Minutes of the Meeting
Rules Committee
September 27, 2010

On Monday, September 27, 2010, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 5:07 p.m.

Members in attendance were:

HON. C. IAN McLACHLAN, ACTING CHAIR
HON. BARBARA N. BELLIS
HON. JULIETT L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

The Hon. Leslie I. Olear was not present at this meeting. Also in attendance were Carl E. Testo, Counsel to the Rules Committee; and Attorneys Denise K. Poncini and Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the May 24, 2010, meeting.

2. The Committee unanimously approved its meeting schedule through May, 2011.

3. The Committee tabled to its October meeting the proposed rules concerning videoconferencing submitted by Judge Elliot N. Solomon on behalf of the Alternatives to Court Appearances Committee.

4. The Committee considered a proposal by Attorney Michael H. Agranoff to add a motion for summary judgment procedure to the juvenile rules. Justice McLachlan advised the Committee that Judge Keller is reviewing this proposal and will forward a recommendation concerning it to the Rules Committee. The Committee thereupon tabled the proposal.

5. The Committee tabled to its October meeting its review of standing orders for inclusion in the Practice Book.

6. The Committee tabled to its October meeting consideration of documents submitted by Attorney Duncan Osborne concerning compliance by lawyers with national and international efforts to curtail money laundering and terrorist financing.

7. The Committee considered a proposal submitted by Judge Pellegrino on behalf of the

Civil Commission to amend the civil pleading rules; a letter from Attorney Edward Maum Sheehy to which he appends a proposed revision to the summary judgment rules; and a memo from Judges Corradino and Scholl concerning this matter. At the Committee's request, Judge Corradino attended the meeting and addressed the Committee concerning the memo that was submitted by him and Judge Scholl.

Justice McLachlan discussed with the Committee a letter he received from Attorney David Cooney on behalf of the CTLA concerning this matter.

After discussion, Justice McLachlan designated a subcommittee consisting of Judges Bellis, Prescott, Corradino and Scholl to receive input from the CTLA and the CDLA concerning these proposals and to report back to the Rules Committee at the November meeting.

8. The Committee considered proposed revisions to the family rules submitted by Judge Lynda Munro, Chief Administrative Judge for Family Matters. At the Committee's request, Judge Munro addressed the Committee concerning the proposals and suggested that some be further revised.

After discussion, the Committee made further revisions to the proposals and unanimously voted to submit to public hearing the revisions to the family rules as set forth in Appendix A attached hereto.

9. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee (SGC) to amend Section 2-37 to allow the SGC to impose public service work as a disciplinary sanction. At the Committee's request, Attorney Bowler attended the meeting and addressed the Committee concerning this proposal.

After discussion, the Committee asked Attorney Bowler to revise his proposal and submit it for consideration at a future meeting.

10. The Committee tabled proposals submitted by Statewide Bar Counsel Michael Bowler on behalf of the SGC to amend Section 2-27 concerning the attorney registration process and Section 7.2 of the Rules of Professional Conduct concerning attorney advertising.

11. The Committee considered a proposal by Judge Samuel J. Sfferrazza to transfer Section 16-36 concerning collateral source reduction hearings from Chapter 16 to Chapter 17 of the Practice Book.

After discussion, the Committee unanimously voted to submit to public hearing the

transfer of Section 16-36 from Chapter 16 to Chapter 17 as set forth in Appendix B attached hereto.

12. The Committee considered a suggestion by Attorney Carl E. Testo to correct the cite to the Code of Judicial Conduct in Practice Book Section 1-22 (a).

After discussion, the Committee unanimously voted to correct the cite as set forth in Appendix C attached hereto. (This will be brought to the attention of the Reporter of Judicial Decisions so that the cite can be corrected in the 2011 edition of the Practice Book.)

13. The Committee considered a proposal by Judge Douglas Mintz to amend Section 13-19 concerning disclosures of defense in foreclosure actions.

After discussion, the Committee further revised the proposal and unanimously voted to submit to public hearing the proposed revision to Section 13-19 as set forth in Appendix D attached hereto.

14. Justice McLachlan advised Mr. Andrew B. Burns, who was present at the meeting, that the Rules Committee members had read his letters suggesting revisions to the Practice Book and that he could expect a response from the Committee concerning them.

15. The Committee considered a proposal by Assistant Attorney General Lawrence G. Widem to amend Section 1-9 to require the publication of asbestos docket standing orders and a notice and comment period prior to amending such orders.

After discussion, the Committee referred the matter to Court Operations to determine whether the standing orders may be placed on the Judicial Branch website.

16. The Committee did not reach Items 1-9, 1-10, 1-13 and 1-16.

Respectfully submitted,

Carl E. Testo

Carl E. Testo
Counsel to the Rules Committee

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

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

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

COMMENTARY: The proposed rule requires that a party seeking to enforce or to avoid enforcement of a premarital agreement give notice of that intention by filing appropriate claims for relief before the case management date. The rule takes no position on pleading any other agreements dealing with the rights and obligations of parties at the dissolution or annulment of a marriage because, to date, legislation and appellate court decisions have only recognized premarital agreements.

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

[(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(1) Neither party shall sell, transfer, encumber (except for the filing of a lis pendens), conceal, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, individually or jointly held by the

parties, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(3) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator within thirty days of the return day. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, in accordance with the uniform child support guidelines.

(4) The case management date for this case is . The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

(5) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority.

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

(7) Neither party shall cause the other party or the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(8) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

(9) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(10) If the parties share a child or children, a party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such

move, of an address where the relocated party can receive communication. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(11) If the parents of minor children live apart during this dissolution proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in uppercase letters:
FAILURE TO OBEY THESE ORDERS MAY BE PUNISHABLE BY CONTEMPT OF COURT. IF YOU OBJECT TO OR SEEK MODIFICATION OF THESE ORDERS DURING THE PENDENCY OF THE ACTION, YOU HAVE THE RIGHT TO A HEARING BEFORE A JUDGE WITHIN A REASONABLE TIME. The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

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

The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(a) In all cases involving a child or children, whether or not the parties are married or in a civil union:

(1) Neither party shall permanently remove the minor child or children from the state of

Connecticut, without written consent of the other or order of a judicial authority.

(2) A party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such move, of an address where the relocated party can receive communication. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(3) If the parents of minor children live apart during this proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing. This provision shall not apply if and to the extent there is a prior, contradictory order of a judicial authority.

(4) Neither party shall cause the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) The parties shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(6) These orders do not change or replace any existing court orders, including criminal protective and civil restraining orders.

(b) In all cases involving a marriage or civil union, whether or not there are children:

(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall conceal any property.

(3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority.

(5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further

encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(6) Neither party shall cause the other party to be removed from any medial, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(7) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

(8) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(c) In all cases:

(1) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator within thirty days of the return day. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, including, if applicable, proposed orders in accordance with the uniform child support guidelines.

(2) The case management date for this case is _____. The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in uppercase letters:

FAILURE TO OBEY THESE ORDERS MAY BE PUNISHABLE BY CONTEMPT OF COURT. IF YOU OBJECT TO OR SEEK MODIFICATION OF THESE ORDERS DURING THE PENDENCY OF THE ACTION, YOU HAVE THE RIGHT TO A HEARING BEFORE A JUDGE WITHIN A REASONABLE TIME.

The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does

not comply with this subsection.

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

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

(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a petition for child support. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the petitioner or the applicant upon the signing of the document initiating the action (whether it be complaint, petition or application), and with regard to the respondent, upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

Neither party shall cause the other party or the children who are the subject of the complaint, application or petition to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

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

COMMENTARY: This section corresponds to new rule 25A-4 and will provide for

consistent automatic orders between IV-D and Non-IV-D support petitions.

Sec. 25-31. Discovery and Depositions

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

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

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

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

COMMENTARY: The purpose of this proposed new rule is to clarify and improve the discovery process in Family Cases. It is not the intent of this rule to have the actual disclosure documents provided, but rather a detailed list of the items provided.

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

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

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

Sec. 25-34. Procedure for Short Calendar

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

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

(c) If the judicial authority has determined that oral argument or the presentation of testimony is necessary on a motion made under Chapter 13 and has not set it down on a hearing date, the movant may reclaim the motion within 30 days of the date the motion appeared on the calendar.

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

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

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

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

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

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

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

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

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

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

(b) Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the guardian ad litem or, where there is no guardian ad litem, by court personnel.

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

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

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

Sec. 25-62. Appointment of Guardian Ad Litem

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

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

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

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

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

APPENDIX B (9-27-10 mins)

[Sec. 16-36. Motions to Reduce Verdict

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

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

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

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

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

APPENDIX C (9-27-10 mins)

Sec. 1-22. Disqualification of Judicial Authority

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

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

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

APPENDIX D (9-27-10 mins)

Sec. 13-19. Disclosure of Defense

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

COMMENTARY: The above change makes the rule internally consistent.