COMMENTARY: The substance of this section is now contained in new Chapter 25A, Section 25A-20. This section is no longer necessary and should be repealed.

[Sec. 25-67. Support Enforcement Services

In cases where the payment of alimony and support has been ordered, a support enforcement officer, where provided by statute, shall:

(1) Whenever there is a default in any payment of alimony or support of children under judgments of dissolution of marriage or civil union or separation, or of support under judgments of support, where necessary, (A) bring an application to a family support magistrate for a rule requiring

said party to appear before a family support magistrate to show cause why such party should not be held in contempt, or (B) take such other action as is provided by rule or statute.

(2) In connection with subdivision (1) above, or at any other time upon direction of a family support magistrate, investigate the financial situation of the parties and report his or her findings thereon to a family support magistrate which may authorize the officer to bring an application for a rule requiring any party to appear before a family support magistrate to show cause why there should not be a modification of the judgment.

(3) In non-TANF IV-D cases, review child support orders at the request of either parent subject to a support order or, in TANF cases, review child support orders at the request of the bureau of child support enforcement and initiate and facilitate, but not advocate on behalf of either party, an action before a family support magistrate to modify such support order if it is determined upon such review that the order substantially deviates from the child support guidelines established pursuant to General Statutes §§ 46b-215a or 46b-215b. The requesting party shall have the right to such review every three years without proving a substantial change in circumstances; more frequent reviews shall be made only if the requesting party demonstrates a substantial change in circumstances.]

COMMENTARY: An amended version of this section has been moved to new Chapter 25A, as Section 25A-21. This section is no longer necessary and should be repealed.

(NEW) CHAPTER 25A
FAMILY SUPPORT MAGISTRATE MATTERS

COMMENTARY: This new chapter is intended to clarify what rules of practice are specifically incorporated in the family support magistrate court rules, and what rules are exclusive only to the family support magistrate court. They include rules that mirror, to the extent possible, the language of the Superior Court rules but are in an exclusive new section based upon the sense that they vary sufficiently such that it was more efficacious to provide them as separate rules.

(NEW) Sec. 25A-1. Family Support Magistrate Matters; Procedure

(a) In addition to the specific procedures set out in this chapter, the following provisions shall govern the practice and procedure in all family support magistrate matters, whether heard by a family support magistrate or any other judicial authority. The term "judicial authority" and the word "judge" as used in the rules referenced in this section shall include family support magistrates where applicable, unless specifically otherwise designated. The word "complaint" as used in the rules referenced in this section shall include petitions and applications filed in family support magistrate matters.

(1) General Provisions:

(i) Chapters 1, 2, 5 and 6, in their entirety;

(ii) Chapter 3, in its entirety except subsection (b) of Section 3-2, and Section 3-9;

(iii) Chapter 4, in its entirety except Section 4-2;

(iv) Chapter 7, Section 7-19.

(2) Procedures in Civil Matters:

(i) Chapter 8, Section 8-1 and 8-2;

(ii) Chapter 9, Sections 9-1, and 9-18 through 9-20;

(iii) Chapter 10, Sections 10-1, 10-3 through 10-5, 10-7, 10-10, 10-12 through 10-14, 10-17, 10-26, 10-28, 10-31 through 10-34, 10-41 through 10-45 and 10-59 through 10-68;

(iv) Chapter 11, Sections 11-1 through 11-8, 11-10 through 11-12 and 11-19;

(v) Chapter 12, in its entirety;

(vi) Chapter 13, Sections 13-1 through 13-3, 13-5, 13-8, 13-10 except subsection (c), 13-11A, 13-21 except paragraph (13) of subsection (a), subsections (a), (e), (f), (g) and (h) of Section 13-27, 13-28 and 13-30 through 13-32;

(vii) Chapter 14, Sections 14-1 through 14-3, 14-9, 14-15, 14-17, 14-18, 14-24 and 14-25.

(viii) Chapter 15, Sections 15-3, 15-5, 15-7 and 15-8;

(ix) Chapter 17, Sections 17-1, 17-4, 17-5, 17-19, 17-21, subsection (a) of Sections 17-33, and 17-41;

(x) Chapter 18, Section 18-19;

(xi) Chapter 19, Section 19-19;

(xii) Chapter 20, Sections 20-1 and 20-3;

(xiii) Chapter 23, Sections 23-20, 23-67 and 23-68.

(3) Procedure in Family Matters:

Chapter 25, Sections 25-1, 25-9, 25-12 through 25-22, 25-27, 25-33, 25-48, 25-54, 25-59, 25-59A, 25-61, 25-62 through 25-64 and 25-68.

(b) Any pleading or motion filed in a family support magistrate matter shall indicate, in the lower right hand corner of the first page of the document, that it is a family support magistrate matter.

(c) Family support magistrate matters shall be placed on the family support magistrate matters list for hearing and determination.

(d) Family support magistrate list matters shall be assigned automatically by the clerk without the necessity of a written claim. No such matters shall be so assigned unless filed at least five days before the opening of court on the day the list is to be called.

(e) Family support magistrate list matters shall not be continued except by order of a judicial authority.

COMMENTARY: This section is intended to make clear, specifically, what rules of practice are applicable to the practice and procedure for Family Support Magistrate court. It is intended to be all-inclusive and eliminate the discretionary application of rules. It also specifies the manner of filing and the hearing procedures that are specific to Family Support Magistrate court.

As regards the incorporation of Section 6-2, judgment files in Family Support Magistrate court are prepared when necessary for appeals to the Appellate Court and Supreme

Court and in certain interstate matters and shall be prepared by the clerk when needed.

As regards the incorporation of Section 13-5, it is intended that the purpose of the protective order in the Title IV-D context is solely to protect litigants against attempts by other litigants to seek discovery beyond that which was ordered disclosed by the judicial authority.

As regards the incorporation of Section 13-29, it is intended to recognize that the information gathering procedures and procedures regarding the taking of testimony such as those set out in the Uniform Interstate Family Support Act (UIFSA) which are different than those set out in this section and that those procedures be utilized when a conflict arises with the provisions of subsections (b) and (c) of Section 13-29.

As regards the incorporation of Section 13-30, it is intended that the term "trial" as used in Section 13-30 includes hearings in Title IV-D child support matters.

As regards the incorporation of Section 19-19, it is suggested that Section 19-19 be deemed applicable to Family Support Magistrate court because, in rare instances, a Family Support Magistrate is confronted with a matter that requires a reference to an accountant. Those cases arise most often with regard to post judgment support enforcement actions that have originated in superior court, or with self-employed obligors.

Subsections (b) through (e) are similar to subsections (b) through (e) of Section 25-65.

(NEW) Sec. 25A-1A. Prompt Filing of Appearance

An appearance in Title IV-D child support matters should be filed promptly but may be filed at any stage of the proceeding.

COMMENTARY: This rule is based on Section 3-2 (b) and is intended to make clear the desire for a prompt filing of an appearance by an attorney for a party, but to recognize that an appearance should be able to be filed at any stage of the proceeding.

(NEW) Sec. 25A-2. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by

such other counsel at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

(d) Except as provided in subsections (a), (b) and (c), no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court.

(e) All appearances of the chief child protection attorney appointed pursuant to General Statutes § 46b-123c shall continue until a motion to withdraw has been granted.

(f) All appearances entered on behalf of parties for matters involving Title IV-D child support matters shall be deemed to be for those matters only.

(g) All appearances entered on behalf of parties in the family division of the superior court shall not be deemed appearances for any matter involving a Title IV-D child support matter unless specifically so designated.

COMMENTARY: This section is similar to Section 3-9, but has been tailored to Family Support Magistrate court. Subsection (e) of this section is intended to clarify that the Chief Child Protection Attorney counsel must file a motion to withdraw as any other attorney.

This section regarding appearances and withdrawals is intended to clarify that an appearance in family court is not an appearance in IV-D court and vice versa. Without this clarification, members of the bar have been faced with a judicial authority counting their appearance for all matters where neither their retainer agreement covers the additional services nor is their sense of their own individual competence contemplated to cover services in the other court.

(NEW) Sec. 25A-2A. Telephonic Hearings

(a) In any case where mandated by law, the judicial authority shall upon written motion or on its own motion

permit an individual to testify by telephone or other audio electronic means.

(b) In any case where permitted by law, the judicial authority may upon written motion or on its own motion permit an individual to testify by telephone or other audio electronic means.

(c) Upon an order for a telephonic hearing, the judicial authority shall set the date, time and place for such hearing and shall issue an order in connection therewith.

COMMENTARY: The Committee is concerned that some uniform practice be established for providing notice of and requesting telephonic hearings. Telephonic hearings are commonly used in Family Support Magistrate court for *Uniform Interstate Family Support Act (UIFSA)* proceedings.

(NEW) Sec. 25A-2B. Signing of Pleading

(a) Every pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney, and a support enforcement officer where appropriate, shall sign the pleadings and other papers. The name of the attorney, party or support enforcement officer who signs such document shall be legibly typed or printed beneath the signature.

(b) The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, that

it is not interposed for delay, and that the signer has complied with the requirements of Section 4-7 regarding personal identifying information. Each pleading and every other court-filed document shall set forth the signer's telephone number and mailing address.

COMMENTARY: This section is similar to Section 4-2, but has been tailored to Family Support Magistrate matters. In Family Support Magistrate court, a support enforcement officer is an authorized person to sign a pleading.

(NEW) Sec. 25A-3. Contents of Petition

All petitions shall contain a concise statement of the facts constituting the cause of action, a demand for relief and the basis on which relief is sought.

COMMENTARY: This section is similar to Section 10-20, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-4. Automatic Orders upon Service of Petition

(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:

(1) 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 contains the automatic orders from Section 25-5 that were deemed applicable to matters in Family Support Magistrate court. Actions for support brought in the name of the recipient of Title IV-D services require an affidavit to be signed by that recipient. This will provide the opportunity for the Department of Social

Services' representative to give that recipient a copy of these automatic orders at that time.

(NEW) Sec. 25A-4A. Order of Notice

(a) On a petition for support or the establishment of paternity when the adverse party resides out of or is absent from the state or the whereabouts of the adverse party are unknown to the plaintiff or the applicant, any judicial authority or clerk of the court may make such order of notice as he or she deems reasonable. If such notice is by publication, it shall not include the automatic orders set forth in Section 25A-4, but shall instead include a statement that automatic orders have issued in the case pursuant to Section 25A-4 and that such orders are set forth in the application or petition on file with the court. Such notice having been given and proved, the judicial authority may hear the application or petition if it finds that the adverse party has actually received notice that the application or petition is pending. If actual notice is not proved, the judicial authority in its discretion may hear the case or continue it for compliance with such further order of notice as it may direct.

(b) With regard to any motion for modification or for contempt or any other motion requiring an order of notice, where the adverse party resides out of or is absent from the state any judicial authority or clerk of the court may make such order of notice as he or she deems reasonable. Such notice having been given and proved, the court may hear the motion

if it finds that the adverse party has actually received notice that the motion is pending.

COMMENTARY: This section is similar to Section 25-28, but has been tailored to Family Support Magistrate matters. It is noted that the *Uniform Interstate Family Support Act (UIFSA)* provides a means for notice under General Statutes § 46b-212d which provides an alternative basis for notice of the proceeding.

(NEW) Sec. 25A-5. Motions

(a) Any appropriate party may move for child support, appointment of counsel or guardian ad litem for the minor child, counsel fees, or for an order or enforcement of an order with respect to the maintenance of the family or for any other statutorily authorized relief.

(b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a postjudgment motion.

COMMENTARY: This section is similar to Section 25-24 and reflects the fact that relief is exclusively statutory in Family Support Magistrate court.

(NEW) Sec. 25A-5A. —Motion to Cite in New Parties

Any motion to cite in or admit new parties must comply with Section 11-1 and state briefly the grounds upon which it is made. In Title IV-D child support matters, a motion to cite in or admit new parties is limited to a parent, legal custodian or guardian.

(NEW) Sec. 25A-6. Answer to Cross Petition

A plaintiff in a family support magistrate matter seeking to contest the grounds of a cross petition may file an answer admitting or denying the allegations of such cross petition or leaving the pleader to his or her proof. If a decree is rendered on the cross petition, the judicial authority may award to the plaintiff such relief as is claimed in the petition.

COMMENTARY: This section is similar to Section 25-10, but has been tailored to Family Support Magistrate matters. It makes clear that an answer is discretionary and not mandatory just as in family court.

(NEW) Sec. 25A-7. Order of Pleadings

The order of pleadings shall be:

(1) the petition for establishment of paternity and/or a petition for support;

(2) the defendant's motion to dismiss the petition;

(3) the defendant's motion to strike the petition or claims for relief;

(4) the defendant's answer, cross petition and claims for relief;

(5) the plaintiff's motion to strike the defendant's answer, cross petition, or claims for relief;

(6) the plaintiff's answer.

COMMENTARY: This section is similar to Sec. 25-11, but it has been tailored to Family Support Magistrate matters. The order of pleadings tracks the order in family court. It is

specific for Family Support Magistrate court in that it refers to the support and paternity petition. No request to revise is permitted here just as it is not permitted in the family rules.

(NEW) Sec. 25A-8. Reclaims

If a motion has gone off the family support magistrate calendar without being adjudicated, any party may claim the motion for adjudication. If an objection to a request has gone off the family support magistrate calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. Any party may claim for adjudication any motion or request initiated by support enforcement services that has gone off without being adjudicated and a support enforcement officer may claim any motion or request initiated by support enforcement services that has gone off without being adjudicated.

COMMENTARY: This section is intended to clarify how a matter may be brought before the court for hearing if it has gone off. This section is similar to Section 11-13.

(NEW) Sec. 25A-8A. –Continuances when Counsel's Presence or Oral Argument Required

Matters upon the short calendar list requiring oral argument or counsel's presence shall not be continued except for good cause shown; and no such matter in which adverse parties are interested shall be continued unless the parties shall agree thereto before the day of the short calendar session and notify the clerk, who shall make note thereof on the list of the

judicial authority; in the absence of such agreement, unless the judicial authority shall otherwise order, any counsel appearing may argue the matter and submit it for decision, or request that it be denied.

COMMENTARY: This section is based on Section 11-16, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-9. Statements to Be Filed

(a) At least five days before the hearing date of a motion or order to show cause concerning alimony, support, or counsel fees, or at the time a dissolution of marriage or civil union, legal separation or annulment action or action for custody or visitation is scheduled for a hearing, each party shall file, where applicable, a sworn statement substantially in accordance with a form prescribed by the chief court administrator, of current income, expenses, assets and liabilities. When the attorney general has appeared as a party in interest, a copy of the sworn statements shall be served upon him or her in accordance with Sections 10-12 through 10-14 and 10-17. Unless otherwise ordered by the judicial authority, all appearing parties shall file sworn statements within thirty days prior to the date of the decree. Notwithstanding the above, the court may render pendente lite and permanent orders, including judgment, in the absence of the opposing party's sworn statement.

(b) Where there is a minor child who requires support, the parties shall file a completed child support and arrearage

guidelines worksheet at the time of any court hearing concerning child support.

(c) At the time of any hearing, including pendente lite and postjudgment proceedings, in which a moving party seeks a determination, modification, or enforcement of any alimony or child support order, a party shall submit an Advisement of Rights Re: Income Withholding form (JD-FM-71).

COMMENTARY: This section is similar to Section 25-30 and makes clear that there is an expectation of proper financial affidavits in Family Support Magistrate court as provided herein.

(NEW) Sec. 25A-10. Opening Argument

Instead of reading the pleadings, any party shall be permitted to make a brief opening statement at the discretion of the judicial authority, to apprise the trier in general terms as to the nature of the case being presented for trial. The judicial authority shall have discretion as to the latitude of the statements of the parties.

COMMENTARY: This section is similar to Section15-6, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-11. Motion to Open Judgment of Paternity by Acknowledgment

(a) Any mother or acknowledged father who wishes to challenge an acknowledgment of paternity pursuant to General Statutes Section 46b-172(a)(2) shall file a motion to open judgment which shall state the statutory grounds upon which

the motion is based and shall append a certified copy of the document containing the acknowledgment of paternity to such motion.

(b) Upon receipt of such motion to open and accompanying document, the clerk shall cause the matter to be docketed.

(c) Any action to challenge an acknowledgment of paternity for which there is no other family court file involving the same parties shall be commenced by an order to show cause accompanied by the motion to open judgment and the document containing the acknowledgment of paternity required by subsection (a) of this section. Upon presentation of the motion to open and the acknowledgment of paternity, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested by the moving party should not be granted. The motion to open, acknowledgment of paternity and order shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the challenge.

(d) Nothing in this section shall preclude an individual from filing a special defense of a challenge to a paternity judgment, or a counterclaim in response to a petition for support.

COMMENTARY: This section is intended to provide a standard process for a challenge to a paternity

acknowledgment. These acknowledgments are not housed in the courthouse but have the statutory effect of a judgment. The challenge addressed by this rule was to find a means to create a process which also created a file with the judgment in it for clerk record keeping purposes. It is intended that the initial burden of proof be on the moving party. Subsection (d) is intended to make clear that while the judgment father may not have initiated a matter through this section, he is not precluded from seeking to open a judgment within an action claiming support against him, or as a special defense to a petition for support.

(NEW) Sec. 25A-12. Modification of Alimony or Support

(a) Upon an application for a modification of an award of alimony or support of minor children, filed by a person who is then in arrears under the terms of such award, the judicial authority may, upon hearing, ascertain whether such arrearage has accrued without sufficient excuse so as to constitute a contempt of court, and, in its discretion, may determine whether any modification of current alimony and support shall be ordered prior to the payment, in whole or in part as the judicial authority may order, of any arrearage found to exist.

(b) In Title IV-D matters, upon any motion to modify support for minor children, where the motion seeks to reduce the amount of support, the judicial authority may upon hearing, ascertain whether such arrearage has accrued without sufficient excuse so as to constitute a contempt of court, and, in its discretion, may determine whether any modification of

current alimony and support shall be ordered prior to the payment, in whole or in part as the judicial authority may order, of any arrearage found to exist.

(c) Either parent or both parents of minor children, or any individual receiving Title IV-D services from the State of Connecticut may be cited or summoned by any party to the action, or in Title IV-D matters by support enforcement services of the judicial branch, to appear and show cause why orders of support or alimony should not be entered or modified.

(d) In matters where the parties, or other individuals pursuant to subsection (b) of this section, to a child support order are receiving Title IV-D services from the State of Connecticut, support enforcement services of the judicial branch may initiate a motion to modify an existing child support order pursuant to General Statutes Section 46b-231(s)(4) and, in connection with such motion, may issue an order and summons and assign a date for a hearing on such motion.

(e) If any applicant, other than support enforcement services of the judicial branch, is proceeding without the assistance of counsel and citation of any other party is necessary, the applicant shall sign the application and present the application, proposed order and summons to the clerk; the clerk shall review the proposed order and summons and, unless it is defective as to form, shall sign the proposed order

and summons and shall assign a date for a hearing on the application.

(f) Each motion for modification shall state the specific factual and statutory basis for the claimed modification and shall include the outstanding order and date thereof to which the motion for modification is addressed.

(g) On motions addressed to financial issues, the provisions of Section 25-30(a), (e) and (f) shall be followed.

COMMENTARY: This section is similar to Section 25-26, but has been tailored to Family Support Magistrate matters. The phrase "or any individual" in subsection (c) of this section refers to any individual receiving Title IV-D services for the child(ren) at issue.

(NEW) Sec. 25A-13. Standard Disclosure and Production

(a) Upon request by a party or as ordered by the judicial authority, opposing parties shall exchange the following documents within thirty days of such request or such order:

(1) all federal and state income tax returns filed within the last three years, including personal returns and returns filed on behalf of any partnership or closely-held corporation of which a party is a partner or shareholder;

(2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income tax returns for that year have not been prepared;

(3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;

(4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past 24 months;

(5) the most recent statement showing any interest in any Keogh, IRA, profit sharing plan, deferred compensation plan, pension plan, or retirement account;

(6) the most recent statement regarding any insurance on the life of any party;

(7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;

(8) any written appraisal concerning any asset owned by either party.

(b) Such duty to disclose shall continue during the pendency of the action should a party appear. This section shall not preclude discovery under any other provisions of these rules.

COMMENTARY: This section is similar to Section 25-32, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-14. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end.

COMMENTARY: This section is similar to Section 15-4, but has been tailored to Family Support Magistrate matters. Medical evidence often is admitted into evidence in Family Support Magistrate court regarding an obligor's disability status.

(NEW) Sec. 25A-15. Experts

As soon as is practicable, if a party, including the State of Connecticut, is going to rely on in court expert testimony, that party shall provide notice to all opposing parties, but said notice shall not be provided less that 14 days before the hearing. Discovery, facts unknown, and opinions held by experts may be ordered disclosed by the judicial authority on such terms and conditions as the judicial authority deems reasonable.

COMMENTARY: This section is based on Section 13-4 but provides a timetable more realistic for Family Support Magistrate court and creates a discretionary, reasonableness standard for Family Support Magistrate court. Experts are rarely utilized and therefore should be controlled as part of the constraints on discovery issues in general.

(NEW) Sec. 25A-15A. Interrogatories; In General

(a) In any action in the family support magistrate division to establish, enforce or modify a child support order, upon motion of any party and when the judicial authority deems it necessary, any party may be required to answer all or part of the interrogatories set forth in Form 207 of the rules of

practice, which is printed in the Appendix of Forms in this volume.

(b) In any paternity action before the family support magistrate division interrogatories may only be served upon a party where the judicial authority deems it necessary.

(c) For good cause shown, in postjudgment matters, the judicial authority may upon motion authorize further discovery.

COMMENTARY: This section is based on Sec. 13-6, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-16. 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, 10-14 and 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 10-12,10-14 and 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.

(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.

(c) 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 25A-18 with respect to any failure to answer.

COMMENTARY: This section is similar to Section 13-7, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-17. Requests for Production, Inspection and Examination; In General

(a) Upon motion and by order of the judicial authority, requests for production may be served upon any party at any time after the return day.

(b) If data 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.

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

(d) 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.

COMMENTARY: This section is similar to Section 13-9, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-18. 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 has failed to comply with the provisions of Section 25A-19, 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 13-8, 13-10 except subsection (c), 25A-15A, 25A-16 or 25A-17, the judicial authority may make such order as appropriate.

(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.

COMMENTARY: This section is similar to Section 13-14, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-19. Continuing Duty to Disclose

If, subsequent to compliance with any request or order for discovery at any time the matter is before the court, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney, and file and serve in accordance with Sections 10-12, 10-14 and 10-17 a supplemental or corrected compliance.

COMMENTARY: This section is similar to Section 13-15, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-19A. Depositions; In General

In addition to other provisions for discovery and subject to the provisions of Sections 13-2, 13-3 and 13-5, any party who has appeared in any Title IV-D matter or in any matter under General Statutes §§ 46b-212 through 46b-213w where the judicial authority finds it reasonably probable that evidence outside the record will be required, may, at any time after the commencement of the action or proceeding, in accordance

with the procedures set forth in this chapter, take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13-28. The attendance of a party deponent or of an officer, director, or managing agent of a party may be compelled by notice to the named person or such person's attorney in accordance with the requirements of Section 13-27 (a). The deposition of a person confined in prison may be taken only by leave of the judicial authority on such terms as the judicial authority prescribes.

Leave of the court for such a deposition is required. Motions for the taking of a deposition shall include the proposed notice of the deposition and the identification of such documents or other tangible evidence as may be sought to be subpoenaed. Only those documents or other tangible evidence approved by the judicial authority shall be permitted to be subpoenaed from the deponent.

COMMENTARY: This section is similar to Section 13-26, but has been tailored to Family Support Magistrate matters. While it makes clear that depositions may be taken in a Title IV-D matter, this section limits the taking of depositions by requiring leave of the court. Depositions are not needed in most of these expedited proceedings. The requirement of identification of documents (or other tangible evidence sought) will help clarify what complexity exists in the case to require

the taking of a deposition, and limit and define its scope. This should prevent abuses of the process.

(NEW) Sec. 25A-19B. –Place of Deposition

(a) Any party who is a resident of this state may be compelled by notice as provided in Section 13-27 (a) to give a deposition at any place within the county of such party's residence, or within thirty miles of such residence, or at such other place as is fixed by order of the judicial authority. A plaintiff who is a resident of this state may also be compelled by like notice to give a deposition at any place within the county where the action is commenced or is pending.

(b) Except as otherwise required by law, a plaintiff who is not a resident of this state may be compelled by notice under Section 13-27 (a) to attend at the plaintiff's expense an examination in the county of this state where the action is commenced or is pending or at any place within thirty miles of the plaintiff's residence or within the county of his or her residence or in such other place as is fixed by order of the judicial authority.

(c) Except as otherwise required by law, a defendant who is not a resident of this state may be compelled:

(1) By subpoena to give a deposition in any county in this state in which the defendant is personally served, or

(2) By notice under Section 13-27 (a) to give a deposition at any place within thirty miles of the defendant's residence or within the county of his or her residence or at such other place as is fixed by order of the judicial authority.

(d) A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place within the county of his or her residence or within thirty miles of the nonparty deponent's residence, or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(e) In this section, the terms "plaintiff" and "defendant" include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Section 13-27 (h) as appropriate.

(f) If a deponent is an officer, director or managing agent of a corporate party, or other person designated under Section 13-27 (h), the place of examination shall be determined as if the residence of the deponent were the residence of the party.

COMMENTARY: This section is based on Section 13-29, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-20. Appeal from Decision of Family Support Magistrate

Any person who is aggrieved by a final decision of a family support magistrate may appeal such decision in accordance with the provisions of General Statutes § 46b-231. The appeal shall be instituted by the filing of a petition which shall include the reasons for the appeal.

COMMENTARY: This provision was originally Section 25-66 and has been moved to this chapter.

(NEW) Sec. 25A-21. Support Enforcement Services

In cases where the payment of alimony and/or support has been ordered, a support enforcement officer, where provided by statute, shall:

(1) Whenever there is a default in any payment of alimony or support of children under judgments of dissolution of marriage or civil union or separation, or of support under judgments of support, where necessary, (A) initiate and facilitate, but not advocate on behalf of either party, an application to a family support magistrate and issue an order requiring said party to appear before a family support magistrate to show cause why such party should not be held in contempt, or (B) take such other action as is provided by rule or statute.

(2) Review child support orders (A) in non-TFA IV-D cases at the request of either parent or custodial party subject to a support order, or upon receipt of information indicating a substantial change in circumstances of any party to the support order, (B) in TFA cases, at the request of the bureau of child support enforcement, (C) as necessary to comply with federal requirements for the child support enforcement program mandated by Title IV-D of the Social Security Act, and initiate and facilitate, but not advocate on behalf of either party, an action before a family support magistrate to modify such support order if it is determined upon such review that

the order substantially deviates from the child support guidelines established pursuant to General Statutes §§ 46b-215a or 46b-215b. The requesting party shall have the right to such review every three years without proving a substantial change in circumstances; more frequent reviews shall be made only if the requesting party demonstrates a substantial change in circumstances.

(3) In connection with subdivision (1) or (2) above, or at any other time upon direction of a family support magistrate, investigate (A) the financial situation of the parties, using all appropriate information and resources available to the IV-D child support program, including information obtained through electronic means from state and federal sources in the certified child support system, or (B) information about the status of participation in programs that increase the party's ability to fulfill the duty of support, and report his or her findings thereon to a family support magistrate and to the parties and upon direction of a family support magistrate facilitate agreements between parties.

COMMENTARY: This section was originally Section 25-67 and has been moved to this chapter with amendments. It is intended to clarify the actual role of Support Enforcement Services.

PROPOSED 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, [and,] except that (A) for purposes of delinquency matters and proceedings, [and family with service needs matters,] ''child'' means any person [(A) under sixteen years of age whose delinquent act or family with service needs conduct occurred prior to the person's sixteenth birthday or, (B) sixteen] (i) under seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining [sixteen] seventeen years of age, has [violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs,] committed a delinquent act and, subsequent to attaining [sixteen] 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 ''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. (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) ''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) ''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.

(j) ''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), [and] 46b-141, and 46b-149(j).

(k) ''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*) ''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) ''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) ''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) ''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) ''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) ''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) ''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 proposed revisions in subsections (a) and (r) implement provisions of Sept. Spec. Sess, 09-7, Sec. 69 which amended General Statutes § 46b-120. The proposed revision in subsection (j) implements provisions of Public Act 08-86, section 3, which amended Gen. Stat. § 46b-149(j). The proposed revision in subsection (q) is to clarify that the judicial authority may order protective supervision after the child has been placed with a guardian or custodian.

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 **[**all**]** 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 [shall] 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 is 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 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.

(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 change in subsection (a) (1) authorizes the judicial authority to extend the plea date when service needs to be accomplished.

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, 17-4 and 17-21 of the rules of practice shall apply to juvenile matters 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: The proposed revision to subsection (b) adds references to applicable civil practice book rules that are frequently used in Juvenile Matters.

Sec. 34a-21. Court Ordered Evaluations

(a) The judicial authority, after hearing on a motion for a court ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

[(b)] (c) At the time of appointment of any court appointed evaluator, counsel and the court services officer shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the

judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

[c)] (d) Any party who wishes to alter, update, amend or modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the evaluation.

[(d)] (e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time

and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the proposed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

COMMENTARY: Proposed new subsection (b) clarifies that the judicial authority oversees the selection and appointment of court-ordered evaluators; however the Commissioner of the Department of Children and Families is responsible for the costs of the evaluation under subsection (b) above and the party seeking to have the evaluator testify is responsible for the cost related to the testimony. The proposed revision in subsection (f) further clarifies the evaluation procedure.

Sec. 35a-8. Burden of Proceeding

(a) The petitioner shall be prepared to substantiate the allegations of the petition. All parties except the child or youth shall be present at trial unless excused for good cause shown. Failure of any party to appear in person or by their statutorily permitted designee may result in a default or nonsuit for failure

to appear for trial, as the case may be, and evidence may be introduced and judgment rendered.

(b) If a parent fails to appear at the initial hearing and no military affidavit has been filed, the judicial authority shall continue the proceedings prior to entering a default for failure to appear until such time as the military affidavit is filed, provided if the identity of the parent, after reasonable search, cannot be determined, then default may enter and no military affidavit is required.

[(b)](c) The clerk shall give notice by mail to the defaulted party and the party's attorney of the default and of any action taken by the judicial authority. The clerk shall note the date that such notice is given or mailed.

COMMENTARY: Clarifies that the judicial authority should continue the proceedings until a military affidavit is filed, when a parent fails to appear at the initial hearing; however, if the parent's identity is not known, a military affidavit is not necessary.

Sec. 35a-19. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any

orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) Any appearance filed for any party in the court of probate shall continue in the superior court until [withdrawn] a motion to withdraw is filed by counsel and granted by the court of probate or the superior court [or replaced] or another counsel files an "in lieu of" appearance on behalf of the party. Counsel previously appointed by the court of probate for indigent parties or for the minor child(ren) and paid by Probate Court Administration who remain on the case in superior court shall be paid by the Commission on Child Protection at the rate of pay established by the Commission. If a motion to withdraw is filed and granted and the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned and paid by the Commission on Child Protection.

(d) (1) The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than

thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian, and an advisement of rights notice to be served on any nonappearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing which shall be held not more than thirty days from the date of receipt petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

COMMENTARY: The proposed amendment clarifies the intent that attorneys handling cases that have been transferred from the court of probate to superior court are required to continue providing representation, unless they appropriately terminate their representation. The amendment also reflects existing practice whereby the Commission on Child Protection is responsible for the assignment and payment of counsel for children and indigent parents in civil matters before the superior court for juvenile matters.

Sec. 35a-21. Appeals

(a) Appeals from final judgments or decisions of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment or decision from which the appeal is taken in the manner provided by the rules of appellate procedure.

(b) [If an indigent party wishes to appeal a final decision and if the trial counsel declines to represent the party because in counsel's professional opinion the appeal lacks merit, counsel shall file a timely motion to withdraw and to extend time in which to take an appeal. The judicial authority shall then forthwith notify the chief child protection attorney to assign another attorney to review this record who, if willing to represent the party on appeal, will be assigned by the chief child protection attorney for this purpose. If the second attorney determines that there is no merit to an appeal, that attorney shall make this known to the judicial authority and the chief child protection attorney at the earliest possible moment,

and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may file an appearance to represent the party on the appeal.]

If an indigent party, child or youth wishes to appeal a final decision, trial counsel shall immediately request an expedited transcript from the court reporter the cost of which shall be billed to the Commission on Child Protection. Trial counsel shall either file the appeal within 20 days or file a timely motion to extend time in which to take an appeal and request the appointment of counsel to review the matter for purposes of appeal. If the reviewing attorney determines there is a non-frivolous ground for appeal, such attorney shall file an "in addition to" appearance for purposes of the appeal with the appellate court. The trial attorney shall remain in the underlying juvenile matters case in order to handle ongoing procedures before the local or regional juvenile court. Counsel who filed the appeal or filed an appearance in the appellate court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. If the reviewing attorney determines that there is no merit to an appeal, such attorney shall make this known to the judicial authority as soon as practicable, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal.

(c) The time to take an appeal shall not be extended past forty days from the date of the issuance of notice of the rendition of the judgment or decision.

COMMENTARY: This proposed amendment is intended to reflect the creation of the Commission on Child Protection and the transfer of the responsibility for assigning counsel from the Judicial Branch to the Commission. In an effort to improve the quality of legal representation in child protection matters, including appellate representation, the Commission on Child Protection has granted contracts specifically for appellate representation. These attorneys cover appellate reviews and take appeals on cases throughout the state. It is impractical for them to take over the entire juvenile case, which often, even after a final decision, remains pending before the juvenile court due to its jurisdiction over pending petitions and permanency reviews. It is more practical for the local juvenile court contract attorney to remain on the case and handle the ongoing juvenile court proceedings. An indigent party seeking appellate review is entitled to a review for meritorious grounds for appeal by his or her trial attorney and an appellate review attorney.

PROPOSED NEW PRACTICE BOOK FORM

(NEW) Form 207

INTERROGATORIES-ACTIONS TO ESTABLISH, ENFORCE OR MODIFY CHILD SUPPORT ORDERS

No.		
(Plaintiff)	:	SUPERIOR COURT
	:	FAMILY SUPPORT
	:	MAGISTRATE DIVISION
VS.	:	JUDICIAL DISTRICT OF
	:	AT
(Defendant)	:	(Date)

The undersigned, on behalf of the plaintiff/defendant, propounds the following interrogatories to be answered by the defendant/plaintiff within thirty (30) days of the filing hereof.

(1) For your present residence:

(a) what is the address?

(b) what type of property is it (apartment, condominium, single family home)?

(c) who is the owner of the property?

(d) what is your relationship to the owner (landlord, parents, spouse)?

(e) when did you start living at this residence?

(2) List the names of all the adults that live with you.

(a) For each adult you live with, what is your relationship to them (spouse, sibling, roommate, parent, girlfriend or boyfriend)?

(b) For each adult you live with, what is their financial contribution to the household (who pays the rent, who pays the utilities, who buys the groceries)?

(3) Give the name and address of your employer.

(a) Are you employed full time or part time? Are you self employed? If you are self employed, do not answer (b) through (h) and go directly to question 4.

(b) Are you paid a salary, by the hour basis, or do you work on commission or tips?

(c) What is your income per week?

(d) How many hours per week do you usually work?

(e) Is overtime available, and if it is, how many hours per week do you work overtime and what are you paid?

(f) Do you, or have you, ever received bonus income from your employment and what is the basis for the bonus?

(g) Does your employer deduct federal and state taxes and Medicare from your wages or are you responsible for filing your own deductions? If you file, provide a copy of your most recent tax returns.

(h) Do you have a second source of employment? If so, please provide the same information as requested in (a) through (g).

(4) If you are self employed:

(a) are you part of a partnership, corporation or LLC, and if you are, give the name of the business and your role in it?

(b) name the other people involved in your business and their roles.

(c) does the business file taxes (if so bring copies of the last two tax returns filed to your next court date)?

(d) describe the work you do.

(e) how many hours per week do you work, on average?

(f) how much do you typically earn per hour?

(g) list your business expenses, and what they cost per week.

(h) state how you are typically paid (check or cash).

(i) name the five people or companies you did most of your work for in the last year.

(j) if you have a business account, what bank is it at (bring copies of the last six months of bank statements to your next court date)?

(k) do you work alone or do you employ anyone and pay them wages? If you employ any one, please identify them, their relationship to you, if any, and the amount you pay them.

(*l*) how do you keep your payment and expense records? Do you employ an accountant, and if so, please give the name and address of the accountant responsible for your records?

(5) Except for your current job, list all the places you have worked for the last three years. For each place, list the address, the type of work you did, the dates you worked there and how much you were paid at each job.

(6) If you cannot work because of a disability, what is the nature of your disability.

(a) What is the date you became disabled?

(b) Is this disability permanent or temporary?

(c) If a doctor has told you that you cannot work, what is the name of the doctor and his or her office (bring a note from this doctor stating that you cannot work to your next court date)?

(d) If a doctor has told you that you cannot work, did he or she say you cannot work full time or part time?

(e) If you have a partial or permanent disability, please provide the percentage rating.

(f) Is your disability the result of an automobile accident, an accident at work, an accident at home or otherwise? Please give the date and details of the incident and whether you have filed a lawsuit or worker's compensation claim as a result.

(g) Have you had any children since the incident? If so, list their dates of birth.

(7) Have you applied for Social Security Disability (SSD) or Supplemental Security Income (SSI)?

(a) If you did, when did you apply and where are you in the application process?

(b) Have you been told if or when you will receive benefits? If so, who told you and what is the date they gave you?

(c) If your application for SSD and /or SSI has been denied, did you appeal? If you appealed, what is the status of the appeal and what lawyer, if any, represents you?

(d) Have you applied for or are you receiving State assistance?

(e) Are you a recipient of the State supplement program, medical assistance program, temporary family assistance program, state-administered general assistance program (SAGA medical or cash)? If so, state the source of the benefit, the effective date of the benefit and the date when your

eligibility for benefits will be re-determined by the Department of Social Services.

(8) Do you have any lawsuits pending?

(a) If you do, what type of case is it?

(b) Give the name, address, email address and phone number of the lawyer handling the case for you.

(c) What amount you do expect to recover and when do you expect to receive it?

(d) If you have already settled the case, please provide a copy of the settlement statement.

(9) Do you expect to inherit any money or property in the next six months?

(a) If you do, who do you expect to inherit from and where do they or where did they live?

(b) What do you expect to inherit, what is its value and when do you expect to inherit it?

(c) What is the name and address of the person or lawyer handling the estate and where is the probate court in which the action is filed?

(10) Is anyone holding any money for you? If so, name the person, their relationship to you, their address and the amount of money they are holding.

(11) Do you own any rental properties, by yourself, with someone else or in trust? If the answer is yes,

(a) is the property residential or commercial?

(b) please identify the location of the property or properties, include the address and identify your ownership interest.

(c) do you derive any income from the property? Do you calculate your net income from the property on a weekly, monthly or yearly basis?

(d) what are your expenses relating to the property or properties? Please state the amount of your mortgage payment, if any, and the amount of your taxes, insurance and utility payments, if any, and your method of payment of these expenses.

(e) did you have to apply for a loan to finance any part of the real property or to finance the purchase of any personal property? If so, identify the item, state the amount of the loan and give a copy of the loan application.

(12) Are you the beneficiary or settler of a trust?

(a) If so, please identify the trust, the type of trust, the date of the creation of the trust, the name and address of the trustee and how the trust is funded.

(b) How often do you receive a distribution from the trust and from whom, and in what amounts are the distributions?

By _____

I, _____, certify that I have reviewed the interrogatories set out above and the responses to those interrogatories and they are true and accurate to the best of my knowledge and belief.

_____

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
Notary Public/Commissioner of Superior Court

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20___ to (names and addresses of all opposing counsel and self-represented parties upon whom service is required by Practice Book Section 10-12 et seq.).

_____
(Attorney Signature)

COMMENTARY: The above form implements Section 25A-16.

PROPOSED REVISIONS TO THE CODE OF EVIDENCE

Sec. 8-10. Hearsay Exception: Tender Years

[(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim, or any alleged act of physical abuse committed against the child by the child's parent, guardian or any other person then exercising comparable authority over the child at the time of the act, is admissible in evidence in criminal and juvenile proceedings if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness;

(2) The statement was not made in preparation for a legal proceeding; and

(3) The child either:

(A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or

(B) Is unavailable as a witness, provided that:

(i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and

(ii) The statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) A statement m ay not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its trustworthiness. If the statement is in writing, the proponent must provide the adverse party a copy of the writing; if the statement is otherwise recorded by audiotape, videotape, or some other equally reliable medium, the proponent must provide the adverse party a copy in the medium in the possession of the proponent in which the statement will be proffered. Except for good cause shown, notice and a copy must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from:

(1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act described in the first paragraph of section (a) than they do for other declarants; and

(2) admitting by way of a residual hearsay exception statements described in the first paragraph of section (a).]

"Admissibility in criminal and juvenile proceedings of statement by child under thirteen relating to sexual offense or offense involving physical abuse against child. (a) Notwithstanding any other rule of evidence or provision of law, a statement by a child under thirteen years of age relating to a sexual offense committed against that child, or an offense involving physical abuse committed against that child by a person or persons who had authority or apparent authority over the child, shall be admissible in a criminal or juvenile proceeding if: (1) The court finds, in a hearing conducted outside the presence of the jury, if any, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness, (2) the statement was not made in preparation for a legal proceeding, (3) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement including the content of the statement, the approximate time, date and location of the statement, the person to whom the statement was made and the circumstances surrounding the statement that indicate its trustworthiness, at such time as to provide the adverse party with a fair opportunity to prepare to meet it, and (4) either (A) the child testifies and is subject to cross-examination at the proceeding, or (B) the child is unavailable as a witness and (i) there is independent nontestimonial corroborative evidence of the alleged act, and (ii) the statement was made prior to the

defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) Nothing in this section shall be construed to (1) prevent the admission of any statement under another hearsay exception, (2) allow broader definitions in other hearsay exceptions for statements made by children under thirteen years of age at the time of the statement concerning any alleged act described in subsection (a) of this section than is done for other declarants, or (3) allow the admission pursuant to the residual hearsay exception of a statement described in subsection (a) of this section." General Statutes § 54-86/.

COMMENTARY: [This section addresses the unique and limited area of statements made by children concerning alleged acts of sexual assault or other sexual misconduct against the child, or other alleged acts of physical abuse against the child by a parent, guardian or other person with like authority over the child at the time of the alleged act. It recognizes that children, because of their vulnerability and psychological makeup, are not as likely as adults to exclaim spontaneously about such events, making section 8-3 (2) unavailable to admit statements about such events; are not as likely to seek or receive timely medical diagnoses or treatment after such events, making section 8 -3 (5) unavailable; and it provides more specific guidance for this category of statements than does the residual exception, section 8 -9.

Subsection (a) defines the factual scope of the statements that may be admitted under the exception and the

types of proceedings to which the exception applies. The proceedings included are criminal proceedings, with or without a jury, and juvenile proceedings; civil proceedings are not included. The rule applies to alleged acts of sexual assault or sexual misconduct com mitted by anyone against the child. It only applies to alleged acts of physical abuse committed by a parent, guardian or someone in a com parable position of authority at the time of the alleged act of physical abuse. It provides guidance on the test of trustworthiness the court must apply to the proffered statement (subdivision (1)); addresses the exclusion of testimonial statements prohibited by Crawford. v. Washington, 541 U.S. 36 (2004) (subdivisions (2) and (3)(B)(ii)); and, sets forth separate requirements when the child testifies and is subject to cross-examination and when the child is unavailable (subdivision (3)(B)).

Subsection (b) provides for notice to the adverse party of the proponents intent to offer the statement.

Subsection (c)(1) prohibits expanded interpretations of other hearsay exceptions where statements covered by this section are not admissible. It is not intended to limit exceptions that, heretofore, have been legally applied to such statements. Subsection (c)(2), however, prohibits the use of the residual exception for statements treated by this section.]

The section was amended to harmonize it with the general statutes. As amended, and to be consistent with the 2009 amendment to General Statutes § 54-86/, it no longer explicitly provides that the cross-examination of the child may

be by video telecommunication or by submitting to a recorded video deposition for that purpose; it does not require the proponent to provide the adverse party a copy of the statement in writing or in whatever other medium the original statement is in and is intended to be proffered in; and, it does not provide a good cause exception to the obligation to provide the adverse party with advance notice sufficient to permit the adverse party to prepare to meet the statement. These changes do not limit the discretion of the court to impose such requirements.