

**Practice Book Revisions
Being Considered by the
Rules Committee of the Superior Court**

**Superior Court Rules
Rules of Professional Conduct
Forms**

Including Commentaries to Proposals

April 30, 2013

NOTICE

Public Hearing on Practice Book Revisions Being Considered by the Rules Committee of the Superior Court

Notice is hereby given that on May 20, 2013, at 10:00 a.m. the Rules Committee of the Superior Court will conduct a public hearing in the Supreme Court in Hartford for the purpose of receiving comments concerning the following Practice Book revisions which are being considered by the Committee. These proposed revisions have also been posted on the Judicial Branch website at <http://www.jud.ct.gov>.

In addition, written comments may be forwarded to the Rules Committee at the following address:

Rules Committee of the Superior Court
Attn: Carl E. Testo, Counsel
P.O. Box 150474
Hartford, CT 06115-0474

Written comments must be received by May 16, 2013.

Each speaker at the public hearing will be limited to five minutes. Anyone who believes that they cannot cover their remarks within that time period may submit written comments to the Rules Committee. If written comments are submitted, ten copies should be provided.

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

Hon. Dennis G. Eveleigh
Chairman, Rules Committee

INTRODUCTION

Contained herein are amendments that are being considered to the Practice Book. These amendments are

indicated by brackets for deletions and underlines for added language. The designation “NEW” is printed with the title of each proposed new rule and form.

Rules Committee of the Superior Court

PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.0. Terminology

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Client” or “person” as used in these Rules includes an authorized representative unless otherwise stated.

(c) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See subsection (f) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(e) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(h) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(i) “Reasonable” or “reasonably,” when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(j) “Reasonable belief” or “reasonably believes,” when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) “Reasonably should know,” when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) “Substantial,” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(n) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence

or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and [e-mail] electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENTARY: Confirmed in Writing. If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm. Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the

Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud. When used in these Rules, the terms “fraud” or “fraudulent” refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent. Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a

client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently

represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of "writing" and "confirmed in writing," see subsections (o) and (c). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) and (g). For a definition of "signed," see subsection (o).

Screened. The definition of "screened" applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer shall acknowledge in writing to the client the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be

appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other [materials] information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other [materials] information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENTARY: Legal Knowledge and Skill. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is

that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest. A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and

procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2 (c).

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (f), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENTARY: Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client. If these Rules or other law require that a particular decision about the representation be made by the client, subsection (a) (1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action. See Rule 1.2 (a).

Subsection (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, subsection (a) (3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a) (4) requires

prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. [Client telephone calls should be promptly returned or acknowledged.] A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0 (f).

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard

may be impracticable, for example, when the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information. In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4 (3) directs compliance with such rules or orders.

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred. In any representation in which the lawyer and the client agree that the lawyer will file a limited appearance, the limited appearance engagement agreement shall also include the following: identification of the proceeding in which the lawyer will file the limited appearance; identification of the court events for which the lawyer will appear on behalf of the client; and notification to the client that after the limited appearance services have been completed, the lawyer will file a Certificate of

Completion of Limited Appearance with the Court, which will serve to terminate the lawyer's obligation to the client in the matter, and as to which the client will have no right to object. Any change in the scope of the representation requires the client's informed consent, shall be confirmed to the client in writing, and shall require the lawyer to file a new limited appearance with the court reflecting the change(s) in the scope of representation. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subsection (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages of the recovery that shall accrue to the lawyer as a fee in the event of settlement, trial or appeal, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or civil union or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and

(2) The total fee is reasonable.

COMMENTARY: **Basis or Rate of Fee.** Subsection (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Subsection (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

When the lawyer has regularly represented a client, the lawyer and the client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client

with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. Absent extraordinary circumstances the lawyer should send the written fee statement to the client before any substantial services are rendered, but in any event not later than ten days after commencing the representation.

Contingent fees, like any other fees, are subject to the reasonableness standard of subsection (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters. In matters where a contingent fee agreement has been signed by the client and is in accordance with General Statutes § 52-251c, the fee is presumed to be reasonable.

Terms of Payment. A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing

this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees. Subsection (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee. A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the

same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Contingent fee agreements must be in writing signed by the client and must otherwise comply with subsection (c) of this Rule. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

Subsection (e) does not prohibit or regulate divisions of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees. If an arbitration or mediation procedure such as that in Practice Book Section 2-32 (a) (3) has been established for resolution of fee disputes, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

AMENDMENT NOTE: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).

(b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm.

(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to:

(1) Prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another;

(2) Prevent, mitigate or rectify the consequence of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used;

(3) Secure legal advice about the lawyer's compliance with these Rules;

(4) Comply with other law or a court order.

(5) Detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(d) A lawyer may reveal such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal

charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

COMMENTARY: This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9 (c) (2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8 (b) and 1.9 (c) (1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0 (f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon

experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of client-lawyer confidentiality is given effect by related bodies of law, the attorney-client privilege, the work product doctrine and the Rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The Rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality Rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

Subsection (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure. Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client

when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specific lawyers.

Disclosure Adverse to Client. Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality Rule is subject to limited exceptions. Subsection (b) recognizes the overriding value of life and physical integrity and requires disclosure in certain circumstances.

Subsection (c) (1) is a limited exception to the Rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0 (e), that is likely to result in substantial injury to the financial or property interests of another. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (c) (1) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2 (d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such

circumstances, and Rule 1.13 (c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

Subsection (c) (2) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subsection (c) (2) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subsection (c) (3) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. The lawyer's right to disclose such information to a second lawyer pursuant to subsection (c) (3) does not give the second lawyer the duty or right to disclose such information under subsections (b), (c) and (d). The first lawyer's client does not become the client of the second lawyer just because the first lawyer seeks the second lawyer's advice under (c) (3).

Subsection (c) (5) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, subsection (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules. Any information disclosed pursuant to subsection (c) (5) may be used

or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Subsection (c) (5) does not restrict the use of information acquired by means independent of any disclosure pursuant to subsection (c) (5). Subsection (c) (5) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Subsection (d) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

A lawyer entitled to a fee is permitted by subsection (d) to prove the services rendered in an action to collect it. This aspect

of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, subsection (c) (4) permits the lawyer to make such disclosures as are necessary to comply with the law.

A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, subsection (c) (4) permits the lawyer to comply with the court's order.

Subsection (b) requires and subsection (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for

disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Subsection (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (c) (1) through (c) (4). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by subsection (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by subsection (b). See Rules 1.2 (d), 4.1 (b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3 (c).

Acting Competently to Preserve Confidentiality.

Subsection (c) requires a [A] lawyer [must] to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules

1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of subsection (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Official Commentary.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable

expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client. The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9 (c) (2). See Rule 1.9 (c) (1) for the prohibition against using such information to the disadvantage of the former client.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

The Rule in subsection (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be

disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The Rule in subsection (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does subsection (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0 (k) and 5.3.

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

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

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

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

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

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

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

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

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

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

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in subsection (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) The representation will result in violation of the Rules of Professional Conduct or other law;
- (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) The lawyer is discharged.

(b) Except as stated in subsection (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.

COMMENTARY: A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed upon assistance has been concluded. See Rules 1.2 (c) and 6.5. See also Rule 1.3, Commentary.

Mandatory Withdrawal. A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the

hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Withdrawal of Limited Appearance. When the lawyer has filed a limited appearance under Practice Book Section 3-8 (b) and the lawyer has completed the representation described in the limited appearance the lawyer is not required to obtain permission of the tribunal to terminate the representation before filing the certificate of completion.

Discharge. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority

that appointment of successor counsel is unjustified, thus requiring the client to represent himself or herself.

If the client has diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Assisting the Client upon Withdrawal. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.5.

Confirmation in Writing. A written statement to the client confirming the termination of the relationship and the basis of the termination reduces the possibility of misunderstanding the status of the relationship. The written statement should be sent to the client before or within a reasonable time after the termination of the relationship.

AMENDMENT NOTE: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in Connecticut;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller. The requirement that all of the private practice, or all of an area of practice, be sold

is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation.

The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17 (a).

This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5 (e). For example, a lawyer with a substantial number of estate planning matters and a

substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice. Negotiations between a seller and a prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6 (c) (5). Providing the purchaser access to [client-specific] detailed information relating to the representation, [and to] such as the

client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and must be told that the decision to consent or make other arrangements must be made within ninety days. If nothing is heard from the client within that time, consent to the sale is presumed.

A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. This procedure is contemplated as an in camera review of privileged materials.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements between Client and Purchaser. The sale may not be financed by increases in fees charged exclusively to the clients of the purchased practice. Existing agreements

between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0 [f] for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule. This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar

arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. An otherwise unrepresented party for whom a limited appearance has been filed pursuant to Practice Book Section 3-8(b) is considered to be unrepresented for purposes of this rule as to anything other than the subject matter of the limited appearance. When a limited appearance has been filed for the party, and served on the other lawyer, or the other lawyer is otherwise notified that a limited appearance has been filed or will be filed, that lawyer may directly communicate with the party only about matters outside the scope of the limited appearance without consulting with the party's limited appearance lawyer.

COMMENTARY: This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also,

parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. (Compare Rule 3.4 [6]).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

AMENDMENT NOTE: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, in whole or in part, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer

knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

COMMENTARY: An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13 (d).

The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of

a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

See Rule 3.8 for particular duties of prosecutors in dealing with unrepresented persons.

AMENDMENT NOTE: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

COMMENTARY: Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such

rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subsection (b) recognizes that lawyers sometimes receive a document[s] or electronically stored information that [were] was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privilege status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, “document or electronically stored information” includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is [e-mail or other electronic modes of transmission] subject to being read or put into readable form. Metadata in electronic documents creates an

obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

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

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

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

(c) Upon recommendation by the Rules Committee, the judges of the superior court may, by vote at a meeting or by mail vote as set forth in subsection (d), waive the provisions of

subsection (b) if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously, provided that the adoption of any rules or changes in existing rules in connection with such waiver shall be on an interim basis until a public hearing has been held and the judges have thereafter acted on such revisions and such action has become effective. With respect to such rules adopted on an interim basis the judges shall prescribe the effective date thereof following publication in the Connecticut Law Journal.

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

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

Sec. 1-10B. Media Coverage of Court Proceedings; In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court should be allowed subject to the limitations set out in this section and in Sections 1-11A through 1-11C, inclusive.

(b) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

(1) Family relations matters as defined in General Statutes

§ 46b-1;

(2) Juvenile matters as defined in General Statutes § 46b-

121;

(3) Proceedings involving sexual assault;

(4) Proceedings involving trade secrets;

(5) In jury trials, all proceedings held in the absence of the

jury unless the trial court determines that such coverage does not create a risk to any party's rights or other fair trial risks under the circumstances;

(6) Proceedings which must be closed to the public to

comply with the provisions of state law;

(7) Any proceeding that is not held in open court on the

record.

(c) No broadcasting, televising, recording or photographic

equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting, televising, recording or photographing

of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or

photographing of the process of jury selection nor of any juror.

COMMENTARY: The Judicial Branch may provide, at its

discretion, within a court facility, a contemporaneous closed-circuit video transmission of any court proceeding for the benefit of media or other spectators, and such a transmission shall not be considered broadcasting or televising by the media under this rule.

Sec. 2-11A. Appeal from Decision of Bar Examining Committee concerning Conditions of Admission

(a) A decision by the bar examining committee prescribing conditions for admission to the bar under Section 2-9 (b) or on an application to remove or modify conditions of admission under Section 2-11 (a) may be appealed to the superior court by the bar applicant or attorney who is the subject of the decision. Within thirty days from the issuance of the decision of the bar examining committee, the appellant shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested or with electronic delivery confirmation, to the office of the statewide bar counsel and to the office of the director of the bar examining committee as agent for the bar examining committee. The statewide bar counsel shall be considered a party for purposes of defending an appeal under this section.

(b) The filing of an appeal shall not, of itself, stay enforcement of the bar examining committee's decision. An application for a stay may be made to the bar examining committee, to the court or to both. Filing of an application with the bar examining committee shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(c) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the director of the bar examining committee shall transmit to the reviewing court a certified copy of the entire record of the proceeding appealed from, which shall include a transcript of any testimony heard by the bar examining committee and the decision of the bar examining committee. By stipulation of all parties to

such appeal proceedings, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(d) The appellant shall file a brief within thirty days after the filing of the record by the bar examining committee. The appellee shall file its brief within thirty days of the filing of the appellant's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

(e) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the bar examining committee are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument.

(f) Upon appeal, the court shall not substitute its judgment for that of the bar examining committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the appellant have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions, rules of practice or statutory provisions; (2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, rescind the action of the bar examining committee or take such other

action as may be necessary. For purposes of further appeal, the action taken by the superior court hereunder is a final judgment.

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide bar counsel in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the bar examining committee, except that the court may, in its discretion, award to the appellant reasonable fees and expenses if the court determines that the action of the bar examining committee was undertaken without any substantial justification. “Reasonable fees and expenses” means any expenses not in excess of \$7500 which the court finds were reasonably incurred in opposing the committee’s action, including court costs, expenses incurred in administrative proceedings, attorney’s fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

(h) All information relating to the conditional admission of an attorney, including information submitted in connection with the appeal under this section, shall be confidential unless otherwise ordered by the court.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 2-20. —Disciplinary Provisions regarding Foreign Legal Consultants

(a) Every person licensed to practice as a foreign legal consultant under these rules:

(1) shall be subject to the Connecticut Rules of Professional Conduct and to the rules of practice regulating the conduct of attorneys in this state to the extent applicable to the legal services authorized under these rules, and shall be subject to reprimand, suspension, or revocation of license to practice as a foreign legal consultant by the court;

(2) shall execute and file with the clerk, in such form and manner as the court may prescribe:

(A) a written commitment to observe the Connecticut Rules of Professional Conduct and other rules regulating the conduct of attorneys as referred to in subsection (a) (1) of this section,

(B) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the foreign legal consultant's proper professional conduct and responsibility,

(C) a duly acknowledged instrument in writing setting forth the foreign legal consultant's address in the state of Connecticut or United States, and designating the clerk of the superior court for the judicial district of Hartford at Hartford as his or her agent upon whom process may be served. Such service shall have the same effect as if made personally upon the foreign legal consultant, in any action or proceeding thereafter brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of the state of Connecticut, and

(3) a written commitment to notify the clerk of the foreign legal consultant's resignation from practice in the foreign country of his or her admission or in any other state or jurisdiction in which

said person has been admitted to practice law, or of any censure, reprimand, suspension, revocation or other disciplinary action relating to his or her right to practice in such country, state or jurisdiction.

(b) Service of process on the clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, at the clerk's office, duplicate copies of such process together with a fee of \$20. Service of process shall be complete when the clerk has been so served. The clerk shall promptly send one of the copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested or with electronic delivery confirmation, addressed to the foreign legal consultant at the address given to the court by the foreign legal consultant as aforesaid.

(c) In imposing any sanction authorized by subsection (a)(1), the court may act sua sponte or on the recommendation of the statewide grievance committee. To the extent feasible, the court shall proceed in a manner consistent with the rules of practice governing discipline of the bar of the state of Connecticut.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 2-32. Filing Complaints against Attorneys; Action; Time Limitation

(a) Any person, including disciplinary counsel, or a grievance panel on its own motion, may file a written complaint,

executed under penalties of false statement, alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint the statewide bar counsel shall review the complaint and process it in accordance with subdivisions (1), (2) or (3) of this subsection as follows:

(1) forward the complaint to a grievance panel in the judicial district in which the respondent maintains his or her principal office or residence, provided that, if the respondent does not maintain such an address in this state, the statewide bar counsel shall forward the complaint to any grievance panel; and notify the complainant and the respondent, by certified mail with return receipt or with electronic delivery confirmation, of the panel to which the complaint was sent. The notification to the respondent shall be accompanied by a copy of the complaint. The respondent shall respond within thirty days of the date notification is mailed to the respondent unless for good cause shown such time is extended by the grievance panel. The response shall be sent to the grievance panel to which the complaint has been referred. The failure to file a timely response shall constitute misconduct unless the respondent establishes that the failure to respond timely was for good cause shown;

(2) refer the complaint to the chair of the statewide grievance committee or an attorney designee of the chair and to a nonattorney member of the committee, and the statewide bar counsel in conjunction with the chair or attorney designee and the nonattorney member, shall if deemed appropriate, dismiss the complaint on one or more of the following grounds:

(A) the complaint only alleges a fee dispute and not a clearly excessive or improper fee;

(B) the complaint does not allege facts which, if true, would constitute a violation of any provision of the applicable rules governing attorney conduct;

(C) the complaint does not contain sufficient specific allegations on which to conduct an investigation;

(D) the complaint is duplicative of a previously adjudicated complaint;

(E) the complaint alleges that the last act or omission constituting the alleged misconduct occurred more than six years prior to the date on which the complaint was filed;

(i) Notwithstanding the period of limitation set forth in this subparagraph, an allegation of misconduct that would constitute a violation of Rule 1.15, 8.1 or 8.4 (2) through (6) of the Rules of Professional Conduct may still be considered as long as a written complaint is filed within one year of the discovery of such alleged misconduct.

(ii) Each period of limitation in this subparagraph is tolled during any period in which: (1) the alleged misconduct remains undiscovered due to active concealment; (2) the alleged misconduct would constitute a violation of Rule 1.8 (c) and the conditions precedent of the instrument have not been satisfied; (3) the alleged misconduct is part of a continuing course of misconduct; or (4) the aggrieved party is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation.

(F) the complaint alleges misconduct occurring in a superior court, appellate court or supreme court action and the

court has been made aware of the allegations of misconduct and has rendered a decision finding misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the statewide grievance committee;

(G) the complaint alleges personal behavior outside the practice of law which does not constitute a violation of the Rules of Professional Conduct;

(H) the complaint alleges the nonpayment of incurred indebtedness;

(I) the complaint names only a law firm or other entity and not any individual attorney, unless dismissal would result in gross injustice. If the complaint names a law firm or other entity as well as an individual attorney or attorneys, the complaint shall be dismissed only as against the law firm or entity;

(J) the complaint alleges misconduct occurring in another jurisdiction in which the attorney is also admitted and in which the attorney maintains an office to practice law, and it would be more practicable for the matter to be determined in the other jurisdiction. If a complaint is dismissed pursuant to this subdivision, it shall be without prejudice and the matter shall be referred by the statewide bar counsel to the jurisdiction in which the conduct is alleged to have occurred.

(3) If a complaint alleges only a fee dispute within the meaning of subsection (a) (2) (A) of this section, the statewide bar counsel in conjunction with the chairperson or attorney designee and the nonattorney member may stay further proceedings on the complaint on such terms and conditions deemed appropriate, including referring the parties to fee arbitration. The record and result of any such fee arbitration shall be filed with the statewide

bar counsel and shall be dispositive of the complaint. A party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(b) The statewide bar counsel, chair or attorney designee and nonattorney member shall have fourteen days from the date the complaint was filed to determine whether to dismiss the complaint. If after review by the statewide bar counsel, chair or attorney designee and nonattorney member it is determined that the complaint should be forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section, the complaint shall be so forwarded in accordance with subsection (a) (1) of this section within seven days of the determination to forward the complaint.

(c) If the complaint is dismissed by the statewide bar counsel in conjunction with the chair or attorney designee and nonattorney member, the complainant and respondent shall be notified of the dismissal in writing. The respondent shall be provided with a copy of the complaint with the notice of dismissal. The notice of dismissal shall set forth the reason or reasons for the dismissal. The complainant shall have fourteen days from the date notice of the dismissal is mailed to the complainant to file an appeal of the dismissal. The appeal shall be in writing setting forth the basis of the appeal and shall be filed with the statewide bar counsel who shall forward it to a reviewing committee for decision on the appeal. The reviewing committee shall review the appeal and render a decision thereon within sixty days of the filing of the appeal. The reviewing committee shall either affirm the dismissal of the complaint or order the complaint forwarded to a grievance panel for investigation in accordance with subsections (f) through

(j) of this section. The decision of the reviewing committee shall be in writing and mailed to the complainant. The decision of the reviewing committee shall be final.

(d) The statewide bar counsel shall keep a record of all complaints filed. The complainant and the respondent shall notify the statewide bar counsel of any change of address or telephone number during the pendency of the proceedings on the complaint.

(e) If for good cause a grievance panel declines, or is unable pursuant to Section 2-29 (d), to investigate a complaint, it shall forthwith return the complaint to the statewide bar counsel to be referred by him or her immediately to another panel. Notification of such referral shall be given by the statewide bar counsel to the complainant and the respondent by certified mail with return receipt or with electronic delivery confirmation.

(f) The grievance panel, with the assistance of the grievance counsel assigned to it, shall investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct. The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

(g) Investigations and proceedings of the grievance panel shall be confidential unless the attorney under investigation requests that such investigation and proceedings be public.

(h) On the request of the respondent and for good cause shown, or on its own motion, the grievance panel may conduct a hearing on the complaint. The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided,

however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

(i) The panel shall, within one hundred and ten days from the date the complaint was referred to it, unless such time is extended pursuant to subsection (j), do one of the following: (1) If the panel determines that probable cause exists that the respondent is guilty of misconduct, it shall file the following with the statewide grievance committee and with the disciplinary counsel: (A) its written determination that probable cause exists that the respondent is guilty of misconduct, (B) a copy of the complaint and response, (B) a transcript of any testimony heard by the panel, (D) a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. (2) If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it shall dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime. Such dismissal shall be final and there shall be no review of the matter by the statewide grievance committee, but the panel shall file with the statewide grievance committee a copy of its decision dismissing the complaint and the materials set forth in subsection (i) (1) (B), (C) and (D). In cases in which there is an allegation in the complaint that the respondent committed a crime, the panel shall file with the statewide grievance committee and with disciplinary counsel its written determination that no probable cause exists and the materials set forth in subsection (i) (1) (B), (C) and (D). These materials shall constitute the panel's record in the case.

(j) The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the statewide grievance committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee.

(k) The panel shall notify the complainant, the respondent, and the statewide grievance committee of its determination. The determination shall be a matter of public record if the panel determines that probable cause exists that the respondent is guilty of misconduct.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 2-38. Appeal from Decision of Statewide Grievance Committee or Reviewing Committee Imposing Sanctions or Conditions

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee imposing sanctions or conditions against the respondent, in accordance with Section 2-37 (a). A respondent may not appeal a decision by a reviewing committee imposing sanctions or conditions against the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the

statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested or with electronic delivery confirmation, to the office of the statewide bar counsel as agent for the statewide grievance committee and to the office of the chief disciplinary counsel.

(b) Enforcement of a final decision by the statewide grievance committee imposing sanctions or conditions against the respondent pursuant to Section 2-35 (i), including the publication of the notice of a reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. Enforcement of a decision by a reviewing committee imposing sanctions or conditions against the respondent, including the publication of the notice of a reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g). If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision imposing sanctions or conditions against the respondent is rescinded, the complaint shall be deemed dismissed as of the

date of the decision imposing sanctions or conditions against the respondent. An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

(c) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the statewide bar counsel shall transmit to the reviewing court a certified copy of the entire record of the proceeding appealed from, which shall include the grievance panel's record in the case, as defined in Section 2-32 (i), and a copy of the statewide grievance committee's record or the reviewing committee's record in the case, which shall include a transcript of any testimony heard by it or by a reviewing committee which is required by rule to be on the record, any decision by the reviewing committee in the case, any requests filed pursuant to Section 2-35 (g) of this section, and a copy of the statewide grievance committee's decision on the request for review. By stipulation of all parties to such appeal proceedings, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the statewide grievance committee or reviewing committee are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument.

(e) The respondent shall file a brief within thirty days after the filing of the record by the statewide bar counsel. The

disciplinary counsel shall file his or her brief within thirty days of the filing of the respondent's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

(f) Upon appeal, the court shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions, rules of practice or statutory provisions;(2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, rescind the action of the statewide grievance committee or take such other action as may be necessary. For purposes of further appeal, the action taken by the superior court hereunder is a final judgment.

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide grievance committee in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the statewide grievance committee, except that the court may, in its discretion, award to the respondent reasonable fees and expenses if the court determines that the action of the

committee was undertaken without any substantial justification. “Reasonable fees and expenses” means any expenses not in excess of \$7500 which the court finds were reasonably incurred in opposing the committee’s action, including court costs, expenses incurred in administrative proceedings, attorney’s fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 2-41. Discipline of Attorneys Convicted of a Felony and Other Matters in Another Jurisdiction

(a) An attorney shall send to the disciplinary counsel written notice of his or her conviction in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined within ten days of the entry of the judgment of conviction. That written notice shall be sent by certified mail, return receipt requested or with electronic delivery confirmation.

(b) The term “conviction” as used herein refers to the disposition of any charge of a serious crime as hereinafter defined resulting from either a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(c) The term “serious crime” as used herein shall mean any felony or any larceny as defined in the jurisdiction in which the attorney was convicted or any crime for which the attorney was

sentenced to a term of incarceration or for which a suspended period of incarceration or a period of probation was imposed.

(d) The written notice required by subsection (a) of this section shall include the name and address of the court in which the judgment of conviction was entered, the date of the judgment of conviction, and the specific section of the applicable criminal or penal code upon which the conviction is predicated.

(e) Upon receipt of the written notice of conviction the disciplinary counsel shall obtain a certified copy of the attorney's judgment of conviction, which certified copy shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney on the basis of the conviction. Upon receipt of the certified copy of the judgment of conviction, the disciplinary counsel shall file a presentment against the attorney with the superior court for the judicial district wherein the attorney maintains an office for the practice of law in this state, except that, if the attorney has no such office, the disciplinary counsel shall file it with the superior court for the judicial district of Hartford. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less. The sole issue to be determined in the presentment proceeding shall be the extent of the final discipline to be imposed, provided that the presentment proceeding instituted will not be brought to hearing until all appeals from the conviction are concluded unless the attorney requests that the matter not be deferred. The disciplinary counsel shall also apply to the court for an order of immediate interim suspension, which application shall contain the certified copy of

the judgment of conviction. The court may in its discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the judgment of conviction. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension. Whenever the court enters an order suspending or disbaring an attorney pursuant to this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.

(f) If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(g) An attorney's failure to send the written notice required by this section shall constitute misconduct.

(h) No entry fee shall be required for proceedings hereunder.

(i) Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a serious crime as defined herein is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) [No application for reinstatement or readmission shall be considered by the court unless the applicant, among other things, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal.] An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for

reinstatement in accordance with this section, unless the court that imposed the discipline expressly provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement pursuant to this section, unless otherwise ordered by the court at the time the discipline was imposed.

(b) [The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.] An attorney who was disbarred or resigned shall be required to apply for reinstatement pursuant to this section, but shall not be eligible to do so until after five years from the effective date of disbarment or acceptance by the court of the resignation, unless the court that imposed the discipline expressly provided a shorter period of disbarment or resignation in its order. No attorney who has resigned from the bar and waived the privilege of applying for readmission or reinstatement to the bar at any future time shall be eligible to apply for readmission or reinstatement to the bar under this rule.

(c) [The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief

justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.】 In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the effective date of the disbarment. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated, including but not limited to restitution to the client security fund for all claims paid resulting from the attorney's dishonest misconduct.

(d) 【The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.】 Unless otherwise ordered by the court, an application for reinstatement shall not be filed until:

(1) The applicant is in compliance with Sections 2-27(d), 2-70 and 2-80;

(2) The applicant is no longer the subject of any pending disciplinary proceedings or investigations;

(3) The applicant has passed the Multistate Professional Responsibility Examination not more than six months prior to the filing of the application;

(4) The applicant has successfully completed any criminal sentence including, but not limited to, a sentence of incarceration, probation, parole, supervised release, or period of sex offender registration and has fully complied with any orders regarding conditions, restitution, criminal penalties or fines;

(5) The applicant has fully complied with all conditions imposed pursuant to the order of discipline. If an applicant asserts that a certain disciplinary condition is impossible to fulfill, he or she must apply to the court that ordered the condition for relief from that condition prior to filing an application for reinstatement;

(6) The bar examining committee has received an application fee. The fee shall be established by the chief court administrator and shall be expended in the manner provided by Section 2-22 of these rules.

(e) [The applicant shall pay to the bar examining committee \$200 and shall submit proof of such payment to the clerk of the superior court at the time the application is filed with the court. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.] An application for reinstatement shall be filed with the clerk of the superior court in the jurisdiction that issued the discipline. The application shall be filed under oath and on a form approved by the office of the chief court administrator. The application shall be accompanied by proof of payment of the application fee to the bar examining committee.

(f) [An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be

required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.】 The application shall be referred by the clerk of the superior court where it is filed to the chief justice or designee, who shall refer the matter to a standing committee on recommendations for admission to the bar whose members do not maintain their primary office in the same judicial district as the applicant.

(g) 【In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.】 The clerk of the superior court shall give notice of the pendency of the application to the state's attorney of that court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The clerk shall also promptly publish notice on the judicial branch website, in the Connecticut Law

Journal, and in a newspaper with substantial distribution in the judicial district where the application was filed.

(h) Within sixty days of the referral from the chief justice to a standing committee, the statewide grievance committee and the office of the chief disciplinary counsel shall file a report with the standing committee, which report may include additional relevant information, commentary in the information provided in the application and recommendations on whether the applicant should be reinstated. Both the statewide grievance committee and the office of the chief disciplinary counsel may file an appearance and participate in any investigation into the application and at any hearing before the standing committee, and at any court proceeding thereon.

(i) The standing committee shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. The standing committee shall give written notice of all hearings to the state's attorney of the court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district location where the application was filed, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The standing committee shall also publish all hearing notices on the judicial branch website, in the Connecticut Law Journal and in a newspaper with substantial distribution in the county where the application was filed.

(j) The standing committee shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement, any reports filed by the statewide grievance committee and office of the chief disciplinary counsel, a copy of the record of the applicant's disciplinary history, a transcript of its hearings thereon, any exhibits received by the standing committee, any other documents considered by the standing committee in making its recommendations, and copies of all notices provided by the standing committee in accordance with this section. Record materials containing personal identifying information or medical information may, in the discretion of the standing committee, be redacted, or open for inspection only to persons having a proper interest therein and upon order of the court. The standing committee shall complete work on the application within 180 days of referral from the chief justice. It is the applicant's burden to demonstrate by clear and convincing evidence that he or she possesses good moral character and fitness to practice law as defined by Section 2-5A.

(k) Upon completion of its investigation, the standing committee shall file its recommendation in writing together with a copy of the record with the clerk of the superior court. The report shall recommend that the application be granted, granted with conditions, or denied.

(l) The court shall thereupon inform the chief justice of the pending application and recommendation, and the chief justice shall designate two other judges of the superior court to sit with

the judge presiding at the session. The applicant, the statewide grievance committee, the office of the chief disciplinary counsel and the standing committee shall have an opportunity to appear and be heard at any hearing. The three judge panel, or a majority of them, shall determine whether the application should be granted.

(m) If the application for reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. Unless otherwise ordered by the court, the attorney may not reapply for reinstatement for a period of at least one year following the denial.

COMMENTARY: These proposed rule changes establishes a consistent application and process for suspended, disbarred, or resigned attorneys who wish to apply for reinstatement. The process will place the burden on the applicant to prepare a thorough, uniform application for reinstatement before it is submitted to the standing committee and the court for and investigation.

Subsection (a) moves the language in the current subsection (f) to subsection (a).

Subsection (b) places a minimum waiting time of five years on those attorneys who have been disbarred or resigned when the court did not provide a specific time frame for the discipline.

Subsection (c) moves the language from current subsection (g) to subsection (c). It also makes clear that an attorney who has resigned and waived the right to apply for reinstatement cannot use this rule to apply for reinstatement.

Subsection (d) creates a uniform application process for attorneys applying for reinstatement. The process also prohibits

attorneys who are not in compliance with Sections 2-27(d), 2-70 or 2-80 from applying for reinstatement. Currently attorneys who 1) have not registered when suspended, have failed to pay the Client Security Fund fee, and have failed to make full restitution to the Client Security Fund, 2) are under a pending disciplinary investigation, or 3) have not completed all of the conditions of a criminal sentence can still apply for reinstatement to the Connecticut Bar. This would end that practice. It would also require applicants to take and pass the MPRE and requires them to open their disciplinary case to have a condition removed, if it is impossible to complete. A uniform application also places the burden on the applicant to disclose credit problems, criminal history, mental health and substance abuse problems, employment history, prior residences, references and rehabilitation efforts (including CLE and community service) in advance of a hearing before the standing committee. Currently, the burden was on the standing committee to affirmatively ask for this information, if the applicant had not provided it. The standing committee as a volunteer committee, has limited resources to independently investigate an application. This would place the burden back on the applicant to have a continuing duty to disclose this information.

This proposed application process is similar to the reinstatement process in New York as well as the current investigation the Connecticut Bar Examining Committee performs for new applicants to the Connecticut bar.

Subsection (e) describes where the application would be filed. It also changes the application fee from \$200 to an amount set by the Chief Court Administrator.

Subsection (f) contains language from current subsection (a). It also prevents a standing committee with attorneys who work in the judicial district where the applicant worked as an attorney from investigating the application.

Subsection (g) contains language from previous subsection (a). It also requires the clerk to publish notice on the website and in a newspaper so that the general public might become aware of a reinstatement application.

Subsection (h) clarifies the role of the statewide grievance committee and the disciplinary counsel in helping to investigate the application and allows them to provide a report to the standing committee and participate in all of the proceedings.

Subsection (i) contains language from current subsection (b). It also requires the standing committee to send notice to interested parties and publish notice of its hearings in a manner similar to the clerk of the court's initial publication and notice requirements.

Subsection (j) contains language from current subsection (b). It also provides the standing committee with a timeframe of 180 days to complete its work. It codifies that the burden of proof is on the applicant to prove fitness to practice law and good and moral character.

Subsection (k) contains language from current subsection (b). It also clarifies that the standing committee shall make a recommendation that the application be granted, granted with conditions, or denied.

Subsection (l) contains language from current subsection (c). It also clarifies who may appear at the hearing.

Subsection (m) contains language from current subsection (e). It changes the timeframe to submit a new application for reinstatement from six months to one year if the prior application has been denied.

Sec. 2-55. Retirement of Attorney –Right of Revocation

(a) An attorney who is admitted to the bar in the state of Connecticut and is not the subject of any pending disciplinary investigation may submit a written request on a form approved by the office of the chief court administrator to the statewide bar counsel for retirement under this section. Upon receipt of the request, the statewide bar counsel shall review it and, if it is found that the attorney is eligible for retirement under this section, shall grant the request and notify the attorney and the clerk for the judicial district of Hartford. [Written notice of retirement from the practice of law, pursuant to the provisions of General Statutes § 51-81b,] Retirement shall not constitute removal from the bar or the roll of attorneys, but it shall be noted on the roll of attorneys kept by the clerk for the judicial district of [in] Hartford. [county who shall notify the statewide bar counsel of such retirement. The notice shall include the attorney's juris number and be filed in triplicate with such clerk. Upon the filing of such notice] If the request is granted, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut, except as provided in subsection (e) of this section. [Retirement may be revoked at any time upon written notice to the clerk for Hartford county and the statewide bar counsel. Disciplinary proceedings against an attorney shall not be stayed or terminated on account of the attorney's retirement from the practice of law.]

(b) An attorney who has retired pursuant to this section shall thereafter be exempt from payment of the client security fund fee set forth in Section 2-70(a), but must continue to comply with the registration requirements set forth in Sections 2-26 and 2-27(d).

(c) An attorney who has retired pursuant to this section and thereafter wishes to revoke the retirement and be eligible to practice law again in the state of Connecticut may do so at any time by sending written notice to the clerk for the judicial district of Hartford and the statewide bar counsel.

(d) Retirement pursuant to this section shall not be a bar to the initiation, investigation and pursuit of disciplinary complaints filed on or subsequent to the date of retirement.

(e) An attorney who has retired pursuant to this section may engage in uncompensated services to clients under the supervision of an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program.

Sec. 2-55A. Retirement of Attorney – Permanent (NEW)

(a) An attorney who is admitted to the bar in the state of Connecticut and is not the subject of any pending disciplinary investigation may submit a written request on a form approved by the office of the chief court administrator to the statewide bar counsel for permanent retirement under this section. Upon receipt of the request, the statewide bar counsel shall review it and, if it is found that the attorney is eligible for retirement under this section, shall grant the request and notify the attorney and the clerk for the judicial district of Hartford. Retirement shall not constitute removal from the bar or the roll of attorneys, but it shall be noted on the roll

of attorneys kept by the clerk for the judicial district of Hartford. If granted, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut.

(b) An attorney who has retired pursuant to this section shall thereafter be exempt from the registration requirements set forth in Sections 2-26 and 2-27(d) and from payment of the client security fund fee set forth in Section 2-70(a).

(c) An attorney who has retired pursuant to this section and thereafter wishes to be eligible to practice law again in the state of Connecticut must apply for admission to the bar pursuant to Sections 2-8 or 2-13.

(d) Retirement pursuant to this section shall not be a bar to the initiation, investigation and pursuit of disciplinary complaints filed on or subsequent to the date of retirement.

Sec. 3-3. Form and Signing of Appearance

(a) Except as otherwise provided in subsection (b),
[E]ach appearance shall (1) be filed on judicial branch form JD-CL-12, (2) include the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto, if any, the mailing address and the telephone number. [This section shall not apply to appearances entered pursuant to Section 3-1.]

(b) Each limited appearance pursuant to Section 3-8 (b) shall (1) be filed on judicial branch form JD-XX-XX, (2) include the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number, (5) define the proceeding or event for which the lawyer is appearing, and (6) state that the attorney named on the limited appearance is available for service of process only for those matters described on the limited appearance. All pleadings, motions, or other documents served on the limited appearance attorney shall also be served in the same manner on the party for whom the limited appearance was filed. For all other matters, service must be made on the party instead of the attorney who filed the limited appearance, unless otherwise ordered by court.

(c) This section does not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Sec. 3-8. Appearance for Represented Party

(a) 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. [The provisions of this section regarding parties filing appearances for themselves do not apply to criminal cases.]

(b) The Chief Court Administrator may establish, for such period or periods of time as he or she determines, a pilot program in one or more judicial districts permitting an attorney to file an appearance limited to a specific event or proceeding in matters that have been designated as being within the purview of the pilot. Limited appearances may only be filed in connection with such pilot program. If an event or proceeding in a matter in which a limited appearance has been filed has been continued to a later date, for any reason, it is not deemed completed unless otherwise ordered by the court. Except with leave of court, a limited appearance may not be filed to address a specific issue or to represent the client at or for a portion of a hearing. A limited appearance may not be limited to a particular length of time or the exhaustion of a fee. Whenever an attorney files a limited appearance for a party, the limited appearance shall be filed in addition to any self-represented appearance that the party may have already filed with the court. Upon the filing of the limited appearance, the client may not file or serve pleadings, discovery requests or otherwise represent himself or herself in connection with the proceeding or event that is the subject of the limited appearance. An attorney shall not file a limited appearance for a party when filing a new action or during the pendency of an action if there is no appearance on file for that party, unless the party for

whom the limited appearance is being filed files an appearance in addition to the attorney's limited appearance at the same time. A limited appearance may not be filed on behalf of a firm or corporation. A limited appearance may not be filed in criminal or juvenile cases.

(c) The provisions of this section regarding parties filing appearances for themselves do not apply to criminal cases.

COMMENTARY: The above change to subsection (b) provides that the Chief Court Administrator may establish a pilot program allowing an attorney to file an appearance limited to a specific event or proceeding in matters within the purview of the pilot program.

Sec. 3-9. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8. An attorney or party whose appearance is deemed to have been withdrawn may file an appearance for the limited purpose of filing an objection to the in lieu of appearance.

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

at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) In addition to the grounds set forth in subsections (a), (b), and (d), a lawyer who represents a party or parties on a limited basis in accordance with Section 3-8 (b) and has completed his or her representation as defined in the limited appearance, shall file a certificate of completion of limited appearance on Judicial Branch form JD-YY-YY. The certificate shall constitute a full withdrawal of a limited appearance. Copies of the certificate must be served in accordance with Sections 10-12 through 10-17 on the client, and all attorneys and self-represented parties of record.

[(c)](d) 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)](e) 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)](f) All appearances in juvenile matters shall be deemed to continue during the period of delinquency probation, family with service needs supervision, or any commitment to the commissioner of the department of children and families or protective supervision. An attorney appointed by the chief public defender to represent a parent in a pending neglect or uncared for proceeding shall continue to represent the parent for any subsequent petition to terminate parental rights if the attorney remains under contract to the office of the chief public defender to represent parties in child protection matters, the parent appears at the first hearing on the termination petition and qualifies for appointed counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section 35a-20, and with motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

COMMENTARY: The above change to subsection (c) is made in connection with the revision to Section 3-8 (b) that allows

an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

The above change to subsection (f) clarifies the ongoing obligation of an attorney to represent a parent in certain proceedings provided the attorney still has a contract with the chief public defender to provide such representation.

Sec. 4-2. Signing of Pleading

(a) Every pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign his or her pleadings and other papers. The name of the attorney or party who signs such document shall be legibly typed or printed beneath the signature.

(b) The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, that it is not interposed for delay, and that the signer has complied with the requirements of Section 4-7 regarding personal identifying information. Each pleading and every other court-filed document signed by an attorney or party shall set forth the signer's telephone number and mailing address.

(c) An attorney may assist a client in preparing a pleading, motion or other document to be signed and filed in court by the client. In such cases, the attorney shall insert the notation "prepared with assistance of counsel" on any pleading, motion or document prepared by the attorney. The attorney is not required to sign the pleading, motion or document and the filing of such a

pleading, motion or document shall not constitute an appearance by the attorney.

COMMENTARY: The above change is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

Sec. 5-1. Trial Briefs

The parties [may, as of right, or] shall, if the judicial authority so orders, file, at such time as the judicial authority shall determine, written trial briefs discussing the issues in the case and the factual or legal basis upon which they ought to be resolved.

COMMENTARY: The revision to this section is to allow trial briefs to be filed only at the discretion of the judicial authority.

[Sec. 5-9. Citation of Opinion Not Officially Published

An opinion which is not officially published may be cited before a judicial authority only if the person making reference to it provides the judicial authority and opposing parties with copies of the opinion.]

COMMENTARY: This rule is being repealed as unnecessary because opinions that are not officially published are easily accessible to the court and most parties on the internet and through on-line legal research services.

PROPOSED AMENDMENTS TO THE CIVIL RULES

Sec. 8-1. [Mesne] Process

(a) [Mesne p]Process in civil actions shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff's complaint. Such writ may run into any judicial district or geographical area and shall be signed by a commissioner of the superior court or a judge or clerk of the court to which it is returnable. Except in those actions and proceedings indicated below, the writ of summons shall be on a form substantially in compliance with the following judicial branch forms prescribed by the chief court administrator: Form JD-FM-3 in family actions, Form JD-HM-32 in summary process actions, and Form JD-CV-1 in other civil actions, as such forms shall from time to time be amended. Any person proceeding without the assistance of counsel shall sign the complaint and present the complaint and proposed writ of summons to the clerk; the clerk shall review the proposed writ of summons and, unless it is defective as to form, shall sign it.

(b) For administrative appeals brought pursuant to General Statutes §§ 4-183 et seq., process and service of process shall be made in accordance with General Statutes §§ 4-183(c)(1) and (c)(2) and Practice Book Section 14-7A(a).

[(b)](c) Form JD-FM-3, Form JD-HM-32, and Form JD-CV-1 shall not be used in the following actions and proceedings:

- (1) Applications for change of name.
- (2) Proceedings pertaining to arbitration.
- (3) Probate appeals.
- (4) Administrative appeals.

- (5) Verified petitions for paternity.
- (6) Verified petitions for support orders.
- (7) Any actions or proceedings in which an attachment, garnishment or replevy is sought.
- (8) Applications for custody.
- (9) Applications for visitation.

[(c)](d) A plaintiff may, before service on a defendant, alter printed forms JD-FM-3, JD-HM-32, and JD-CV-1 in order to make them conform to any relevant amendments to the rules of practice or statutes.

COMMENTARY: The intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the process of filing administrative appeals and to reduce the size of the record that is filed with the court.

Sec. 10-8. Time to Plead

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall [first] advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of [fifteen] thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the initial time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion

of either party the judicial authority shall find that there is good cause to suspend such time requirements.

COMMENTARY: The amount of time permitted for the filing of pleadings in civil actions has been extended from fifteen days to thirty days to allow additional time for counsel and self-represented parties to review and respond to filings. By extending the time for parties to respond to new pleadings from fifteen to thirty days, it is expected that parties will not find it necessary to frequently seek an extension of time to plead.

Sec. 10-30. Motion to Dismiss; [Request for Extension of Time to Respond] Grounds

(a) A motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process.

(b) Any defendant, wishing to contest the court's jurisdiction, [may do so even after having entered a general appearance, but must] shall do so by filing a motion to dismiss within thirty days of the filing of an appearance. [Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.]

(c) This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record.

COMMENTARY: The proposed revisions to this section and Section 10-31 on filing of a motion to dismiss and a response to it separate the requirements so that Section 10-30 contains all the requirements for filing a motion to dismiss: the time for filing, the grounds for filing and the requirement that it be accompanied by a memorandum of law. Section 10-31 contains the requirements for filing a response to a motion to dismiss and the information on when the motion can be placed on the calendar. Combining the requirements in this way simplifies the filing of a motion to dismiss and a response, and mirrors the revisions made to the rules on filing a motion to strike.

**Sec. 10-31. [—Grounds of Motion to Dismiss] —Opposition;
Date for Hearing Motion to Dismiss**

[(a) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record.

(b) Any adverse party who objects to this motion shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.]

(a) Any adverse party shall have thirty days to respond to the motion to dismiss by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition and, where appropriate, supporting affidavits as to facts not apparent on the record.

(b) Except in summary process matters, the motion shall be placed on the short calendar to be held not less than forty-five days following the filing of the motion, unless the judicial authority otherwise orders. If an evidentiary hearing is required, any party shall file a request for such hearing with the court.

COMMENTARY: The revised rule now includes all requirements for responding to a motion to dismiss, and specifically allows thirty days for the filing of a response to allow additional time for counsel and self-represented parties to review and respond to a motion to dismiss. By extending and clarifying the time for parties to respond, the drafters expect that parties will not find it necessary to seek an extension of time to plead as frequently. The rule, therefore, no longer contains the provision for filing a request for extension of time although that would not preclude parties from moving for an extension when necessary.

Sec. 10-39. Motion to Strike Grounds

(a) A motion to strike shall be used [W] whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint, or (3) the legal sufficiency of any such complaint, counterclaim or cross

complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56 (b), the failure to join or give notice to any interested person, or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.

(b) Each claim of legal insufficiency enumerated in this section shall be separately set forth, and shall specify the reason or reasons for such claimed insufficiency.

(c) Each motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies.

~~[(b)]~~(d) A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56 (b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action.

COMMENTARY: The proposed revision moves the requirements that a motion to strike separately set forth each claim of legal insufficiency together with the reason or reasons for the claim, and that the motion be accompanied by a memorandum of law from Section 10-41 and Section 10-42 so that all the requirements for filing the motion are found in the same section.

**Sec. 10-40. —Opposition; Date for Hearing Motion to Strike
[Request for Extension of Time to Respond]**

[Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.]

(a) Any adverse party shall have thirty days to respond to a motion to strike filed pursuant to Sec. 10-39 by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition.

(b) Except in summary process matters, the motion to strike shall be placed on the short calendar to be held not less than forty-five days following the filing of the motion, unless the judicial authority otherwise orders.

COMMENTARY: The rule has been revised to include all requirements for filing a response to a motion to strike, including the time for filing the memorandum of law and the information on when the motion can be placed on the short calendar. The revised rule also provides additional time for counsel and self-represented parties to review and respond to a motion to strike. By extending the time for parties to respond, the drafters expect that parties will not find it necessary to seek an extension of time to file a response as frequently. The revision has also eliminated provision for filing a request for extension of time although that would not preclude parties from moving for an extension when necessary.

[Sec. 10-41. —Reasons in Motion to Strike

Each motion to strike raising any of the claims of legal insufficiency enumerated in the preceding sections shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency.]

COMMENTARY: The provisions of this rule have been incorporated into Sections 10-39(b).

[Sec. 10-42. —Memorandum of Law—Motion and Objection

(a) Each motion to strike must be accompanied by an appropriate memorandum of law citing the legal authorities upon which the motion relies.

(b) Any adverse party who objects to this motion shall, at least five days before the date the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law.]

COMMENTARY: The provisions of this rule have been incorporated into Sections 10-39 and 10-40.

Sec. 13-1. Definitions

(a) For purposes of this chapter, (1) “statement” means (A) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (B) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded; (2) “party” means (A) a person named as a party in the action, or (B) an

agent, employee, officer, or director of a public or private corporation, partnership, association, or governmental agency, named as a party in the action; (3) “representative” includes agent, attorney, consultant, indemnitor, insurer, and surety; (4) “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; (5) “electronically stored information” means information that is stored in an electronic medium and is retrievable in perceivable form.

(b) The full text of the definitions and rules of construction set forth in paragraphs (c) and (d) herein is deemed incorporated by reference into all discovery requests served pursuant to this chapter, and shall preclude any broader definition of a term defined in paragraph (c), but shall not preclude: (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in paragraph (c).

(c) The following definitions apply to all discovery requests:

(1) Communication. The term ‘communication’ means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(2) Document. The term ‘document’ means any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. A request for production of ‘documents’ shall encompass, and the response shall include, electronically stored

information, as defined in subsection (a) above, unless otherwise specified by the requesting party.

(3) Identify (With Respect to Persons). When referring to a person, to 'identify' means to provide, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subdivision, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) Identify (With Respect to Documents or Electronically Stored Information). When referring to documents or electronically stored information, to 'identify' means to provide, to the extent known, information about the (i) type of document or electronically stored information; (ii) its general subject matter; (iii) the date of the document or electronically stored information; and (iv) author(s), addressee(s) and recipient(s).

(5) Identify (With Respect to Oral Communications). When referring to an oral communication, to "identify" means (i) to state the date and place of the oral communication; (ii) to identify all persons hearing, present or participating in the communication; (iii) to state whether the communication was in person, by telephone, or by some other means or medium; (iv) to summarize what was said by each such person, or provide a transcript if one is available.

(6) Identify (With Respect to an Act or Event). When referring to an act or event, to "identify" means (i) to describe the act or event, including its location and its date; (ii) to identify the persons participating, present or involved in the act or event; (iii)

to identify all oral communications which were made at the act or event identified; and (iv) to identify all documents concerning the act or event identified.

(7) Person. The term 'person' is defined as any natural person or any business, legal or governmental entity or association.

(8) Concerning. The term 'concerning' means relating to, referring to, describing, evidencing or constituting.

(9) You. The term "you" means the party or person to whom a discovery request is directed, except that: (i) if the party is the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the party's decedent, ward or incapable person, unless the context of the discovery request clearly indicates otherwise; and (ii) notwithstanding section (b) above, the propounding party may specify a different definition of the term "you."

(d) The following rules of construction apply to all discovery requests:

(1) All/Each. The terms 'all' and 'each' shall both be construed as all and each.

(2) And/Or. The connectives 'and' and 'or' shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(3) Number. The use of the singular form of any word includes the plural and vice versa.

(4) Gender. Unless the context clearly requires otherwise, the use of any pronoun or gender-identified form of any word includes both the male and female genders.

COMMENTARY: The purpose of amending this section on definitions of terms commonly used in discovery requests is to provide comprehensive standard definitions that are broad enough to encompass the information necessary to litigating a claim, but not unduly burdensome. These definitions are taken largely from the Local Rules of the U.S. District Court for the District of Connecticut, so many Connecticut practitioners will be familiar with them. The absence of standard definitions has resulted in the proliferation of discovery requests with overly complex and burdensome definitions that increase the volume of discovery disputes. The proposed definitions are not meant to inhibit the ability of a respondent to raise an objection to a request based upon its being burdensome under the circumstances of a particular case.

Sec. 13-3. —Materials Prepared in Anticipation of Litigation; Statements of Parties; Privilege Log

(a) Subject to the provisions of Section 13-4, a party may obtain discovery of documents and tangible things otherwise discoverable under Section 13-2 and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the judicial authority shall not order disclosure of the mental impressions, conclusions, opinions, or legal theories of an

attorney or other representative of a party concerning the litigation.

(b) A party may obtain, without the showing required under this section, discovery of the party's own statement and of any nonprivileged statement of any other party concerning the action or its subject matter.

(c) A party may obtain, without the showing required under this section, discovery of any recording, by film, photograph, videotape, audiotape or any other digital or electronic means, of the requesting party and of any recording of any other party concerning the action or the subject matter, thereof, including any transcript of such recording. A party may obtain information identifying any such recording and transcript, if one was created, prior to the deposition of the party who is the subject of the recording; but the person from whom discovery is sought shall not be required to produce the recording or transcript until thirty days after the completion of the deposition of the party who is the subject of the recording or sixty days prior to the date the case is assigned to commence trial, whichever is earlier; except that if a deposition of the party who is the subject of the recording was not taken, the recording and transcript shall be produced sixty days prior to the date the case is assigned to commence trial. If a recording was created within such sixty day period, the recording and transcript must be produced immediately. No such recording or transcript is required to be identified or produced if neither it nor any part thereof will be introduced into evidence at trial. However, if any such recording or part or transcript thereof is required to be identified or produced, all recordings and transcripts thereof of the subject of the recording party shall be identified and produced,

rather than only those recordings, or transcripts or parts thereof that the producing party intends to use or introduce at trial.

(d) When a claim of privilege or work product protection has been asserted pursuant to Sections 13-5 or 13-10 in response to a discovery request for documents or electronically stored information, the party asserting the privilege or protection shall provide, within forty-five days from the request of the party serving the discovery, the following information in the form of a privilege log.

(1) The type of document or electronically stored information;

(2) The general subject matter of the document or electronically stored information;

(3) The date of the document or electronically stored information;

(4) The author of the document or electronically stored information;

(5) Each recipient of the document or electronically stored information; and

(6) The nature of the privilege or protection asserted.

The privilege log shall initially be served upon all parties but not filed in court.

If the information called for by one or more of the foregoing categories is itself privileged, it need not be disclosed. However, the existence of the document and any nonprivileged information called for by the other categories must be disclosed.

A privilege log must be prepared with respect to all documents and electronically stored information withheld on the basis of a claim of privilege or work product protection except for

the following: written or electronic communications after commencement of the action between a party and the firm or lawyer appearing for the party in the action or as otherwise ordered by the judicial authority.

COMMENTARY: Currently the rules do not require the preparation of a privilege log or define the contents of one. In those cases where protective orders or objections to production requests are based upon a claim of privilege, the privilege log will assist the parties and the judicial authority in narrowing the scope of the dispute, including the number and nature of documents or electronically stored information for which there is a claim of privilege. The addition of subsection (d) to this rule defines the contents of the privilege log and when it must be prepared and served on other parties. Providing a standard for the privilege log will reduce disputes and increase judicial economy. This rule is limited to parties to the underlying litigation. If a document subpoena issues to a non-party and there is an objection on the ground of privilege, the court may order the production of a privilege log but the non-party will not be required to produce one in the absence of a court order. See *Woodbury Knoll, LLC. V. Shipman & Goodwin, LLP.*, 305 Conn. 750, 779-80 (2012).

Sec. 13-6. Interrogatories; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 written interrogatories, which may be in electronic format, upon any other party to be answered by the party served.

Written interrogatories may be served upon any party without leave of the judicial authority at any time after the return day. Except as provided in subsection (c) or where the interrogatories are served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the answers in the transmitted document, the party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert the answer. In the event that an answer requires more space than that provided on interrogatories that were not served electronically and in a format that allows the recipient to electronically insert the answers in the transmitted document, the answer shall be continued on a separate sheet of paper which shall be attached to the completed answers.

(b) Interrogatories may relate to any matters which can be inquired into under Sections 13-2 through 13-5 and the answers may be used at trial to the extent permitted by the rules of evidence. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the interrogatories shall be limited to those set forth in Forms 201, 202, [and/or] 203, 208 and/or 210 of the rules of practice, unless upon motion, the judicial authority determines that such interrogatories are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume. Unless the judicial authority orders otherwise, the frequency of use of interrogatories in all actions except those for which interrogatories have been set forth in Forms 201, 202, [and/or] 203, 208 and/or 210 of the rules of practice is not limited.

(c) In lieu of serving the interrogatories set forth in Forms 201, 202, [and/or] 203, 208 and/or 210 on a party who is represented by counsel, the moving party may serve on such party a notice of interrogatories, which shall not include the actual interrogatories to be answered, but shall instead set forth the number of the Practice Book form containing such interrogatories and the name of the party to whom the interrogatories are directed. The party to whom such notice is directed shall in his or her response set forth each interrogatory immediately followed by that party's answer thereto.

(d) The party serving interrogatories or the notice of interrogatories shall not file them with the court.

(e) Unless leave of court is granted, the instructions to forms 201 through 203 are to be used for all nonstandard interrogatories.

COMMENTARY: The revisions reference the addition of new forms 208 and 210 to the Appendix of Forms.

Creating standard instructions to be used in both standard and nonstandard interrogatories requests will eliminate the need to file objections to instructions that seek to impose an obligation on a respondent that goes beyond that imposed by the rules. Many discovery disputes will be avoided and the process as a whole will be streamlined.

Sec. 13-8. —Objections to Interrogatories

(a) Objections to interrogatories shall be immediately preceded by the interrogatory objected to, shall set forth reasons for the objection, shall be signed by the attorney or self-represented party making them and shall be filed with the court

pursuant to Section 13-7. No objection may be filed with respect to interrogatories which have been set forth in Forms 201, 202, [and/or] 203, 208 and/or 210 of the rules of practice for use in connection with Section 13-6.

(b) No objections to interrogatories shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein or, if no conference has been held, the reasons for the failure to hold such a conference. If any objection to an interrogatory is overruled, the interrogatory shall be answered, and the answer served within twenty days after the judicial authority ruling unless otherwise ordered by the judicial authority.

(c) An interrogatory otherwise proper is not objectionable merely because it involves more than one fact or relates to the application of law to facts.

COMMENTARY: The revisions reference the addition of new forms 208 and 210 to the Appendix of Forms.

Sec. 13-9. Requests for Production, Inspection and Examination; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it

reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 upon any other party a request to afford the party submitting the request the opportunity to inspect, copy, photograph or otherwise reproduce designated documents [(including, but not limited to, writings, drawings, graphs, charts, photographs, phonograph records and electronically stored information as provided in subsection (d))] or to inspect and copy, test or sample any tangible things in the possession, custody or control of the party upon whom the request is served or to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. Such requests will be governed by the provisions of Sections 13-2 through 13-5. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the requests for production shall be limited to those set forth in Forms 204, 205, [and/or] 206, 209 and/or 211 of the rules of practice, unless, upon motion, the judicial authority determines that such requests for production are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume.

(b) Requests for production may be served upon any party without leave of court at any time after the return day. In lieu of serving the requests for production set forth in Forms 204, 205, [and/or] 206, 209 and/or 211 on a party who is represented by counsel, the moving party may serve on such party a notice of requests for production, which shall not include the actual

requests, but shall instead set forth the number of the Practice Book form containing such requests and the name of the party to whom the requests are directed.

(c) The request shall clearly designate the items to be inspected either individually or by category. The request or, if applicable, the notice of requests for production shall specify a reasonable time, place and manner of making the inspection. Unless the judicial authority orders otherwise, the frequency of use of requests for production in all actions except those for which requests for production have been set forth in Forms 204, 205, [and/or] 206, 209 and/or 211 of the rules of practice is not limited.

(d) If information has been electronically stored, and if a request for production does not specify a form for producing a type of electronically stored information, the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form.

(e) The party serving such request or notice of requests for production shall not file it with the court.

(f) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which Forms 204 and 205 of the rules of practice apply.

[(f) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which Forms 204 and 205 of the rules of practice apply.]

(f) Unless leave of court is granted, the instructions to forms 204 through 206 are to be used for all nonstandard requests for production.

(g) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which forms 204 and 205 of the rules of practice apply.

COMMENTARY: The revisions reference the addition of new forms 209 and 211 to the Appendix of Forms.

Creating standard instructions to be used in both standard and nonstandard requests for production will eliminate the need to file objections to instructions that seek to impose an obligation on a respondent that goes beyond that imposed by the rules. Many discovery disputes will be avoided and the process as a whole will be streamlined. In addition, since the term “document” is now

defined in Section 13-1(c)(2), it is redundant to define it in this section as well.

Sec. 13-10. —Responses to Requests for Production; Objections

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the request or, if applicable, the notice of requests for production on the responding party, unless:

(1) Counsel file with the court a written stipulation extending the time within which responses may be served; or

(2) The party to whom the requests for production are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the requests for production or the notice of requests for production shall file objection thereto. A party shall be entitled to one such request for each set of requests for production served upon that party; or

(3) Upon motion, the court allows a longer time.

(b) The response of the party shall be inserted directly on the original request served in accordance with Section 13-9 and shall state, with respect to each item or category, that inspection

and related activities will be permitted as requested, unless the request or any part thereof is objected to. If, pursuant to subsection (b) of Section 13-9, a notice of requests for production is served in lieu of requests for production, the party to whom such notice is directed shall in his or her response set forth each request for production immediately followed by that party's response thereto. No objection may be filed with respect to requests for productions set forth in Forms 204, 205, [and/or] 206, 209 and/or 211 of the rules of practice for use in connection with Section 13-9. Where a request calling for submission of copies of documents is not objected to, those copies shall be appended to the copy of the response served upon the party making the request. A party objecting to one or more requests shall file an objection to the request. Objections to requests for production shall be immediately preceded by the request objected to, shall set forth reasons for the objection, shall be signed by the attorney or self-represented party making them and shall be filed with the court. Objection by a party to certain parts of the request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the thirty-day period. The party serving the request or the notice of requests for production may move for an order under Section 13-14 with respect to any failure on the part of the party to whom the request or notice is addressed to respond.

(c) No objection to any such request shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall

set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein, or, if no conference has been held, the reasons for the failure to hold such a conference. If an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

COMMENTARY: The revisions reference the addition of new forms 209 and 211 to the Appendix of Forms.

Sec. 14-6. Administrative Appeals Are Civil Actions

For purposes of these rules, administrative appeals are civil actions subject to the provisions and exclusions of General Statutes §§ 4-183 et seq. and the Practice Book. Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that an administrative appeal shall not be deemed an action for purposes of Section 10-8 of these rules or for General Statutes §§ 52-48, 52-591, 52-592 or 52-593.

COMMENTARY: The intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the process of filing administrative appeals and to reduce the size of the record that is filed with the court.

Sec. 14-7. [Trial List for Administrative Appeals; Briefs; Placing Cases Thereon] Administrative Appeals; Exceptions

[(a) Except as provided in subsections (b), (c) and (d) below, or except as otherwise permitted by the judicial authority in its discretion, in an administrative appeal, the record shall be filed as prescribed in Section 14-7B below or as otherwise prescribed by statute; the defendant's answer shall be filed within the time prescribed by Section 10-8; the plaintiff's brief shall be filed within thirty days after the filing of the defendant's answer or the return of the record, whichever is later; and the defendant's brief shall be filed within thirty days of the plaintiff's brief. No brief shall exceed thirty-five pages without permission of the judicial authority. A motion for extension of time within which to file the return of record, the answer, or any brief shall be made to the judicial authority before the due date of the filing which is the subject of the motion. The motion shall set forth the reasons therefor and shall contain a statement of the respective positions of the opposing parties with regard to the motion. The motion shall also state whether any previous motion for extension of time was made and the judicial authority's action thereon. If a party fails timely to file the record, answer, or brief in compliance with this subsection, the judicial authority may, on its own motion or on motion of one of the parties, and after hearing, make such order as the ends of justice require. Such orders may include but are not limited to the following or any combination thereof:

- (1) An order that the party not in compliance pay the costs of the other parties, including reasonable attorney's fees;
- (2) If the party not in compliance is the plaintiff, an order dismissing the appeal;

(3) If the party not in compliance is a defendant, an order sustaining the appeal, an order remanding the case, or an order dismissing such defendant as a party to the appeal;

(4) If the board or agency has failed to file the record within the time permitted, an order allowing any other party to prepare and file a record of the administrative proceedings and an order that the board or agency pay the reasonable costs, including attorney's fees, of such party.]

[(b)](a) Appeals from the employment security board of review shall follow the procedure set forth in chapter 22 of these rules.

[(c)](b) Workers' compensation appeals taken to the appellate court shall follow the procedure set forth in the Rules of Appellate Procedure.

[(d) The following administrative appeals shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions:

(1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-117a and 12-119.

(2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103.

(3) Appeals from the commissioner of revenue services.

(4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139.

(5) Any other appeal in which the parties are entitled to a trial de novo.]

(c) Appeals in which the parties are entitled to a trial de novo, including but not limited to (1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-

117a and 12-119; (2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103; (3) Appeals from the commissioner of revenue services; and (4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139; are excluded from the procedures prescribed in Section 14-7A and 14-7B below, and shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions.

[(e)](d) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in Sections 14-7A and 14-7B.

COMMENTARY: The intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the process of filing administrative appeals and to reduce the size of the record that is filed with the court.

Sec. 14-7A. [Withdrawal or Settlement of Zoning and Inland Wetlands Appeals to Superior Court] –Administrative Appeals brought pursuant to General Statutes §§ 4-183 et seq.; Appearances; Records, Briefs and Scheduling

[No appeal under General Statutes §§ 8-8 or 22a-43 shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement. No decision that is appealed under General Statutes §§ 8-8 or 22a-43 shall be modified by settlement or stipulated judgment unless the terms of the settlement or stipulated judgment have been approved at a public meeting of the municipal agency that issued the decision. The proposed settlement shall be identified on the agenda of such

meeting, which agenda shall be posted in accordance with the applicable requirements of General Statutes §§ 1-210 et seq., and the reasons for such approval shall be stated on the record during such public meeting of such agency and before the court. The court may inquire about the procedure followed by the agency, inquire of the parties whether settlement was reached by coercion or intimidation, and consider any other factors that the court deems appropriate. No notice of the court proceeding other than normal publication of the calendar and notice to the parties is required unless otherwise ordered by the court.】

(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-XX 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-XX 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 intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the

process of filing administrative appeals and to reduce the size of the record that is filed with the court.

Sec. 14-7B. [Record in Administrative Appeals; Exceptions] Administrative Appeals from Municipal Land Use, Historic and Resource Protection Agencies; Records, Briefs and Scheduling; Withdrawal or Settlement

(a) Except as provided in [subsection (b), (c), and (d) of] Sections 14-7 or 14-7A, [or appeals taken pursuant to General Statutes § 4-183,] for appeals from municipal land use, historic, and resource protection agencies, the board or agency shall transmit and file the record in accordance with this section. For the purposes of this Section 14-7B, 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 return of record described in General Statutes § 8-8 (i), including additions to the record per § 8-8 (k).

(b) Within thirty days of the return date, the board or agency shall transmit a certified list of the papers in the record to all parties and shall make the existing listed papers available for inspection by the parties.

(c) The first time that the appeal appears on the administrative appeals calendar, the court and the parties will establish, or 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, which will include 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. [which will include dates for the filing of the

designated contents of the record, for the submission of briefs and reply briefs, for pretrials or other appropriate conferences, and for the hearing on the administrative appeal.] 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. [Disputes about the contents of the record or other motions, applications or objections will be heard on the administrative appeals calendar or as otherwise scheduled by the court. Any hearings to consider the taxation of costs in accordance with General Statutes § 8-8 (i) shall be conducted after the court renders its decision on the appeal.]

(d) The board or agency shall transmit to the court and all parties (1) the certified list of papers in the record that was transmitted to the parties under subsection (b) of this section; and (2) certified copies of the designated contents of the record established in accordance with subsection (c).

(e) 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 (c) 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.

(f) 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 (c), nor on the certified list filed in accordance with subsection (b), unless the court grants permission to supplement the records with such papers pursuant to General Statutes § 8-8 (k).

(g) Disputes about the contents of the records or other motions, application or objections will be heard on the administrative appeals calendar or as otherwise scheduled by the Court.

(h) 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.

(i) Any hearings to consider taxation of costs in accordance with General Statutes § 8-8(i) shall be conducted after the court renders its decision on the appeal.

(j) No appeal under General Statutes §§ 8-8 or 22a-43 shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement. No decision that is appealed under General Statutes §§ 8-8 or 22a-43 shall be modified by settlement or stipulated judgment unless the terms of the settlement or stipulated judgment have been approved at a public meeting of the municipal agency that issued the decision. The proposed settlement shall be identified on the agenda of such meeting, which agenda shall be posted in accordance with the applicable requirements of General Statutes §§ 1-210 et seq., and

the reasons for such approval shall be stated on the record during such public meeting of such agency and before the court. The court may inquire about the procedure followed by the agency, inquire of the parties whether settlement was reached by coercion or intimidation, and consider any other factors that the court deems appropriate. No notice of the court proceeding other than normal publication of the calendar and notice to the parties is required unless otherwise ordered by the court.

COMMENTARY: The intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the process of filing administrative appeals and to reduce the size of the record that is filed with the court.

Sec. 14-8. Certifying That Pleadings Are Closed

(a) A case [~~shall not~~] may be scheduled for trial at any time by order of the court. [~~until a party accurately certifies on a form to be supplied by the clerk that~~] When the pleadings are closed on the issue or issues in the case as to all parties, an accurate certificate of closed pleadings shall be filed within ten days. Any party may file the certificate. Upon [~~receiving such a certification~~] the filing of the certificate of closed pleadings, [~~the clerk shall refer~~] the case [~~to the presiding judge to~~] shall be scheduled for a trial as soon as the court's docket permits if it has not already been scheduled for a trial.

(b) If the case is claimed as privileged, the ground of privilege as defined in Section 14-9 shall be stated. If the privilege claimed arises from some other statute or rule giving a matter precedence for trial, the applicable provisions shall be cited with specificity.

[(b)](c) An administrative appeal may be placed on the administrative appeal trial list [without the necessity for a claim] at the direction of the judicial authority, pursuant to Section 14-7A or 14-7B or in accordance with subsections (a) and (b) of this section.

[(c)](d) This section shall not apply to summary process matters.

COMMENTARY: The purpose of this revision is to permit the court to issue scheduling orders setting trial dates before the issues have been joined and the pleadings have been closed, a practice that the existing rule prohibits. The proposed rule comports with General Statutes § 52-215 which provides that a case may be entered on the jury docket by written request of either party made to the clerk “within thirty days of the return date” or “upon written consent of all parties, or by order of the court” at any time or “within ten days after” an issue of fact is joined. The proposed revision does not supersede the requirement of filing a jury claim along with the appropriate statutory fee. The requirement to file a certificate of closed pleadings (JD-CV-11) is retained to allow for a written claim of privilege and the selection of a trial list. Additionally, the certificate assists the presiding judge, caseflow coordinators and clerks with case management. The proposed revision provides more flexibility to the court to assign trial dates.

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

(a) The plaintiff shall file a motion for default for failure to appear[,] and judgment [and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt,

a military affidavit], a bill of costs [and], a proposed judgment and notice to all parties, and if applicable, a request for an order of weekly payments pursuant to Section 17-26.

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

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

[(b)](A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff, and a copy of the executed instrument or contract shall be attached to the affidavit. [If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.] If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also include the most recent bill of sale from the plaintiff's seller

and swear to its purchase of the debt from its seller in the affidavit of debt.

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

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

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

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

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

make the practice consistent and clarify the requisite affidavits and attachments necessary to obtain judgment.

For the purposes of subsection (b) (1), in regard to credit card debts owed to a financial institution and subject to federal requirements for the charging off of accounts, it is the intention of this rule that the federally authorized charge-off balance may be treated as the “principal” and itemization regarding such debts is required only from the date of the charge-off balance.

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

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

(b) Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto[,]
and in summary process actions, [and in any contract action where the damages are liquidated,] provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority. The judicial authority may render judgment in any contract action where the damages are liquidated provided that the plaintiff has made a motion for judgment and submitted the affidavits and attachments specified in Section 17-25 (b) (1).

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

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

Sec. 17-44. Summary Judgments; Scope of Remedy

In any action, [except] including administrative appeals which are [not] enumerated in Section 14-7, any party may move for a summary judgment [at any time, except that the party must obtain the judicial authority's permission to file a motion for summary judgment after the case has been assigned for trial] as to any claim or defense as a matter of right at any time if no scheduling order exists and the case has not been assigned for trial. If a scheduling order has been entered by the court, either party may move for summary judgment as to any claim or defense as a matter of right by the time specified in the scheduling order. If no scheduling order exists but the case has been assigned for trial, a party must move for permission of the judicial authority to file a motion for summary judgment. These rules shall be applicable to counterclaims and cross complaints, so that any party may move for summary judgment upon any counterclaim or cross complaint as if it were an independent action. The pendency of a motion for summary judgment shall delay trial only at the discretion of the trial judge.

COMMENTARY: This change clarifies that a party may move for summary judgment in administrative appeals enumerated in Section 14-7. It also clarifies that summary judgment may be obtained as to a defense as well as to an affirmative claim for relief. The section also incorporates scheduling orders in delineating when the filing of a motion for summary judgment is a matter of right and when the permission of the judicial authority is required.

Sec. 24-10. —Service of Small Claims Writ and Notice of Suit

(a) The plaintiff, or representative, shall cause service of the writ and notice of suit separately on each defendant by priority mail with delivery confirmation, by certified mail with return receipt requested or with electronic delivery confirmation, by a nationally recognized courier service providing delivery confirmation, or by a proper officer in the manner in which a writ of summons is served in a civil action. The plaintiff, or representative, shall include any information required by the office of the chief court administrator. A statement of how service has been made, together with the delivery confirmation or return receipt or electronic delivery confirmation and the original writ and notice of suit shall be filed with the clerk. The writ and notice of suit and the statement of service shall be returned to the court not later than one month after the date of service.

(b) For each defendant which is an out-of-state business entity, the plaintiff shall cause service of the writ and notice of suit and answer form to be made in accordance with the General Statutes. The officer lawfully empowered to make service shall

make return of service to the court. The clerk shall document the return of service.

(c) Upon receipt of the writ and accompanying documents, the clerk shall set an answer date and send notice to all plaintiffs or their representatives of the docket number and answer date. The clerk will send an answer form that includes the docket number and answer date to each defendant at the address provided by the plaintiff.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

Sec. 24-32. Execution in Small Claims Actions

(a) Pursuant to the General Statutes, the judgment creditor or the representative of the judgment creditor may file with the court a written application on forms prescribed by the office of the chief court administrator for an execution to collect an unsatisfied money judgment.

(b) Service of an initial set of interrogatories, on forms prescribed by the office of the chief court administrator relevant to obtaining satisfaction of a small claims money judgment shall be made by sending the interrogatories by certified mail, with return receipt requested or with electronic delivery confirmation, to the person from whom discovery is sought.

COMMENTARY: This amendment permits the use of electronic delivery confirmation in place of traditional return receipts.

PROPOSED AMENDMENTS TO THE FAMILY RULES

Sec. 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If

any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or filed in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion. (2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such

as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(h) Sworn statements of current income, expenses, assets and liabilities filed with the court pursuant to Sections 25-30 and 25a-15 shall be under seal and be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any guardians ad litem and attorneys appointed for any minor children involved in the matter, except as otherwise ordered by the judicial authority. When such sworn statements are filed, the clerk shall place them in a sealed envelope clearly identified with the words "Financial Affidavit." All such sworn statements that are filed in a case may be placed in the same sealed envelope. Any person may file a motion to unseal these documents. When such motion is filed, the provisions of paragraphs (a) through (e) of this section shall apply and the party who filed the documents shall have the burden of proving that they should remain sealed. The judicial authority shall order that the automatic sealing pursuant to this paragraph shall terminate with respect to all such sworn statements then on file with the court when any hearing is held at which financial issues are in dispute.

This shall not preclude a party from filing a motion to seal or limit disclosure of such sworn statements pursuant to this section.

(i) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled “Motions to Seal or Close” and shall also be listed with the time, date and place of the hearing on the Judicial Branch web site. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk’s office and accessible to the public.

COMMENTARY: The above change is made to make clear that the provisions of Section 25-59A (h) apply to sworn statements filed under Section 25a-15 (a).

Sec. 25-61. Family Division

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

COMMENTARY: The above change clarifies that counsel for the party or child being evaluated shall not initiate contact with the evaluator, unless the court orders otherwise, until the evaluation is filed with the clerk. This parallels language in Section

25-60A (c) concerning court-ordered evaluations by private evaluators.

PROPOSED AMENDMENTS TO THE FAMILY SUPPORT MAGISTRATE RULES

Sec. 25a-15. Statements to Be Filed

(a) At least five days before the hearing date of a motion or order to show cause concerning alimony, support, or counsel fees, or at the time a dissolution of marriage or civil union, legal separation or annulment action or action for custody or visitation is scheduled for a hearing, each party shall file, where applicable, a sworn statement substantially in accordance with a form prescribed by the chief court administrator, of current income, expenses, assets and liabilities. When the attorney general has appeared as a party in interest, a copy of the sworn statements shall be served upon him or her in accordance with Sections 10-12 through 10-14 and 10-17. Unless otherwise ordered by the judicial authority, all appearing parties shall file sworn statements within thirty days prior to the date of the decree. Notwithstanding the above, the court may render pendente lite and permanent orders, including judgment, in the absence of the opposing party's sworn statement. The provisions of Section 25-59A (h) shall apply to sworn statements filed under this subsection.

(b) Where there is a minor child who requires support, the parties shall file a completed child support and arrearage guidelines worksheet at the time of any court hearing concerning child support.

(c) At the time of any hearing, including pendente lite and postjudgment proceedings, in which a moving party seeks a

determination, modification, or enforcement of any alimony or child support order, a party shall submit an Advisement of Rights Re: Income Withholding form (JD-FM-71).

COMMENTARY: The above change is made to make clear that the provisions of Section 25-59A (h) apply to sworn statements filed under Section 25a-15 (a).

PROPOSED AMENDMENTS TO THE JUVENILE RULES

Sec. 30a-8. Records

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

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

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

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

Sec. 32a-7. Records

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

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

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

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

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

The mandated social study, addendums thereto, case status reports [update] or [any] other written reports [or evaluation] made available to the judicial authority shall be [made available for inspection] reproduced and provided to all counsel of record and, any self-represented party [in the absence of counsel, to the parties themselves] by the commissioner of the department of children and families before [the] any scheduled case status conference, pretrial or hearing date. [The mandated social study,

updates, reports and records and any copies thereof made available in the discretion of the judicial authority, together with any notes, copies or abstractions thereof, shall be returned to the clerk immediately following the disposition unless they may be required for subsequent proceedings.】 All persons who have access to such materials shall be responsible for preserving the confidentiality thereof in accordance with Section 32a-7.

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

Sec. 35a-18. Opening Default

Any order or decree entered through a default may be set aside within four months succeeding the date of such entry of the order or decree upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a defense in whole or in part existed at the time of the rendition of such order or of such decree, and that the party so defaulted was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same, except that no such order or decree shall be set aside if a final decree of adoption regarding the child has been issued prior to the filing of any such motion. Such written motion shall be verified by the oath of the complainant, and shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the party failed to appear. The judicial authority shall order reasonable notice of the pendency of such motion to be given to all parties to the action[.] and also, in the case of a motion to set aside a judgment terminating parental rights, to any person who has legal custody of the child or who has physical custody of the child

pursuant to an agreement, including an agreement with the Department of Children and Families or a licensed child-placing agency. The judicial authority [and] may enjoin enforcement of such order or decree until the decision upon such written motion, unless said action shall prejudice or place the child's or youth's health, safety or welfare in jeopardy. [A] The initial hearing on said motion shall be held as a priority matter but no later than fifteen days after the same has been filed with the clerk, unless otherwise agreed to by the parties and sanctioned by the judicial authority. All hearings on motions to set aside a judgment terminating parental rights shall be conducted in accordance with the provisions of General Statutes § 45a-719. In the event that [said] any motion is granted the matter shall be scheduled for an immediate pretrial or case status conference within fourteen days thereof, and failing a resolution at that time, then the matter shall be scheduled for a trial as expeditiously as possible.

COMMENTARY: To alert practitioners and the judicial authority to the special prohibition against opening termination of parental rights judgments pursuant to General Statutes § 45a-719.

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

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

(b) A notice pursuant to subsection (a) shall be filed with the court and shall be served on all counsel of record and self-represented parties when appropriate, in accordance with Practice

Book Section 10-13. The notice shall identify the proffered statement, the basis for the psychological unavailability claim and shall be filed within a reasonable time before the trial.

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

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

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

PROPOSED AMENDMENTS TO THE CRIMINAL RULES

Sec. 38-3. —Release by Bail Commissioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED AMENDMENTS TO THE APPENDIX OF FORMS

Form 201

Plaintiff's Interrogatories

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within thirty (30) days of the filing hereof [insofar as the disclosure sought will be of assistance in the prosecution of this action and can be provided by the Defendant with substantially greater facility than could otherwise be obtained]. Definition: "You" shall mean the Defendant to whom these interrogatories are directed except that if that Defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

In answering these Interrogatories, the Defendant(s), is (are) required to provide all information within their knowledge, possession or power. If an Interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the Interrogatory as a whole. If any Interrogatories cannot be answered in full, answer to the extent possible.

(1) State the following:

(a) your full name and any other name(s) by which you have been known;

(b) your date of birth;

(c) your motor vehicle operator's license number;

(d) your home address;

(e) your business address;

(f) if you were not the owner of the subject vehicle, the name and address of the owner or lessor of the subject vehicle on the date of the alleged occurrence.

(2) Have you made any statements, as defined in Practice Book Section 13-1, to any person regarding any of the incidents alleged in the Complaint?

COMMENT:

This interrogatory is intended to include party statements made to a representative of an insurance company prior to involvement of defense counsel.

(3) If the answer to Interrogatory #2 is affirmative, state:

(a) the name and address of the person or persons to whom such statements were made;

(b) the date on which such statements were made;

(c) the form of the statement (i.e., whether written, made by recording device or recorded by a stenographer, etc.);

(d) the name and address of each person having custody, or a copy or copies of each statement.

(4) State the names and addresses of all persons known to you who were present at the time of the incident alleged in the Complaint or who observed or witnessed all or part of the incident.

(5) As to each individual named in response to Interrogatory #4, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1

concerning the subject matter of the Complaint in this lawsuit. If your answer to this Interrogatory is affirmative, state also:

(a) the date on which the statement or statements were taken;

(b) the names and addresses of the person or persons who took such statement or statements;

(c) the names and addresses of any person or persons present when such statement or statements were taken;

(d) whether such statement or statements were written, made by recording device or taken by court reporter or stenographer;

(e) the names and addresses of any person or persons having custody or a copy or copies of such statement or statements.

(6) Are you aware of any photographs depicting the accident scene, any vehicle involved in the incident alleged in the Complaint, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs taken of each such subject by each photographer, please state:

(a) the name and address of the photographer, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken;

(c) the subject (e.g., "Plaintiff's vehicle," "scene," etc.);

(d) the number of photographs.

(7) If, at the time of the incident alleged in the Complaint, you were covered by an insurance policy under which an insurer may be liable to satisfy part or all of a judgment or reimburse you

for payments to satisfy part or all of a judgment, state the following:

- (a) the name(s) and address(es) of the insured(s);
- (b) the amount of coverage under each insurance policy;
- (c) the name(s) and address(es) of said insurer(s).

(8) If at the time of the incident which is the subject of this lawsuit you were protected against the type of risk which is the subject of this lawsuit by excess umbrella insurance, or any other insurance, state:

- (a) the name(s) and address(es) of the named insured;
- (b) the amount of coverage effective at this time;
- (c) the name(s) and address(es) of said insurer(s).

(9) State whether any insurer, as described in Interrogatories #7 and #8 above, has disclaimed/reserved its duty to indemnify any insured or any other person protected by said policy.

(10) If applicable, describe in detail the damage to your vehicle.

(11) If applicable, please state the name and address of an appraiser or firm which appraised or repaired the damage to the vehicle owned or operated by you.

(12) If any of the Defendants are deceased, please state the date and place of death, whether an estate has been created, and the name and address of the legal representative thereof.

(13) If any of the Defendants is a business entity that has changed its name or status as a business entity (whether by dissolution, merger, acquisition, name change, or in any other manner) since the date of the incident alleged in the Complaint,

please identify such Defendant, state the date of the change, and describe the change.

(14) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether, at the time of the incident, you were operating that vehicle in the course of your employment with any person or legal entity not named as a party to this lawsuit, and, if so, state the full name and address of that person or entity.

(15) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether you consumed or used any alcoholic beverages, drugs or medications within the eight (8) hours next preceding the time of the incident alleged in the Complaint and, if so, indicate what you consumed or used, how much you consumed, and when.

(16) Please state whether, within eight (8) hours after the incident alleged in the Complaint, any testing was performed to determine the presence of alcohol, drugs or other medications in your blood, and, if so, state:

- (a) the name and address of the hospital, person or entity performing such test or screen;
- (b) the date and time;
- (c) the results.

(17) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape, or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of

your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

PLAINTIFF,

BY _____

I, _____, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief. (Defendant) Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public/
Commissioner of the Superior Court

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this ____ day of _____, 20____ to (names and addresses of all opposing counsel and self-represented parties upon whom service is required by Practice Book Section 10-12 et seq.).

(Attorney Signature)

Form 202

Defendant's Interrogatories

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Defendant, hereby propounds the following interrogatories to be answered by the Plaintiff

_____, under oath, within thirty (30) days of the filing hereof [insofar as the disclosure sought will be of assistance in the defense of this action and can be provided by the Plaintiff with substantially greater facility than could otherwise be obtained] in compliance with Practice Book § 13-2.

Definition: "You" shall mean the Plaintiff to whom these interrogatories are directed except that if suit has been instituted by the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Plaintiff's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

In answering these interrogatories, the Plaintiff(s), is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) State the following:

(a) your full name and any other name(s) by which you have been known;

(b) your date of birth;

(c) your motor vehicle operator's license number;

(d) your home address;

(e) your business address;

(f) if you were not the owner of the subject vehicle, the name and address of the owner or lessor of the subject vehicle on the date of the alleged occurrence.

(2) Identify and list each injury you claim to have sustained as a result of the incidents alleged in the Complaint.

(3) When, where and from whom did you first receive treatment for said injuries?

(4) If you were treated at a hospital for injuries sustained in the alleged incident, state the name and location of each hospital and the dates of such treatment and confinement therein.

(5) State the name and address of each physician, therapist or other source of treatment for the conditions or injuries you sustained as a result of the incident alleged in your Complaint.

(6) When and from whom did you last receive any medical attention for injuries alleged to have been sustained as a result of the incident alleged in your Complaint?

(7) On what date were you fully recovered from the injuries or conditions alleged in your Complaint?

(8) If you claim you are not fully recovered, state precisely from what injuries or conditions you are presently suffering?

(9) Are you presently under the care of any doctor or other health care provider for the treatment of injuries alleged to have been sustained as a result of the incident alleged in your Complaint?

(10) If the answer to Interrogatory #9 is in the affirmative, state the name and address of each physician or other health care provider who is treating you.

(11) Do you claim any present disability resulting from injuries or conditions allegedly sustained as a result of the incident alleged in your Complaint?

(12) If so, state the nature of the disability claimed.

(13) Do you claim any permanent disability resulting from said incident?

(14) If the answer to Interrogatory #13 is in the affirmative, please answer the following:

(a) list the parts of your body which are disabled;

(b) list the motions, activities or use of your body which you have lost or which you are unable to perform;

(c) state the percentage of loss of use claimed as to each part of your body;

(d) state the name and address of the person who made the prognosis for permanent disability and the percentage of loss of use;

(e) list the date for each such prognosis.

(15) If you were or are confined to your home or your bed as a result of injuries or conditions sustained as a result of the incident alleged in your Complaint, state the dates you were so confined.

(16) List each medical report received by you or your attorney relating to your alleged injuries or conditions by stating the name and address of the treating doctor or other health care provider, and of any doctor or health care person you anticipate calling as a trial witness, who provided each such report and the date thereof.

(17) List each item of expense which you claim to have incurred as a result of the incident alleged in your Complaint, the amount thereof and state the name and address of the person or organization to whom each item has been paid or is payable.

(18) For each item of expense identified in response to Interrogatory #17, if any such expense, or portion thereof, has been paid or reimbursed or is reimbursable by an insurer, state, as to each such item of expense, the name of the insurer that made such payment or reimbursement or that is responsible for such reimbursement.

(19) If, during the ten year period prior to the date of the incident alleged in the Complaint, you were under a doctor's care for any conditions which were in any way similar or related to those identified and listed in your response to Interrogatory #2, state the nature of said conditions, the dates on which treatment was received, and the name of the doctor or health care provider.

(20) If, during the ten year period prior to the date of the incident alleged in your Complaint, you were involved in any incident in which you received personal injuries similar or related to those identified and listed in your response to Interrogatory #2, please answer the following with respect to each such earlier incident:

(a) on what date and in what manner did you sustain such injuries?

(b) did you make a claim against anyone as a result of said accident?

(c) if so, provide the name and address of the person or persons against whom a claim was made;

(d) if suit was brought, state the name and location of the Court, the return date of the suit, and the docket number;

(e) state the nature of the injuries received in said accident;

(f) state the name and address of each physician who treated you for said injuries;

(g) state the dates on which you were so treated;

(h) state the nature of the treatment received on each such date;

(i) if you are presently or permanently disabled as a result of said injuries, please state the nature of such disability, the name and address of each physician who diagnosed said disability and the date of each such diagnosis.

(21) If you were involved in any incident in which you received personal injuries since the date of the incident alleged in the Complaint, please answer the following:

(a) on what date and in what manner did you sustain said injuries?

(b) did you make a claim against anyone as a result of said accident?

(c) if so, provide the name and address of the person or persons against whom a claim was made;

(d) if suit was brought, state the name and location of the Court, the return date of the suit, and the docket number;

(e) state the nature of the injuries received in said accident;

(f) state the name and address of each physician who treated you for said injuries;

(g) state the dates on which you were so treated;

(h) state the nature of the treatment received on each such date;

(i) if you are presently or permanently disabled as a result of said injuries, please state the nature of such disability, the name and address of each physician who diagnosed said disability and the date of each such diagnosis.

(22) Please state the name and address of any medical service provider who has rendered an opinion in writing or through testimony that you have sustained a permanent disability to any body part other than those listed in response to Interrogatories #13, #14, #20 or #21, and:

(a) list each such part of your body that has been assessed a permanent disability;

(b) state the percentage of loss of use assessed as to each part of your body;

(c) state the date on which each such assessment was made.

(23) If you claim that as a result of the incident alleged in your Complaint you were prevented from following your usual occupation, or otherwise lost time from work, please provide the following information:

(a) the name and address of your employer on the date of the incident alleged in the Complaint;

(b) the nature of your occupation and a precise description of your job responsibilities with said employer on the date of the incident alleged in the Complaint;

(c) your average, weekly earnings, salary, or income received from said employment for the year preceding the date of the incident alleged in the Complaint;

(d) the date following the date of the incident alleged in the Complaint on which you resumed the duties of said employment;

(e) what loss of income do you claim as a result of the incident alleged in your Complaint and how is said loss computed?

(f) the dates on which you were unable to perform the duties of your occupation and lost time from work as a result of injuries or conditions claimed to have been sustained as a result of the incident alleged in your Complaint;

(g) the names and addresses of each employer for whom you worked for three years prior to the date of the incident alleged in your Complaint.

(24) Do you claim an impairment of earning capacity?

(25) List any other expenses or loss and the amount thereof not already set forth and which you claim to have incurred as a result of the incident alleged in your Complaint.

(26) If you have signed a covenant not to sue, a release or discharge of any claim you had, have or may have against any person, corporation or other entity as a result of the incident alleged in your Complaint, please state in whose favor it was given, the date thereof, and the consideration paid to you for giving it.

(27) If you or anyone on your behalf agreed or made an agreement with any person, corporation or other entity to limit in any way the liability of such person, corporation or other entity as a result of any claim you have or may have as a result of the incident alleged in your Complaint, please state in whose favor it was given, the date thereof, and the consideration paid to you for giving it.

(28) If since the date of the incident alleged in your Complaint, you have made any claims for Workers' Compensation benefits, state the nature of such claims and the dates on which they were made.

(29) Have you made any statements, as defined in Practice Book Section 13-1, to any person

regarding any of the events or happenings alleged in your Complaint?

COMMENT:

This interrogatory is intended to include party statements made to a representative of an insurance company prior to involvement of defense counsel.

(30) State the names and addresses of all persons known to you who were present at the time of the incident alleged in your Complaint or who observed or witnessed all or part of the accident.

(31) As to each individual named in response to Interrogatory #30, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1 concerning the subject matter of your Complaint or alleged injuries. If your answer to this Interrogatory is affirmative, state also:

(a) the date on which such statement or statements were taken;

(b) the names and addresses of the person or persons who took such statement or statements;

(c) the names and addresses of any person or persons present when such statement or statements were taken;

(d) whether such statement or statements were written, made by recording device or taken by court reporter or stenographer;

(e) the names and addresses of any person or persons having custody or a copy or copies of such statement or statements.

(32) Are you aware of any photographs depicting the accident scene, any vehicle involved in the incident alleged in the Complaint, or any condition of injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs taken of each such subject by each photographer, please state:

(a) the name and address of the photographer, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken;

(c) the subject (e.g., "Plaintiff's vehicle," "scene," etc.);

(d) the number of photographs.

(33) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether you consumed or used any alcoholic beverages, drugs or medications within the eight (8) hours next preceding the time of the incident alleged in the Complaint and, if so, indicate what you consumed or used, how much you consumed, and when.

(34) Please state whether, within eight (8) hours after the incident alleged in the Complaint, any testing was performed to determine the presence of alcohol, drugs or other medications in your blood, and, if so, state:

(a) the name and address of the hospital, person or entity performing such test or screen;

(b) the date and time;

(c) the results.

(35) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

COMMENT: The following two interrogatories are intended to identify situations in which a plaintiff has applied for and received workers' compensation benefits. If compensation benefits were paid, then the supplemental interrogatories and requests for production may be served on the plaintiff without leave of the court if the compensation carrier does not intervene in the action.

(36) Did you make a claim for workers' compensation benefits as a result of the incident/occurrence alleged in the complaint?

(37) Did you receive workers' compensation benefits as a result of the incident/occurrence alleged in the complaint?

DEFENDANT,

BY _____

I, _____, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

(Plaintiff)

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20____ to _____.

(Attorney Signature)

Form 203

Plaintiff's Interrogatories**Premises Liability Cases**

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within thirty (30) days of the filing hereof [insofar as the disclosure sought will be of assistance in the prosecution of this action and can be provided by the Defendant with substantially greater facility than could otherwise be obtained] in compliance with Practice Book Section 13-2.

In answering these Interrogatories, the Defendant(s), is (are) required to provide all information within their knowledge, possession or power. If an Interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the Interrogatory as a whole. If any Interrogatories cannot be answered in full, answer to the extent possible.

(1) Identify the person(s) who, at the time of the Plaintiff's alleged injury, owned the premises where the Plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your date of birth;

(iii) your home address;

(iv) your business address.

(b) If the owner is not a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your business address;

(iii) the nature of your business entity (corporation, partnership, etc.);

(iv) whether you are registered to do business in Connecticut;

(v) the name of the manager of the property, if applicable.

(2) Identify the person(s) who, at the time of the Plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the Plaintiff claims to have been injured.

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured.

(4) State whether you had in effect at the time of the Plaintiff's injuries any written policies or procedures that relate to the kind of conduct or condition the Plaintiff alleges caused the injury.

(5) State whether it is your business practice to prepare, or to obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

(6) State whether any written report of the incident described in the Complaint was prepared by you or your employees in the regular course of business.

(7) State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the Plaintiff claims to have been injured.

(8) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers;

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;

(c) the time and date a sign or barrier was erected;

(d) the size of the sign or barrier and wording that appeared thereon.

(9) State whether you received, at any time within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

(10) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name and address of the person who made the complaint;

(b) the name, address and person to whom said complaint was made;

(c) whether the complaint was in writing;

(d) the nature of the complaint.

(11) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or

its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made. 12-23. (Interrogatories #1 (a) through (e), #2 through #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

Form 204

Plaintiff's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Plaintiff(s) hereby request(s) that the Defendant provide counsel for the Plaintiff(s) with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff(s) the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on (day), (date) at (time).

In answering these production requests, the plaintiff(s), are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

Definition: "You" shall mean the Defendant to whom these interrogatories are directed except that if that Defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) A copy of the appraisal or bill for repairs as identified in response to Interrogatory #11.

(2) A copy of declaration page(s) of each insurance policy identified in response to Interrogatory #7 and/or #8.

(3) If the answer to Interrogatory #9 is in the affirmative, a copy of the complete policy contents of each insurance policy identified in response to Interrogatory #7 and/or #8.

(4) A copy of any photographs identified in response to Interrogatory #6.

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of all lease agreements pertaining to any motor vehicle involved in the incident which is the subject of this action, which was owned or operated by you or your employee, and all documents referenced or incorporated therein.

(7) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #16, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same for each hospital, person or entity that performed such test or screen. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(8) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been
mailed, this _____ day of
_____, 20____
_____ to
_____.

(Attorney Signature)

Form 205

Defendant's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production. In answering these production requests, the Plaintiff(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) If a claim for lost wages or lost earning capacity is being made copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to

comply with the provisions of the Health Insurance Portability and Accountability

Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶¶5 and ¶¶6 above.

(8) Copies of all documentation of claims of right to reimbursement provided to the Plaintiff by third party payors, and copies of, or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26.

(10) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a signed authorization, sufficient to comply with the provisions of the Health

Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(13) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20__ to _____.

(Attorney Signature)

Form 206

Plaintiff's Requests for Production Premises Liability

No. CV- : SUPERIOR COURT
(Plaintiff) : JUDICIAL DISTRICT OF
VS. : AT
(Defendant) : (Date)

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on _____ on _____ (day), _____ (date) at (time).

In answering these production requests, the Defendant(s), are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

(1) A copy of the policies or procedures identified in response to Interrogatory #4.

(2) A copy of the report identified in response to Interrogatory #6.

(3) A copy of any written complaints identified in Interrogatory #10.

(4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered and

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

(NEW) Form 208**Defendant's Supplemental Interrogatories
Workers' Compensation Benefits – No Intervening Plaintiff**

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Defendant, hereby propounds the following interrogatories to be answered by the Plaintiff

_____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the defense of this action and can be provided by the Plaintiff with substantially greater facility than could otherwise be obtained.

Definition: "You" shall mean the Plaintiff to whom these interrogatories are directed except that if suit has been instituted by the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Plaintiff's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

In answering these interrogatories, the Plaintiff(s), is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) State your full name, home address, and business address.

(2) State the workers' compensation claim number and the date of injury of each workers' compensation claim that you have filed as a result of the incident/occurrence alleged in the complaint.

(3) State the total amount paid on your behalf on each of the claims filed as a result of the incident/occurrence alleged in the complaint and referred to in interrogatory # 2, and if known, specify the amount of medical benefits, loss of income benefits, and specific award benefits, and if unknown, provide an authorization for the same.

(4) Identify any First Report of Injury, Notice of Claim for Compensation, Notice of Intention to Reduce or Discontinue Benefits, Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits, and any reports of

medical exams requested by the commissioner, respondent and/or employer arising out of the incident/occurrence alleged in the complaint.

(5) Identify any voluntary agreements, approved stipulations to date, approved full and final stipulations and findings and awards, and findings and denials arising out of the incident/occurrence alleged in the complaint and which formed the basis for your answer to interrogatory # 3.

(6) Which of your claims arising out of the incident/occurrence alleged in the complaint and referenced in your answer to interrogatory # 2 are still open?

COMMENT: These supplemental interrogatories are specifically directed at eliciting information about any workers' compensation claims, benefits and agreements. Unless the compensation carrier is a party to the action, it can be difficult to obtain this information. Often the plaintiff's lawyers do not represent the client in the workers' compensation case, and although this information is available in the workers' compensation file, providing these records to lawyers not involved in the compensation case could be time-consuming for the workers' compensation office staff. If compensation benefits were paid, these supplemental interrogatories may be served on the plaintiff without leave of the court if there is no intervening plaintiff in the action.

DEFENDANT,

BY _____

I, _____, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

(Plaintiff)

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed,
this _____ day of _____, 20____ to
_____.

(Attorney Signature)

(NEW) Form 209**Defendant's Supplemental Requests for Production
Workers' Compensation Benefits – No Intervening Plaintiff**

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production. In answering these production requests, the Plaintiff(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

(1) Produce a copy of the First Report of Injury (Form FRI), Notice of Claim for Compensation (Form 30C), Notice of Intention to Reduce or Discontinue Benefits (Form 36), and Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits (Form 43).

(2) Produce a copy of all of the approved voluntary agreements, approved stipulations to date, approved full and final stipulations, findings and awards, and findings and denials that relate to one or more of the claims referenced in your answer to interrogatory # 2 on Form 208.

(3) Produce a copy of all reports of medical exams requested by the commissioner, respondent and/or employer that were prepared concerning any of the claims referenced in your answer to interrogatory # 2 on Form 208.

(4) If you are unable to specify the amount of medical benefits, loss of income benefits, and specific award benefits paid on your behalf, provide an authorization for the same.

COMMENT: These supplemental requests for production are specifically directed at eliciting information about any workers' compensation claims, benefits and agreements. Unless the compensation carrier is a party to the action, it can be difficult to obtain this information. Often the plaintiff's lawyers do not represent the client in the workers' compensation case, and although this information is available in the workers' compensation

file, providing these records to lawyers not involved in the compensation case could be time-consuming for the workers' compensation office staff. If compensation benefits were paid, these supplemental requests for production may be served on the plaintiff without leave of the court if there is no intervening plaintiff in the action.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed,
this _____ day of _____, 20____ to
_____.

(Attorney Signature)

(NEW) Form 210**Defendant's Interrogatories****Workers' Compensation Benefits – Intervening Plaintiff**

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Defendant, hereby propounds the following interrogatories to be answered by the Intervening Plaintiff _____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the defense of this action and can be provided by the Intervening Plaintiff with substantially greater facility than could otherwise be obtained.

Definition: "You" shall mean the Intervening Plaintiff to whom these interrogatories are directed except that if suit has been instituted by the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Intervening Plaintiff's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

In answering these interrogatories, the Plaintiff(s), is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) State the name, business address, business telephone number, business e-mail address and relationship to the workers' compensation lien holder of the person answering these interrogatories.

(2) State the workers' compensation claim number and the date of injury of each workers' compensation claim that gave rise to the lien asserted by the workers' compensation lien holder.

(3) State the total amount paid on each claim referenced in the answer to interrogatory # 2, specifying the amount of medical benefits, loss of income benefits, and specific award benefits paid.

(4) Identify any First Report of Injury, Notice of Claim for Compensation, Notice of Intention to Reduce or Discontinue Benefits, Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits, and any reports of medical exams requested by the commissioner, respondents and/or employer arising out of the incident/occurrence alleged in the complaint.

(NEW) Form 211
Defendant's Requests for Production
Workers' Compensation – Intervening Plaintiff

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Intervening Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photography or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production. In answering these production requests, the Plaintiff(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

(1) Produce a copy of the First Report of Injury (Form FRI), Notice of Claim for Compensation (Form 30C), Notice of Intention to Reduce or Discontinue Benefits (Form 36), and Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits (Form 43).

(2) Produce a copy of all of the approved voluntary agreements, approved stipulations to date, approved full and final stipulations, findings and awards, and findings and denials that relate to one or more of the claims referenced in your answer to interrogatory# 2 on Form 210.

(3) Produce a copy of all reports of medical exams requested by the commissioner, respondent and/or employer that were prepared concerning any of the claims referenced in your answer to interrogatory # 2 on Form 210.

(4) Produce a copy of your workers' compensation lien calculations.

COMMENT: These standard requests for production are intended to tailor the discovery from the intervening compensation carrier to the limited role and limited material information in the workers' compensation lien holder's file. The existing standard requests for production directed to plaintiffs place an unnecessary burden on the parties, result in discovery disputes, and require the compensation carrier to produce information and documentation, in many instances, that is duplicative of the responses engendered by the same requests for production served upon the plaintiff in the case.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed,
this _____ day of _____, 20____ to
_____.

(Attorney Signature)