

On Monday, November 19, 2012, the Rules Committee met in the Supreme Court courtroom 2:00 p.m. to 3:42 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR  
HON. JON M. ALANDER  
HON. BARBARA N. BELLIS  
HON. WILLIAM M. BRIGHT, JR.  
HON. JULIETT L. CRAWFORD  
HON. KARI A. DOOLEY  
HON. RICHARD W. DYER  
HON. MAUREEN M. KEEGAN  
HON. ELIOT D. PRESCOTT

Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Joseph J. Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the meeting held on September 25, 2012. Judge Crawford was not present for this vote, but arrived shortly after.

2. The Committee considered a proposal by Judge Lynda Munro, Chief Administrative Judge for Family Matters, to amend Sec. 25-61 concerning evaluations conducted by the Family Services Unit and material submitted by Attorney Joseph Chiarelli concerning the proposal. Judge Munro was invited to attend this meeting and she addressed questions and concerns of Committee members.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 25-61 as set forth in Appendix A attached hereto.

3. The Committee considered proposed further revisions to the juvenile rules, submitted by Judge Carol Wolven, Chief Administrative Judge for Juvenile Matters, that were considered by the Rules Committee at its September, 2012, meeting. These proposed further revisions address the issues raised by the Committee at that meeting. The original proposals were submitted by Judge Christine Keller on behalf of the Juvenile Task Force.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 3-9, 30a-8, 32a-7 and 35a-10 and a new section entitled “Child’s Hearsay Statement; Residual Exception,” as set forth in Appendix B attached hereto.

The Committee raised various issues concerning the proposed revision to Section 35a-18 and tabled that proposal so that the issues could be forwarded to Judge Wolven for a response.

4. The Committee considered a proposal by Attorney David Atkins to include in the commentary to Rule 1.10 of the Rules of Professional Conduct new paragraphs 7 through 10 that the ABA added to the commentary of its version of that rule.

After discussion, the Committee revised the proposed commentary and unanimously voted to submit to public hearing the revised commentary to Rule 1.10 of the Rules of Professional Conduct as set forth in Appendix C attached hereto.

5. The Committee considered a proposal by Judges Trombley and Danaher to amend Section 11-1 to require that motions, requests, applications or objections filed under that section, as well as any supporting briefs or memoranda, be paginated.

Judge Bellis advised the Committee that the Civil Commission planned to review the proposal and forward their comments to the Rules Committee. The Committee thereupon tabled the proposal.

6. The Committee considered a proposal by the undersigned to amend Section 1-9 to provide for the use of email in connection with mail votes to amend the Practice Book.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 1-9 as set forth in Appendix D attached hereto.

7. The Committee considered proposals by Attorney Michael H. Agranoff to amend the juvenile rules to require fact pleading in motions and petitions and allow motions for summary judgment in juvenile matters, and comments from Judge Wolven concerning the proposal.

After discussion, the Committee voted not to amend the rules as proposed. Judge Crawford abstained from this vote.

8. The Committee considered a proposal by Judge Douglas C. Mintz, Chair of the Bench/Bar Foreclosure Committee, to amend Section 6-3 to allow the certificate of judgment issued by the clerk to be used in cases under CGS § 49-17.

After discussion, the Committee tabled the matter in order to seek clarification from Judge Mintz concerning his proposal.

9. The Committee considered proposals by Judge Richard M. Marano to amend the criminal rules to provide that a separate docket number be assigned to failures to appear and to allow an attorney to limit his or her appearance to G.A. matters so that if a case is transferred to Part A the attorney would no longer be in the case and a judge's consent would not be required.

After discussion, the Committee referred the proposals for comment to the Chief Court Administrator's office, the Criminal Commission, and Judge Devlin, Chief Administrative Judge for Criminal Matters.

10. The Committee considered a proposal by the Civil Commission to amend Sections 17-25 and 17-33 concerning default judgments. During their discussion of the proposal, the Committee invited Attorney Adam Olshan, who was present at the meeting, to address the Committee concerning Section 17-25.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Section 17-25, as revised by the Committee, and Section 17-33, as set forth in Appendix E attached hereto.

11. The Committee considered a proposal by Judge Barbara M. Quinn, Chief Court Administrator, to amend the rules to provide for limited scope representation in Connecticut. Judge Raymond Norko was present and addressed the Committee concerning this proposal.

After discussion, the Committee requested additional background information concerning the proposal, which Judge Norko agreed to provide. The Committee referred the proposal to the chief administrative judges for comment.

12. The Committee considered a proposal by Judge Jon M. Alander to amend Section 38-3, concerning release by bail commissioner, in light of C.G.S. § 54-63b as amended by P.A. 12-114, § 5.

After discussion, the Committee further revised the proposal and unanimously voted to submit to public hearing the proposed revision to Section 38-3 as set forth in Appendix F attached hereto.

13. The Committee considered a proposal by Justice Peter T. Zarella to amend the rules concerning the retention and destruction of court records to provide that electronic records filed with the court shall be retained indefinitely

After discussion, Judge Bellis agreed to put the proposal before the Judges Advisory Committee on E-Filing for their comments.

The Committee thereupon tabled the matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carl E. Testo".

Carl E. Testo  
Counsel to the Rules Committee

## APPENDIX A (111912 mins)

### Sec. 25-61. Family Division

The family services unit shall, at the request of the judicial authority, provide assistance with regard to issues concerning custody, visitation, finances, mediation, case management and such other matters as the judicial authority may direct, including, but not limited to, an evaluation of any party or any child in a family proceeding. If an evaluation of a party or child is requested by the judicial authority, counsel for the party or child shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority, until the evaluation is filed with the clerk pursuant to Section 25-60 (b).

COMMENTARY: The above change clarifies that counsel for the party or child being evaluated shall not initiate contact with the evaluator, unless the court orders otherwise, until the evaluation is filed with the clerk. This parallels language in Section 25-60A (c) concerning court-ordered evaluations by private evaluators.

## APPENDIX B (111912 mins)

### 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. An attorney or party whose appearance is deemed to have been withdrawn may file an appearance for the limited purpose of filing an objection to the in-lieu-of appearance.

(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, family with service needs supervision, or any commitment to the commissioner of the department of children and families or protective supervision. An attorney appointed by the chief public defender 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 attorney remains under contract to the Office of the Chief Public Defender to represent parties in child protection matters, 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 above change clarifies the ongoing obligation of an attorney to represent a parent in certain proceedings provided the attorney still has a contract with the Chief Public defender to provide such representation.

### **Sec. 30a-8. Records**

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court records, including the predispositional study, medical or clinical reports, school reports, police reports, or the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties without the express consent of the judicial authority.

(c) Each counsel and self-represented party in a delinquency matter shall have access to and be entitled to copies, at his or her expense, of the entire court record, including transcripts of all proceedings, without express consent of the judicial authority.

COMMENTARY: To ensure access to records for self-represented parties.

**Sec. 32a-7. Records**

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including the transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court record, including the social study, medical or clinical reports, school reports, police reports and the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties without the express consent of the judicial authority.

(c) Each counsel and self-represented party in a child protection matter shall have access to and be entitled to copies, at his or her expense, of the entire court record, including transcripts of all proceedings, without the express consent of the judicial authority.

COMMENTARY: To ensure access to records for self-represented parties.

**Sec. 35a-10. Availability of Social Study to Counsel and Parties**

The mandated social study, addendums thereto, case status reports [update] or [any] other written reports [or evaluation] made available to the judicial authority shall be [made available for inspection] reproduced and provided to all counsel of record and, any self-represented party [in the absence of counsel, to the parties themselves] by the commissioner of the department of children and families before [the] any scheduled case status conference, pretrial or hearing date. [The mandated social study, updates, reports and records and any copies thereof made available in the discretion of the judicial authority, together with any notes, copies or abstractions thereof, shall be returned to the clerk immediately following the disposition unless they may be required for subsequent proceedings.] All persons who have access to such materials shall be responsible for preserving the confidentiality thereof in accordance with Section 32a-7.

COMMENTARY: To clarify to whom and by whom social studies should be disclosed.

**(NEW) Section 35a-23. Child's Hearsay Statement; Residual Exception**

(a) A party who seeks the admission of a hearsay statement of a child pursuant to the residual exception to the hearsay rule based upon psychological unavailability, shall provide a written notice within a reasonable time before the trial.

(b) A notice pursuant to subsection (a) shall be filed with the court and shall be served on all counsel of record and self-represented parties when appropriate, in accordance with Practice Book Section 10-13. The notice shall identify the proffered statement, the basis for the psychological unavailability claim and shall be filed within a reasonable time before the trial.

(c) A party who objects to the introduction of the child's hearsay statement and challenges the representations contained in the notice filed pursuant to subsection (b) of this section, shall file a written objection with the court within a reasonable time before the trial, stating the reasons therefore.

(d) The judicial authority shall hold an evidentiary hearing to determine the admissibility of the child's hearsay statement in a manner that does not unduly delay resolution of the proceedings. The party seeking to introduce the statement shall have the burden of proving the child's psychological unavailability; specifically, that the child will suffer serious emotional or mental harm if required to testify.

COMMENTARY: This new provision is based upon In re Tayler F., 296 Conn. 524 (2010).

## APPENDIX C (111912 mins)

### **Rule 1.10. Imputation of Conflicts of Interest: General Rule**

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9 (a) or 1.9 (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9 (2) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

**COMMENTARY: Definition of "Firm."** For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0 (d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0 and its Commentary.

**Principles of Imputed Disqualification.** The rule of imputed disqualification stated in subsection (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Subsection (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9 (b) and 1.10 (b).

The Rule in subsection (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The Rule in subsection (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does subsection (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, must be screened

from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0 (k) and 5.3.

Rule 1.10 (b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9 (c).

Rule 1.10 (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 and its Commentary. For a definition of informed consent, see Rule 1.0 (f).

Rule 1.10 (a) (2) similarly removes the imputation otherwise required by Rule 1.10 (a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in sections (a) (2) (i)-(iii) be followed. A description of effective screening mechanisms appear in Rule 1.0 (l). Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

Paragraph (a) (2) (i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

The notice required by paragraph (a) (2) (ii) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the

need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the rules. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

The certifications required by paragraph (a) (2) (iii) give the former client assurance that the client's material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.

Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11 (d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, subsection (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

AMENDMENT NOTE: The above change is taken from paragraphs 7 through 10 of the commentary to Rule 1.10 of the ABA Model Rules of Professional Conduct.

## APPENDIX D (111912 mins)

### Sec. 1-9. Publication of Rules; Effective Date

(a) Each rule hereinafter adopted shall be promulgated by being published once in the Connecticut Law Journal. Such rule shall become effective at such date as the judges of the superior court shall prescribe, but not less than sixty days after its promulgation. The judges may waive the sixty day provision if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously.

(b) Prior to such adoption the proposed revisions to the rules or a summary thereof shall be published in the Connecticut Law Journal with a notice stating the time when, the place where and the manner in which interested persons may present their views thereon.

(c) Upon recommendation by the Rules Committee, the judges of the superior court may, by vote at a meeting or by mail vote as set forth in subsection (d), waive the provisions of subsection (b) if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously, provided that the adoption of any rules or changes in existing rules in connection with such waiver shall be on an interim basis until a public hearing has been held and the judges have thereafter acted on such revisions and such action has become effective. With respect to such rules adopted on an interim basis the judges shall prescribe the effective date thereof following publication in the Connecticut Law Journal.

(d) For a mail vote under subsection (c) to be effective, a written notice setting forth the proposed rule or change in an existing rule, together with a statement as to the effective date thereof, shall be mailed or electronically transmitted to all the judges of the superior court. In the event that no objection from any judge is received, by mail or electronically, by the counsel to the Rules Committee within the time specified in such notice, such rule or change shall become effective on the date specified in the notice until further action is taken at the next meeting of the judges.

COMMENTARY: The above change will allow the mail vote process to be conducted electronically.

**APPENDIX E (111912 mins)**

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

(a) The plaintiff shall file a motion for default for failure to appear[,] and judgment [and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit], a bill of costs [and], a proposed judgment and notice to all parties, and if applicable, a request for an order of weekly payments pursuant to Section 17-26.

(b) The motion shall have attached to it the following affidavits:

(1) An affidavit of debt signed by the plaintiff or by an authorized representative of the plaintiff who is not the plaintiff's attorney. The affidavit shall state the amount due or the principal owed and contain an itemization of interest, attorney's fees and other lawful charges claimed. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

[(b)](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 or contract shall be attached to the affidavit. [If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.] 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 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.

[(c)](B) If the [moving party] plaintiff claims any lawful fees or charges other than interest, including a reasonable attorney's fee, the plaintiff shall attach to the affidavit of debt [shall set forth] a copy of the portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

(C) If a claim for a reasonable attorney's fee is made, the [moving party] plaintiff shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel [and a copy of the contract shall be attached to the affidavit].

(2) A military affidavit as required by Section 17-21.

(c) Nothing contained in this section shall prevent the judicial authority from requiring the submission of additional written documentation or the presence of the plaintiff, the authorized representative of the plaintiff or other affiants, as well as counsel, before the court prior to rendering judgment if it appears to the judicial authority that additional information or evidence is required in order to enter judgment.

COMMENTARY: The amendment conforms the requirements to obtain a default judgment in actions based on an express or implied promise to pay a definite sum and claiming liquidated damages only, Practice Book section 17-34 and 17-24, to the ones already in place to obtain such judgments in small claims court, Practice Book Section 24-24. The amendment will make the practice consistent and clarify the requisite affidavits and attachments necessary to obtain judgement.

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. 17-33. When Judgment May Be Rendered after a Default**

(a) If a defendant is defaulted for failure to appear for trial, evidence may be introduced and judgment rendered without notice to the defendant.

(b) Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto[,] and in summary process actions, [and in any contract action where the damages are liquidated,] provided the plaintiff has

also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority. The judicial authority may render judgment in any contract action where the damages are liquidated provided that the plaintiff has made a motion for judgment and submitted the affidavits and attachments specified in Section 17-25 (b) (1).

(c) If the taking of testimony is required, the procedures in Section 17-34 shall be followed before judgment is rendered.

COMMENTARY: This amendment requires that the same affidavits used to obtain a judgment following a default for failure to appear in actions based on an express or implied promise to pay a definite sum and claiming liquidated damages only be used to obtain a judgment in these actions following the entry of a default for failure to plead or for failure to appear at trial. The amendment will make the practice consistent and clarify the requisite affidavits and attachments necessary to obtain judgment.

## APPENDIX F (111912 mins)

### Sec. 38-3. — Release by Bail Commissioner

(a) Upon notification by a law enforcement officer that a defendant has not posted bail, a bail commissioner shall promptly conduct an interview and investigation and, based upon release criteria established by the chief bail commissioner, shall promptly order the release of the defendant upon the first of the following conditions of release found sufficient to [assure] ensure [his] the defendant's appearance in court and to reasonably ensure that the safety of any other person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with any of the nonfinancial conditions specified in subsection (b) of this section;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's execution of a bond with surety in no greater amount than necessary.

(b) In addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (4), inclusive, of subsection (a) of this section, the bail commissioner may impose nonfinancial conditions of release, which may require that the defendant do any of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant or a controlled substance;

(4) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense; or

(5) Satisfy any other condition that is reasonably necessary to [assure] ensure the appearance of the [person] defendant in court and that the safety of any other person will not be endangered.

Any of the conditions imposed under subsection (a) of this section and this subsection by the bail commissioner shall be effective until the appearance of such person in court.

(c) The bail commissioner shall prepare for review by the judicial authority an interview record and a written report for each person interviewed. The written report shall contain the information obtained during the interview and verification process, the defendant's prior criminal record, if possible, the determination or recommendation of the bail commissioner concerning terms and conditions of release, and, where applicable, a statement that the defendant was unable to meet conditions of release ordered by the bail commissioner.

COMMENTARY: The above amendment to subsection (a) conforms the rule to C.G.S. § 54-63b as amended by Section 5 of Public Act 12-114. The new language in subsection (b) (5) is taken in part from Section 38-4 (d) (10).