Minutes of the Meeting
Rules Committee
April 7, 2010

On Wednesday, April 7, 2010, the Rules Committee met in the Attorneys' Conference Room from 1:00 p.m. to 2:45 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. JACK W. FISCHER
HON. LESLIE I. OLEAR
HON. ANTONIO C. ROBAINA
HON. JANE SCHOLL
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

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 members of the Committee unanimously approved the minutes of the March 29, 2010, meeting.

2. The Committee considered a proposal submitted by Attorney Humbert J. Polito, Jr., on behalf of the Connecticut Trial Lawyers Association, to amend Section 13-11 concerning physical or mental examination.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to amend Section 13-11 as set forth in Appendix A attached hereto.

3. The Committee considered proposed revisions to the small claims rules with an overview by Maureen P. Finn, Chief Clerk of Centralized Small Claims; and written comments thereon submitted by Attorneys Abraham M. Hoffmann, Raphael Podolsky, and Jeanine Dumont.

Attorneys Russell London and Jeanine Dumont attended the meeting and discussed the proposals with the Rules Committee.

After further discussion, the Committee made additional revisions to the proposals and voted to submit to public hearing the proposed revisions to the small claims rules as set forth in Appendix B attached hereto.

An issue was raised at the meeting concerning whether there are instances in the rules in which it is inappropriate for "plaintiff" to include "representative." Judge Sheldon stated that he would review the small claims rules and bring to the Rules Committee's attention any instances in which "plaintiff" should not include "representative."

4. The Committee discussed proposed revisions to the camera rules submitted by Judge Quinn on behalf of the Judicial Media Committee.

The Rules Committee decided that it will review these proposals at the meeting immediately following the public hearing on May 24.

5. The Rules Committee discussed proposed rules concerning videoconferencing submitted by Judge Elliot N. Solomon, on behalf of the Alternatives to Court Appearances Committee.

The Rules Committee decided that it will review these proposals at the meeting immediately following the public hearing on May 24.

6. The Committee considered proposals submitted by Judge Christine E. Keller on behalf of the Juvenile Task Force to amend various juvenile rules in light of current procedures and recent statutory changes.

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

Respectfully submitted,

Carl E. Testo

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (04/07/10 mins)

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.

APPENDIX B (4-7-10 mins)

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 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 places of residence or other addresses. 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**]** 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.

COMMENTARY: The above revision retains the minimum parameter so the defendant will have enough time to answer the claim. The maximum parameter has been removed because the increased caseload has necessitated that answer dates be further in the future than the thirty day limit permits. The other changes would be consistent with those proposed for Section 24-10 in regard to service of the claim.

[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. A small claims writ and notice of suit signed and sworn to by the plaintiff 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.

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.

APPENDIX C (4-7-10 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.

(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. 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] under seventeen years of age who has not been legally emancipated or, (B) 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.