Practice Book Revisions

Being Considered by the

Rules Committee of the Superior Court

Superior Court Rules

Rules of Professional Conduct

Including Commentaries to Proposals

NOTICE

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

On May 18, 2015, at 2:00 p.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 Practice Book revisions which are being considered by the Committee. The revisions proposed by the Rules Committee have been printed in the April 21, 2015, issue of the Connecticut Law Journal and have been posted on the Judicial Branch website at http://www.jud.ct.gov/pb.htm.

Pursuant to subsection (c) of section 51-14 of the Connecticut General Statutes, the Supreme Court has designated the Rules Committee to conduct this public hearing also for the purpose of receiving comments on any proposed new rule or any change in an existing rule that any member of the public deems desirable.

Comments may be forwarded to the Rules Committee by email at Joseph.DelCiampo@jud.ct.gov or may be forwarded to the Rules Committee at the following address and should be received by May 14, 2015:

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
P.O. Box 150474
Hartford, CT 06115-0474

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.

Wheelchair access is located in the rear of the building, accessible from the staff parking lot between Lafayette and Oak Streets. There are a limited number of handicap parking spots in the gated staff lot, which is accessible from Oak Street. Use the intercom at the gate to speak to security about the availability of parking. Once at the accessible door, use the intercom to request entry from security. If you would like to attend the meeting and need an accommodation under the Americans with Disabilities Act, please email the Rules Committee at Joseph.DelCiampo@jud.ct.gov before May 14, 2015.

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.

Rules Committee of the Superior Court

PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.15. Safekeeping Property

(a) As used in this Rule, the terms below shall have the following meanings:

(1) ''Allowable reasonable fees'' for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.

(2) An ''eligible institution'' means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or (ii) an openend investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection **[**(h)**]**(i) (3) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection **[**(h)**]**(i) (4) below, subject to the dispute resolution process provided in subsection **[**(h)**]**(i) (4) (E) below.

(3) ''Federal Funds Target Rate'' means the target level for the federal funds rate set by the Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate.

If such rate or successor rate is set as a range, the term ''Federal Funds Target Rate'' means the upper limit of such range.

(4) ''Interest- or dividend-bearing account'' means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is ''well-capitalized'' or ''adequately capitalized'' as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a ''money market fund'' as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least $250,000,000.

(5) ''IOLTA account'' means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection **[**(h)**]**(i) (6) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection **[**(h)**]**(i) (4) below.

(6) ''Non-IOLTA account'' means an interestor dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) ''U.S. Government Securities'' means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

(b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes.

(d) Absent a written agreement with the client otherwise, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) **[**claim**]** have interests, the property shall be kept separate by the lawyer until **[**the dispute is**]** any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which the **[**interests are not in dispute**]** lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.

(g) The word ''interest(s)'' as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the

lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within sixty days, the lawyer may distribute the funds in question to the client.

[g](h) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining

the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

[(h)**]**(i) An IOLTA account may only be established at an eligible institution that meets the following requirements:

(1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.

(2) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is

made and such other information as is reasonably required by such organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

(3) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of

allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken

from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it

has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice;

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.

(5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection **[**(h)**]**(i) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal ser-

vices to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection **[**(h)**]**(i) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established

on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

[(i)](j) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(10) copies of those portions of client files that are reasonably related to client trust account transactions.

[(j)**]**(k) With respect to client trust accounts required by this Rule:

(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals shall be made only by check payable to a named payee or by authorized electronic transfer and not to cash.

[(k)**]**(*l*) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise

comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

[(*l*)**]**(m) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

[(m)**]**(n) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices.

While normally it is impermissible to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However,

a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful **[**claims against**]** interests in specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party **[**claims**]** interests against wrongful interference by the client. In such cases the lawyer must refuse to surrender the property to the client until the **[**claims**]** competing interests are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

The word ''interest(s)'' as used in subsections (e), (f) and (g) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A ''lawyers' fund'' for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

Subsection **[**(h)**]**(i) requires lawyers and law firms to participate in the statutory IOLTA program. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

Subsection **[**(i)**]**(j) lists the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Rules of Professional Conduct.

Subsection **[**(i)**]**(j) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks for a period of at least seven

years after termination of each particular legal engagement or representation. The ''Check Clearing for the 21st Century Act'' or ''Check 21 Act'', codified at 12 U.S.C. § 5001 et seq., recognizes ''substitute checks'' as the legal equivalent of an original check. A ''substitute check'' is defined at 12 U.S.C. § 5002 (16) as paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition (''MICR'') line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. § 5002 (2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number years.

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the interbank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers

and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection **[**(i)**]**(j) (8).

There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection **[**(i)**]**(j) (8). First, in a ''point-of-purchase conversion,'' a paper check is converted into a debit at the point of purchase, and the paper check is returned to the issuer. Second, in a ''back-office conversion,'' a paper check is presented at the point-of-purchase and is later converted into a debit, and the paper check is destroyed. Third, in a ''account-receivable conversion,'' a paper check is converted into a debit, and the paper check is destroyed. Fourth, in a ''telephone-initiated debit'' or ''check-by-phone'' conversion, bank account information is provided via the telephone, and the information is converted to a debit. Fifth, in a ''web-initiated debit,'' an electronic payment is initiated through a secure web environment. Subsection **[**(i)**]**(j) (8) applies to each of the types of electronic funds transfers described. All electronic funds transfers shall be recorded, and a lawyer should not reuse a check number which has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection **[**(i)**]**(j) (9) are regularly performed. The trial balance is the sum of balances of each client's

ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in subdivisions (1) through (9) of subsection **[**(h)**]**(i) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under subdivision (10) of subsection **[**(h)**]**(i) because it is ''reasonably related'' to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this subdivision include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of

proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

Subsection **[**(j)**]**(k) lists minimal accounting controls for client trust accounts. It also enuciates the requirement that only a lawyer admitted to the practice of law in this jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorized to make electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a nondelegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See Rules 5.1 and 5.3 of the Rules of Professional Conduct.

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

The requirements in subdivision (2) of subsection **[**(j)**]**(k) that receipts shall be deposited intact mean that a lawyer cannot deposit one check

or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

Subsection **[**(k)**]**(*l*) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) backup procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by subsection **[**(i)**]**(j) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.15 of the Rules of Professional Conduct, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personal identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

Subsections **[**(*l*)**]**(m) and **[**(m)**]**(n) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms

''law firm,'' ''partner,'' and ''reasonable'' are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTE: The changes to this rule and its commentary address issues related to unwarranted obstruction of disbursements and unsubstantiated claims. Under subsection (f) as revised, a lawyer would be obligated to hold property only where two or more persons have competing interests in the property and would not be prevented from making a proper disbursement because there is a mere claim or dispute lacking a mature legal interest in the property. The term ''interest(s)'' is defined in new subsection (g) of the rule as is a process by which the lawyer may request information to assist the lawyer in determining whether substantial grounds exist for the claim to the property.

Rule 7.4C. Application by Board or Entity to Certify Lawyers as Specialists

Any board or entity seeking the approval of the Rules Committee of the superior court for authority to certify lawyers practicing in this state as being specialists in a certain field or fields of law as set forth in Rule 7.4A (e), shall file an original and six copies of its application with the Legal Specialization Screening Committee pursuant to Rule 7.4B on form JD-ES-63. The application materials shall be filed in a format prescribed by the Legal Specialization Screening Committee, which may require them to be filed electronically.

COMMENTARY: The amendment to this rule gives the Legal Specialization Screening Committee the option to require that applications be filed electronically because applications are voluminous and are

required to be filed in multiple copies for further distribution by the Judicial Branch. Having the ability to further distribute an electronic copy for the consideration of Committee members, will increase efficiency and cut costs.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 1-9A. —Judiciary Committee; Placement of Rules Information on Judicial Branch Website

(a) Each year the Rules Committee shall make itself available to meet with the members of the Judiciary Committee of the General Assembly (the Judiciary Committee) as soon as practicable after the first Rules Committee meeting in September to advise the Judiciary Committee as to the Rules Committee's anticipated agenda for the upcoming year.

(b) As soon as practicable after the convening of each regular legislative session, the chair of the Rules Committee shall invite the Senate and House chairs and the ranking members of the Judiciary Committee, and such other members of that Committee as the chairs may designate, to attend a meeting with the Rules Committee to confer and consult with respect to the rules of practice, pleadings, forms and procedure for the superior court and with respect to legislation affecting the courts pending before or to be introduced in the General Assembly.

(c) The chair of the Rules Committee shall forward to the Judiciary Committee for review and comment all proposed revisions to the Practice Book **[**and to the Code of Evidence**]** which the Rules Committee has decided to submit to public hearing at least 35 days in advance

of the public hearing thereon. If the chair of the Rules Committee shall receive any comments from the Judiciary Committee with respect to such proposed revisions, he or she shall forward such comments to the members of the Rules Committee for their consideration in connection with the public hearing.

(d) The agendas and minutes of Rules Committee meetings, any proposed revisions to the Practice Book [and to the Code of Evidence] which the Rules Committee has decided to submit to public hearing, any comments by the Judiciary Committee with respect to such proposed revisions, and any proposed revisions that are adopted by the superior court judges shall be placed on the Judicial Branch website.

COMMENTARY: Public Act 14-120, ''An Act Concerning Adoption of the Connecticut Code of Evidence by the Supreme Court,'' authorized the Supreme Court to adopt the Code of Evidence and established the Code of Evidence Oversight Committee of the Supreme Court. That committee makes recommendations directly to the Supreme Court and reports annually to the legislature concerning changes to the Code of Evidence. The proposed revisions comport with the Public Act.

(NEW) Sec. 2-47B. Restrictions on the Activities of Deactivated Attorneys

(a) As used in this section:

(1) A ''deactivated attorney'' is an attorney who is currently disbarred, suspended, resigned, or on inactive status.

(2) A ''supervising attorney'' is an attorney:

(A) who has been approved by the court as a supervising attorney for a deactivated attorney in accordance with subsection (e) of this section;

(B) who is in good standing with the bar of this state;

(C) who was not affiliated with the deactivated attorney as an employer, employee, partner, independent contractor or in any other employment relationship at the time of the deactivation; and

(D) who did not serve as an attorney pursuant to Section 2-64 in connection with the disbarment, suspension, resignation or placement on inactive status of the deactivated attorney.

(3) A ''law-related activity'' is:

(A) engaging in the practice of law as defined by Section 2-44A;

(B) representing a client in any legal matter, including discovery matters;

(C) negotiating or transacting any matter for, or on behalf of, a client with third parties, or having any contact with third parties regarding such negotiation or transaction;

(D) receiving, disbursing or exercising any control over clients' funds or other property held in trust and related accounts;

(E) using the titles ''attorney'' or ''lawyer,'' or the designations ''Esq.,'' or ''J.D.'' to describe oneself; or

(F) communicating with clients and third parties regarding matters that are the subject of representation by the supervising attorney or his or her firm.

(4) ''Employ'' means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.

(b) (1) No deactivated attorney shall be permitted to engage in any law-related activities or to be employed as a paralegal or legal assistant unless expressly permitted by the court as provided in this section.

(2) The court may expressly permit, by written order, a deactivated attorney to perform any of the following activities, under the supervision of a supervising attorney, as provided herein:

(A) performing legal work of a preparatory nature, such as conducting legal research, assembling data and other necessary information, and drafting transactional documents, pleadings, briefs, and other similar documents; and

(B) providing clerical assistance to the supervising attorney.

(c) No attorney who knows or should have known that an attorney's license has been deactivated, shall employ the deactivated attorney to engage in any law-related activities or to act as a paralegal or legal assistant, without the permission of the court, as provided in this section.

(d) A deactivated attorney shall not engage in law-related activities or be employed as a paralegal or legal assistant on behalf of any client previously represented by the deactivated attorney or for whom the deactivated attorney had previously provided any legal services in the ten year period prior to deactivation. During the period of employment of the deactivated attorney, the supervising attorney or his or her firm shall not assume representation of any matter on behalf of any client previously represented by the deactivated attorney or for whom the deactivated attorney had previously provided any legal services in the ten year period prior to deactivation.

(e) (1) An attorney desiring to become a supervising attorney shall file a written application on a form approved by the office of the chief court administrator.

(2) The application shall be filed with the court in the docket number of the matter in which the deactivated attorney was suspended, disbarred, placed on inactive status or resigned. A copy of the application shall be served by the applicant on the office of the chief disciplinary counsel.

(3) An application filed under this section shall be assigned to the same judge who presided over the matter in which the deactivated attorney resigned or was disbarred, suspended, or placed on inactive status. If that judge is no longer available, the administrative judge in the judicial district where the deactivation proceeding was held shall assign the matter to another judge.

(f) The court shall schedule the application for a hearing to determine the following:

(1) whether the deactivated attorney should be permitted to perform the activities permitted herein;

(2) whether the attorney will be appointed to serve as the supervising attorney for the deactivated attorney; and

(3) whether any additional monitoring, conditions, or restrictions are necessary.

(g) If the relationship between the supervising attorney and the deactivated attorney terminates, the supervising attorney shall send written notice to the court within fifteen days of the termination of the

relationship. A copy of the written notice shall be served on the office of the chief disciplinary counsel.

(h) Violation of this section by the deactivated attorney or the supervising attorney shall constitute a violation of Rule 8.4 (4) of the Rules of Professional Conduct.

(i) In any application for reinstatement, the supervising attorney and a deactivated attorney under the supervision of a supervising attorney pursuant to this section shall certify that he or she has complied with the requirements of this section during the period of suspension, disbarment, resignation, or inactive status.

COMMENTARY: The unrestricted ability of attorneys whose licenses are deactivated due to a disciplinary proceeding or disability to practice as ''paralegals'' negatively impacts the public perception of our ability to regulate the practice of law. This rule will serve to increase public confidence in the regulation of the bar because it prohibits a deactivated attorney from simply returning to his or her former practice and working as a ''paralegal'' for his or her former firm, for the trustee, or for his or her former clients. With permission of the court, a deactivated attorney may perform the activities specified in this rule. This section shall apply to any attorney whose license is deactivated on or after the effective date of this section.

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.

(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.**]** An attorney is permitted to file an appearance limited to a specific event or proceeding in any family or civil case. 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 change to this section removes the pilot status of limited appearances and expands the application of such appearances to any family or civil case.

Sec. 4-6. Page Limitations for Briefs, Memoranda of Law and Reply Memoranda

(a) The text of any trial brief or any other brief concerning a motion in any case shall not exceed thirty-five pages without permission of the judicial authority. The judicial authority may also permit the filing of a supplemental brief of a particular number of pages. The text of any brief shall be double-spaced and the type font shall be no smaller than 12 point. The judicial authority may in its discretion limit the number of pages of any brief to less than thirty-five.

(b) Any reply memorandum filed pursuant to Section 11-10 (b) shall not exceed ten pages without the permission of the judicial authority.

COMMENTARY: The above change sets the page limitations for reply memoranda filed under Section 11-10 (b).

Sec. 4-7. Personal Identifying Information to Be Omitted or Redacted from Court Records in Civil and Family Matters

(a) As used in this section, ''personal identifying information'' means: an individual's date of birth; mother's maiden name; motor vehicle

operator's license number; Social Security number; other government issued identification number except for juris, license, permit or other business related identification numbers that are otherwise made available to the public directly by any government agency or entity; health insurance identification number; or any financial account number, security code or personal identification number (PIN). For purposes of this section, a person's name is specifically excluded from this definition of personal identifying information**[.]** unless the judicial authority has entered an order allowing the use of a pseudonym in place of the name of a party. If such an order has been entered, the person's name is included in this definition of ''personal identifying information.''

(b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or paper format, unless otherwise required by law or ordered by the court. The party filing the redacted documents shall retain the original unredacted documents throughout the pendency of the action, any appeal period, and any applicable appellate process.

(c) The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The court or the clerk of the court need not review any filed document for compliance with this rule.

COMMENTARY: The revision to this section is to include a person's name in the definition of personal identifying information if the judicial

authority has entered an order permitting the person to use a pseudonym in an action. By including the name in the definition of personal identifying information, the rule permits a party, the person identified by name or the judicial authority on its own motion to proceed under Section 11-20B to move quickly to protect the identity of the person in accordance with the existing order of the judicial authority.

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

Self-represented litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any **[**civil**]** matter, including matters scheduled on short calendar or special proceeding lists or for trial, shall file an application to have the clerk of the court issue subpoenas for that purpose. The clerk, after verifying the scheduling of the short calendar hearing, special proceeding or trial, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the matter has not been scheduled before a specific judge, which judge shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate.

COMMENTARY: The change to this section expands the applicability of the section to any matter and comports with *State* v. *Nowacki*, 155 Conn. App. 758 (2015).

PROPOSED AMENDMENTS TO THE CIVIL RULES

Sec. 11-10. Requirement That Memorandum of Law Be Filed with Certain Motions

(a) A memorandum of law briefly outlining the claims of law and authority pertinent thereto shall be filed and served by the movant with the following motions and requests: (1) motions regarding parties filed pursuant to Sections 9-18 through 9-22 and motions to implead a third party defendant filed pursuant to Section 10-11; (2) motions to dismiss except those filed pursuant to Section 14-3; (3) motions to strike; (4) motions to set aside judgment filed pursuant to Section 17-4; and (5) motions for summary judgment. Memoranda of law may be filed by other parties on or before the time the matter appears on the short calendar.

(b) A reply memorandum is not required and the absence of such memoranda will not prejudice any party. A reply memorandum shall be strictly confined to a discussion of matters raised by the responsive memorandum, and shall be filed within fourteen days of the filing of the responsive memorandum to which such reply memoranda is being made.

(c) Surreply memoranda cannot be filed without the permission of the judicial authority.

COMMENTARY: The above change is intended to make clear that a reply memorandum by the proponent of a motion or request is permitted, but not required. The memorandum must discuss only matters contained in the responsive memorandum, and it must be filed within fourteen days. This change eliminates the current practice of

filing a motion for permission to file a reply memorandum, which can extend the time for a resolution of a motion or request. No surreply memoranda can be filed without the permission of the judicial authority.

Sec. 13-7. —Answers to Interrogatories

(a) Any such interrogatories shall be answered under oath by the party to whom directed and such answers shall not be filed with the court but shall be served within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the interrogatories or, if applicable, the notice of interrogatories on the answering party, unless:

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

(2) The party to whom the interrogatories 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 interrogatories or the notice of interrogatories shall file objection thereto. A party shall be entitled to one such request for each set of interrogatories directed to that party; or

(3) Upon motion, the judicial authority allows a longer time; or

(4) Objections to the interrogatories and the reasons therefor are filed and served within the thirty-day period.

(b) A party objecting to one or more interrogatories shall file an objection in accordance with Section 13-8.

(c) Objection by a party to certain of the interrogatories directed to such party shall not relieve that party of the obligation to answer the interrogatories to which he or she has not objected within the thirty-day period. All answers to interrogatories shall repeat immediately before each answer the interrogatory being answered. Answers are to be signed by the person making them. The party serving the interrogatories or the notice of interrogatories may move for an order under Section 13-14 with respect to any failure to answer.

COMMENTARY: This section currently provides that a request for a thirty day discovery extension ''shall contain a certification by the requesting party that the case has not been assigned for trial.'' With the recent amendment of Section 14-8 (a) and the advent of the individualized calendaring system (IndiCal), trial dates are being assigned shortly after the cases are filed. The revision to this section eliminates that requirement which otherwise prevents the filing of requests for extension of time.

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 production set forth in Forms 204, 205, 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: This section currently provides that a request for a thirty day discovery extension ''shall contain a certification by the requesting party that the case has not been assigned for trial.'' With the recent amendment of Section 14-8 (a) and the advent of the individualized calendaring system (IndiCal), trial dates are being assigned shortly after the cases are filed. The revision to this section eliminates that requirement which otherwise prevents the filing of requests for extension of time.

Sec. 17-30. Summary Process; Default and Judgment for Failure to Appear or Plead

(a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions.

(b) If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial

authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs.

(c) In summary process actions, a motion for judgment by default that is sent to the court either electronically or is hand-delivered to the court shall be deemed to be filed on the third business day following such delivery unless the party filing the motion for judgment by default certifies that the motion has also been sent electronically or hand-delivered on the same day to all opposing parties or their counsel.

COMMENTARY: When motions for judgment are sent electronically or hand-delivered to the court and then mailed to the opposing parties or their counsel, there is significant chance that by the time the motion is received by the opposing parties or their counsel judgment will have entered. This amendment to this section is intended to avoid that situation.

Sec. 17-53. Summary Process Executions

Whenever a summary process execution is requested because of a violation of a term in a judgment by stipulation or a judgment with a stay of execution beyond the statutory stay, a hearing shall be required. If the violation consists of nonpayment of a sum certain, an affidavit with service certified in accordance with Sections 10-12 through 10-17 shall be accepted in lieu of a hearing unless an objection to the execution is filed by the defendant prior to the issuance of the execution. The execution shall issue on the third business day after the filing of the affidavit.

An affidavit asserting nonpayment of a sum certain that is sent to the court either electronically or is hand-delivered to the court shall

be deemed to be filed on the third business day following such delivery unless the party filing the affidavit certifies that the affidavit has also been sent electronically or hand-delivered on the same day to all opposing parties or their counsel.

COMMENTARY: When affidavits of noncompliance are sent electronically or hand-delivered to the court and then mailed to the opposing parties or their counsel, there is a significant chance that by the time the affidavit is received by the opposing parties or their counsel an execution will have issued. The amendment to this section is intended to avoid that situation.

Sec. 23-36. —The Expanded Record

A party may **[**file with the court any portion of**]**, consistent with the rules of evidence, offer as an exhibit, or the habeas court may take judicial notice of, the transcript and any portion of the superior court, appellate court or supreme court record or clerk's file **[**as part of the record before the habeas court**]** from the petitioner's criminal matter which is the subject of the habeas proceeding.

COMMENTARY: The amendments to this section allow for the creation of an ''expanded record'' in the habeas court from materials from the underlying criminal case. This will reduce confusion as to what materials are before the court and what the parties are relying on. It will also reduce record keeping issues that are created when a trial is over and some of the criminal court records were delivered as part of the expanded record, but never marked as exhibits.

PROPOSED AMENDMENTS TO THE FAMILY RULES

Sec. 25-1. Definitions Applicable to Proceedings on Family Matters

The following shall be "family matters" within the scope of these rules: Any actions brought pursuant to General Statutes § 46b-1, including but not limited to dissolution of marriage or civil union, legal separation, dissolution of marriage or civil union after legal separation, annulment of marriage or civil union, alimony, support, custody, and change of name incident to dissolution of marriage or civil union, habeas corpus and other proceedings to determine the custody and visitation of children except those which are properly filed in the superior court as juvenile matters, the establishing of paternity, enforcement of foreign matrimonial or civil union judgments, actions related to prenuptial or pre-civil union and separation agreements and to matrimonial or civil union decrees of a foreign jurisdiction, actions brought pursuant to General Statutes § 46b-15, custody proceedings brought under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act and proceedings for enforcement of support brought under the provisions of the Uniform Interstate Family Support Act.

COMMENTARY: The Uniform Child Custody Jurisdiction Act was replaced by the Uniform Child Custody Jurisdiction and Enforcement Act. The proposed revision reflects that change.

Sec. 25-24. Motions

(a) Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor

child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other equitable relief.

(b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendent lite or a postjudgment motion.

COMMENTARY: The revision to this section establishes by rule the procedure to follow in connection with seeking the removal of counsel for a minor child or a guardian ad litem for the minor child and is consistent with Section 4 of Public Act 14-3.

Sec. 25-49. Definitions

For purposes of these rules the following definitions shall apply:

(1) ''Uncontested matter'' means a case in which both parties are appearing and no aspect of the matter is in dispute.

(2) **[**''Limited contested matter''**]** ''Financial Disputes'' means a case in which **[**the matters in dispute are limited to**]** monetary awards, real property or personal property are in dispute.

(3) **[**''Contested matter''**]** ''Parenting Disputes'' means a case in which child custody, visitation rights, also called parenting time or access, paternity or the grounds for the action are in dispute**[**, and matters of monetary awards or the disposition of real or personal property may be in dispute**]**.

A case may contain both financial and parenting disputes.

COMMENTARY: The revisions to the definitions are consistent with current practice and reflect the substance and status of each case. The proposed last sentence makes it clear that parties may have a case with more than one type of status.

Sec. 25-50. Case Management

(a) The presiding judge or a designee shall determine by the case management date which track each case shall take and assign each case for disposition. That date shall be set on a schedule approved by the presiding judge.

(b) In all cases, unless the party or parties appear and the case proceeds to judgment under subsections (c) or (d) on the case management date, the party or parties shall file on or before the case management date:

(1) a case management agreement (JD-FM-163);

(2) sworn financial affidavits;

(3) a proposed parenting plan, if there are minor children.

If the parties or counsel have not filed these documents on or before the case management date, or in a case with parenting disputes where counsel or self-represented parties have not come to court on the case management date, the case may be dismissed or other sanctions may be imposed.

(c) If the defendant has not filed an appearance by the case management date, the plaintiff may appear and proceed to judgment on the case management date without further notice to the defendant, provided the plaintiff has complied with the provisions of Section 25-30. Otherwise, the plaintiff must file on or before the case management date, the documents listed in subsection (b) and the clerk shall assign the matter to a date certain for disposition.

[(b)**]**(d) If the matter is uncontested, the parties may appear and proceed to judgment on the case management date, provided the

plaintiff has complied with the provisions of Section 25-30. Otherwise, the parties must file on or before the case management date, the documents listed in subsection (b) and [a form prescribed by the office of the chief court administrator has been filed,] the clerk shall assign the matter to a date certain for disposition.

[(c)](e) [With the approval of the presiding judge, a case management conference may be conducted by the filing of a stipulated scheduling order when only financial issues are outstanding. If there is a dispute with respect to financial issues,] In cases where there are financial disputes, the parties do not have to come to court on the case management date, but must file on or before the case management date the documents listed in subsection (b). Thereafter, the matter may be directed to any alternative dispute resolution mechanism, private or court-annexed, [or thereafter have assigned a date certain for] including, but not limited to family special masters and [further] judicial pretrial. [Thereafter, the matter may be assigned for trial for a date certain if not resolved.] If not resolved, the matter will be assigned a date certain for trial.

[(d)](f) In cases where there are parenting disputes [custody or visitation issues are outstanding], the parties and counsel must appear for a case management conference on the case management date. If parenting disputes [custody or visitation issues] require judicial intervention, the appointment of counsel or a guardian ad litem for the minor child, or case study or evaluation by family services or by a private provider of services, a target date shall be assigned for comple-

tion of such study and the final conjoint thereon and thereafter a date certain shall be assigned for disposition.

[(e)**]**(g) With respect to subsections **[**(c)**]** (e) and **[**(d)**]** (f), if a trial is required, such order may include a date certain for a trial management conference between counsel or self-represented parties for the purpose of premarking exhibits and complying with other orders of the judicial authority to expedite the trial process.

COMMENTARY: The revisions to this section are intended to give direction to the litigants. The revisions also clarify that the parties may proceed to judgment on the case management date if the defendant has failed to appear by the case management date.

Sec. 25-51. When Motion for Default for Failure to Appear Does Not Apply

(a) **[**Any case claiming a dissolution of marriage or civil union, legal separation, or annulment in which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50.**]** If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has not filed an appearance by the **[**date assigned for disposition**]** case management date, the plaintiff **[**case**]** may proceed to judgment on the case management date without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.

(b) If the defendant files an appearance by the **[**date assigned for disposition**]** case management date, the presiding judge or a designee

shall determine which track the case shall take pursuant to Section 25-50.

COMMENTARY: The revisions to this section clarify that a plaintiff may proceed to judgment on the case management date if the defendant has failed to appear.

Sec. 25-57. Affidavit concerning Children

Before the judicial authority renders any order in any matter pending before it involving the custody, visitation or support of a minor child or children, an affidavit shall be filed with the judicial authority averring (1) whether **[**the wife**]** any of the parties is believed to be pregnant; (2) the name and date of birth of any minor child born since the date of the filing of the complaint or the application; (3) information which meets the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act, General Statutes § 46b-115 et seq.; (4) that there is no other proceeding in which either party has participated as a party, witness, or otherwise concerning custody of the child in any state; and (5) that no person not a party has physical custody or claims custody or visitation rights with respect to the child. This section shall not apply to modifications of existing support orders or in situations involving allegations of contempt of support orders.

COMMENTARY: The proposed change recognizes that the existing terminology is obsolete in some relationships.

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) Any Income Withholding for Support form (JD-FM-1) filed with the Superior Court Clerk's Office, after being signed by the clerk, shall

be returned to the filer for service on the payer of income. A copy of the signed form shall be retained for the court file and shall be under seal. Any such copy shall be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any individual or entity under cooperative agreement with the IV-D agency requesting disclosure of such form in the administration of the child support program. Any person may file a motion to unseal this document. A copy of the signed form with all social security numbers and dates of birth redacted by the clerk shall be retained in the court file and be available for public inspection.

[(i)**]**(j) 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 website. 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 language that has been deleted in subsection (h) was applicable to a paper file. There are, as of December 15, 2014, paperless family files for which sealing financial affidavits in an envelope is not applicable. A comparable electronic process ''seals'' those affidavits in accordance with the other provisions of this section.

New subsection (i) concerns the Income Withholding for Support form (JD-FM-1) which is a federally mandated form. The social security number and dates of birth are required fields, and there is currently no law that protects this information from disclosure. Family files are

now electronic and may be viewed from any courthouse public access computer in the state, allowing for greater access to these documents without the need to go to a clerk's office. Therefore, the most secure way of protecting the social security number and other personal identifying information on this form is to seal the copy of the form that is retained in the court file. A provision has been included to allow any person to move to unseal the document. A redacted copy of the signed form will be retained in the court file for public inspection.

PROPOSED AMENDMENTS TO THE JUVENILE RULES

(NEW) Sec. 26-3. Case Initiation; Electronic Filing

Proceedings in juvenile matters may be initiated and papers filed, signed or verified by electronic means in the manner prescribed in Section 4-4.

COMMENTARY: This new rule provides for electronic filing for juvenile matters proceedings and is consistent with General Statutes § 51-193c and existing Practice Book rules.

PROPOSED AMENDMENTS TO THE CRIMINAL RULES

Sec. 40-11. Disclosure by the Prosecuting Authority

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose in writing the existence of, provide photocopies of, and allow the defendant in accordance with Section 40-7, to inspect,

copy, photograph and have reasonable tests made on any of the following items:

(1) **[**Exculpatory information or materials;

(2)**]** Any books, tangible objects, papers, photographs, or documents within the possession, custody or control of any governmental agency, which the prosecuting authority intends to offer in evidence in chief at trial or which are material to the preparation of the defense or which were obtained from or purportedly belong to the defendant;

[(3)**]**(2) Copies of the defendant's prior criminal record, if any, which are within the possession, custody, or control of the prosecuting authority, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting authority;

[(4)**]**(3) Any reports or statements of experts made in connection with the offense charged including results of physical and mental examinations and of scientific tests, experiments or comparisons which are material to the preparation of the defense or are intended for use by the prosecuting authority as evidence in chief at the trial;

[(5)**]**(4) Any warrant executed for the arrest of the defendant for the offense charged, and any search and seizure warrants issued in connection with the investigation of the offense charged;

[(6)**]**(5) (i) Any written, recorded or oral statements made by the defendant or a codefendant, before or after arrest to any law enforcement officer or to a person acting under the direction of or in cooperation with a law enforcement officer concerning the offense charged; or

(ii) Any relevant statements of coconspirators which the prosecuting authority intends to offer in evidence at any trial or hearing.

(b) In addition to the foregoing, the [defendant shall be entitled to disclosure of] prosecuting authority shall disclose to the defendant in accordance with any applicable constitutional and statutory provisions any exculpatory information or materials that the prosecuting authority may have whether or not a request has been made therefor [in accordance with any applicable constitutional and statutory provisions].

COMMENTARY: The revisions to this rule conform the rule to the statutory and constitutional requirement that prosecutors disclose any exculpatory information and material to defendants whether or not a request has been made for such information or material.

Sec. 40-13. Names of Witnesses; Prior Record of Witnesses; Statements of Witnesses

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the defendant the names and, subject to the provisions of subsections (f) and (g) of this section, the addresses of all witnesses that the prosecuting authority intends to call in his or her case-in-chief. [and] The prosecuting authority shall additionally make a reasonable affirmative effort to obtain a record of the witness' felony convictions and pending misdemeanor and felony charges, and shall disclose any such convictions and pending charges to the defendant [any record of felony convictions of the witnesses known to the prose-

cuting authority and any record of felony or misdemeanor charges pending against the witnesses known to the prosecuting authority**]**.

(b) Upon written request by the prosecuting authority, filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the defendant, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the prosecuting authority the names and, subject to the provisions of subsection (g) of this section, the addresses of all witnesses whom the defendant intends to call in the defendant's case-in-chief and shall additionally disclose to the prosecuting authority any statements of the witnesses other than the defendant in the possession of the defendant or his or her agents, which statements relate to the subject matter about which each witness will testify.

(c) No witness shall be precluded from testifying for any party because his or her name or statement or criminal history was not disclosed pursuant to this rule if the party calling such witness did not in good faith intend to call the witness at the time that he or she provided the material required by this rule. In the interests of justice the judicial authority may in its discretion permit any undisclosed individual to testify.

(d) The provisions of this section shall apply to any additional testimony presented by any party as rebuttal evidence pursuant to Section 42-35 (3) and the statements and criminal histories of such witnesses shall be provided to the opposing party before the commencement of any such rebuttal testimony.

(e) The fact that a witness' name or statement is provided under this section shall not be a ground for comment upon a failure to call a witness.

(f) Notwithstanding any provision of this section, the personal residence address of a police officer or correction officer shall not be required to be disclosed except pursuant to an order of the judicial authority after a hearing and a showing that good cause exists for the disclosure of the information.

(g) Upon written request of a party and for good cause shown, the judicial authority may order that the address of any witness whose name was disclosed pursuant to subsections (a) or (b) of this section not be disclosed to the opposing party.

COMMENTARY: The revision to subsection (a) of this section adds the requirement that the state make a reasonable affirmative effort to obtain the criminal record of state's witnesses for disclosure to the defendant.