

Minutes of the Meeting
Rules Committee
October 24, 2011

On Monday, 24, 2011, at 2:00 p.m. the Rules Committee met in the Supreme Court Courtroom from 2:00 p.m. to 3:23 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. WILLIAM M. BRIGHT, JR.
HON. JULIET L. CRAWFORD
HON. RICHARD W. DYER
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

The Hon. Maureen M. Keegan was not in attendance at this meeting.

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

1. The Committee unanimously approved the minutes of the September 19, 2011, meeting.
2. The Committee considered a recommendation by the Legal Specialization Screening Committee that the Connecticut Bar Association be approved for recertification as a certifier in the specialty area of workers' compensation.

After discussion, the Committee unanimously voted as follows:

The Rules Committee, after reviewing the recommendation of the Legal Specialization Screening Committee dated October 4, 2011, recommending approval of the application of the Connecticut Bar Association for renewal of its authority to certify lawyers as specialists in the field of workers' compensation law, unanimously approves the Connecticut Bar Association for a five year period commencing October 23, 2011, as qualified to certify lawyers as specialists in that field. This approval is subject to the condition that the Connecticut Bar Association is required to notify promptly the Legal Specialization Screening Committee of any proposed material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

3. The Committee considered definitions of "Elder Law" as a field of law in which

attorneys may be certified as specialists in this state pursuant to Rule 7.4A, proposed by the Connecticut Bar Association and by the National Elder Law Foundation.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Rule 7.4A of the Rules of Professional Conduct as set forth in Appendix A attached hereto.

4. The Committee considered a proposal by Judge Robert J. Devlin, Jr., Chief Administrative Judge of the Criminal Division, to amend the rules to provide more protection of juror privacy; a letter from Judges Linda K. Lager and Frank M. D'Addabbo, Jr., Co-chairs of the Jury Committee, concerning the proposal; and a proposed revision to Section 42-8 submitted by Judges Juliet L. Crawford and Maureen M. Keegan and Attorney Carl E. Testo at the Committee's request.

After discussion, the Committee suggested further changes to the proposal and asked the undersigned to submit a revised draft for their consideration at a future meeting.

5. The Committee considered a proposal by Judge Lynda Munro, Chief Administrative Judge for Family Matters, to amend Section 25-60A, which was recently adopted by the judges and became effective on August 15, 2011.

After discussion, the Committee decided to invite Judge Munro to attend a future Rules Committee meeting to address this matter.

6. The Committee considered a proposal by Judge Christine E. Keller, Chief Administrative Judge for Juvenile Matters, to amend Section 3-4 to provide for appearances being filed in lieu of other attorneys in juvenile matters and a draft revision to Section 3-4 submitted by the undersigned at the Rules Committee's request.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 3-4 as set forth in Appendix B attached hereto.

7. The Committee considered a proposal by Judge Barbara Quinn, Chief Court Administrator, to amend Section 3-8 concerning appearances for represented parties, and revisions to Section 3-9 submitted by the undersigned at the Rules Committee's request.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 3-8 and 3-9 as set forth in Appendix C attached hereto.

8. The Committee considered a proposal by Judge William Bright, Jr. to amend Rule 5.5

(d) of the Rules of Professional Conduct and Practice Book Section 2-15A to allow pro bono representation by authorized house counsel.

After discussion, the Committee made further revisions to the proposed revision to Practice Book Section 2-15A and unanimously voted to submit to public hearing the proposed revision to Rule 5.5 (d) of the Rules of Professional Conduct and the proposed revision to Practice Book Section 2-15A, as set forth in Appendix D attached hereto.

9. The Committee considered a proposal by Judge Bright to delete Section 37-11 and amend Sections 37-10 and 42-2 concerning two part informations.

After discussion, the Committee referred the proposal for comment to the Chief Administrative Judge of the Criminal Division, the Criminal Practice Commission, the Criminal Justice Section of the Connecticut Bar Association, the Criminal Defense Lawyers Association and Chief State's Attorney Kevin Kane.

10. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Section 17-20 in light of PA 11-201, which extends the sunset date of the foreclosure mediation program to 2014 and includes in the program real property owned by religious organizations.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 17-20 as set forth in Appendix E attached hereto.

11. The Committee considered a proposal submitted by Judge Linda K. Lager, Chief Administrative Judge for Civil Matters, on behalf of the Civil Commission to amend Section 13-4 to make clear that experts' written reports, including medical reports and reports involving trade secrets, are not to be attached to the experts' disclosure.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 13-4 as set forth in Appendix F attached hereto.

12. The Committee considered a proposal by Attorney Joseph Del Ciampo to repeal Section 1-11D concerning the Juvenile Access Pilot Program in light of P.A. 11-51 Sections 30 and 225.

After discussion, the Committee unanimously voted to submit to public hearing the proposed repeal of Section 1-11D as set forth in Appendix G attached hereto.

The Committee decided that a rule implementing Section 30 of Public Act 11-51 should be drafted, but that it should avoid the prior restraint issue created by the language of the Act.

Judge Dyer agreed to discuss this matter with Judge Keller and to work with her in the drafting of an implementing rule.

13. The Committee considered proposed rules for Minimum Continuing Legal Education submitted by Attorney Keith Bradoc Gallant, President of the CBA.

After discussion, the Committee tabled the matter to its January meeting and decided to forward the matter for comment to the local bar associations around the state.

14. The Committee considered a proposal submitted by CBA President Gallant to amend Rule 1.10 of the Rules of Professional Conduct to provide a screening mechanism that would permit law firms to avoid imputed conflicts of interest triggered by attorneys making lateral moves from one law firm to another.

After discussion, Judge Sheldon noted a typographical error in subsection (a)(2)(iii): the words “with and” in the first line should be reversed. The Committee referred the matter for comment to Chief Disciplinary Counsel Patricia King and Statewide Bar Counsel Michael Bowler.

15. The Committee considered a proposal by Attorney Richard P. Weinstein to amend the rules to require that if a document is e-filed with the court it must be sent electronically to all counsel of record at the same time, unless opposing counsel specifically elects not to receive electronic delivery of pleadings.

After discussion, Judge Bellis agreed to obtain the views of the Judges Advisory Committee on E-Filing concerning the proposal.

16. The Committee considered a proposal by Judge Cara Eschuk to amend new Section 35a-22 (effective January 1, 2012), which permits the presence of a person to be by means of an interactive audio visual device in certain juvenile proceedings.

After discussion, the Committee referred the matter to Judge Keller for comment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carl E. Testo".

Carl E. Testo
Counsel to the Rules Committee

APPENDIX A (102411 mins)

Rule 7.4A. Certification as Specialist

(a) Except as provided in Rule 7.4, a lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state. Among the criteria to be considered by the Rules Committee in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists, shall be the requirement that the board or entity certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such certification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competence, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.

(b) Upon certifying a lawyer practicing in this state as being a specialist, the board or entity that certified the lawyer shall notify the statewide grievance committee of the name and juris number of the lawyer, the specialty field in which the lawyer was certified, the date of such certification and the date such certification expires.

(c) A lawyer shall not state that he or she is a certified specialist if the lawyer's certification has terminated, or if the statement is otherwise contrary to the terms of such certification.

(d) Certification as a specialist may not be attributed to a law firm.

(e) Lawyers may be certified as specialists in the following fields of law:

(1) Administrative law: The practice of law dealing with states, their political subdivisions, regional and metropolitan authorities and other public entities including, but not limited to, their rights and duties, financing, public housing and urban development, the rights of public employees, election law, school law, sovereign immunity, and constitutional law; practice before federal and state courts and governmental agencies.

(2) Admiralty: The practice of law dealing with all matters arising under the carriage of goods by sea act (COGSA), Harter Act, Jones Act, and federal and state maritime law including, but not limited to, the carriage of goods, collision and other maritime torts, general average, salvage, limitation of liability, ship financing, ship subsidies, the rights of injured

sailors and longshoremen; practice before federal and state courts and governmental agencies (including the Federal Maritime Commission).

(3) Antitrust: The practice of law dealing with all matters arising under the Sherman Act, Clayton Act, Federal Trade Commission Act, Hart-Scott-Rodino Antitrust Improvements Act and state antitrust statutes including, but not limited to, restraints of trade, unfair competition, monopolization, price discrimination, restrictive practices; practice before federal and state courts and governmental agencies.

(4) Appellate practice: The practice of law dealing with all procedural and substantive aspects of civil and criminal matters before federal and state appeals courts including, but not limited to, arguments and the submission of briefs.

(5) Business Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was engaged in business before the institution of a Chapter 7, 9, or 11 proceeding. This includes, but is not limited to, business liquidations, business reorganizations, and related adversary and contested proceedings.

(6) Child Welfare Law: The practice of law representing children, parents or the government in all child protection proceedings including emergency, temporary custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child Welfare Law does not include representation in private child custody and adoption disputes where the state is not a party.

(7) Consumer Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was not engaged in business before the institution of a Chapter 7, 12, or 13 proceeding. This includes, but is not limited to, liquidations, wage earner plans, family farmers and related adversary and contested proceedings.

(8) Civil rights and discrimination: The practice of law dealing with all matters arising under federal and state law relating to proper treatment in the areas of, among others, public accommodations, voting, employment, housing, administration of welfare and social security benefits; practice before federal and state courts and governmental agencies.

(9) Civil trial practice: The practice of law dealing with representation of parties before federal or state courts in all noncriminal matters.

(10) Commercial transactions: The practice of law dealing with all aspects of commercial paper, contracts, sales and financing, including, but not limited to, secured

transactions.

(11) Consumer claims and protection: The practice of law dealing with all aspects of consumer transactions including, but not limited to, sales practices, credit transactions, secured transactions and warranties; all matters arising under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Magnuson-Moss Act, the Truth in Lending Act, state statutes such as the "Little FTC" acts, and other analogous federal and state statutes.

(12) Corporate and business organizations: The practice of law dealing with all aspects of the formation, operation and dissolution of corporations, partnerships (general and limited), agency and other forms of business organizations.

(13) Corporate finance and securities: The practice of law dealing with all matters arising under the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisors Act (or the Federal Securities Code, if adopted) and other federal and state securities statutes; financing corporate activities; mergers and acquisitions; practice before the Securities and Exchange Commission and state securities commissions.

(14) Criminal: The practice of law dealing with the prosecution or representation of persons accused of crimes at all stages of criminal proceedings in federal or state courts including, but not limited to, the protection of the accused's constitutional rights.

(15) Elder Law: The practice of law dealing with counseling and representation of individuals, their representatives, or other persons of interest, for the purpose of preserving and enhancing the individuals' autonomy, dignity and quality of life as they age, in the broad areas of health and long term care, housing options, financial well-being, and decision-making capacity, involving, when appropriate, consultation and collaboration with professionals in related disciplines. The specific matters arising in these areas include, but are not limited to: advance directives; powers of attorney; capacity determinations; conservatorships; estate planning; housing options, financing, and contractual responsibilities; residents' rights under state and federal law in housing and long term care; long term care planning and financing; public benefits and health insurance; abuse, neglect and exploitation; estate and tax matters; probate; special needs counseling; and the recognition of professional conduct and ethical issues that arise during representation.

[[15]] (16) Environmental: The practice of law dealing with all aspects of the regulation of environmental quality by both federal and state governments; control of air pollution, water

pollution, noise pollution, toxic substances, pesticides, and civilian uses of nuclear energy; solid waste/ resource recovery; all matters arising under the National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Noise Control Act, Solid Waste Disposal Act, Toxic Substance Control Act and other federal and state environmental statutes; practice before federal and state courts and governmental agencies.

[(16)] (17) Estate planning and probate: The practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments in order to effectuate estate plans; administering estates, including tax related matters, both federal and state.

[(17)] (18) Family and matrimonial: The practice of law dealing with all aspects of antenuptial and domestic relationships, separation and divorce, alimony and child support, distribution of assets, child custody matters and adoption, giving due consideration to the tax consequences, and court proceedings relating thereto.

[(18)] (19) Government contracts and claims: The practice of law dealing with all aspects of the negotiation and administration of contracts with federal and state governmental agencies.

[(19)] (20) Immigration and naturalization: The practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not limited to, such matters as visas, change of status, deportation and naturalization; representation of aliens before courts and governmental agencies; protection of aliens' constitutional rights.

[(20)] (21) International: The practice of law dealing with all aspects of the relations among states, international business transactions, international taxation, customs and trade law and foreign and comparative law.

[(21)] (22) Labor: The practice of law dealing with all aspects of employment relations (public and private) including, but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members, employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of The Civil Rights Act of 1964, Occupational Safety and Health Act (OSHA), Employee Retirement Income Security Act

(ERISA), other federal statutes and analogous state statutes; practice before the National Labor Relations Board, analogous state boards, federal and state courts, and arbitrators.

[(22)] (23) Military: The practice of law dealing with the presentation of parties before courts-martial and other military tribunals in disputes arising under the uniform code of military justice; the representation of veterans and their dependents in seeking government benefits due to them on account of military service; handling civil law problems of the military.

[(23)] (24) Natural Resources: The practice of law dealing with all aspects of the regulation of natural resources such as coal, oil, gas, minerals, water and public lands; the rights and responsibilities relating to the ownership and exploitation of such natural resources.

[(24)] (25) Patent, trademark and copyright: The practice of law dealing with all aspects of the registration, protection and licensing of patents, trademarks or copyrights; practice before federal and state courts in actions for infringement and other actions; the prosecution of applications before the United States Patent and Trademark Office; counseling with regard to the law of unfair competition as it relates to patents, trademarks and copyrights.

[(25)] (26) (A) Residential Real Estate: The practice of law dealing with all aspects of real property transactions involving single one-to-four family residential dwellings when the client uses such dwelling or expresses in writing the intent to use such dwelling as the client's primary or other residence including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives, and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, and determination of property rights. (B) Commercial Real Estate: The practice of law dealing with all aspects of real property transactions except for residential real estate as defined in subparagraph (A) of this subdivision, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing (with due consideration to tax and securities consequences) and determination of property rights.

[(26)] (27) Taxation: The practice of law dealing with all matters arising under the Internal Revenue Code, Employee Retirement Income Security Act (ERISA), state and local tax

laws and foreign tax laws, including counseling with respect thereto; practice before federal and state courts and governmental agencies.

[(27)] (28) Workers' Compensation: The practice of law dealing with the representation of parties before federal and state agencies, boards and courts in actions to determine eligibility for workers' compensation, and disability.

AMENDMENT NOTE: The above change establishes the new specialty of elder law.

APPENDIX B (102411 mins)

Sec. 3-4. Filing Appearance

Appearances shall be filed with the clerk of the court location where the matter is pending.

(a) Whenever an appearance is filed in any civil or family action, including appearances filed in addition to or in place of another appearance, a copy shall be mailed or delivered to all counsel and self-represented parties of record.

(b) Whenever an appearance is filed in summary process actions, including appearances filed in addition to or in place of another appearance, the attorney for the defendant, or, if there is no such attorney, the defendant himself or herself, shall mail or deliver a copy of the appearance to the attorney for the plaintiff, or if there is no such attorney, to the plaintiff himself or herself.

(c) Whenever an appearance is filed in delinquency, family with service needs or youth in crisis proceedings, including appearances filed in addition to or in place of another appearance, the attorney or guardian ad litem for the respondent, or for any other interested party, shall mail or deliver a copy of [their] the appearance to the prosecutorial official and all other counsel and self-represented parties of record; in child protection proceedings, the attorney or guardian ad litem for the child, respondent, or any other interested party, shall mail or deliver a copy of [their] the appearance to the attorney for the petitioner and to all other counsel and self-represented parties of record.

(d) Whenever an appearance is filed in criminal cases, including appearances filed in addition to or in place of another appearance, the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

COMMENTARY: The above changes are made for clarity.

APPENDIX C (102411 mins)

Sec. 3-8. Appearance for Represented Party

Whenever an attorney files an appearance for a party, or the party files an appearance for himself or herself, and there is already an appearance of an attorney or party on file for that party, the attorney or party filing the new appearance shall state thereon whether such appearance is in place of or in addition to the appearance or appearances already on file. [If the new appearance is stated to be in place of any appearance or appearances on file, the party or attorney filing that new appearance shall serve, in accordance with Sections 10-12 through 10-17, a copy of that new appearance on any attorney or party whose appearance is to be replaced by the new appearance. Unless a written objection is filed within ten days after the filing of an in-lieu-of appearance, the appearance or appearances to be replaced by the new appearance shall be deemed to have been withdrawn and the clerk shall make appropriate entries for such purpose on the file and docket.] The provisions of this section regarding parties filing appearances for themselves do[es] not apply to criminal cases.

COMMENTARY: This revision eliminates the ten day limit for a party or attorney to file an objection to being replaced when a new appearance is filed. A party or attorney should not be limited to only ten days to file an objection. The requirement to serve a copy of the new appearance on the party or attorney being replaced has been removed from this section because it has been added to Section 3-4.

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. The attorney or party may file an objection to the in lieu of appearance.

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

as of course, if such an appearance by other counsel has been entered.

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

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

(e) All appearances in juvenile matters shall be deemed to continue during the period of delinquency probation, family with service needs supervision, or any commitment to the commissioner of the department of children and families or protective supervision. An attorney appointed by the chief 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 above changes are made to be consistent with the change in Section 3-8 that eliminates the ten day limit for a party or attorney to file an objection to being

replaced by an in lieu of appearance.

Sec. 2-15A. — Authorized House Counsel

(a) Purpose

The purpose of this section is to clarify the status of house counsel as authorized house counsel as defined herein, and to confirm that such counsel are subject to regulation by the judges of the superior court. Notwithstanding any other section of this chapter relating to admission to the bar, this section shall authorize attorneys licensed to practice in jurisdictions other than Connecticut to be permitted to undertake these activities, as defined herein, in Connecticut without the requirement of taking the bar examination so long as they are exclusively employed by an organization.

(b) Definitions

(1) Authorized House Counsel. An “authorized house counsel” is any person who:

(A) is a member in good standing of the entity governing the practice of law of each state (other than Connecticut) or territory of the United States, or the District of Columbia or any foreign jurisdiction in which the member is licensed;

(B) has been certified on recommendation of the bar examining committee in accordance with this section;

(C) agrees to abide by the rules regulating members of the Connecticut bar and submit to the jurisdiction of the statewide grievance committee and the superior court; and

(D) is, at the date of application for registration under this rule, employed in the state of Connecticut by an organization or relocating to the state of Connecticut in furtherance of such employment within three months of such application under this section and receives or shall receive compensation for activities performed for that business organization.

(2) Organization. An “organization” for the purpose of this rule is a corporation, partnership, association, or employer sponsored benefit plan or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization for the activities of the authorized house counsel.

(c) Activities

(1) **Authorized Activities.** An authorized house counsel, as an employee of an organization, may provide legal services in the state of Connecticut to the organization for which a registration pursuant to subsection (d) is effective, provided, however, that such activities shall be limited to:

(A) the giving of legal advice to the directors, officers, employees, trustees, and agents of the organization with respect to its business and affairs;

(B) negotiating and documenting all matters for the organization; and

(C) representation of the organization in its dealings with any administrative agency, tribunal or commission having jurisdiction; provided, however, authorized house counsel shall not be permitted to make appearances as counsel before any state or municipal administrative tribunal, agency, or commission, and shall not be permitted to make appearances in any court of this state, unless the attorney is specially admitted to appear in a case before such tribunal, agency, commission or court.

(2) **Disclosure.** Authorized house counsel shall not represent themselves to be members of the Connecticut bar or commissioners of the superior court licensed to practice law in this state. Such counsel may represent themselves as Connecticut authorized house counsel.

(3) **Limitation on Representation.** In no event shall the activities permitted hereunder include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice therefor unless otherwise permitted or authorized by law, code, or rule or as may be permitted by subsection (c) (1). Authorized house counsel shall not be permitted to prepare legal instruments or documents on behalf of anyone other than the organization employing the authorized house counsel.

(4) **Limitation on Opinions to Third Parties.** An authorized house counsel shall not express or render a legal judgment or opinion to be relied upon by any third person or party other than legal opinions rendered in connection with commercial, financial or other business transactions to which the authorized house counsel's employer organization is a party and in which the legal opinions have been requested from the authorized house counsel by another party to the transaction. Nothing in this subsection (c) (4) shall permit authorized house counsel to render legal opinions or advice in consumer transactions to customers of the organization employing the authorized house counsel.

(5) **Pro Bono Legal Services.** Notwithstanding anything to the contrary in this section, an authorized house counsel may participate in the provision of any and all legal services pro bono publico in Connecticut offered under the supervision of an organized legal aid society or state/local bar association project, or of a member of the Connecticut bar who is also working on the pro bono representation.

(d) Registration

(1) Filing with the Bar Examining Committee. The bar examining committee shall investigate whether the applicant is at least eighteen years of age and is of good moral character, consistent with the requirement of Section 2-8 (3) regarding applicants for admission to the bar. In addition, the applicant shall file with the bar examining committee, and the committee shall consider, the following:

(A) a certificate from each entity governing the practice of law of a state or territory of the United States, or the District of Columbia or any foreign jurisdiction in which the applicant is licensed to practice law certifying that the applicant is a member in good standing;

(B) a sworn statement by the applicant:

(i) that the applicant has read and is familiar with the Connecticut Rules of Professional Conduct for attorneys and Chapter 2 (Attorneys) of the Superior Court Rules, General Provisions, and will abide by the provisions thereof;

(ii) that the applicant submits to the jurisdiction of the statewide grievance committee and the superior court for disciplinary purposes, and authorizes notification to or from the entity governing the practice of law of each state or territory of the United States, or the District of Columbia in which the applicant is licensed to practice law of any disciplinary action taken against the applicant;

(iii) listing any jurisdiction in which the applicant is now or ever has been licensed to practice law; and

(iv) disclosing any disciplinary sanction or pending proceeding pertaining or relating to his or her license to practice law including, but not limited to, reprimand, censure, suspension or disbarment, or whether the applicant has been placed on inactive status;

(C) a certificate from an organization certifying that it is qualified as set forth in subsection (b) (2); that it is aware that the applicant is not licensed to practice law in Connecticut; and that the applicant is employed or about to be employed in Connecticut by

the organization as set forth in subsection (b) (1) (D);

(D) an appropriate application pursuant to the regulations of the bar examining committee;

(E) remittance of a filing fee to the bar examining committee as prescribed and set by that committee; and

(F) an affidavit from each of two members of the Connecticut bar, who have each been licensed to practice law in Connecticut for at least five years, certifying that the applicant is of good moral character and that the applicant is employed or will be employed by an organization as defined above in subsection (b) (2).

(2) **Certification.** Upon recommendation of the bar examining committee, the court may certify the applicant as authorized house counsel and shall cause notice of such certification to be published in the Connecticut Law Journal.

(3) **Annual Client Security Fund Fee.** Individuals certified pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 of this chapter, including payment of the annual fee and shall pay any other fees imposed on attorneys by court rule.

(4) **Annual Registration.** Individuals certified pursuant to this section shall register annually with the statewide grievance committee in accordance with Sections 2-26 and 2-27 (d) of this chapter.

(e) Termination or Withdrawal of Registration

(1) Cessation of Authorization to Perform

Services. Authorization to perform services under this rule shall cease upon the earliest of the following events:

(A) the termination or resignation of employment with the organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another organization within thirty days of the termination or resignation, authorization to perform services under this rule shall continue upon the filing with the bar examining committee of a certificate as set forth in subsection (d) (1) (C);

(B) the withdrawal of registration by the authorized house counsel;

(C) the relocation of an authorized house counsel outside of Connecticut for a period greater than 180 consecutive days; or

(D) the failure of authorized house counsel to comply with any applicable provision of

this rule.

Notice of one of the events set forth in subsections (e) (1) (A) through (C) or a new certificate as provided in subsection (e) (1) (A) must be filed with the bar examining committee by the authorized house counsel within thirty days after such action. Failure to provide such notice by the authorized house counsel shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

(2) **Notice of Withdrawal of Authorization.** Upon receipt of the notice required by subsection (e) (1), the bar examining committee shall forward a request to the statewide bar counsel that the authorization under this chapter be revoked. Notice of the revocation shall be mailed by the statewide bar counsel to the authorized house counsel and the organization employing the authorized house counsel.

(3) **Reapplication.** Nothing herein shall prevent an individual previously authorized as house counsel to reapply for authorization as set forth in subsection (d).

(f) **Discipline**

(1) **Termination of Authorization by Court.** In addition to any appropriate proceedings and discipline that may be imposed by the statewide grievance committee, the superior court may, at any time, with cause, terminate an authorized house counsel's registration, temporarily or permanently.

(2) **Notification to Other States.** The statewide bar counsel shall be authorized to notify each entity governing the practice of law in the state or territory of the United States, or the District of Columbia, in which the authorized house counsel is licensed to practice law, of any disciplinary action against the authorized house counsel.

(g) **Transition**

(1) **Preapplication Employment in Connecticut.** The performance of an applicant's duties as an employee of an organization in Connecticut prior to the effective date of this rule shall not be grounds for the denial of registration of such applicant if application for registration is made within six months of the effective date of this rule.

(2) **Immunity from Enforcement Action.** An authorized house counsel who has been duly registered under this rule shall not be subject to enforcement action for the unlicensed practice of law for acting as counsel to an organization prior to the effective date of this rule.

COMMENTARY: The above change permits authorized house counsel to participate in

the provision of pro bono legal services in this state under certain circumstances.

Rule 5.5. Unauthorized Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The practice of law in this jurisdiction is defined in Practice Book Section 2-44A. Conduct described in subsections (c) and (d) in another jurisdiction shall not be deemed the unauthorized practice of law for purposes of this paragraph (a).

(b) A lawyer who is not admitted to practice in this jurisdiction, shall not:

(1) except as authorized by law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction which accords similar privileges to Connecticut lawyers in its jurisdiction, and provided that the lawyer is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction, that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, with respect to a matter that is substantially related to, or arises in, a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within subdivisions (c) (2) or (c) (3) and arise out of or are substantially related to the legal services provided to an existing client of the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted to practice in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) [are provided to the lawyer's employer or its organizational affiliates and the lawyer is an authorized house counsel as provided in Practice Book Section 2-15A;] the lawyer is authorized to provide pursuant to Practice Book Section 2-15A and the lawyer is an authorized house counsel as provided in that section; or

(2) the lawyer is authorized by federal or other law to provide in this jurisdiction.

(e) A lawyer not admitted to practice in this jurisdiction and authorized by the provisions of this Rule to engage in providing legal services on a temporary basis in this jurisdiction is thereby subject to the disciplinary rules of this jurisdiction with respect to the activities in this jurisdiction.

(f) A lawyer desirous of obtaining the privileges set forth in subsections (c) (3) or (4), (1) shall notify the statewide bar counsel as to each separate matter prior to any such representation in Connecticut, (2) shall notify the statewide bar counsel upon termination of each such representation in Connecticut, and (3) shall pay such fees as may be prescribed by the Judicial Branch.

(P.B. 1978-1997, Rule 5.5.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect Jan. 1, 2003; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

COMMENTARY: A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Subsection (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person.

A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates subsection (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may

be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 (a) and 7.5 (b). A lawyer not admitted to practice in this jurisdiction who engages in repeated and frequent activities of a similar nature in this jurisdiction such as the preparation and/or recording of legal documents (loans and mortgages) involving residents or property in this state may be considered to have a systematic and continuous presence in this jurisdiction which would not be authorized by this Rule and could thereby be considered to constitute unauthorized practice of law.

There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Subsection (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of subdivisions (d) (1) and (d) (2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction and may, therefore, be permissible under subsection (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subsection (c) applies to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in subsection (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who, while technically admitted, is not authorized to practice, because, for example, the lawyer is in an inactive status.

Subdivision (c) (1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this subdivision to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the

client.

Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under subdivision (c) (2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

Subdivision (c) (2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, subdivision (c) (2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

Subdivision (c) (3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed

arbitration or mediation or otherwise if court rules or law so require. Subdivision (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction if they arise out of or are substantially related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within subdivisions (c) (2) or (c) (3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Subdivision (c) (3) requires that the services be with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is admitted to practice. A significant aspect of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities and the resulting legal issues involve multiple jurisdictions. Subdivision (c) (4) requires that the services provided in this jurisdiction in which the lawyer is not admitted to practice be for (1) an existing client, i.e., one with whom the lawyer has a previous relationship and not arising solely out of a Connecticut-based matter and (2) arise out of or be substantially related to the legal services provided to that client in a jurisdiction in which the lawyer is admitted to practice. Without both, the lawyer is prohibited from practicing law in the jurisdiction in which the lawyer is not admitted to practice.

Subdivision (d) (2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

A lawyer who practices law in this jurisdiction pursuant to subsections (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5 (a).

In some circumstances, a lawyer who practices law in this jurisdiction pursuant to subsections (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction.

Subsections (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions.

AMENDMENT NOTE: The above change is pursuant to the revision to Section 2-15A,

which permits authorized house counsel to participate in the provision of *pro bono* legal services in this state under certain circumstances.

APPENDIX E (102411 mins)

Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear

(a) Except as provided in subsection (b), if no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a nonsuit or default be entered for failure to appear.

(b) In an action commenced by a mortgagee prior to July 1, [2012] 2014, for the foreclosure of (i) a mortgage on residential real property consisting of a one to four-family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, or (ii) a mortgage on real property owned by a religious organization with a return date during the period from October 1, 2011, to June 30, 2014, inclusive, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to the action may make a motion that a default be entered for failure to appear.

(c) It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(d) Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk not less than seven days from the filing of the motion and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.

(e) A motion for nonsuit for failure to appear shall be placed on the short calendar. If it is proper to grant the motion, the judicial authority shall grant it without the need for the

moving party to appear at the short calendar.

(f) The granting of a motion for nonsuit for failure to appear or a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto or (2) a statement, with reasons therefore, that it is not necessary to attach a military affidavit to the motion.

COMMENTARY: The amendment to subsection (b) reflects the extension of the foreclosure mediation program by P.A. 11-201.

Sec. 13-4. — Experts

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

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

(1) Except as provided in subdivision (2) of this subsection, the field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; and the substance of the grounds for each such expert opinion. Disclosure of the information required under this subsection may be made by making reference in the disclosure to, and contemporaneously producing to all parties, a written report of the expert witness containing such information. The parties shall not file the expert's written report with the court.

(2) If the witness to be disclosed hereunder is a health care provider who rendered care or treatment to the plaintiff, and the opinions to be offered hereunder are based upon that provider's care or treatment, then the disclosure obligations under this section may be satisfied by disclosure to the parties of the medical records and reports of such care or treatment. A witness disclosed under this subsection shall be permitted to offer expert opinion testimony at trial as to any opinion as to which fair notice is given in the disclosed medical records or reports. Expert testimony regarding any opinion as to which fair notice is not given in the disclosed medical records or reports must be disclosed in accordance with subdivision (1) of subsection (b) of this section. The parties shall not file the disclosed medical records or disclosed medical reports with the court.

(3) Except for an expert witness who is a health care provider who rendered care or treatment to the plaintiff, or unless otherwise ordered by the judicial authority or agreed upon by the parties, the party disclosing an expert witness shall, upon the request of an opposing party, produce to all other parties all materials obtained, created and/ or relied upon by the

expert in connection with his or her opinions in the case within fourteen days prior to that expert's deposition or within such other time frame determined in accordance with the Schedule for Expert Discovery prepared pursuant to subsection (g) of this section. If any such materials have already been produced to the other parties in the case, then a list of such materials, made with sufficient particularity that the materials can be easily identified by the parties, shall satisfy the production requirement hereunder with respect to those materials. If an expert witness otherwise subject to this subsection is not being compensated in that capacity by or on behalf of the disclosing party, then that party may give written notice of that fact in satisfaction of the obligations imposed by this subsection. If such notice is provided, then it shall be the duty of the party seeking to depose such expert witness to obtain the production of the requested materials by subpoena or other lawful means.

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

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

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

upon motion.

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

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

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

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

(f) A party may discover facts known or opinions held by an expert who had been

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

(g) Unless otherwise ordered by the judicial authority, or otherwise agreed by the parties, the following schedule shall govern the expert discovery required under subsections (b), (c), (d) and (e) of this section.

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

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

(3) Unless otherwise ordered by the court, disclosure of any expert witness under subsection (e) hereof shall be made within thirty days of the event giving rise to the need for that party to adopt the expert disclosure as its own (e.g., the withdrawal or dismissal of the party originally disclosing the expert).

(4) The parties, by agreement, may modify the approved Schedule for Expert Discovery or any other time limitation under this section so long as the modifications do not interfere with an assigned trial date. A party who wishes to modify the approved Schedule for Expert Discovery or other time limitation under this section without agreement of the parties may file a motion for modification with the court stating the reasons therefor. Said motion shall be

granted if (i) the requested modification will not cause undue prejudice to any other party; (ii) the requested modification will not cause undue interference with the trial schedule in the case; and (iii) the need for the requested modification was not caused by bad faith delay of disclosure by the party seeking modification.

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

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

COMMENTARY: The above revision makes clear that experts' written reports, including medical reports and reports involving trade secrets, for example, are not to be attached to the experts' disclosure.

[Sec. 1-11D. Pilot Program to Increase Public Access to Child Protection Proceedings

(a) Pursuant to this section, the chief court administrator shall establish a pilot program to increase public access to trial proceedings in juvenile matters in which a child is alleged to be uncared for, neglected, abused or dependent or is the subject of a petition for termination of parental rights, except as otherwise provided by law or as hereinafter precluded or limited, and subject to the limitations set forth in Sections 1-10B and 32a-7 and General Statutes § 46b-124. The pilot program shall be in a single district or session of the superior court for juvenile matters, to be chosen by the chief court administrator based on the following considerations:

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

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

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

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

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

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

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

(d) Upon written motion of any party, guardian ad litem, witness or other interested

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

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

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

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

(g) Notwithstanding the confidentiality of the motion to deny or limit public access, the accompanying memorandum, and all memoranda of law and other written submissions in support of or in opposition to the motion, the hearing on the motion shall be conducted in open court. Any person whose rights may be affected by the granting or denial of the motion, including any media representative, may attend and be heard at the hearing in the manner permitted by the judicial authority, but shall not be allowed intervening party status. The hearing shall be conducted by the judicial authority in a manner consistent with maintaining the confidentiality of the records of the underlying proceeding and protecting the interests for which denial or limitation of public access has been sought. At the conclusion of the hearing, the judicial authority shall announce its ruling on the motion in open court. If and to the extent that the judicial authority determines that public access to the trial proceeding should be denied or limited in any way, it shall articulate the good cause upon which it finds that such relief is necessary, shall specify the facts upon which it bases that finding, and shall order that a transcript of its decision become a part of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. If, however, and to the extent that it further determines that any such articulation of good cause or specification of factual findings would reveal information that any interested person is entitled to keep confidential, then the judicial authority shall make such articulation and specification in a signed writing, which shall be filed with the court and become part of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. The decision shall be final.

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

(i) The Rules Committee shall evaluate the efficacy of this section on or before

December 31, 2010, and shall receive recommendations from the chief court administrator, the juvenile access pilot program advisory board and other sources.]

COMMENTARY: The repeal of the above rule is in light of Section 30 and 225 of Public Act 11-51, which repeal C.G.S. § 46b-122(b), which established the Juvenile Access Pilot Program and the Juvenile Access Pilot Program Advisory Board.