Minutes of the Meeting
Rules Committee
September 16, 2015

On Wednesday, September 16, 2015, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 3:58 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. MARSHALL K. BERGER, JR.
HON. WILLIAM H. BRIGHT, JR.
HON. HENRY S. COHN
HON. ROBERT L. GENUARIO
HON. MARY E. SOMMER
HON. ROBIN L. WILSON
HON. ROBERT E. YOUNG

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

1. The Committee unanimously approved the minutes of the meeting held on May 18, 2015.

2. The Committee unanimously approved the proposed Rules Committee meeting schedule for 2015/2016. That schedule is as follows:

Monday, October 19, 2015	-	2:00 p.m.	
Monday, November 16, 2015	-	2:00 p.m.	
Monday, December 14, 2015	-	2:00 p.m.	
Monday, January 11, 2016	-	2:00 p.m.	
Monday, February 8, 2016	-	2:00 p.m.	
Monday, March 14, 2016	-	2:00 p.m.	
Monday, May 16, 2016	-	10:00 a.m.	Public Hearing and Rules Committee Meeting

3. The Committee considered comments from Judge Devlin, Chief Administrative Judge, Criminal Division, concerning Section 7-19, as considered and adopted by the judges of the Superior Court on June 12, 2015, regarding issuing subpoenas on behalf of self-represented litigants. Judge Devlin was present and addressed the Committee.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 7-19, as amended by the Committee, as set forth in Appendix A attached to these minutes.

4. The Committee considered comments from Justice McDonald and matters for further discussion regarding Practice Book Sections 2-47B, 4-6 and 25-51, as considered and adopted by the judges on June 12, 2015.

After discussion, the Committee decided to refer Justice McDonald's comments concerning Section 25-51 to Judge Bozzuto, Chief Administrative Judge, Family Division, for review and comment. Judge Cohn offered to forward to Justice Eveleigh cases of interest for Justice McDonald's information concerning Section 2-47B. The Committee decided that no further action was necessary concerning Justice McDonald's comments on Section 4-6.

5. The Committee considered the amendment to Section 17-32, adopted by the judges on June 12, 2015, on an interim basis without having gone to public hearing, to allow defaults for failure to plead to be set aside automatically by operation of law rather than by the clerk.

After discussion, the Committee unanimously voted to submit to public hearing pursuant to Section 1-9 of the Practice Book the revision to Section 17-32, as set forth in Appendix B attached to these minutes.

6. The Committee considered a proposal by Attorney Alice Mastrony to amend Section 10-32 concerning the ability to raise a claim of improper venue by a motion to dismiss.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 10-32, as set forth in Appendix C attached to these minutes.

7. The Committee considered a proposal by the New Britain State's Attorney's Office to amend Practice Book Section 43-29 regarding revocation of probation.

After discussion, the Committee decided to refer the proposal to Judge Devlin, Chief Administrative Judge, Criminal Division, for review and comment.

8. The Committee considered a proposal by Attorney Lori Petruzzelli to amend Section 1-6 to include Class E felonies.

After discussion, the Committee decided to refer the proposal to the Chief Court Administrator for review and comment as to whether Section 1-6 accurately reflects the criminal division of the Superior Court and, further, whether Sections 1-3 through 1-5 and 1-7 also accurately reflect the

operations of the divisions described in those sections.

9. The Committee considered a proposal by Mr. Lawrence S. Jezouit to amend Section 4-1 et seq. to clarify use of the terms "paper" and "document."

After discussion, the Committee decided that no further action was necessary on the proposal.

10. The Committee considered a proposal by Judge Lager on behalf of the Civil Commission to revise the standard discovery forms, Form 201 through Form 206, to include interrogatories regarding Medicare liens and to obtain discovery of all recordings of the subject incident by film, photograph, videotape, audiotape or any other digital or electronic means and to expand the discovery to premises liability cases as well as automobile accident cases. The Committee also considered whether amendments to Section 13-3 (c) may need to be recommended.

After discussion, the Committee decided to table the proposal one month to its October meeting, and referred the matter to Judge Bright for consideration by the Civil Commission.

11. The Committee considered a proposal by Judge Lager on behalf of the Civil Commission to conform Practice Book Sections 8-3 through 8-12, 14-74, and 23-45 through 23-47 to legislative changes regarding recognizance as set out in sections 7, 13, 14 and 27 of Public Act 15-85.

After discussion, the Committee unanimously voted to submit the proposal to public hearing, as set forth in Appendix D attached to these minutes.

12. The Committee considered a response by Judge Bozzuto to the referral to her of comments from Mr. Mark T. L. Sargent regarding form JD-FM-227, *Orders of Duties and Fees-Counsel or Guardian Ad Litem for Minor Child or Children.*

After discussion, the Committee decided that no action is necessary on this matter.

13. The Committee considered a proposal by Attorney Fred Ury, Attorney Lou Pepe and Attorney Lawrence Morizio to implement Minimum Continuing Legal Education (MCLE), and comments from the New Haven County Bar Association and the Waterbury Bar Association regarding that proposal.

Attorneys Pepe, Ury and Morizio were present and addressed the Committee in favor of the proposal. Attorney Howard Levine, President of the Hew Haven County Bar Association; Attorney Isabella Squicciarini, President of the Waterbury Bar Association; and Attorney David Schaeffer were present and addressed the Committee in opposition to the proposal. Mr. William Chapman of the Connecticut Bar Association (CBA) was present and addressed the committee.

After discussion, the Committee decided to table to matter to its November meeting and asked the CBA to present its position on the proposal at that meeting. Additionally, the Committee asked the Rules Committee staff to research other states concerning the enforcement of the self-reporting provisions and report the results of this research at the November meeting. Finally, the Committee decided to invite Attorney Michael Bowler, Statewide Bar Counsel, to address the Committee concerning this proposal at its October meeting.

Respectfully submitted,

Joseph J. Del Ciampo

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (091615)

Sec. 7-19. Issuing Subpoenas for Witnesses on Behalf of Self-Represented Litigants

Self-represented litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any matter shall file an application to have the clerk of the court issue subpoenas for that purpose. The application shall include a summary of the expected testimony of each proposed witness so that the court may determine the relevance of the testimony. The clerk, after verifying the scheduling of the matter, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the matter has not been scheduled before a specific judge, which judge shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate. If an application is denied in whole or in part, the applicant may request a hearing which shall be scheduled by the court.

COMMENTARY: The change to this section will assist the court in determining the relevance of the expected testimony of each proposed witness.

Appendix B (091615)

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

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

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

COMMENTARY: The revision to this rule is intended to incorporate the language of Section 17-20 on setting aside a default for failure to appear in order to make the setting aside of a default for failure to plead more efficient. On June 12, 2015, the judges of the Superior Court adopted this revision on an interim basis, effective August 1, 2015, pursuant to Section 1-9 (c) of the Practice Book.

Appendix C (091615)

Sec. 10-32. —Waiver Based on Certain Grounds

Any claim of lack of jurisdiction over the person **[**or improper venue**]** or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Sections 10-6 and 10-7 and within the time provided by Section 10-30.

COMMENTARY: In 2015, "improper venue" was removed from Section 10-30 as one of the grounds for a motion to dismiss. The change to this section is consistent with the amendment to section 10-30.

APPENDIX D (091615)

[Sec. 8-3. Bond for Prosecution

(a) Except as provided below, if the plaintiff in any civil action is not an inhabitant of this state, or if it does not appear to the authority signing the process that the plaintiff is able to pay the costs of the action should judgment be rendered against the plaintiff, he or she shall, before such process is signed, enter into a recognizance to the adverse party with some substantial inhabitant of this state as surety, or some substantial inhabitant of this state shall enter into a recognizance to the adverse party, that the plaintiff shall prosecute the action to effect, and answer all damages in case the plaintiff does not make his or her plea good; and no such recognizance shall be discharged by any amendment or alteration of the process between the time of signing and of serving it. (See General Statutes § 52-185 and annotations.)

(b) No recognizance shall be required of a self-represented complainant in a summary process action.]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

(NEW) Sec. 8-3A. Bond for Prosecution or Recognizance

No bond for prosecution or recognizance for prosecution shall be required of a party in any civil action unless ordered by the judicial authority upon motion and for good cause shown. If the judicial authority finds that a party is not able to pay the costs of the action, the judicial authority shall order the party to give a sufficient bond to pay taxable costs. In determining the sufficiency of the bond to be given, the judicial

authority shall consider only the taxable costs for which a party may be responsible under General Statutes § 52-257, except that in no event shall the judicial authority consider the fees or charges of expert witnesses notwithstanding that such fees or charges may be allowable under that section. Any party failing to comply with such order may be nonsuited or defaulted, as the case may be.

COMMENTARY: Sections 8-3 through 8-12, 14-7A, 23-45 through 23-47, the sections of the rules concerned with bonds for prosecution and recognizance, should be repealed or revised to reflect legislative changes to General Statutes §§ 52-185, 52-186, 52-187, 52-188, 52-190 and 47a-23. A bond for prosecution and a recognizance unnecessarily increase the burden on a self-represented party filing a lawsuit and do not provide any realistic security for costs on an action. Failure to provide a bond or include a recognizance in an action is no longer a basis for dismissing the action. The proposed changes provide the option that a bond or recognizance be required if there is good cause to believe that a party will be unable to pay the costs of an action, but it eliminates the requirement for a bond or a recognizance in all actions.

[Sec. 8-4. Certification of Financial Responsibility

(a) Except as provided below, in all actions wherein costs may be taxed against the plaintiff, no mesne process shall be issued until the recognizance of a third party for costs has been taken, unless the authority signing the writ shall certify thereon that he or she has personal knowledge as to the financial responsibility of the plaintiff and deems it sufficient.

(b) No recognizance shall be required of a self-represented complainant in a summary process action.

(c) No attorney shall enter into a recognizance upon a writ which such attorney signs.]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-5. Remedy for Failure to Give Bond

(a) When there has been a failure to comply with the provisions of Sections 8-3 and 8-4; the validity of the writ and service shall not be affected unless the neglect is made a ground of a motion to dismiss.

(b) If the judicial authority, upon the hearing of the motion to dismiss, directs the plaintiff to file a bond to prosecute in an amount deemed sufficient by the judicial authority, the action shall be dismissed unless the plaintiff complies with the order of the judicial authority within two weeks of such order.

(c) Upon the filing of such bond, the case shall proceed in the same manner and to the same effect as to rights of attachment and in all other respects as though the neglect had not occurred. The judicial authority may, in its discretion, order, as a condition to the acceptance of the bond, that the plaintiff pay to the defendant costs not to exceed the costs in full to the date of the order.

(See General Statutes § 52-185 and annotations.)]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-6. Bond Ordered by Judicial Authority

If the judicial authority in which any action is pending finds that any bond taken therein for prosecution, or on appeal, is insufficient, or that the plaintiff has given no bond for prosecution and is not able to pay the costs, it shall order a sufficient bond to be given before trial, unless the trial will thereby necessarily be delayed. In determining the sufficiency of the bond to be given, the judicial authority shall consider only the taxable costs which the plaintiff may be responsible for under General Statutes § 52-257, except that in no event shall the judicial authority consider the fees or charges of expert witnesses notwithstanding that such fees or charges may be allowable under that section. Any party failing to comply with such order may be nonsuited or defaulted, as the case may be. Bonds for the prosecution of any civil action or appeal, pending in any court, may be taken in vacation by its clerk. (See General Statutes § 52-186 and annotations.)]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-7. Request to Furnish Bond

No order for a bond for prosecution will be made by the judicial authority unless it be shown that the adverse party has been requested in writing to furnish the same and has refused such request or has failed to file a satisfactory bond within a reasonable time after the request was made.]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-8. Member of Community Defending to Give Bond

If, in any action against a community, any individual member of such community appears to defend, he or she shall procure bond with surety to the acceptance of the court in which the action is pending, to save such community harmless from all costs which may arise by reason of such appearance, which bond shall be payable to such community and be filed in such court. Any such individual member who successfully defends against such action shall be entitled to the costs recoverable from the plaintiff unless the community likewise appeared and incurred the costs of such defense. (See General Statutes § 52-187 and annotations.)**]**

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-9. Bond by Nonresident in Realty Action

Each nonresident defendant in any civil action relating to real estate or any interest therein, if any relief other than money damages is claimed, may be ordered by the judicial authority, during the pendency of such action, to give such bond to such other party or parties to such action as the judicial authority may direct, conditioned for the payment of costs. Judgment as on default may be rendered against any defendant who fails to comply with such order. (See General Statutes § 52-188.)**]**

COMMENTARY: This section should be repealed to reflect legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

Sec. 8-10. Surety Company Bond Acceptable

Any surety company chartered by this state or authorized to do business herein may be accepted as surety or recognizor upon any bond or recognizance required by law in any civil action or in any proceeding instituted under the statutes of this state and, in any case where a bond or recognizance is **[**by law**]** required by law, the bond of such company, duly executed and conditioned for the performance of the obligations expressed in such bond or recognizance, may be accepted by the person having authority thereto, **[**and**]** who shall **[**be filed by him or her in**]** file it with the court **[**to which such**]** where the action or proceeding is returnable or pending. (See General Statutes § 52-189 and annotations.)

COMMENTARY: The changes to this section reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

[Sec. 8-11. Action on Probate Bond; Endorsement of Writ

The writ in any action brought upon a probate bond, or bond taken to a judge of probate and such judge's successors in office, shall be dismissed unless, before its issue, some responsible inhabitant of the state signs a written endorsement upon it, agreeing to be responsible for the costs of suit. If the endorser dies or removes from this state, a new endorser on such writ shall be substituted; and the court before which the suit is pending may at any time order the substitution of a new endorser to be approved

by it. For any failure to comply with such an order the plaintiff may be nonsuited. (See General Statutes § 52-190 and annotations.)]

COMMENTARY: This section should be repealed to reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

Sec. 8-12. Renewal of Bond

Bonds given in the course of any judicial proceedings may, for reasonable cause and upon due notice, be renewed, or other bonds taken in lieu of them, by the [court, or by the judge before whom the matter is pending] judicial authority.

COMMENTARY: The changes to this section reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

Sec. 14-7A. —Administrative Appeals Brought Pursuant to General Statutes § 4-183 et seq.; Appearances; Records, Briefs and Scheduling

(a) Administrative appeals brought pursuant to General Statutes § 4-183 et seq. shall be served in accordance with applicable law either by certified or registered mail of the appeal, and a notice of filing [and recognizance] on a form substantially in compliance with Form JD-CV-137 prescribed by the chief court administrator or by personal service of the appeal, and a citation and recognizance on a form substantially in compliance with Form JD-CV-138 [prescribed by the chief court administrator]. The appeal shall be filed with the court in accordance with General Statutes § 4-183 (c).

(b) In administrative appeals brought pursuant to General Statutes § 4-183 et seq., the defendant shall file an appearance within thirty days of service made pursuant to General Statutes § 4-183 (c). Within thirty days of the filing of the defendant's

appearance, or if a motion to dismiss is filed, within forty-five days of the denial of a motion to dismiss, the agency shall file with the court and transmit to all parties a certified list of the papers in the record as set forth in General Statutes § 4-183 (g), and, unless otherwise excluded by law or subject to a pending motion by either party, shall make the existing listed papers available for inspection by the parties.

(c) Except as provided in Section 14-7, or except as otherwise permitted by the judicial authority in its discretion, in an administrative appeal brought pursuant to General Statutes § 4-183 et seq., the record shall be transmitted and filed in accordance with this section. For the purposes of this section, the term "papers" shall include any and all documents, transcripts, exhibits, plans, minutes, agendas, correspondence, or other materials, regardless of format, which are part of the entire record of the proceeding appealed from described in General Statutes §§ 4-183 (g) and 4-177 (d), including additions to the record pursuant to General Statutes § 4-183 (h).

(d) No less than thirty days after the filing of the certified list of papers in the record under subsection (b), the court and the parties will set up a conference to establish which of the contents of the record are to be transmitted and will set up a scheduling order, including dates for the filing of the designated contents of the record, for the filing of appropriate pleading and briefs, and for conducting appropriate conferences and hearings. No brief shall exceed thirty-five pages without permission of the judicial authority. At the conference, the court shall also determine which, if any, of the designated contents of the record shall be transmitted to the parties and/or the court in paper format because such papers are either difficult to reproduce electronically or difficult to review in electronic format.

(e) The agency shall transmit to the court certified copies of the designated contents of the record established in accordance with subsection (d).

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

(g) No party shall include in such party's brief or appendices, papers that were neither part of the designated contents of the record under subsection (d), nor on the certified list filed in accordance with subsection (b), unless the court requires or permits subsequent corrections of additions to the record under General Statutes § 4-183 (g) or unless an application for leave to present additional evidence is filed and granted under General Statutes § 4-183 (h) or (i).

(h) Disputes about the contents of the record or other motion, application or objection will be heard as otherwise scheduled by the court.

(i) If a party is not in compliance with the scheduling order, the judicial authority may, on its own motion or on motion of one of the parties, and after hearing, make such order, including sanctions, as the ends of justice require.

(j) Any hearings to consider the taxation of costs in accordance with General Statutes § 4-183 (g) shall be conducted after the court renders its decision on the appeal.

COMMENTARY: The changes to this section reflect 2015 legislative changes regarding bonds for prosecution and recognizance. See also commentary to (New) Section 8-3A.

Sec. 23-45. Mandamus; Parties Plaintiff; Complaint

(a) An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person, or by any state's attorney **[**in a capacity as such**]** to enforce a public duty.

(b) The plaintiff shall commence the action by serving and filing a writ and complaint that conforms to the requirements of Section 8-1 of these rules. The prayer for relief shall include asking that an order in the nature of a mandamus be granted. No affidavit to the truth of the allegation of the complaint is required.

COMMENTARY: The revised rule now includes all the requirements for bringing a mandamus action in a single rule but does not make any substantive changes to the required form of the writ and complaint except for the elimination of the language regarding a bond or recognizance. With the revisions to the statutes and rules eliminating the requirement for a bond or a recognizance, that language is no longer necessary.

[Sec. 23-46. —Mandamus Complaint

The writ and complaint in an original action shall be in the form used in, and served as are, ordinary civil actions, but with a distinct statement in the prayer for relief that an order in the nature of a mandamus is sought. No affidavit to the truth of the allegations of the complaint is required, and no bond or recognizance is necessary other

than that ordinarily used in civil actions; and no bond or recognizance shall be required where the action is brought by a state's attorney.]

COMMENTARY: This rule should be repealed in light of the changes to Section 23-45.

Sec. 23-47. —Mandamus Order in [Aid of] a Pending Action

Any party may move for [A]an order in the nature of a mandamus [may be made in aid of a] in a pending action, upon the application of any party, [and] A[a]ny person claimed to be charged with the duty of performing the act in question may be summoned before the court by the service upon that person of a rule to show cause.

COMMENTARY: The language of this section has been revised to make it easier to understand. No substantive changes are intended by these revisions.