

**Practice Book and Code of Evidence
Revisions**

Recommended by the

Rules Committee of the Superior Court

PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to subsections (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. Subject to revocation by the client and to the terms of the contract, a client's decision to settle a matter shall be implied where the lawyer is retained to represent the client by a third party obligated under the terms of a contract to provide the client with a defense and indemnity for the loss, and the third party elects to settle a matter without contribution by the client.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such informed consent shall not be required when a client cannot be located despite reasonable efforts where the lawyer is retained to represent a client by a third party which is obligated by contract to provide the client with a defense.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENTARY: Allocation of Authority between Client and Lawyer. Subsection (a) confers upon the client the ultimate

authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in subsection (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation. The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent. Nothing in Rule 1.2 shall be construed to authorize limited appearances before any tribunal unless otherwise authorized by law or rule.

Although this Rule affords the lawyer and client substantial latitude to limit the scope of representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. Subsection (d) prohibits a lawyer from knowingly counseling or assisting a

client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally believed legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Subsection (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Subsection (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of subsection (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).

AMENDMENT NOTE: The above revisions address the situation where an insured/client cannot be located despite diligent and good faith efforts by both the lawyer and the insurer.

Rule 1.5. Fees

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subsection (d) or other law. A contingent fee agreement shall be in a writing signed by the

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

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

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

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

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

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

(2) The total fee is reasonable.

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

When the lawyer has regularly represented a client, the lawyer and the client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. Absent extraordinary circumstances the lawyer should send the written fee statement to the client before any substantial services are rendered, but in any event not later than ten days after commencing the representation.

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

Terms of Payment. A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees

often have the essential qualities of a business transaction with the client.

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

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

Division of Fee. A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Contingent fee agreements must be in writing signed by the client and must otherwise comply with subsection (c) of this Rule. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

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

Disputes over Fees. If an arbitration or mediation procedure such as that in Practice Book Section 2-32 (a) (3) has been established for resolution of fee disputes, the lawyer must comply with the procedure when it is mandatory, and, even

when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

AMENDMENT NOTE: The above change adds to the rule the express provision that, where a signed contingent fee agreement is in accordance with Gen. Stat. § 52-251c, the fee is presumed to be reasonable.

Rule 1.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction, including investment services, with a client or former client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client or former client unless:

(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client or former client and are fully disclosed and transmitted in writing to the client or former client in a manner that can be reasonably understood by the client or former client;

(2) The client or former client is advised in writing that the client or former client should consider the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction;

(3) The client or former client gives informed consent in writing signed by the client or former client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction;

(4) With regard to a business transaction, the lawyer advises the client or former client in writing either (A) that the lawyer will provide legal services to the client or former client concerning the transaction, or (B) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn for legal advice concerning the transaction; and

(5) With regard to the providing of investment services, the lawyer advises the client or former client in writing (A) whether such services are covered by legal liability insurance or other insurance, and either (B) that the lawyer will provide legal services to the client or former client concerning the transaction, or (C) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn to for legal services concerning the transaction. Investment services shall only apply where the lawyer has either a direct or indirect control over the invested funds and a direct or indirect interest in the underlying investment.

For purposes of subsection (a) (1) through (a) (5), the phrase "former client" shall mean a client for whom the two-year period starting from the conclusion of representation has not expired.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may pay court costs and expenses of litigation on behalf of a client, the repayment of which may be contingent on the outcome of the matter;

(2) A lawyer representing an indigent client may pay court

costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed consent; subject to revocation by the client, such informed consent shall be implied where the lawyer is retained to represent a client by a third party obligated under the terms of a contract to provide the client with a defense;

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement. Subject to revocation by the client and to the terms of the contract, such informed consent shall be implied and need not be in writing where the lawyer is retained to represent a client by a third party obligated under the terms of a contract to provide the client with a defense and indemnity for the loss and the third party elects to settle a matter without contribution by the client.

(h) A lawyer shall not:

(1) Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) Settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) Contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing subsection (a) through (i) that applies to any one of them shall apply to all of them.

COMMENTARY: Business transactions Between Client and Lawyer. Subsection (a) expressly applies to former clients as well as existing clients. A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of subsection (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in subsection (a) are unnecessary and impracticable.

Subsection (a) (1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably

understood. Subsection (a) (2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a) (3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0 (f) (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subsection (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, paragraph (a) (2) of this Rule is inapplicable, and the subsection (a) (1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subsection (a) (1) further requires.

Use of Information Related to Representation. Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Subsection

(b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Subsection (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2 (d), 1.6, 1.9 (c), 3.3, 4.1 (b), 8.1 and 8.3.

Gifts to Lawyers. A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subsection (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary.

In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subsection (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and subsections (a) and (i).

Financial Assistance. Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services. Subsection (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4 (c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7 (a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7 (b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subsection. Under Rule 1.7 (b), the informed consent must be confirmed in writing.

Aggregate Settlements. Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2 (a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in

a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0 (f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims.

Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This subsection does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this subsection limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first

advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation. Subsection (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like subsection (e), the general rule, which has its basis in common law champerty and maintenance, is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in subsection (e). In addition, subsection (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of subsection (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line

between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interest and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7 (a) (2).

Imputation of Prohibitions. Under subsection (k), a prohibition on conduct by an individual lawyer in subsections (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. The prohibition set forth in subsection (j) is personal and is not applied to associated lawyers.

AMENDMENT NOTE: The above revisions address the situation where an insured/client cannot be located despite diligent and good faith efforts by both the lawyer and the insurer.

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 federal government, or (ii) an open-end investment company registered with the federal 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 [paragraph] subsection (e) (4) 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 (g) (5) below, subject to the dispute resolution process provided in subsection (g) (5) (E) below.

(3) "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.

(4) "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 (g) (7) 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 [paragraph] subsection (g) (5) below.

(5) "Non-IOLTA account" means an interest- or dividend-

bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(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 [that] 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 interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f)[, a lawyer or] , 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 (i) the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and (ii) law school scholarships based on financial need. Lawyers and law firms shall [only] place a client's or third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days in an IOLTA account and shall only establish IOLTA accounts at eligible institutions that meet the following requirements:

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

(2) The IOLTA account shall include only clients' or a third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days.

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

(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 practice, 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.

(4) 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. 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.

(5) 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 this 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; [and]

(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.

(6) 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 (g) (3) (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 services 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.

(7) [A lawyer's or law firm's own funds may only be deposited in a clients' funds account in an amount that the lawyer or law firm reasonably determines to be necessary to pay financial institution fees or service charges on the account or to obtain a waiver of fees and service charges on the account.

(8) Nothing in this subsection (g) 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.

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 monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in

similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices and comply with the requirements of Connecticut Practice Book Ch. 2, Sec. 2-27.

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 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 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 against wrongful interference by the client. In such cases[, when the third-party claim is not frivolous under applicable law,] the lawyer must refuse to surrender the property to the client until the claims 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 "interests" as used in subsection (f) 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.

AMENDMENT NOTES: The word "only" is deleted in subsection (g) to make the rule consistent with C.G.S. § 51-81c.

Subsection (g) (5) (E) is a new provision that would require the entity designated to administer the program to 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" under the rule.

The above change to the Commentary defines the word "interests" as used in subsection (f).

Other changes make technical corrections to the rule and make it internally consistent.

Rule 3.5. Impartiality and Decorum

A lawyer shall not:

(1) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(2) Communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(3) Communicate with a juror or prospective juror after discharge of the jury if:

(a) the communication is prohibited by law or court order;

(b) the juror has made known to the lawyer a desire not to communicate; or

(c) the communication involves misrepresentation, coercion, duress or harassment; or

(4) engage in conduct intended to disrupt a tribunal or ancillary proceedings such as depositions and mediations.

COMMENTARY: Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Rule 5.5. Unauthorized Practice of Law

[A lawyer shall not:

(1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar, who has resigned from the bar, who has retired from the bar, or who has been suspended, disbarred, or placed on inactive status in the performance of activity that constitutes the unauthorized practice of law.]

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENTARY: [The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Subdivision (2) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjustors, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.]

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

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

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

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

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph

(c). Services may be “temporary” even though the lawyer provides services in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

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

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

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

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

lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

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

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

Subparagraph (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction if they arise out of or are substantially related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within subparagraphs (c) (2) or (c) (3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

Subparagraph (c) (3) requires that the services be with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is admitted to practice. A significant aspect of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.

The necessary relationship might arise when the client's activities and the resulting legal issues involve multiple jurisdictions. Subparagraph (c) (4) requires that the services provided in this jurisdiction in which the lawyer is not admitted to practice be for (1) an existing client i.e., one with whom the lawyer has a previous relationship and not arising solely out of a Connecticut-based matter and (2) arise out of or be substantially related to the legal services provided to that client in a jurisdiction in which the lawyer is admitted to practice. Without both, the lawyer is prohibited from practicing law in the jurisdiction in which the lawyer is not admitted to practice.

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

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

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

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

AMENDMENT NOTES: The above proposed revisions are a variation of the ABA Model Rule 5.5 concerning the unauthorized practice of law and multi-jurisdictional practice.

Rule 7.4A. Certification as Specialist

(a) Except as provided in Rule 7.4, a lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state. Among the criteria to be considered by the Rules Committee in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists, shall be the requirement that the board or entity

certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such certification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competence, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.

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

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

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

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

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

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

(4) Appellate practice: The practice of law dealing with all procedural and substantive aspects of civil and criminal matters

before federal and state appeals courts including, but not limited to, arguments and the submission of briefs.

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

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

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

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

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

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

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

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

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

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

[(14)](15) Environmental: The practice of law dealing with all aspects of the regulation of environmental quality by both federal and state governments; control of air pollution, water pollution, noise pollution, toxic substances, pesticides, and civilian uses of nuclear energy; solid waste/resource recovery; all matters arising under the National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Noise Control Act, Solid Waste Disposal Act, Toxic Substance Control Act and other federal and state environmental statutes; practice before federal and state courts and governmental agencies.

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

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

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

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

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

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

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

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

[(23)](24) Patent, trademark and copyright: The practice of law dealing with all aspects of the registration, protection and licensing of patents, trademarks or copyrights; practice before federal and state courts in actions for infringement and other actions; the prosecution of applications before the United States

Patent and Trademark Office; counseling with regard to the law of unfair competition as it relates to patents, trademarks and copyrights.

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

(B) Commercial Real Estate: The practice of law dealing with all aspects of real property transactions except for residential real estate as defined in subparagraph (A) of this subdivision, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing (with due consideration to tax and securities consequences) and determination of property rights.

[(25)](26) Taxation: The practice of law dealing with all matters arising under the Internal Revenue Code, Employee Retirement Income Security Act (ERISA), state and local tax laws and foreign tax laws, including counseling with respect thereto; practice before federal and state courts and governmental agencies.

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

AMENDMENT NOTES: The above change adds child welfare law to the fields of law in which lawyers may be certified as specialists.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

**Sec. 1-10. [Cameras and Electronic Media; In General]
Possession of Electronic Devices in Court Facilities**

(a) Personal computers may be used for note-taking in a courtroom, but no other electronic devices shall be allowed in a courtroom unless authorized by a judicial authority or permitted by these rules. [Except as otherwise provided by these rules, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions. A judicial authority may authorize:

(1) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(3) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(A) the means of recording will not distract participants or impair the dignity of the proceedings;

(B) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(C) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(D) the reproduction will be exhibited only for instructional purposes in educational institutions.]

(b) An attorney in good standing in this state, who has in his or her possession a picture identification card authorized by the office of the chief court administrator indicating that he or she is an attorney, may possess in a court facility an electronic device, including, but not limited to, a cellular telephone, portable computer, or personal digital assistant, which device has the capacity to broadcast, record, or take photographs. Such devices shall not be used in any court facility for the purpose of broadcasting or recording audio or video, or for any photographic purposes, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use such devices in such office. Cellular telephones may be used in a court facility for telephonic purposes to transmit and receive voice signals only,

but in no event shall they be used in any courtroom, lockup, chambers, or offices, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use a cellular telephone in such office. Personal computers may be used, with the permission of the judicial authority, in a courtroom in conjunction with the conduct of a hearing or trial. A violation of this subsection may constitute misconduct or contempt. This subsection shall be in force for a period of one year from its effective date, unless terminated sooner or extended beyond said period by vote of the judges of the superior court, to enable an analysis of the effects of this subsection to be made and reported to such judges. This subsection shall not apply to attorneys who are employees of the Judicial Branch. Such attorneys shall comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities. This subsection shall not be deemed to restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees.

COMMENTARY: The amendments to this section and to Section 1-11, and the adoption of new Sections 1-10A, 1-10B, 1-11A, 1-11B and 1-11C, implement various recommendations of the Judicial Branch's Public Access Task Force relating to cameras and electronic media coverage of court proceedings.

Subsection (a) of this section has been transferred with amendments to Section 1-11 and is applicable only to media coverage of criminal trials.

(NEW) Sec. 1-10A. Definition of "Media"

For purposes of these rules, "media" means any person or entity that is regularly engaged in the gathering and dissemination of news and that is approved by the office of the chief court administrator.

(NEW) Sec. 1-10B. Media Coverage of Court Proceedings In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court

should be allowed subject to the limitations set out in this section and in Sections 1-11 through 1-11C, inclusive.

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

(1) Family relations matters as defined in General Statutes § 46b-1;

(2) Juvenile matters as defined in General Statutes § 46b-121;

(3) Proceedings involving trade secrets;

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

(5) Proceedings which must be closed to the public to comply with the provisions of state law;

(6) Any proceeding that is not held in open court on the record.

(c) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting or recording of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or photographing of the process of jury selection nor of any juror.

COMMENTARY: The provisions of this section have been relocated with amendments from Section 1-11 to make it clear that there exists a presumption that media coverage of proceedings and trials in the Superior Court will be allowed subject to certain limitations.

Sec. 1-11. Media Coverage of [Court] Criminal Proceedings

(a) [The broadcasting, televising, recording or photographing of court proceedings by news media will be allowed, subject to the limitations hereinafter set forth, in civil and criminal trials in the superior court.] Except as otherwise provided by this section and as provided in Sections 1-11A and 1-11C, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in criminal proceedings.

(b) No broadcasting, televising, recording or photographing of sentencing hearings, except in trials that have been previously broadcast, televised, recorded or photographed, or of trials or proceedings involving sexual offense charges shall be permitted.

~~[(b)]~~(c) A judicial authority may permit broadcasting, televising, recording or photographing of [civil and] criminal trials in courtrooms of the superior court except as hereinafter excluded. As used in [these] this rule[s], the word "trial" in jury cases shall mean proceedings taking place after the[,] jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

~~[(c)]~~(d) Any media or pool representative seeking permission to broadcast, televise, record or photograph a [civil or] criminal trial shall, at least three days prior to the commencement of the trial, submit a written request to the administrative judge of the judicial district where the case is to be tried. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall refer the request to the trial judge who shall approve or disapprove such request. Disapproval by the trial judge shall be final. Before the trial judge approves of such request the judge shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to such judge. Approval of the request, however, shall not be effective unless confirmed by the administrative judge. Any [news] media organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the administrative judge and shall be allowed to participate in the pool arrangement only with the approval of the trial judge.

~~[(d)]~~ No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

- (1) Family relations matters as defined in General Statutes § 46b-1;
- (2) Sentencing hearings, except in trials which have been previously broadcast, televised, recorded or photographed;
- (3) Trials involving trade secrets;
- (4) In jury trials, all proceedings held in the absence of the jury;
- (5) Trials of sexual offense charges;
- (6) Trials of cases which must be closed to the public to comply with the provisions of state law.

(e) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(f) No broadcasting or recording of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(g) No juror shall be the subject of any coverage permitted under these rules. However, in courtrooms where televising or photographing is impossible without including the jury as part of the unavoidable background, the televising or photographing is permitted, but closeups which clearly identify individual jurors are prohibited.

~~(h)~~(e) The trial judge in his or her discretion, upon the judge's own motion, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge may also, at the request of a participant, prohibit in his or her discretion the broadcasting, televising, recording or photographing of that participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. Participant for the purpose of this section shall mean any party, lawyer or witness.

~~(i)~~(f) (1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only. Videotape recording equipment and other equipment which is not a component part of the television camera shall be located outside the courtroom.

(2) Only one still camera photographer, carrying not more than two still cameras with one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio system for televising, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the trial judge.

[(j)](g) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

[(k)](h) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the trial judge and other appropriate authority.

[(l)](i) Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the trial.

[(m)](j) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to the courtrooms shall remain in full force.

[(n)](k) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

[(o)](l) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such conference the

trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.

COMMENTARY: Subsection (a) of Section 1-10 has been transferred with amendments to this section. Subsections (d), (e), (f) and (g) of this section have been transferred with amendments to new Section 1-10B. The amendments to this section make the section applicable only to media coverage of criminal trials. Media coverage of civil proceedings and trials is addressed in new Section 1-11B. The A judicial authority's decision disapproving a request for electronic coverage is not appealable.

(NEW) Sec. 1-11A. Media Coverage of Arraignments

The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments. The judicial authority shall articulate the reasons for its decision on a request for electronic coverage of an arraignment and such decision shall be final. The judicial authority in its discretion may require pooling arrangements by the media.

COMMENTARY: This new section adopts the thirty-first recommendation of the Judicial Branch's Public Access Task Force by expanding media coverage to arraignments on a case by case basis. Before the judicial authority approves such request he or she should, to the extent practicable, consult with the media to coordinate the logistics of the permitted coverage, and shall be satisfied that the permitted coverage will not interfere with the rights or safety of the parties or others involved in the arraignment. The Public Access Task Force recommended that the expansion of such coverage to arraignments generally should be the subject of additional inquiry. A judicial authority's decision on a request for electronic coverage is not appealable.

(NEW) Sec. 1-11B. Media Coverage of Civil Proceedings

(a) The broadcasting, televising, recording or photographing of civil proceedings and trials in the superior court by news media should be allowed, subject to the limitations set forth herein and in Section 1-10B.

(b) A judicial authority shall permit broadcasting, televising, recording or photographing of civil proceedings and trials in courtrooms of the superior court except as hereinafter precluded or limited. As used in this rule, the word "trial" in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

(c) Any party, attorney, witness or other interested person may object in advance of electronic coverage of a civil proceeding or trial if there exists a substantial reason to believe that such coverage will undermine the legal rights of a party or will significantly compromise the safety of a witness or other interested person or impact significant privacy concerns. To the extent practicable, notice that an objection to the electronic coverage has been filed, and the date, time and location of the hearing on such objection shall be posted on the Judicial Branch website. Any person, including the media, whose rights are at issue in considering whether to allow electronic coverage of the proceeding or trial, may participate in the hearing to determine whether to limit or preclude such coverage. When such objection is filed by any party, attorney, witness or other interested person, the burden of proving that electronic coverage of the civil proceeding or trial should be limited or precluded shall be on the person who filed the objection.

(d) The judicial authority, in deciding whether to limit or preclude electronic coverage of a civil proceeding or trial, shall consider all rights at issue and shall limit or preclude such coverage only if there exists a compelling reason to do so, there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

(e) If the judicial authority has a substantial reason to believe that the electronic coverage of a civil proceeding or trial will undermine the legal rights of a party or will significantly compromise the safety or significant privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected to such coverage, the judicial authority shall schedule a hearing to consider limiting or precluding such coverage. To the extent practicable, notice that the judicial authority is considering limiting or precluding electronic coverage of a civil

proceeding or trial, and the date, time and location of the hearing thereon shall be given to the parties and others whose interests may be directly affected by a decision so that they may participate in the hearing and shall be posted on the Judicial Branch website.

(f) Objection raised during the course of a civil proceeding or trial to the photographing, videotaping or audio recording of specific aspects of the proceeding or trial, or specific individuals or exhibits will be heard and decided by the judicial authority, based on the same standards as set out in subsection (d) of this section used to determine whether to limit or preclude coverage based on objections raised before the start of a civil proceeding or trial.

(g) The trial judge in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. "Participant" for the purpose of this section shall mean any party, lawyer or witness.

(h) The judicial authority shall articulate the reasons for its decision on whether or not to limit or preclude electronic coverage of a civil proceeding or trial and such decision shall be final.

(i) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

(j) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the trial judge and other appropriate authority.

(k) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to the courtrooms shall remain in full force.

(l) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(m) Pool representatives should ordinarily be used for video, still cameras and radio, with each pool representative to be decided by the relevant media group. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the trial.

(n) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a civil proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice and the judicial authority shall allow such coverage except as otherwise provided in this section. Any news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a separate written notice to the administrative judge and shall be allowed to participate in the pool arrangement.

(o) To evaluate and resolve prospective problems where broadcasting, televising, recording or photographing of a civil proceeding or trial will take place, and to ensure compliance with these rules during the proceeding or trial, the judicial authority who will hear the proceeding or preside over the trial may require the attendance of attorneys and media personnel at a pretrial conference. At such conference the judicial authority shall set forth the conditions of coverage in accordance herewith.

COMMENTARY: This new section adopts the thirty-second recommendation of the Judicial Branch's Public Access Task Force by broadening media coverage of civil proceedings and trials. A judicial authority's decision on whether or not to limit or preclude electronic coverage is not appealable.

(NEW) Sec. 1-11C. Pilot Program for Media Coverage of Criminal Proceedings

(a) Notwithstanding the provisions of Section 1-11, and except as otherwise provided in Section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B, in a single judicial district of the superior court to be chosen by the Chief Court Administrator based on the following considerations:

(1) the age of the courthouse facility, its ability to accommodate the media technology involved, and security and cost concerns;

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

(3) the likelihood of significant criminal trials of interest to the public in the judicial district;

(4) the proximity of the judicial district to the major media organizations; and to the organization or entity providing coverage;

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

(b) No broadcasting, televising, recording or photographing of trials or proceedings involving sexual offense charges shall be permitted.

(c) As used in this rule, the word "trial" in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

(d) Any party, attorney, witness or other interested person may object in advance of electronic coverage of a criminal proceeding or trial if there exists a substantial reason to believe that such coverage will undermine the legal rights of a party or will significantly compromise the safety of a witness or other

person or impact significant privacy concerns. To the extent practicable, notice that an objection to the electronic coverage has been filed, and the date, time and location of the hearing on such objection shall be posted on the Judicial Branch website. Any person, including the media, whose rights are at issue in considering whether to allow electronic coverage of the proceeding or trial, may participate in the hearing to determine whether to limit or preclude such coverage. When such objection is filed by any party, attorney, witness or other interested person, the burden of proving that electronic coverage of the civil proceeding or trial should be limited or precluded shall be on the person who filed the objection.

(e) The judicial authority, in deciding whether to limit or preclude electronic coverage of a criminal proceeding or trial, shall consider all rights at issue and shall limit or preclude such coverage only if there exists a compelling reason to do so, there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

(f) If the judicial authority has a substantial reason to believe that the electronic coverage of a criminal proceeding or trial will undermine the legal rights of a party or will significantly compromise the safety or privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected to such coverage, the judicial authority shall schedule a hearing to consider limiting or precluding such coverage. To the extent practicable, notice that the judicial authority is considering limiting or precluding electronic coverage of a criminal proceeding or trial, and the date, time and location of the hearing thereon shall be given to the parties and others whose interests may be directly affected by a decision so that they may participate in the hearing and shall be posted on the Judicial Branch website.

(g) Objection raised during the course of a criminal proceeding or trial to the photographing, videotaping or audio recording of specific aspects of the proceeding or trial, or specific individuals or exhibits will be heard and decided by the judicial authority, based on the same standards as set out in subsection (e) of this section used to determine whether to limit

or preclude coverage based on objections raised before the start of a criminal proceeding or trial.

(h) The judge presiding over the proceeding or trial in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. "Participant" for the purpose of this section shall mean any party, lawyer or witness.

(i) The judicial authority shall articulate the reasons for its decision on whether or not to limit or preclude electronic coverage of a criminal proceeding or trial and such decision shall be final.

(j) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the proceeding or trial.

(k) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the proceeding or trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the judge presiding over the proceeding or trial and other appropriate authority.

(l) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to the courtrooms shall remain in full force.

(m) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(n) Pool representatives should ordinarily be used for video, still cameras and radio, with each pool representative to be decided by the relevant media group. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool

representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the proceeding or trial.

(o) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice and the judicial authority shall allow such coverage except as otherwise provided. Any news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a separate written notice to the administrative judge and shall be allowed to participate in the pool arrangement.

(p) To evaluate and resolve prospective problems where broadcasting, televising, recording or photographing by media of a criminal proceeding or trial will take place, and to ensure compliance with these rules during the proceeding or trial, the judicial authority who will hear the proceeding or preside over the trial may require the attendance of attorneys and media personnel at a pretrial conference.

(q) The Rules Committee shall evaluate the efficacy of this rule at the end of a two year period and shall receive recommendations from the Judicial-Media Committee and other sources.

COMMENTARY: This new section adopts the thirtieth recommendation of the Judicial Branch's Public Access Task Force by broadening media coverage of criminal proceedings and trials in a single judicial district of the superior court to be chosen by the Chief Court Administrator. The Rules Committee

shall evaluate the efficacy of this rule at the end of a two year period and shall receive recommendations from the Judicial-Media Committee and other sources. A judicial authority's decision on whether or not to limit or preclude electronic coverage is not appealable.

(NEW) Sec. 1-24. –Record of Off-Site Judicial Proceedings

Absent exceptional circumstances or except as otherwise provided by court rule, where a transcript or recording is made of an off-site judicial proceeding, such record shall be available to the public. The judicial authority will also state on the record in open court, by the next court day, a summary of what occurred at such proceeding.

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Sections 2-13 through 2-15 of these rules, the applicant must satisfy the committee that:

(1) The applicant is a citizen of the United States or an alien lawfully residing in the United States.

(2) The applicant is not less than eighteen years of age.

(3) The applicant is a person of good moral character and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee.

(4) The applicant has [obtained a bachelor of laws or equivalent degree from a law school approved by the committee or obtained a master of laws degree for postgraduate work acceptable to the committee at a law school approved by the committee, having already obtained a bachelor of laws or equivalent degree at a law school for work acceptable to the committee] met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the administrative director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has

paid such application fee as the committee shall from time to time determine.

(6) The applicant has passed an examination in law in accordance with the regulations of the committee.

(7) The applicant has complied with all of the pertinent rules and regulations of the committee.

(8) As an alternative to satisfying the committee that the applicant has met the committee's educational requirements [of subdivision (4), of this section], the applicant who meets all the remaining requirements of this section may, upon payment of such investigation fee as the committee shall from time to time determine, substitute proof satisfactory to the committee that: (A) the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the Commonwealth of Puerto Rico or in one or more district courts of the United States for [twenty] ten or more years and at the time of filing the application is a member in good standing of such a bar; (B) the applicant has actually practiced law in such a jurisdiction for not less than [ten] five years during the [~~fifteen~~]seven-year period immediately preceding the filing date of the application; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant's working time to the practice of the law in Connecticut.

COMMENTARY: The revision to paragraph (4) above is proposed because the Bar Examining Committee has determined that the Master of Laws Degree no longer assists the committee in determining the qualifications of those who wish to sit for the bar exam from foreign countries or non-approved law schools. This is because such programs generally provide for specialization in tax, international law and business, or other detailed legal topics which do not address the broad range of legal knowledge necessary to demonstrate the applicant's basic minimal legal competence. Such programs are also not accredited by the ABA or any other legal accreditation authority. For these reasons, the practice of using the Master of Laws Degree as a litmus test for foreign credentialed applicants has increasingly come under scrutiny and many

other United States jurisdictions no longer use this as a measure for the ability of such applicants to take their exams.

With regard to the above revisions proposed to paragraph (8), the Bar Examining Committee reports that the twenty year practice requirement has been in this rule for some time and no one has petitioned to be admitted under that provision. Changing the provision from twenty to ten years is a more reasonable time requirement. In addition, requiring actual practice in the past five of the previous seven years is also consistent with the time requirements of Practice Book Section 2-13, the reciprocity provision, and means that the person seeking to be admitted in this fashion has practiced actively in the past and intends to practice in Connecticut. Using the same assumption (that practice in another jurisdiction demonstrates some level of competence) that underlies waiving the bar exam under Section 2-13, the time requirement of five of the last seven years should be adequate to permit waiver of the normal educational requirements when coupled with taking and passing the bar examination as required in Section 2-8 (8).

(NEW) Sec. 2-15A – Authorized House Counsel

(a) Purpose

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

(b) Definitions

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

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

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

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

(D) is, at the date of application for registration under this rule, employed in the state of Connecticut by an organization or relocating to the state of Connecticut in furtherance of such employment within 3 months of such application under this section and receives or shall receive compensation for activities performed for that business organization.

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

(c) **Activities**

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

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

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

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

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

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

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

(d) Registration

(1) **Filing with the Bar Examining Committee.** The bar examining committee shall investigate whether the applicant is at least eighteen years of age, is of good moral character, consistent with the requirement of Section 2-8 (3) regarding applicants for admission to the bar, and has fulfilled the educational requirements of Section 2-8 (4). In addition, the applicant shall file with the bar examining committee, and the committee shall consider, the following:

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

(B) a sworn statement by the applicant:

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

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

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

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

(C) a certificate from an organization certifying that it is qualified as set forth in subsection (b)(2); that it is aware that the applicant is not licensed to practice law in Connecticut; and that the applicant is employed or about to be employed in Connecticut by the organization as set forth in subsection (b)(1)(D);

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

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

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

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

(3) **Annual Client Security Fund Fee.** Individuals certified pursuant to this section shall comply with the requirements of sections 2-68 and 2-70 of this chapter, including payment of

the annual fee and shall pay any other fees imposed on attorneys by court rule.

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

(e) **Termination or Withdrawal of Registration**

(1) **Cessation of Authorization to Perform Services.** Authorization to perform services under this rule shall cease upon the earliest of the following events:

(A) the termination or resignation of employment with the organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another organization within 30 days of the termination or resignation, authorization to perform services under this rule shall continue upon the filing with the bar examining committee of a certificate as set forth in subsection (d) (1) (C);

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

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

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

Notice of one of the events set forth in subsections (e) (1) (A)-(C) or a new certificate as provided in subsection (e) (1) (A) must be filed with the bar examining committee by the authorized house counsel within 30 days after such action. Failure to provide such notice by the authorized house counsel shall be a basis for discipline pursuant to the Rules of Professional Conduct for attorneys.

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

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

(f) **Discipline**

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

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

(g) **Transition**

(1) **Preapplication Employment in Connecticut.** The performance of an applicant's duties as an employee of an organization in Connecticut prior to the effective date of this rule shall not be grounds for the denial of registration of such applicant if application for registration is made within 6 months of the effective date of this rule.

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

COMMENTARY: Subsection (c) (1) limits the activities of authorized house counsel to providing services to such counsel's employer organization, including advice to the organization's directors, officers, employees and agents with respect to the business and affairs of that organization. Authorized house counsel shall not render services or advice to those persons in matters unrelated to the employer organization, and may not render services to other persons on behalf of the organization. For example, authorized house counsel for a title insurance company would not be permitted to render legal services or advice to purchasers of title insurance in real estate transactions.

Subsection (c) (1) (C) prohibits authorized house counsel from appearing in the capacity of an attorney before any state or municipal administrative agency, tribunal or commission or from making appearances in any court of this state, unless the

counsel is specially admitted by such court in a case. The provision does not preclude an authorized house counsel from appearing before an administrative agency, tribunal or commission in a capacity other than as an attorney, for example as an officer or agent of the corporation.

Subsection (c) (3) clarifies the limited scope of authority of authorized house counsel set forth in subsection (c)(1) and specifically prohibits them from preparing legal instruments or documents on behalf of anyone other than the employer organization. For example, authorized house counsel employed by a bank or a title insurance company are clearly prohibited from preparing wills, trusts, or deeds for customers of their employer organizations.

The reference in subsection (d)(1) to section 2-8(3) makes clear that the bar examining committee will be required to investigate the good moral character of applicants under this rule to the same extent that it does with regard to applicants to the bar under section 2-8.

Rule 6.1 of the Rules of Professional Conduct concerning pro bono publico service does not apply to attorneys who are certified as authorized house counsel pursuant to the above section because such attorneys are not fully admitted to practice in Connecticut.

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her

agent upon whom process and service of notice may be served, (c) [and] agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and ~~[(c)]~~ (d) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first ~~[has]~~ appeared pro hac vice in ~~[the state of Connecticut]~~ this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is to be tried. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action.

COMMENTARY: The above changes broaden the mandatory reporting requirement of the section to include any disciplinary history; separate the provisions designating the chief clerk as agent for service of process from the registration provision; and require the attorney appearing pro hac vice to notify the statewide grievance committee of the expiration of the two year period following the completion of the matter for which the attorney appeared, which would allow the statewide grievance committee to deactivate the attorney's juris number and thereby

prevent the attorney from receiving an annual attorney registration form after the two year period.

Sec. 2-27. Clients' Funds; Lawyer Registration

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required under this section for a period of seven years after final distribution of such funds or any portion thereof. Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

(3) at least quarterly a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, shall be made available upon request of the statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the statewide grievance committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide

grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each lawyer shall register with the statewide grievance committee, on a form devised by the committee, the address of the lawyer's office or offices maintained for the practice of law, [and] the name and address of [the] every financial institution with which the lawyer maintains any account in which the funds of more than one client are kept and the identification number of any such account, and any other information requested on such form. Such registrations will be made on an annual basis and at such time as the lawyer changes his or her address or addresses or location or identification number of any such trust account in which the funds of more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the statewide grievance committee from these forms shall be public, except the following: trust account identification numbers; the lawyer's home address; and the lawyer's birth date. Unless otherwise ordered by the court, all non-public information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the lawyer, to any other person. The registration requirements of [T]this subsection shall not apply to judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The statewide grievance committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to subsection (b) of this section to determine whether such accounts are in compliance with this section and Rule 1.15 of the Rules of Professional Conduct. If any random inspection or audit performed under this subsection discloses an apparent

violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the superior court. Any lawyer whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6(a) of the Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule 1.15 of the Rules of Professional Conduct or of this section, or discipline is imposed by the statewide grievance committee or a reviewing committee for violations of said rule or this section. Prior to the commencement of a presentment or a hearing held pursuant to Section 2-35 (c), notice shall be given in writing by the statewide grievance committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records at a presentment or hearing held pursuant to Section 2-35 (c) shall be subject to the client or third person having the reasonable opportunity to seek a court order restricting publication of any such records disclosing confidential information.

(f) Violation of this section shall constitute misconduct.

COMMENTARY: The above changes codify the Statewide Grievance Committee's policy regarding public and confidential information that is derived from the attorney registration process.

Sec. 2-35. Action by Statewide Grievance Committee or Reviewing Committee

(a) Upon receipt of the record from a grievance panel, the statewide grievance committee may assign the case to a reviewing committee which shall consist of at least three members of the statewide grievance committee, at least one third of whom are not attorneys. The statewide grievance committee may, in its discretion, reassign the case to a different reviewing committee. The committee shall regularly rotate membership on reviewing committees and assignments of

complaints from the various grievance panels. An attorney who maintains an office for the practice of law in the same judicial district as the respondent may not sit on the reviewing committee for that case.

(b) The statewide grievance committee and the reviewing committee shall have the power to issue a subpoena to compel any person to appear before it to testify in relation to any matter deemed by the statewide grievance committee or the reviewing committee to be relevant to the complaint and to produce before it for examination any books or papers which, in its judgment, may be relevant to such complaint. Any such testimony shall be on the record.

(c) If the grievance panel determined that probable cause exists that the respondent is guilty of misconduct, the statewide grievance committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determined that probable cause does not exist, but filed the matter with the statewide grievance committee because the complaint alleges that a crime has been committed, the statewide grievance committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: (1) if the statewide grievance committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or assign the matter to a reviewing committee to hold the hearing; or (2) if a reviewing committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the statewide grievance committee which shall assign it to another reviewing committee to hold the hearing. At least two of the same members of a reviewing committee shall be physically present at all hearings held by such reviewing committee. Unless waived by the disciplinary counsel and the respondent, the remaining member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination. The review by the statewide grievance committee or reviewing committee of a grievance panel determination that probable cause exists shall not be limited to the grievance panel determination. The statewide grievance committee or reviewing committee may review the entire record and determine whether any allegation in the

complaint, or any issue arising from the review of the record or arising during any hearing on the complaint, supports a finding of probable cause of misconduct. If either the statewide grievance committee or the reviewing committee determines that probable cause does exist, it shall issue a written notice which shall include but not be limited to the following: (i) a description of the factual allegation or allegations that were considered in rendering the determination; and (ii) for each such factual allegation, an identification of the specific provision or provisions of the applicable rules governing attorney conduct considered in rendering the determination. [All hearings following a determination of probable cause shall be public and on the record.] The statewide grievance committee or reviewing committee shall not make a probable cause determination based, in full or in part, on a claim of misconduct not alleged in the complaint without first notifying the respondent that it is [considering] contemplating such action and affording the respondent the opportunity to be heard. All hearings following a determination of probable cause shall be public and on the record, except for contemplated probable cause hearings which shall be confidential unless the Respondent requests that such hearing be public.

(d) The complainant and respondent shall be entitled to be present at all hearings and other proceedings on the complaint at which testimony is given and to have counsel present. At all hearings the respondent shall have the right to be heard in the respondent's own defense and by witnesses and counsel. The disciplinary counsel shall pursue the matter before the statewide grievance committee or reviewing committee. The disciplinary counsel and the respondent shall be entitled to examine or cross-examine witnesses. At the conclusion of the evidentiary phase of a hearing, the complainant, the disciplinary counsel and the respondent shall have the opportunity to make a statement, either individually or through counsel. The statewide grievance committee or reviewing committee may request oral argument.

(e) Within ninety days of the date the grievance panel filed its determination with the statewide grievance committee pursuant to Section 2-32 (i), the reviewing committee shall render a final written decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent

in the superior court and file it with the statewide grievance committee. Where there is a final decision dismissing the complaint, the reviewing committee may give notice in a written summary order to be followed by a full written decision. The reviewing committee's record in the case shall consist of a copy of all evidence it received or considered, including a transcript of any testimony heard by it, and its decision. The record shall also be sent to the statewide grievance committee. The reviewing committee shall forward a copy of the final decision to the complainant, the disciplinary counsel, the respondent, and the grievance panel to which the complaint was forwarded. The decision shall be a matter of public record if [it results in the imposition of discipline] the grievance complaint is not dismissed. The reviewing committee may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which shall grant the motion only upon a showing of good cause. If the reviewing committee does not complete its action on a complaint within the time provided in this section, the statewide grievance committee shall, on motion of the complainant or the respondent or on its own motion, inquire into the delay and determine the appropriate course of action. Enforcement of the final decision, including the publication of the notice of a reprimand pursuant to Section 2-54, shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the statewide grievance committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38 (b).

(f) If the reviewing committee finds probable cause to believe the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

(g) Within thirty days of the issuance to the parties of the final decision by the reviewing committee, the respondent may submit to the statewide grievance committee a request for review of the decision. Any request for review submitted under this section must specify the basis for the request, including, but not limited to a claim or claims that the reviewing committee's findings, inferences, conclusions or decision is or are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the reviewing

committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and the specific basis for such claim or claims. For grievance complaints filed on or after January 1, 2004, the respondent shall serve a copy of the request for review on disciplinary counsel in accordance with Sections 10-12 through 10-17. Within fourteen days of the respondent's submission of a request for review, disciplinary counsel may file a response. Disciplinary counsel shall serve a copy of the response on the respondent in accordance with Sections 10-12 through 10-17. No reply to the response shall be allowed.

(h) If, after its review of a complaint pursuant to this section that was forwarded to the statewide grievance committee pursuant to Section 2-32 (i) (2), a reviewing committee agrees with a grievance panel's determination that probable cause does not exist that the attorney is guilty of misconduct and there has been no finding of probable cause by the statewide grievance committee or a reviewing committee, the reviewing committee shall have the authority to dismiss the complaint within the time period set forth in subsection (e) of this section without review by the statewide grievance committee. The reviewing committee shall file its decision dismissing the complaint with the statewide grievance committee along with the record of the matter and shall send a copy of the decision to the complainant, the respondent, and the grievance panel to which the complaint was assigned.

(i) If the statewide grievance committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of a reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for dismissal of the complaint. If the statewide grievance committee finds probable cause to believe that the

respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

COMMENTARY: The revision to subsection (c) distinguishes hearings held after a finding of probable cause, which are public, from those held prior to a finding of probable cause, which are not public unless the respondent requests that they be public.

The revision to subsection (e) makes the language of the subsection consistent with Section 2-50.

Sec. 2-38. Appeal from Decision of Statewide Grievance Committee or Reviewing Committee to Reprimand

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee reprimanding the respondent, except that a respondent may not appeal a decision by a reviewing committee reprimanding the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested, to the office of the statewide bar counsel as agent for the statewide grievance committee and to the office of the chief disciplinary counsel.

(b) Enforcement of a final decision by the statewide grievance committee reprimanding the respondent pursuant to Section 2-35 (i), including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. Enforcement of a decision by a reviewing committee reprimanding the respondent, including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g). If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the

respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision reprimanding the respondent. If at the conclusion of all proceedings, the decision reprimanding the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the reprimand decision for all purposes, including the application of Section 2-50 (b). An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

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

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

(e) The respondent shall file a brief within thirty days after the filing of the record by the statewide bar counsel. The disciplinary counsel shall file his or her brief within thirty days of the filing of the respondent's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

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

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

COMMENTARY: The above change is proposed because the Disciplinary Counsel's Office defends appeals from decisions of the Statewide Grievance Committee or Reviewing Committees to reprimand a respondent.

(NEW) Sec. 2-44A. Definition of The Practice of Law

(a) General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

(4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person, and

(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the State of Connecticut as established by case law, statute, ruling or other authority.

“Documents” includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability

company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

The term "person" includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

The term "Connecticut lawyer" means a natural person who has been duly admitted to practice law in this State and whose privilege to do so is then current and in good standing as an active member of the bar of this State.

(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted:

(1) Selling legal document forms previously approved by a Connecticut lawyer in any format.

(2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where:

(A) Such services are confined to representation before such forum or other conduct reasonably ancillary to such representation; and

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.

(3) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.

(4) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements.

(5) Providing clerical assistance to another to complete a form provided by a court for the protection from abuse, harassment and violence when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Serving in a neutral capacity as a clerk or a court employee providing information to the public.

(8) Performing activities which are preempted by Federal law.

(9) Performing statutorily authorized services as real estate agent or broker licensed by the State of Connecticut.

(10) Preparing tax returns and performing any other statutorily authorized services as a certified public accountant, enrolled IRS agent, public accountant, public bookkeeper, or tax preparer.

(11) Performing such other activities as the courts of Connecticut have determined do not constitute the unlicensed or unauthorized practice of law.

(12) Undertaking pro se representation, or practicing law authorized by a limited license to practice.

(c) Nonlawyer Assistance: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

(g) Unauthorized Practice: If a person who is not authorized to practice law is engaged in the practice of law, that person shall be subject to the civil and criminal penalties of this jurisdiction.

COMMENTARY: This rule would establish a clear definition of the practice of law and thereby make clear what is the unauthorized practice of law.

Sec. 2-50. Records of Statewide Grievance Committee, Reviewing Committee and Grievance Panel

(a) The statewide grievance committee shall maintain the record of each grievance proceeding. The record in a grievance proceeding shall consist of the following:

(1) The grievance panel's record as set forth in Section 2-32 (i);

(2) The reviewing committee's record as set forth in Section 2-35 (e);

(3) The statewide grievance committee's record;

(4) Any probable cause determinations issued by the statewide grievance committee or a reviewing committee;

(5) Transcripts of hearings held before the statewide grievance committee or a reviewing committee;

(6) The reviewing committee's proposed decision;

(7) Any statement submitted to the statewide grievance committee concerning a proposed decision;

(8) The statewide grievance committee's final decision;

(9) The reviewing committee's final decision;

(10) Any request for review submitted to the statewide grievance committee concerning a reviewing committee's decision; and

(11) The statewide grievance committee's decision on the request for review.

(b) The following records of the statewide grievance committee shall be non-public:

(1) All records pertaining to grievance complaints that have been decided by a local grievance committee prior to July 1, 1986.

(2) All records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee. For purposes of this section, all grievance complaints that were pending before a grievance panel on July 1, 1986 shall be deemed to have been filed on that date.

(3) All records of complaints dismissed pursuant to Section 2-32 (a) (2).

(4) All records of the statewide grievance committee and grievance panels pertaining to grievance proceedings that have been concluded by: (A) a final judgment of the superior court, after all appeals are exhausted, in a proceeding under Section 2-38 rescinding a reprimand, including a judgment directed on an appeal from the superior court; (B) a final judgment of the superior court, after all appeals are exhausted, in a proceeding commenced pursuant to Section 2-47, dismissing a presentment, including a judgment directed on an appeal from the superior court; or (C) a final judgment of the superior court,

after all appeals are exhausted, dismissing a proceeding commenced pursuant to Sections 2-39 through 2-46 or Section 2-52, including a judgment directed on an appeal from the superior court.

(5) All records of pending grievance complaints in which probable cause has not yet been determined.

(c) Unless otherwise ordered by the court, all non-public records shall be available only to the statewide grievance committee [or] and its counsel, the reviewing committees, the grievance panels [or] and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee [or] and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the respondent, to any other person. Such records may be used or considered in any subsequent disciplinary or client security fund proceeding pertaining to the respondent.

(d) The following records of the statewide grievance committee shall be public:

(1) Prior to a final decision being issued by the statewide grievance committee or a reviewing committee, the following portions of the record: (A) the grievance panel's probable cause determination(s); (B) any probable cause determination(s) issued by the statewide grievance committee or a reviewing committee and, (C) transcripts of any public hearings held following a determination that probable cause exists.

(2) After a final decision has been issued by the statewide grievance committee or a reviewing committee, all records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have not been dismissed or are not otherwise classified by this rule as non-public.

(e) Any respondent who was the subject of a complaint in which the respondent was misidentified and the complaint was dismissed shall be deemed to have never been subject to disciplinary proceedings with respect to that complaint and may so swear under oath.

COMMENTARY: The above changes make clear that when non-public disciplinary records are available to a specified entity, those records are also available to that entity's counsel and vice versa. The changes also add the Connecticut Bar Examining Committee as an entity to which non-public disciplinary records are available.

Sec. 2-52. Resignation of Attorney

(a) The superior court may, under the procedure provided herein, permit the resignation of an attorney whose conduct is the subject of investigation by a grievance panel, a reviewing committee or the statewide grievance committee or against whom a presentment for misconduct under Section 2-47 is pending.

(b) Such resignation shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, to the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court after a hearing following a report by the statewide grievance committee [that the investigation has been completed], whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

COMMENTARY: The above change is made for clarity.

Sec. 7-13. – Criminal/Motor Vehicle Files and Records

(a) Upon the disposition of any criminal case, except a case in which a felony or a capital felony conviction resulted, or any motor vehicle case, including any matter brought pursuant to the commission of an infraction or a violation, the file may be stripped of all papers except (1) the executed arrest warrant and original affidavit in support of probable cause, the misdemeanor/motor vehicle summons, prosecutorial summons or the complaint ticket, (2) the uniform arrest report, (3) the information or indictment and any substitute information, (4) a written plea of nolo contendere, (5) documents relating to

programs for adjudication and treatment as a youthful offender, programs relating to family violence education, community service labor, accelerated pretrial rehabilitation, pretrial drug education, pretrial alcohol education and treatment, determination of competency to stand trial or suspension of prosecution or any other programs for adjudication or treatment which may be created from time to time, (6) any official receipts, (7) the judgment mittimus, (8) any written notices of rights, (9) orders regarding probation, (10) any exhibits on file, (11) any transcripts on file of proceedings held in the matter, and (12) the transaction sheet.

(b) Unless otherwise ordered by the court, the copy of the application for a search warrant and affidavits filed pursuant to General Statutes § 54-33c shall be destroyed upon the expiration of three years from the filing of the copy of the application and affidavits with the clerk.

(c) Except as otherwise provided, the papers stripped from the court file may be destroyed upon the expiration of ninety days from the date of disposition of the case.

(d) Upon the disposition of any criminal or motor vehicle case in which the defendant has been released pursuant to a bond, the clerk shall remove the bond form from the file and maintain it in the clerk's office for such periods as determined by the chief court administrator.

(e) Upon the disposition of any criminal or motor vehicle case in which property is seized, whether pursuant to a search warrant, an arrest, an in rem proceeding or otherwise, the clerk shall remove the executed search warrant, if any, papers relating to any in rem proceedings, if any, and the inventory of the seized property from the court file and maintain them in the clerk's office during the pendency of proceedings to dispose of the property and for such further periods as determined by the chief court administrator.

(f) In cases in which there has been neither a conviction nor the payment of a fine on any charge, the file shall be destroyed upon the expiration of three years from the date of disposition.

(g) In cases in which a fine has been paid pursuant to an infraction or a violation, the file shall be destroyed upon the expiration of five years from the date of disposition.

(h) In cases in which there has been a conviction of a misdemeanor charge but not a conviction of a felony charge, the

file shall be destroyed upon the expiration of ten years from the date of disposition.

(i) In cases in which there has been a conviction of a felony charge but not a conviction of a capital felony charge, the file, all exhibits and the transcripts of all proceedings held in the matter shall be destroyed upon the expiration of twenty years from the date of disposition or upon the expiration of the sentence, whichever is later.

(j) In cases in which there has been a conviction of a capital felony charge, the file, all exhibits and the transcripts of all proceedings held in the matter shall be destroyed upon the expiration of twenty-five years from the death of the person convicted.

(k) The file and records in any case in which an individual is adjudged a youthful offender shall be retained for ten years.

(l) The file in any case in which the disposition is not guilty by reason of mental disease or defect shall be retained for seventy-five years.

(m) Investigatory grand jury records shall be retained permanently.

COMMENTARY: Subsection (m) establishes a retention period for the records of investigatory grand juries.

PROPOSED AMENDMENTS TO THE CIVIL RULES

Sec. 11-14. — Short Calendar; Frequency; Time; Lists

Short calendar sessions shall be held in each judicial district and geographical area at least once each month, the date, hour and place to be fixed by the presiding judge upon due notice to the clerk. The caseload coordinator or clerk, in consultation with the presiding judge, shall determine the number of lists, such as whether there shall be separate lists for family relations matters and foreclosures, and whether various portions of any one list shall be scheduled for different days and for different hours of the same day. [The lists] Notice of the assigned date and time of the motion shall be [printed and distributed] provided to attorneys and pro se parties of record [in cases appearing therein].

COMMENTARY: The above change would allow notice to be provided by other means, including electronic notice and

the online posting of calendars. Under the current rule the Judicial Branch must provide printed lists to attorneys and pro se parties of record.

Sec. 11-18. — Oral Argument of Motions in Civil Matters

(a) Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready for adjudication in accordance with the procedure indicated in the notice that accompanies the short calendar on which the motion appears, and

(2) the movant indicates at the bottom of the first page of the motion or on a reclaim slip that oral argument or testimony is desired or

(3) a nonmoving party files and serves on all other parties pursuant to Sections 10-12 through 10-17, with proof of service endorsed thereon, a written notice stating the party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date and shall contain (A) the name of the party filing the motion and (B) the date of the short calendar on which the matter appears.

(b) As to any motion for which oral argument is of right and as to any other motion for which the judicial authority grants or, in its own discretion, requires argument or testimony, the date for argument or testimony shall be set by the judge to whom the motion is assigned.

(c) If a case has been designated for argument as of right or by the judicial authority but a date for argument or testimony has not been set within thirty days of the date the motion was marked ready, the movant may reclaim the motion.

(d) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.

(e) Notwithstanding the above, all motions to withdraw appearance, except those under Section 3-9 (b), and any other motions designated by the chief court administrator in the civil short calendar standing order shall be set down for oral argument.

COMMENTARY: The above change would provide uniformity statewide with regard to matters that are arguable.

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

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

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

(c) A party may obtain, without the showing required under this section, discovery of any recording, by film, photograph, video tape, audio tape or any other digital or electronic means, of the requesting party and of any recording of any other party concerning the action or the subject matter, thereof, including any transcript of such recording. A party may obtain information identifying any such recording and transcript, if one was created, prior to the deposition of the party who is the subject of the recording; but the person from whom discovery is sought shall not be required to produce the recording or transcript until thirty days after the completion of the deposition of the party who is the subject of the recording or sixty days prior to the date the case is assigned to commence trial, whichever is

earlier; except that if a deposition of the party who is the subject of the recording was not taken, the recording and transcript shall be produced sixty days prior to the date the case is assigned to commence trial. If a recording was created within such sixty day period, the recording and transcript must be produced immediately. No such recording or transcript is required to be identified or produced if neither it nor any part thereof will be introduced into evidence at trial. However, if any such recording or part or transcript thereof is required to be identified or produced, all recordings and transcripts thereof of the subject of the recording party shall be identified and produced, rather than only those recordings, or transcripts or parts thereof that the producing party intends to use or introduce at trial.

COMMENTARY: Section 13-3 (c) is based on the position concerning the discoverability of pretrial surveillance materials taken in the majority of decisions from other jurisdictions where the issue was not addressed by a specific rule. See, e.g., *DiMichel v. South Buffalo Railway Co.*, 80 N.Y.Ed. 184, 604 N.E.Ed. 63, 590 N.Y.S.2d 1 (1992), cert. denied, 510 U.S. 816 (1993), *Wolford v. Joellen Smith Psychiatric Hospital, PIA*, 693 So.2d 1164 (La. 1997); *Shenk v. Berger*, 86 Md. 498, 587 A.2d 551 (1991); *Dodson v. Persell*, 390 So.2d 704, 19 A.L.R. 4th 1228 (Fla. 1980), on remand, 393 So. 2d 1008 (Fla. App. 1980); *Jenkins v. Rainer*, 69 N.J. 50, 350 A.2d 473 (1976); *Snead v. American Export-Ibrandsten Lines, Inc.*, 59 F.R.D. 148 (E.D.Pa. 1973). This section permits discovery of the content of such materials only after the party obtaining the surveillance material has had an opportunity to depose the subject of the surveillance. It differs from the rule in New York, codified in CPLR 3101(i), enacted in 1993, which makes such material freely discoverable. The description of the material discoverable is taken from CPLR 3101(i). The surveillance material discoverable is limited to material concerning surveillance of a "party" as defined in Practice Book Section 13-1 (2). Discovery of pretrial surveillance material is subject to the general limitation of Practice Book Section 13-2 that only information and documents "which are not privileged" are discoverable. Section 13-3 (c) is applicable to family matters pursuant to

Practice Book Section 25-31. Section 13-3 is not applicable to juvenile matters or criminal matters.

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

(a) Except as provided in subsection (b) of this section, the clerk shall send the writ and notice of suit and answer form by first class mail separately to each defendant who is not an out-of-state corporation to one or more of the addresses supplied by the plaintiff. The clerk shall document the mailing date, and the nondelivery of the notice if any. On or before the date the clerk mails the writ and notice of suit to each such defendant, the clerk shall [give or mail a copy of such writ and notice of suit to] send notice to each plaintiff or representative of the docket number and answer date.

(b) For each defendant who is an out-of-state corporation, the plaintiff shall cause service of the writ and notice of suit and answer form to be made in accordance with the General Statutes. The officer or other person lawfully empowered to make service shall make return of service to the court. The clerk shall document the return of service.

COMMENTARY: The changes to this section will allow the clerk to send notice of the docket number and answer date by automated systems rather than by the labor intensive procedures currently required.

PROPOSED AMENDMENTS TO THE FAMILY RULES

Sec. 25-2. Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment

(a) Every complaint in a dissolution of marriage or civil union, legal separation or annulment action shall state the date and place, including the city or town, of the marriage and the facts necessary to give the court jurisdiction.

(b) Every such complaint shall also state whether there are minor children issue of the marriage or minor children of the civil union and whether there are any other minor children born to the wife since the date of marriage of the parties, or born to a party to the civil union since the date of the civil union, the name and date of birth of each, and the name of any individual or agency presently responsible by virtue of judicial award for the custody

or support of any child. These requirements shall be met whether a child is issue of the marriage or not, whether a child is born to a party of the civil union or not, and whether custody of children is sought in the action or not. In every case in which the state of Connecticut or any town thereof is contributing or has contributed to the support or maintenance of a party or child of said party, such fact shall be stated in the complaint and a copy thereof served on the attorney general or town clerk in accordance with the provisions of Sections 10-12 through 10-17. Although the attorney general or town clerk shall be a party to such cases, he or she need not be named in the writ of summons or summoned to appear.

(c) The complaint shall also set forth the plaintiff's demand for relief and the automatic orders as required by Section 25-5.

COMMENTARY: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.
Sec. 25-5. Automatic Orders upon Service of Complaint or Application

(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(1) Neither party shall sell, transfer, encumber (except for the filing of a lis pendens), conceal, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, individually or jointly held by the parties, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any

credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards.

(3) The parties shall each complete and exchange sworn financial statements substantially in accordance with a form prescribed by the chief court administrator within thirty days of the return day. The parties may thereafter enter and submit to the court a stipulated interim order allocating income and expenses, in accordance with the uniform child support guidelines.

(4) The case management date for this case is _____. The parties shall comply with Section 25-50 to determine if their actual presence at the court is required on that date.

(5) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority.

(6) The parties, if they share a minor child or children, shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(7) Neither party shall cause the other party or the children of the marriage or the civil union to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(8) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect.

(9) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(10) If the parties share a child or children, a party vacating the family residence shall notify the other party or the other party's attorney, in writing, within forty-eight hours of such move, of an address where the relocated party can receive communication. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(11) If the parents of minor children live apart during this dissolution proceeding, they shall assist their children in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing [unless there is a prior order of a judicial authority]. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in uppercase letters: FAILURE TO OBEY THESE ORDERS MAY BE PUNISHABLE BY CONTEMPT OF COURT. IF YOU OBJECT TO OR SEEK MODIFICATION OF THESE ORDERS DURING THE PENDENCY OF THE ACTION, YOU HAVE THE RIGHT TO A HEARING BEFORE A JUDGE WITHIN A REASONABLE TIME. The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

(c) The automatic orders of a judicial authority as enumerated in subdivisions (a) (1), (2), and (3) shall not apply in custody and visitation cases.

COMMENTARY: The above change is made for clarity.

Sec. 25-26. Modification of Custody, Alimony or Support

(a) Upon an application for a modification of an award of alimony pendente lite, alimony or support of minor children, filed by a person who is then in arrears under the terms of such award, the judicial authority shall, upon hearing, ascertain whether such arrearage has accrued without sufficient excuse so as to constitute a contempt of court, and, in its discretion, may determine whether any modification of current alimony and support shall be ordered prior to the payment, in whole or in part as the judicial authority may order, of any arrearage found to exist.

(b) Either parent or both parents of minor children may be cited or summoned by any party to the action to appear and

show cause, if any they have, why orders of custody, visitation, support or alimony should not be entered or modified.

(c) If any applicant is proceeding without the assistance of counsel and citation of any other party is necessary, the applicant shall sign the application and present the application, proposed order and summons to the clerk; the clerk shall review the proposed order and summons and, unless it is defective as to form, shall sign the proposed order and summons and shall assign a date for a hearing on the application.

(d) Each motion for modification of custody, visitation, alimony or child support shall state clearly in the caption of the motion whether it is a pendente lite or a postjudgment motion.

(e) Each motion for modification shall state the specific factual and legal basis for the claimed modification and shall include the outstanding order and date thereof to which the motion for modification is addressed.

(f) On motions addressed to financial issues the provisions of Section 25-30 shall be followed.

(g) [Any] Upon or after entry of judgment of a dissolution of marriage, dissolution of civil union, legal separation or annulment, the judicial authority may order that any further motion for modification of a final custody or visitation order or a parental responsibility plan shall be appended to a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section. The specific factual and legal basis for the claimed modification shall be sworn to by the moving party or other person having personal knowledge of the facts recited therein. If no objection to the request has been filed by any party within ten days of the date of service of such request on the other party, the request for leave may be determined by the judicial authority with or without hearing. If an objection is filed, the request shall be placed on the next short calendar, unless the judicial authority otherwise directs. At such hearing, the moving party must demonstrate probable cause that grounds exist for the motion to be granted. If the judicial authority grants the request for leave, at any time during the pendency of such a motion to modify, the judicial authority may determine whether discovery or a study or evaluation pursuant to Section 25-60 shall be permitted.

COMMENTARY: The above change establishes that the procedure outlined in subsection (g) is no longer required in every case. Upon or after the entry of judgment of a dissolution of marriage, dissolution of civil union, legal separation or annulment the judicial authority may order that a party seeking to modify a final custody or visitation order or a parental responsibility plan, must file a request for leave to do so accompanied by an affidavit setting forth the factual and legal basis for the modifications.

PROPOSED AMENDMENTS TO THE CRIMINAL RULES

Sec. 37-12. Defendant in Custody; Determination of Probable Cause

(a) If a defendant has been arrested without a warrant and has not been released from custody by the time of the arraignment or is not released at the arraignment pursuant to Section 38-4, the judicial authority shall, unless waived by the defendant, make an independent determination as to whether there is probable cause for believing that the offense charged has been committed by the defendant. Unless such a defendant is released sooner, such probable cause determination shall be made no later than forty-eight hours following defendant's arrest. Such determination shall be made in a nonadversary proceeding, which may be ex parte based on affidavits. If no such probable cause is found, the judicial authority shall release the defendant from custody.

(b) At the time the judicial authority makes its probable cause determination pursuant to paragraph (a), the judicial authority may, on its own motion or upon written request of any party and for good cause shown, order that any affidavits submitted in support of a finding of probable cause, including any police reports, be sealed from public inspection or that disclosure be limited under such terms and conditions as it finds reasonable, subject to the further order of any judicial authority thereafter having jurisdiction of the matter. If such a request has been granted, the moving party may have up to seven days to make a recommendation as to the details of the sealing order. If no such recommendation is made within that time period, the supporting affidavits shall be made public. No such order shall limit their disclosure to the attorney for the

accused, but the judicial authority may place reasonable restrictions on the further disclosure of the contents of the affidavits by the attorney for the accused and the prosecuting authority.

(c) Any order sealing such affidavits from public inspection or limiting their disclosure shall be for a specific period of time, not to exceed two weeks from the date of the court's probable cause determination, and within that time period the party who obtained the order may by written motion seek an extension of the period. The original order of the court sealing such affidavits or limiting their disclosure shall remain in effect until the court issues an order on the motion. Affidavits which have been the subject of such an order shall remain in the custody of the clerk's office but shall be kept in a secure location apart from the remainder of the file.

(d) Unless the judicial authority entered an order limiting disclosure of the affidavits submitted to the judicial authority in support of a finding of probable cause, whether or not probable cause has been found, all such affidavits, including any police reports, shall be made part of the court file and be open to public inspection and copying and the clerk shall provide copies to any person upon receipt of any applicable fee.

COMMENTARY: The above revisions permit public access to affidavits, including police reports, used in determining probable cause and provide a mechanism for a party to obtain an order sealing or limiting the disclosure of such documents for a limited period of time. Paragraphs (b) through (d) above are based in part on the language in Section 36-2.

PROPOSED AMENDMENTS TO THE PRACTICE BOOK FORMS

Form 201

Plaintiff's Interrogatories

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

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

(1) State the following:

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

(b) your date of birth;

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

(d) your home address;

(e) your business address;

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

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

COMMENT:

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

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

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

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

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

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

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

(5) As to each individual named in response to Interrogatory #4, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1 concerning the subject matter of the Complaint in this lawsuit. If your answer to this Interrogatory is affirmative, state also:

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

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

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

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

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

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

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

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

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

(d) the number of photographs.

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

(a) the name(s) and address(es) of the insured(s);

(b) the amount of coverage under each insurance policy;

(c) the name(s) and address(es) of said insurer(s).

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

(a) the name(s) and address(es) of the named insured;

(b) the amount of coverage effective at this time;

(c) the name(s) and address(es) of said insurer(s).

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

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

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

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

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

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

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

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

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

(b) the date and time;

(c) the results.

(17) Please identify surveillance material discoverable under Practice Book Section 13-3(c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, video tape, audio tape, audio tape or any other digital or

electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

PLAINTIFF,

BY _____

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

Notary Public/
Commissioner of the Superior Court

CERTIFICATION

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

(Attorney Signature)

(P.B. 1978–1997, Form 106.10A) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

Form 202

Defendant's Interrogatories

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

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

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

(1) State the following:

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

(b) your date of birth;

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

(d) your home address;

(e) your business address;

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

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

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

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

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

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

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

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

(9) Are you presently under the care of any doctor or other health care provider for the treatment of injuries alleged to have been sustained as a result of the incident alleged in your Complaint?
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(10) If the answer to Interrogatory #9 is in the affirmative, state the name and address of each physician or other health care provider who is treating you.

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

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

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

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

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

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

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

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

(e) list the date for each such prognosis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(29) Have you made any statements, as defined in Practice Book Section 13-1, to any person regarding any of the events or happenings alleged in your Complaint?

COMMENT:

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

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

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

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

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

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

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

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

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

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

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

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

(d) the number of photographs.

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

(34) Please state whether, within eight (8) hours after the incident alleged in the Complaint, any testing was performed to

determine the presence of alcohol, drugs or other medications in your blood, and, if so, state:

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

(b) the date and time;

(c) the results.

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

DEFENDANT,

BY _____

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

(Plaintiff)

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

Notary Public

CERTIFICATION

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

(Attorney Signature)

(P.B. 1978–1997, Form 106.10B.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

Form 203

**Plaintiff's Interrogatories
Premises Liability Cases**

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

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

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

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

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

(ii) your date of birth;

(iii) your home address;

(iv) your business address.

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

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

(ii) your business address;

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

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

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

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

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

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

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

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

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

(8) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers;

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;

(c) the time and date a sign or barrier was erected;

(d) the size of the sign or barrier and wording that appeared thereon.

(9) State whether you received, at any time six months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

(10) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name and address of the person who made the complaint;

(b) the name, address and person to whom said complaint was made;

(c) whether the complaint was in writing;

(d) the nature of the complaint.

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

12-23.[11-22.] (Interrogatories #1(a)-(e), #2 through #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

(P.B. 1978–1997, Form 106.10C.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

Form 204

Plaintiff's Requests for Production

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

The Plaintiff(s) hereby request(s) that the Defendant provide counsel for the Plaintiff(s) with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff(s) the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on (day), (date) at (time).

Definition: "You" shall mean the Defendant to whom these interr[i]ogatories are directed except that if that Defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) A copy of the appraisal or bill for repairs as identified in response to Interrogatory #11.

(2) A copy of declaration page(s) of each insurance policy identified in response to Interrogatory #7 and/or #8.

(3) If the answer to Interrogatory #9 is in the affirmative, a copy of the complete policy contents of each insurance policy identified in response to Interrogatory #7 and/or #8.

(4) A copy of any photographs identified in response to Interrogatory #6.

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of all lease agreements pertaining to any motor vehicle involved in the incident which is the subject of this action,

which was owned or operated by you or your employee, and all documents referenced or incorporated therein.

(7) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #16, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same for each hospital, person or entity that performed such test or screen. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(8) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3(c), by film, photograph, video tape, audio tape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

CERTIFICATION

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

(Attorney Signature)

(P.B. 1978-1997, Form 106.11A.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

Defendant's Requests for Production

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

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) Copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident

and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶5 and ¶6 above.

(8) Copies of all documentation of claims of right to reimbursement provided to the Plaintiff by third party payors, and copies of, or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26.

(10) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(13) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3(c), by film, photograph, video tape, audio tape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

DEFENDANT,

BY _____

CERTIFICATION

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

(Attorney Signature)

(P.B. 1978-1997, Form 106.11B.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

**Plaintiff's Requests for Production
Premises Liability**

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

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of on _____ (day), (date) at (time).

(1) A copy of the policies or procedures identified in response to Interrogatory #4.

(2) A copy of the report identified in response to Interrogatory #6.

(3) A copy of any written complaints identified in Interrogatory #10.

(4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered and .

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3(c), by film, photograph, video tape, audio tape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

(P.B. 1978–1997, Form 106.11C.)

COMMENTARY: The above change is proposed in light of the proposed revision to Practice Book Section 13-3 concerning discovery of pretrial surveillance material.

PROPOSED AMENDMENTS TO THE CODE OF EVIDENCE

Sec. 2-1. Judicial Notice of Adjudicative Facts

(a) Scope of section. This section governs only judicial notice of adjudicative facts.

(b) Taking of judicial notice. A court may, but is not required to, take notice of matters of fact, in accordance with subsection (c).

(c) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) within the knowledge of people generally in the ordinary course of human experience, or (2) generally accepted as true and capable of ready and unquestionable demonstration.

(d) Time of taking judicial notice. Judicial notice may be taken at any stage of the proceeding.

[(e) Instructing jury. The court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.]

COMMENTARY

(a) Scope of section.

Section 2-1 addresses the principle of judicial notice, which relieves a party from producing formal evidence to prove a fact. E.g., *Beardsley v. Irving*, 81 Conn. 489, 491, 71 A. 580 (1909); *Federal Deposit Ins. Corp. v. Napert-Boyer Partnership*, 40 Conn. App. 434, 441, 671 A.2d 1303 (1996). Section 2-1 deals only with judicial notice of “adjudicative” facts. Adjudicative facts are the facts of a particular case or those facts that relate to the activities or events giving rise to the particular controversy. See *Moore v. Moore*, 173 Conn. 120, 122, 376 A.2d 1085 (1977); K. Davis, “Judicial Notice,” 55 Colum. L. Rev. 945, 952 (1955).

This section does not deal with judicial notice of “legislative” facts, i.e., facts that do not necessarily concern the parties in a particular case but that courts consider in determining the constitutionality or interpretation of statutes or issues of public policy upon which the application of a common-law rule depends. See *Moore v. Moore*, supra, 173 Conn. 122; K. Davis, supra, 55 Colum. L. Rev. 952. The Code leaves judicial notice of legislative facts to common law.

(b) Taking of judicial notice.

Subsection (b) expresses the common-law view that “[c]ourts are not bound to take judicial notice of matters of fact.” *DeLuca v. Park Commissioners*, 94 Conn. 7, 10, 107 A. 611 (1919).

(c) Kinds of facts.

Subsection (c) is consistent with common-law principles of judicial notice. See, e.g., *West Hartford v. Freedom of Information Commission*, 218 Conn. 256, 264, 588 A.2d 1368 (1991); *State v. Tomanelli*, 153 Conn. 365, 369, 216 A.2d 625 (1966).

Both the fact that raw pork must be cooked thoroughly to kill parasites; see *Silverman v. Swift & Co.*, 141 Conn. 450, 458, 107 A.2d 277 (1954); and the fact that the normal period of human gestation is nine months; *Melanson v. Rogers*, 38 Conn. Sup. 484, 490–91, 451 A.2d 825 (1982); constitute examples of facts subject to judicial notice under category (1). Examples of category (2) facts include: scientific tests or principles; *State v. Tomanelli*, supra, 153 Conn. 370–71; geographical data; e.g., *Nesko Corp. v. Fontaine*, 19 Conn. Sup. 160, 162, 110 A.2d 631 (1954); historical facts; *Gannon v. Gannon*, 130 Conn. 449, 452, 35 A.2d 204 (1943); and times and dates. E.g., *Patterson v. Dempsey*, 152 Conn. 431, 435, 207 A.2d 739 (1965).

(d) Time of taking judicial notice.

Subsection (d) adheres to common-law principles. *Drabik v. East Lyme*, 234 Conn. 390, 398, 662 A.2d 118 (1995); *State v. Allen*, 205 Conn. 370, 382, 533 A.2d 559 (1987). Because the Code is intended to govern the admissibility of evidence in the court, subsection (d) does not govern the taking of judicial notice on appeal.

(e) Instructing jury provision deleted.

The 2000 edition of the Code contained a subdivision (e) which read as follows:

“(e) Instructing jury. The court shall instruct the jury that it may, but is not required to accept as conclusive any fact judicially noticed.”

The Commentary contained the following text:

“(e) Instructing jury.

In accordance with common law, whether the case is civil or criminal, the court shall instruct the jury that it may,

but need not, accept the judicially noticed fact as conclusive. See, e.g., *State v. Tomanelli*, supra, 153 Conn. 369; cf. Fed. R. Evid. 201 (g). Because the jury need not accept the fact as conclusive, other parties may offer evidence in disproof of a fact judicially noticed. *State v. Tomanelli*, supra, 369; *Federal Deposit Ins. Corp. v. Napert-Boyer Partnership*, supra, 40 Conn. App. 441.”

The subdivision was deleted with the recognition that the Code of Evidence is not the appropriate repository for jury instructions.

Sec. 7-2. Testimony by Experts

A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.

COMMENTARY

Section 7[0]-2 imposes two conditions on the admissibility of expert testimony. First, the witness must be qualified as an expert. See, e.g., *State v. Wilson*, 188 Conn. 715, 722, 453 A.2d 765 (1982); see also, e.g., *State v. Girolamo*, 197 Conn. 201, 215, 496 A.2d 948 (1985) (bases for qualification). Whether a witness is sufficiently qualified to testify as an expert depends on whether, by virtue of the witness’ knowledge, skill, experience, etc., his or her testimony will “assist” the trier of fact. See *Weinstein v. Weinstein*, 18 Conn. App. 622, 631, 561 A.2d 443 (1989); see also, e.g., *State v. Douglas*, 203 Conn. 445, 453, 525 A.2d 101 (1987) (“to be admissible, the proffered expert’s knowledge must be directly applicable to the matter specifically in issue”). The sufficiency of an expert witness’ qualifications is a preliminary question for the court. E.g., *Blanchard v. Bridgeport*, 190 Conn. 798, 808, 463 A.2d 553 (1983); see Section 1-3 (a).

Second, the expert witness’ testimony must assist the trier of fact in understanding the evidence or determining a fact in issue. See, e.g., *State v. Hasan*, 205 Conn. 485, 488, 534 A.2d 877 (1987); *Schomer v. Shilepsky*, 169 Conn. 186,

191–92, 363 A.2d 128 (1975). Crucial to this inquiry is a determination that the scientific, technical or specialized knowledge upon which the expert’s testimony is based goes beyond the common knowledge and comprehension, i.e., “beyond the ken,” of the average juror. See *State v. George*, 194 Conn. 361, 373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 105 L. Ed. 2d 968 (1985); *State v. Grayton*, 163 Conn. 104, 111, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495 (1972); cf. *State v. Kemp*, 199 Conn. 473, 476–77, 507 A.2d 1387 (1986).

The subject matter upon which expert witnesses may testify is not limited to the scientific or technical fields, but extends to all specialized knowledge. See, e.g., *State v. Correa*, 241 Conn. 322, 355, 696 A.2d 944 (1997) (FBI agent may testify about local cocaine distribution and its connection with violence).

In *State v. Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998), the state supreme court directed trial judges, in admitting scientific evidence, to serve a gatekeeper function in determining whether such evidence will assist the trier of fact. *Id.*, 73. In *Porter*, the court opted for an approach similar to that taken by the United States supreme court in construing the relevant federal rule of evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). *State v. Porter*, *supra*, 61, 68.

In accordance with *Porter*, the trial judge first must determine that the proffered scientific evidence is reliable. *Id.*, 64. Scientific evidence is reliable if the reasoning or methodology underlying the evidence is scientifically valid. *Id.* In addition to reliability, the trial judge also must determine that the proffered scientific evidence is relevant, meaning that the reasoning or methodology underlying the scientific theory or technique in question properly can be applied to the facts in issue. *Id.*

In *Porter*, the court listed several factors a trial judge should consider in deciding whether scientific evidence is reliable. *Id.*, 84–86. The list of factors is not exclusive; *id.*, 84;

and the operation of each factor varies depending on the specific context in each case. *Id.*, 86–87.

Subsequent to both *Daubert* and *Porter*, the United States supreme court decided that, with respect to Fed. R. Evid. 702, the trial judge’s gatekeeping function applies not only to testimony based on scientific knowledge, but also to testimony based on technical and other specialized knowledge, and that the trial judge may consider one or more of the *Daubert* factors if doing so will aid in determining the reliability of the testimony. *Kumho Tire Co., Ltd. v. Carmichael*, U.S. , 119 S. Ct. 1167, 1174–75, 143 L. Ed. 2d 238 (1999). The Code takes no position on such an application of *Porter*. Thus, Section 7[0]-2 should not be read either as including or precluding the *Kumho Tire* rule.

Sec. 8-3. Hearsay Exceptions: Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Statement by a party opponent. A statement that is being offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, (B) a statement that the party has adopted or approved, (C) a statement by a person authorized by the party to make a statement concerning the subject, (D) a statement by a coconspirator of a party while the conspiracy is ongoing and in furtherance of the conspiracy, (E) in an action for a debt for which the party was surety, a statement by the party’s principal relating to the principal’s obligations, or (F) a statement made by a predecessor in title of the party, provided the declarant and the party are sufficiently in privity that the statement of the declarant would affect the party’s interest in the property in question.

(2) Spontaneous utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Statement of then-existing physical condition. A statement of the declarant’s then-existing physical condition, provided that the statement is a natural expression of the

condition and is not a statement of memory or belief to prove the fact remembered or believed.

(4) Statement of then-existing mental or emotional condition. A statement of the declarant's then-existing mental or emotional condition, including a statement indicating a present intention to do a particular act in the immediate future, provided that the statement is a natural expression of the condition and is not a statement of memory or belief to prove the fact remembered or believed.

(5) Statement for purposes of obtaining medical diagnosis or treatment [or advice pertaining thereto]. A statement made for purposes of obtaining a medical diagnosis or treatment [or advice pertaining thereto] and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to the medical diagnosis or treatment [or advice].

(6) Recorded recollection. A memorandum or record concerning an event about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness at or about the time of the event recorded and to reflect that knowledge correctly.

(7) Public records and reports. Records, reports, statements or data compilations, in any form, of public offices or agencies, provided (A) the record, report, statement or data compilation was made by a public official under a duty to make it, (B) the record, report, statement or data compilation was made in the course of his or her official duties, and (C) the official or someone with a duty to transmit information to the official had personal knowledge of the matters contained in the record, report, statement or data compilation.

(8) Statement in learned treatises. To the extent called to the attention of an expert witness on cross-examination or relied on by the expert witness in direct examination, a statement contained in a published treatise, periodical or pamphlet on a subject of history, medicine, or other science or art, recognized as a standard authority in the field by the witness, other expert witness or judicial notice.

(9) Statement in ancient documents. A statement in a document in existence for more than thirty years if it is

produced from proper custody and otherwise free from suspicion.

(10) Published compilations. Market quotations, tabulations, lists, directories or other published compilations, that are recognized authority on the subject, or are otherwise trustworthy.

(11) Statement in family bible. A statement of fact concerning personal or family history contained in a family bible.

(12) Personal identification. Testimony by a witness of his or her own name or age.

COMMENTARY

(1) Statement by party opponent.

Section 8-3 (1) sets forth six categories of party opponent admissions that were excepted from the hearsay rule at common law: (A) The first category excepts from the hearsay rule a party's own statement when offered against him or her. E.g., *In re Zoarski*, 227 Conn. 784, 796, 632 A.2d 1114 (1993); *State v. Woodson*, 227 Conn. 1, 15, 629 A.2d 386 (1993). Under Section 8-3 (1) (A), a statement is admissible against its maker, whether he or she was acting in an individual or representative capacity when the statement was made. Although there apparently are no Connecticut cases that support extending the exception to statements made by and offered against those serving in a representative capacity, the rule is in accord with the modern trend. E.g., Fed. R. Evid. 801 (d) (2) (A). Connecticut excepts party admissions from the usual requirement that the person making the statement have personal knowledge of the facts stated therein. *Dreir v. Upjohn Co.*, 196 Conn. 242, 249, 492 A.2d 164 (1985).

(B) The second category recognizes the common-law hearsay exception for "adoptive admissions." See, e.g., *State v. John*, 210 Conn. 652, 682-83, 557 A.2d 93, cert. denied, 493 U.S. 824, 110 S. Ct. 84, 107 L. Ed. 2d 50 (1989); *Falker v. Samperi*, 190 Conn. 412, 426, 461 A.2d 681 (1983). Because adoption or approval may be implicit; see, e.g., *State v. Moye*, 199 Conn. 389, 393-94, 507 A.2d 1001 (1986); the commonlaw hearsay exception for tacit admissions, under which silence or a failure to respond to another person's

statement may constitute an admission; e.g., *State v. Morrill*, 197 Conn. 507, 535, 498 A.2d 76 (1985); *Obermeier v. Nielsen*, 158 Conn. 8, 11–12, 255 A.2d 819 (1969); is carried forward in Section 8-3 (1) (B). The admissibility of tacit admissions in criminal cases is subject to the evidentiary limitations on the use of an accused’s postarrest silence; see *State v. Ferrone*, 97 Conn. 258, 266, 116 A. 336 (1922); and the constitutional limitations on the use of the accused’s post-*Miranda* warning silence. *Doyle v. Ohio*, 426 U.S. 610, 617–19, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976); see, e.g., *State v. Zeko*, 177 Conn. 545, 554, 418 A.2d 917 (1977).

(C) The third category restates the common-law hearsay exception for “authorized admissions.” See, e.g., *Presta v. Monnier*, 145 Conn. 694, 699, 146 A.2d 404 (1958); *Collins v. Lewis*, 111 Conn. 299, 305–306, 149 A. 668 (1930). The speaker must have speaking authority concerning the subject upon which he or she speaks; a mere agency relationship—e.g., employer-employee—without more, is not enough to confer speaking authority. E.g., *Liebman v. Society of Our Lady of Mount St. Carmel, Inc.*, 151 Conn. 582, 586, 200 A.2d 721 (1964); *Munson v. United Technologies Corp.*, 28 Conn. App. 184, 188, 609 A.2d 1066, cert. denied, 200 Conn. 805, 510 A.2d 192 (1992); cf. *Graham v. Wilkins*, 145 Conn. 34, 40–41, 138 A.2d 705 (1958); *Haywood v. Hamm*, 77 Conn. 158, 159, 58 A. 695 (1904). The proponent need not, however, show that the speaker was authorized to make the particular statement sought to be introduced. The existence of speaking authority is to be determined by reference to the substantive law of agency. Although not expressly mentioned in the exception, the Code in no way abrogates the common-law rule that speaking authority must be established without reference to the purported agent’s out-of-court statements, save when those statements are independently admissible. See Section 1-1 (d) (1). See generally *Robles v. Lavin*, 176 Conn. 281, 284, 407 A.2d 957 (1978). Because partners are considered agents of the partnership for the purpose of its business; General Statutes § 34-322 (1); a partner’s declarations in furtherance of partnership business ordinarily are admissible against the partnership under Section 8-3 (1) (C) principles. See 2 C.

McCormick, Evidence (5th Ed. 1999) § 259, p. 156; cf. *Munson v. Wickwire*, 21 Conn. 513, 517 (1852).

(D) The fourth category encompasses the hearsay exception for statements of coconspirators. E.g., *State v. Couture*, 218 Conn. 309, 322, 589 A.2d 343 (1991); *State v. Pelletier*, 209 Conn. 564, 577, 552 A.2d 805 (1989); see also *State v. Vessichio*, 197 Conn. 644, 654–55, 500 A.2d 1311 (1985), cert. denied, 475 U.S. 1122, 106 S. Ct. 1642, 90 L. Ed. 2d 187 (1986) (additional foundational elements include existence of conspiracy and participation therein by both declarant and party against whom statement is offered). The exception is applicable in civil and criminal cases alike. See *Cooke v. Weed*, 90 Conn. 544, 548, 97 A. 765 (1916). The proponent must prove the foundational elements by a preponderance of the evidence and independently of the hearsay statements sought to be introduced. *State v. Vessichio*, supra, 655; *State v. Haggood*, 36 Conn. App. 753, 767, 653 A.2d 216, cert. denied, 233 Conn. 904, 657 A.2d 644 (1995).

(E) The fifth category of party opponent admissions is derived from *Agricultural Ins. Co. v. Keeler*, 44 Conn. 161, 162–64 (1876). See generally C. Tait & J. LaPlante, Connecticut Evidence (2d Ed. 1988) § 11.5.6 (d), p. 347; 4 J. Wigmore, Evidence (4th Ed. 1972) § 1077.

(F) The final category incorporates the common-law hearsay exception applied in *Pierce v. Roberts*, 57 Conn. 31, 40–41, 17 A. 275 (1889), and *Ramsbottom v. Phelps*, 18 Conn. 278, 285 (1847).

(2) Spontaneous utterance.

The hearsay exception for spontaneous utterances is well established. See, e.g., *State v. Stange*, 212 Conn. 612, 616–17, 563 A.2d 681 (1989); *Cascella v. Jay James Camera Shop, Inc.*, 147 Conn. 337, 341–42, 160 A.2d 899 (1960); *Perry v. Haritos*, 100 Conn. 476, 483–84, 124 A. 44 (1924). Although Section 8-3 (2) states the exception in terms different from that of the case law on which the exception is based; cf. *State v. Stange*, supra, 616–17; *Rockhill v. White Line Bus Co.*, 109 Conn. 706, 709, 145 A. 504 (1929); *Perry v. Haritos*, supra, 484; *State v. Guess*, 44 Conn. App. 790, 803, 692 A.2d 849 (1997); the rule assumes incorporation of the case law principles underlying the exception.

The event or condition must be sufficiently startling, so “as to produce nervous excitement in the declarant and render [the declarant’s] utterances spontaneous and unreflective.” *State v. Rinaldi*, 220 Conn. 345, 359, 599 A.2d 1 (1991), quoting C. Tait & J. LaPlante, *supra*, § 11.11.2, pp. 373–74; accord 2 C. McCormick, *supra*, § 272, p. 204.

(3) Statement of then-existing physical condition.

Section 8-3 (3) embraces the hearsay exception for statements of then-existing physical condition. *Martin v. Sherwood*, 74 Conn. 475, 481–82, 51 A. 526 (1902); *State v. Dart*, 29 Conn. 153, 155 (1860); see *McCarrick v. Kealy*, 70 Conn. 642, 645, 40 A. 603 (1898).

The exception is limited to statements of *then-existing* physical condition, whereby the declarant describes how the declarant feels as the declarant speaks. Statements concerning past physical condition; *Martin v. Sherwood*, *supra*, 74 Conn. 482; *State v. Dart*, *supra*, 29 Conn. 155; or the events leading up to or the cause of a present condition; *McCarrick v. Kealy*, *supra*, 70 Conn. 645; are not admissible under this exception. Cf. Section 8-3 (5) (exception for statements made to physician for purpose of obtaining medical treatment or advice and describing *past* or present bodily condition or cause thereof).

(4) Statement of then-existing mental or emotional condition.

Section 8-3 (4) embodies what is frequently referred to as the “state-of-mind” exception to the hearsay rule. See, e.g., *State v. Periere*, 186 Conn. 599, 605–606, 442 A.2d 1345 (1982).

The exception allows the admission of a declarant’s statement describing his or her then-existing mental or emotional condition when the declarant’s mental or emotional condition is a factual issue in the case. E.g., *State v. Periere*, *supra*, 186 Conn. 606–607 (to show declarant’s fear); *Kearney v. Farrell*, 28 Conn. 317, 320–21 (1859) (to show declarant’s “mental feeling”). Only statements describing *then-existing* mental or emotional condition, i.e., that existing when the statement is made, are admissible.

The exception also covers a declarant’s statement of present intention to perform a subsequent act as an inference that the subsequent act actually occurred. E.g., *State v.*

Rinaldi, 220 Conn. 345, 358 n.7, 599 A.2d 1 (1991); *State v. Santangelo*, 205 Conn. 578, 592, 534 A.2d 1175 (1987); *State v. Journey*, 115 Conn. 344, 351, 161 A.2d 515 (1932). The inference drawn from the statement of present intention that the act actually occurred is a matter of relevancy rather than a hearsay concern.

When a statement describes the declarant's intention to do a future act in concert with another person, e.g., "I am going to meet Ralph at the store at ten," the case law does not prohibit admissibility. See *State v. Santangelo*, supra, 205 Conn. 592. But the declaration can be admitted only to prove the declarant's subsequent conduct, not to show what the other person ultimately did. *State v. Perelli*, 125 Conn. 321, 325, 5 A.2d 705 (1939). Thus, in the example above, the declarant's statement could be used to infer that the declarant actually did go to meet Ralph at the store at ten, but not to show that Ralph went to the store at ten to meet the declarant.

Placement of Section 8-3 (4) in the "availability of the declarant immaterial" category of hearsay exceptions confirms that the admissibility of statements of present intention to show future acts is not conditioned on any requirement that the declarant be unavailable. See *State v. Santangelo*, supra, 205 Conn. 592 (dictum suggesting that declarant's unavailability is precondition to admissibility).

While statements of present intention looking forward to the doing of some future act are admissible under the exception, backward looking statements of memory or belief offered to prove the act or event remembered or believed are inadmissible. See *Wade v. Yale University*, 129 Conn. 615, 618-19, 30 A.2d 545 (1943). But see *State v. Santangelo*, supra, 205 Conn. 592-93. As the advisory committee note to the corresponding federal rule suggests, "[t]he exclusion of 'statements of memory or belief to prove the fact remembered or believed' is necessary to avoid the virtual destruction of the hearsay rule which would otherwise result from allowing state of mind, provable by a hearsay statement, to serve as the basis for an inference of the happening of the event which produced the state of mind." Fed. R. Evid. 803 (3) advisory committee note, citing *Shepard v. United States*, 290 U.S. 96, 54 S. Ct. 22, 78 L. Ed. 196 (1933). For cases dealing with the

admissibility of statements of memory or belief in will cases, see *Spencer's Appeal*, 77 Conn. 638, 643, 60 A. 289 (1905); *Vivian Appeal*, 74 Conn. 257, 260–62, 50 A. 797 (1901); *Comstock v. Hadlyme Ecclesiastical Society*, 8 Conn. 254, 263–64 (1830). Cf. *Babcock v. Johnson*, 127 Conn. 643, 644, 19 A.2d 416 (1941) (statements admissible only as circumstantial evidence of state of mind and not for truth of matter asserted); *In re Johnson's Will*, 40 Conn. 587, 588 (1873) (same).

(5) Statement for purposes of obtaining medical diagnosis or treatment [or advice pertaining thereto].

Statements made in furtherance of obtaining medical diagnosis or treatment [or advice pertaining thereto] are excepted from the hearsay rule. E.g., *State v. DePastino*, 228 Conn. 552, 565, 638 A.2d 578 (1994)[; *Gilmore v. American Tube & Stamping Co.*, 79 Conn. 498, 504, 66 A. 4 (1907)].

It is intended that the term “medical” be read broadly so that the exception would cover statements made for the purpose of [obtaining] diagnosis or treatment [or advice] for both somatic and psychological maladies and conditions. See *State v. Wood*, 208 Conn. 125, 133–34, 545 A.2d 1026, cert. denied, 488 U.S. 895, 109 S. Ct. 235, 102 L. Ed. 2d 225 (1988)[; *Main v. Main*, 17 Conn. App. 670, 674, 555 A.2d 997 (1989)].

Statements concerning the cause of an injury or condition traditionally were inadmissible under the exception. See *Smith v. Hausdorf*, 92 Conn. 579, 582, 103 A. 939 (1918). Recent cases recognize that, in some instances, causation may be pertinent to medical diagnosis or treatment [or advice]. See *State v. Daniels*, 13 Conn. App. 133, 135, 534 A.2d 1253 (1987); cf. *State v. DePastino*, supra, 228 Conn. 565. Section 8-3 (5), thus, excepts from the hearsay rule statements describing “the inception or general character of the cause or external source” of an injury or condition when reasonably pertinent to medical diagnosis or treatment [or advice].

Statements as to causation that include the identity of the person responsible for the injury or condition ordinarily are neither relevant to nor in furtherance of the patient’s medical treatment. *State v. DePastino*, supra, 228 Conn. 565; *State v. Dollinger*, 20 Conn. App. 530, 534, 568 A.2d 1058, cert.

denied, 215 Conn. 805, 574 A.2d 220 (1990). Both the supreme and appellate courts have recognized an exception to this principle in cases of domestic child abuse. *State v. DePastino*, supra, 565; *State v. Dollinger*, supra, 534–35; *State v. Maldonado*, 13 Conn. App. 368, 372–74, 536 A.2d 600, cert. denied, 207 Conn. 808, 541 A.2d 1239 (1988); see C. Tait & J. LaPlante, supra, (Sup. 1999) § 11.12.3, p. 233. The courts reason that “[i]n cases of sexual abuse in the home, hearsay statements made in the course of medical treatment which reveal the identity of the abuser, are reasonably pertinent to treatment and are admissible. . . . If the sexual abuser is a member of the child victim’s immediate household, it is reasonable for a physician to ascertain the identity of the abuser to prevent recurrences and to facilitate the treatment of psychological and physical injuries.” (Citation omitted; internal quotation marks omitted.) *State v. Dollinger*, supra, 535, quoting *State v. Maldonado*, supra, 374; accord *State v. DePastino*, supra, 565.

Traditionally, the exception seemingly required that the statement be made to a physician. See, e.g., *Wilson v. Granby*, 47 Conn. 59, 76 (1879). Statements qualifying under Section 8-3 (5), however, may be those made not only to a physician, but to other persons involved in the treatment of the patient, such as a nurse, a paramedic, an interpreter or even a family member. This approach is in accord with the modern trend. See *State v. Maldonado*, supra, 13 Conn. App. 369, 374 n.3 (statement by child abuse victim who spoke only Spanish made to Spanish speaking hospital security guard enlisted by treating physician as translator).

Common-law cases address the admissibility of statements made only by the patient. E.g., *Gilmore v. American Tube & Stamping Co.*, supra, 79 Conn. 504. Section 8-3 (5) does not, by its terms, restrict statements admissible under the exception to those made by the patient. For example, if a parent were to bring his or her unconscious child into an emergency room, statements made by the parent to a health care provider for the purpose of obtaining treatment and pertinent to that treatment fall within the scope of the exception.

[The] Early common law distinguished between statements made to physicians consulted for the purpose of

treatment and statements made to physicians consulted solely for the purpose of qualifying as an expert witness to testify at trial. Statements made to these so-called “nontreating” physicians were not accorded substantive effect. See, e.g., *Zawisza v. Quality Name Plate, Inc.*, 149 Conn. 115, 119, 176 A.2d 578 (1961); *Rowland v. Phila., Wilm. & Baltimore R. Co.*, 63 Conn. 415, 418–19, 28 A. 102 (1893). This distinction was virtually eliminated by the Court in *George v. Ericson*, 250 Conn. 312, 736 A.2d 889 (1999), which held that nontreating physicians could rely on such statements. The distinction between admission only as foundation for the expert’s opinion and admission for all purposes was considered too inconsequential to maintain. Accordingly, the word “diagnosis” was added to, and the phrase “advice pertaining thereto” was deleted from, [By use of] the phrase “medical treatment or advice pertaining thereto,” in Section 8-3 (5) [retains this common-law distinction].

(6) Recorded recollection.

The hearsay exception for past recollection recorded requires four foundational requirements. First, the witness must have had personal knowledge of the event recorded in the memorandum or record. *Papas v. Aetna Ins. Co.*, 111 Conn. 415, 420, 150 A. 310 (1930); *Jackiewicz v. United Illuminating Co.*, 106 Conn. 302, 309, 138 A. 147 (1927); *Neff v. Neff*, 96 Conn. 273, 278, 114 A. 126 (1921).

Second, the witness’ present recollection must be insufficient to enable the witness to testify fully and accurately about the event recorded. *State v. Boucino*, 199 Conn. 207, 230, 506 A.2d 125 (1986). The rule thus does not require the witness’ memory to be totally exhausted. See *id.* Earlier cases to the contrary, such as *Katsonas v. W.M. Sutherland Building & Contracting Co.*, 104 Conn. 54, 69, 132 A. 553 (1926), apparently have been rejected. See *State v. Boucino*, *supra*, 230. “Insufficient recollection” may be established by demonstrating that an attempt to refresh the witness’ recollection pursuant to Section 6-9 (a) was unsuccessful. See *Katsonas v. W.M. Sutherland Building & Contracting Co.*, *supra*, 69.

Third, the memorandum or record must have been made or adopted by the witness “at or about the time” the event was recorded. *Gigliotti v. United Illuminating Co.*, 151

Conn. 114, 124, 193 A.2d 718 (1963); *Neff v. Neff*, supra, 96 Conn. 278; *State v. Day*, 12 Conn. App. 129, 134, 529 A.2d 1333 (1987).

Finally, the memorandum or record must reflect correctly the witness' knowledge of the event as it existed at the time of the memorandum's or record's making or adoption. See *State v. Vennard*, 159 Conn. 385, 397, 270 A.2d 837 (1970), cert. denied, 400 U.S. 1011, 91 S. Ct. 576, 27 L. Ed. 2d 625 (1971); *Capone v. Sloan*, 149 Conn. 538, 543, 182 A.2d 414 (1962); *Hawken v. Dailey*, 85 Conn. 16, 19, 81 A. 1053 (1911).

A memorandum or record admissible under the exception may be read into evidence and received as an exhibit. *Katsonas v. W.M. Sutherland Building & Contracting Co.*, supra, 104 Conn. 69; see *Neff v. Neff*, supra, 96 Conn. 278-79. Because a memorandum or record introduced under the exception is being offered to prove its contents, the original must be produced pursuant to Section 10-1, unless its production is excused. See Sections 10-3 through 10-6; cf. *Neff v. Neff*, supra, 278.

Multiple person involvement in recordation and observation of the event recorded is contemplated by the exception. For example, *A* reports to *B* an event *A* has just observed. *B* immediately writes down what *A* reported to him. *A* then examines the writing and adopts it as accurate close to the time of its making. *A* is now testifying and has forgotten the event. *A* may independently establish the foundational requirements for the admission of the writing under Section 8-3 (6). Cf. C. Tait & J. LaPlante, supra, § 11.21, p. 408, citing *Curtis v. Bradley*, 65 Conn. 99, 31 A. 591 (1894).

The past recollection recorded exception to the hearsay rule is to be distinguished from the procedure for refreshing recollection, which is covered in Section 6-9.

(7) Public records and reports.

Section 8-3 (7) sets forth a hearsay exception for certain public records and reports. The exception is derived primarily from common law although public records and reports remain the subject of numerous statutes. See, e.g., General Statutes §§ 12-39bb, 19a-412.

Although Connecticut has neither precisely nor consistently defined the elements comprising the common-law

public records exception to the hearsay rule; cf. *Hing Wan Wong v. Liquor Control Commission*, 160 Conn. 1, 9, 273 A.2d 709 (1970), cert. denied, 401 U.S. 938, 91 S. Ct. 931, 28 L. Ed. 2d 218 (1971); Section 8-3 (7) gleans from case law three distinct requirements for substantive admissibility. Proviso (A) is found in cases such as *Hing Wan Wong v. Liquor Control Commission*, supra, 9, *Russo v. Metropolitan Life Ins. Co.*, 125 Conn. 132, 139, 3 A.2d 844 (1939), and *Ezzo v. Geremiah*, 107 Conn. 670, 679–80, 142 A. 461 (1928). Proviso (B) comes from cases such as *Gett v. Isaacson*, 98 Conn. 539, 543–44, 120 A. 156 (1923), and *Enfield v. Ellington*, 67 Conn. 459, 462, 34 A. 818 (1896). Proviso (C) is derived from *Heritage Village Master Assn., Inc. v. Heritage Village Water Co.*, 30 Conn. App. 693, 701, 622 A.2d 578 (1993), and from cases in which public records had been admitted under the business records exception. See, e.g., *State v. Palozie*, 165 Conn. 288, 294–95, 334 A.2d 458 (1973); *Mucci v. LeMonte*, 157 Conn. 566, 569, 254 A.2d 879 (1969).

The “duty” under which public officials act, as contemplated by proviso (A), often is one imposed by statute. See, e.g., *Lawrence v. Kozlowski*, 171 Conn. 705, 717–18, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S. Ct. 2930, 53 L. Ed. 2d 1066 (1977); *Hing Wan Wong v. Liquor Control Commission*, supra, 160 Conn. 8–10. Nevertheless, Section 8-3 (7) does not preclude the recognition of other sources of duties.

Proviso (C) anticipates the likelihood that more than one individual may be involved in the making of the public record. By analogy to the personal knowledge requirement imposed in the business records context; e.g., *In re Barbara J.*, 215 Conn. 31, 40, 574 A.2d 203 (1990); proviso (C) demands that the public record be made upon the personal knowledge of either the public official who made the record or someone, such as a subordinate, whose duty it was to relay that information to the public official. See, e.g., *State v. Palozie*, supra, 165 Conn. 294–95 (public record introduced under business records exception).

(8) Statement in learned treatises.

Exception (8) explicitly permits the substantive use of statements contained in published treatises, periodicals or

pamphlets on direct examination or cross-examination under the circumstances prescribed in the rule.

Although most of the earlier decisions concerned the use of medical treatises; e.g., *Cross v. Huttenlocher*, 185 Conn. 390, 395, 440 A.2d 952 (1981); *Perez v. Mount Sinai Hospital*, 7 Conn. App. 514, 520, 509 A.2d 552 (1986); Section 8-3 (8), by its terms, is not limited to that one subject matter or format. *Ames v. Sears, Roebuck & Co.*, 8 Conn. App. 642, 650–51, 514 A.2d 352, cert. denied, 201 Conn. 809, 515 A.2d 378 (1986) (published technical papers on design and operation of riding lawnmowers).

Connecticut allows the jury to receive the treatise, or portion thereof, as a full exhibit. *Cross v. Huttenlocher*, supra, 185 Conn. 395–96. If admitted, the excerpts from the published work may be read into evidence or received as an exhibit, as the court permits. See *id.*

(9) Statement in ancient documents.

The hearsay exception for statements in ancient documents is well established. *Jarboe v. Home Bank & Trust Co.*, 91 Conn. 265, 270–71, 99 A. 563 (1917); *New York, N.H. & H. R. Co. v. Cella*, 88 Conn. 515, 520, 91 A. 972 (1914); see *Clark v. Drska*, 1 Conn. App. 481, 489, 473 A.2d 325 (1984).

The exception, by its terms, applies to all kinds of documents, including documents produced by electronic means, and is not limited to documents affecting an interest in property. See *Petroman v. Anderson*, 105 Conn. 366, 369–70, 135 A. 391 (1926) (ancient map introduced under exception); C. Tait & J. LaPlante, supra, § 11.18, p. 405.

“[M]ore than thirty years” means any instant of time beyond the point in time at which the document has been in existence for thirty years.

(10) Published compilations.

Connecticut cases have recognized an exception to the hearsay rule—or at least have assumed an exception exists—for these items. *Henry v. Kopf*, 104 Conn. 73, 80–81, 131 A. 412 (1925) (market reports); see *State v. Pambianchi*, 139 Conn. 543, 548, 95 A.2d 695 (1953) (compilation of used automobile prices); *Donoghue v. Smith*, 114 Conn. 64, 66, 157 A. 415 (1931) (mortality tables).

(11) Statement in family bible.

Connecticut has recognized, at least in dictum, an exception to the hearsay rule for factual statements concerning personal or family history contained in family bibles. See *Eva v. Gough*, 93 Conn. 38, 46, 104 A. 238 (1918).

(12) Personal identification.

A witness' in-court statement of his or her own name or age is admissible, even though knowledge of this information often is based on hearsay. *Blanchard v. Bridgeport*, 190 Conn. 798, 806, 463 A.2d 553 (1983) (name); *Toletti v. Bidizcki*, 118 Conn. 531, 534, 173 A. 223 (1934) (name); *State v. Hyatt*, 9 Conn. App. 426, 429, 519 A.2d 612 (1987) (age); see *Creer v. Active Auto Exchange, Inc.*, 99 Conn. 266, 276, 121 A. 888 (1923) (age). It is unclear whether case law supports the admissibility of a declarant's out-of-court statement concerning his or her own name or age when offered independently of existing hearsay exceptions, such as the exception for statements made by a party opponent.

Sec. 8-5. Hearsay Exceptions: Declarant Must Be Available

The following are not excluded by the hearsay rule, provided the declarant is available for cross-examination at trial:

(1) Prior inconsistent statement. A prior inconsistent statement of a witness, provided (A) the statement is in writing or otherwise recorded by audiotape, videotape, or some other equally reliable medium, (B) the statement [is signed by] or recording is duly authenticated as that of the witness, and (C) the witness has personal knowledge of the contents of the statement.

(2) Identification of a person. The identification of a person made by a declarant prior to trial where the identification is reliable.

COMMENTARY

(1) Prior inconsistent statement.

Section 8-5 (1) incorporates the rule of *State v. Whelan*, 200 Conn. 743, 753, 513 A.2d 86, cert. denied, 479 U.S. 994, 107 S. Ct. 597, 93 L. Ed. 2d 598 (1986), [The *Whelan* rule has been subject to further] and later developments and clarifications. E.g., *State v. Hopkins*, 222

Conn. 117, 126, 609 A.2d 236 (1992) (prior inconsistent statement must be made under circumstances assuring reliability, which is to be determined on case-by-case basis); *State v. Holloway*, 209 Conn. 636, 649, 553 A.2d 166, cert. denied, 490 U.S. 1071, 109 S. Ct. 2078, 104 L. Ed. 2d 643 (1989) (tape-recorded statement admissible under *Whelan*); *State v. Luis F.*, 85 Conn. App. 264, 269 (2004) (videotaped statement admissible); see also *State v. Woodson*, 227 Conn. 1, 21, 629 A.2d 386 (1993) (signature of witness unnecessary when tape-recorded statement offered under *Whelan*). [These post-*Whelan* developments were not expressly incorporated into the language of Section 8-5 (1), with one exception noted below. These and other post-*Whelan* developments nevertheless are considered to be an integral part of this rule.

The one post-*Whelan* development incorporated into Section 8-5 (1) is set forth in proviso (C). Proviso (C) is based on the court's holding in *State v. Grant*, 221 Conn. 93, 99–102, 602 A.2d 581 (1992). See also *State v. Buster*, 224 Conn. 546, 558–59, 620 A.2d 110 (1993).]

Use of the word “witness” in Section 8-5 (1) assumes the declarant has testified at the proceeding in question, as required by the *Whelan* rule.

As to the requirements of authentication, see Section 9-1.

(2) Identification of a person.

Section 8-5 (2) incorporates the hearsay exception recognized in *State v. McClendon*, 199 Conn. 5, 11, 505 A.2d 685 (1986), and reaffirmed in subsequent cases. See *State v. Outlaw*, 216 Conn. 492, 497–98, 582 A.2d 751 (1990); *State v. Townsend*, 206 Conn. 621, 624, 539 A.2d 114 (1988); *State v. Weidenhof*, 205 Conn. 262, 274, 533 A.2d 545 (1987). Although this hearsay exception appears to have been the subject of criminal cases exclusively, Section 8-5 (2) is not so limited, and applies in civil cases as well.

Either the declarant or another witness present when the declarant makes the identification, such as a police officer, can testify at trial as to the identification. Compare *State v. McClendon*, supra, 199 Conn. 8 (declarants testified at trial about their prior out-of-court identifications) with *State v. Weidenhof*, supra, 205 Conn. 274 (police officer who showed

declarant photographic array was called as witness at trial to testify concerning declarant's prior out-of-court identification). Even when it is another witness who testifies as to the declarant's identification, the declarant must be available for cross-examination at trial for the identification to be admissible. But cf. *State v. Outlaw*, supra, 216 Conn. 498 (dictum suggesting that declarant must be available for cross-examination either at trial or at prior proceeding in which out-of-court identification is offered).

Constitutional infirmities in the admission of pretrial identifications are the subject of separate inquiries and constitute independent grounds for exclusion. See, e.g., *State v. White*, 229 Conn. 125, 161, 640 A.2d 572 (1994); *State v. Lee*, 177 Conn. 335, 339, 417 A.2d 354 (1979).

Sec. 8-6. Hearsay Exceptions: Declarant Must Be Unavailable

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, provided (A) the issues in the former hearing are the same or substantially similar to those in the hearing in which the testimony is being offered, and (B) the party against whom the testimony is now offered had an opportunity to develop the testimony in the former hearing.

(2) Dying declaration. In a prosecution in which the death of the declarant is the subject of the charge, a statement made by the declarant, while the declarant was conscious of his or her impending death, concerning the cause of or the circumstances surrounding the death.

(3) Statement against civil interest. A trustworthy statement that, at the time of its making, was against the declarant's pecuniary or proprietary interest, or that so far tended to subject the declarant to civil liability that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In determining the trustworthiness of such a statement the court shall consider whether safeguards reasonably equivalent to the oath taken by a witness and the test of cross-examination exist.

(4) Statement against penal interest. A trustworthy statement against penal interest that, at the time of its making, so far tended to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In determining the trustworthiness of a statement against penal interest, the court shall consider (A) the time the statement was made and the person to whom the statement was made, (B) the existence of corroborating evidence in the case, and (C) the extent to which the statement was against the declarant's penal interest.

(5) Statement concerning ancient private boundaries. A statement, made before the controversy arose, as to the location of ancient private boundaries if the declarant had peculiar means of knowing the boundary and had no interest to misrepresent the truth in making the statement.

(6) Reputation of a past generation. Reputation of a past generation concerning facts of public or general interest or affecting public or private rights as to ancient rights of which the declarant is presumed or shown to have had competent knowledge and which matters are incapable of proof in the ordinary way by available witnesses.

(7) Statement of pedigree and family relationships. A statement concerning pedigree and family relationships, provided (A) the statement was made before the controversy arose, (B) the declarant had no interest to misrepresent in making the statement, and (C) the declarant, because of a close relationship with the family to which the statement relates, had special knowledge of the subject matter of the statement.

(8) Forfeiture by wrongdoing. A statement offered against a party that has engaged in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

COMMENTARY

The common thread running through all Section 8-6 hearsay exceptions is the requirement that the declarant be unavailable as a witness. At common law, the definition of unavailability varied with the individual hearsay exception. For example, the supreme court has recognized death as the only

form of unavailability for the dying declaration and ancient private boundary hearsay exceptions. See, e.g., *Rompe v. King*, 185 Conn. 426, 429, 441 A.2d 114 (1981) (boundaries); *State v. Manganella*, 113 Conn. 209, 215–16, 155 A. 74 (1931) (dying declarations). But in *State v. Frye*, 182 Conn. 476, 438 A.2d 735 (1980), the court adopted the federal rule’s definition of unavailability for the statement against penal interest exception; *id.*, 481–82; thereby recognizing other forms of unavailability such as testimonial privilege and lack of memory. See Fed. R. Evid. 804 (a); see also *State v. Schiappa*, 248 Conn. 132, 142–45, 728 A.2d 466 (1999). The court has yet to determine whether the definition of unavailability recognized in *Frye* applies to other hearsay exceptions requiring the unavailability of the declarant.

In keeping with the common law, Section 8-6 eschews a uniform definition of unavailability. Reference should be made to common-law cases addressing the particular hearsay exception.

(1) Former testimony.

Connecticut cases recognize the admissibility of a witness’ former testimony as an exception to the hearsay rule when the witness subsequently becomes unavailable. E.g., *State v. Parker*, 161 Conn. 500, 504, 289 A.2d 894 (1971); *Atwood v. Atwood*, 86 Conn. 579, 584, 86 A. 29 (1913); *State v. Malone*, 40 Conn. App. 470, 475–78, 671 A.2d 1321, cert. denied, 237 Conn. 904, 674 A.2d 1332 (1996).

In addition to showing unavailability; e.g., *Crochiere v. Board of Education*, 227 Conn. 333, 356, 630 A.2d 1027 (1993); *State v. Aillon*, 202 Conn. 385, 391, 521 A.2d 555 (1991); the proponent must establish two foundational elements. First, the proponent must show that the issues in the proceeding in which the witness testified and the proceeding in which the witness’ former testimony is offered are the same or substantially similar. E.g., *State v. Parker*, supra, 161 Conn. 504; *In re Durant*, 80 Conn. 140, 152, 67 A. 497 (1907). The similarity of issues is required primarily as a means of ensuring that the party against whom the former testimony is offered had a motive and interest to adequately examine the witness in the former proceeding. See *Atwood v. Atwood*, supra, 86 Conn. 584.

Second, the proponent must show that the party against whom the former testimony is offered had an opportunity to develop the testimony in the former proceeding. E.g., *State v. Parker*, supra, 161 Conn. 504; *Lane v. Brainerd*, 30 Conn. 565, 579 (1862). This second foundational requirement simply requires the opportunity to develop the witness' testimony; the use made of that opportunity is irrelevant to a determination of admissibility. See *State v. Parker*, supra, 504; *State v. Crump*, 43 Conn. App. 252, 264, 683 A.2d 402, cert. denied, 239 Conn. 941, 684 A.2d 712 (1996).

The common law generally stated this second foundational element in terms of an opportunity for cross-examination; e.g., *State v. Weinrib*, 140 Conn. 247, 252, 99 A.2d 145 (1953); probably because the cases involved the introduction of former testimony against the party against whom it previously was offered. Section 8-6 (1), however, supposes development of a witness' testimony through direct or redirect examination, in addition to cross-examination; cf. *Lane v. Brainerd*, supra, 30 Conn. 579; thus recognizing the possibility of former testimony being offered against its original proponent. The rules allowing a party to impeach its own witness; Section 6-4; and authorizing leading questions during direct or redirect examination of hostile or forgetful witnesses, for example; Section 6-8 (b); provide added justification for this approach.

Section 8-6 (1), in harmony with the modern trend, abandons the traditional requirement of mutuality, i.e., that the identity of the parties in the former and current proceedings be the same; see *Atwood v. Atwood*, supra, 86 Conn. 584; *Lane v. Brainerd*, supra, 30 Conn. 579; in favor of requiring merely that the party against whom the former testimony is offered have had an opportunity to develop the witness' testimony in the former proceeding. See 5 J. Wigmore, *Evidence* (4th Ed. 1974) § 1388, p. 111; cf. *In re Durant*, supra, 80 Conn. 152.

(2) Dying declaration.

Section 8-6 (2) recognizes Connecticut's common-law dying declaration hearsay exception. E.g., *State v. Onofrio*, 179 Conn. 23, 43-44, 425 A.2d 560 (1979); *State v. Manganello*, 113 Conn. 209, 215-16, 155 A. 74 (1931); *State v. Smith*, 49 Conn. 376, 379 (1881). The exception is

limited to criminal prosecutions for homicide. See, e.g., *State v. Yochelman*, 107 Conn. 148, 154–55, 139 A. 632 (1927); *Daily v. New York & New Haven R. Co.*, 32 Conn. 356, 358 (1865). Furthermore, by demanding that “the death of the declarant [be] the subject of the charge,” Section 8-6 (2) retains the requirement that the declarant be the victim of the homicide that serves as the basis for the prosecution in which the statement is offered. See, e.g., *State v. Yochelman*, supra, 155; *Daily v. New York & New Haven R. Co.*, supra, 358; see also C. Tait & J. LaPlante, supra, § 11.7.2, p. 353.

Section 8-6 (2), in accordance with common law, limits the exception to statements concerning the cause of or circumstances surrounding what the declarant considered to be his or her impending death. *State v. Onofrio*, supra, 179 Conn. 43–44; see *State v. Smith*, supra, 49 Conn. 379. A declarant is “conscious of his or her impending death” within the meaning of the rule when the declarant believes that his or her death is imminent and abandons all hope of recovery. See *State v. Onofrio*, supra, 44; *State v. Cronin*, 64 Conn. 293, 304, 29 A. 536 (1894). This belief may be established by reference to the declarant’s own statements or circumstantial evidence such as the administration of last rites, a physician’s prognosis made known to the declarant or the severity of the declarant’s wounds. *State v. Onofrio*, supra, 44–45; *State v. Swift*, 57 Conn. 496, 505–506, 18 A. 664 (1888); *In re Jose M.*, 30 Conn. App. 381, 393, 620 A.2d 804, cert. denied, 225 Conn. 921, 625 A.2d 821 (1993). Dying declarations in the form of an opinion are subject to the limitations on lay opinion testimony set forth in Section 7-1. See *State v. Manganella*, supra, 113 Conn. 216.

(3) Statement against civil interest.

Section 8-6 (3) restates the rule from *Ferguson v. Smazer*, 151 Conn. 226, 232–34, 196 A.2d 432 (1963).

(4) Statement against penal interest.

In *State v. DeFreitas*, 179 Conn. 431, 449–52, 426 A.2d 799 (1980), the supreme court recognized a hearsay exception for statements against penal interest, abandoning the traditional rule rendering such statements inadmissible. See, e.g., *State v. Stallings*, 154 Conn. 272, 287, 224 A.2d 718 (1966). Section 8-6 (4) embodies the hearsay exception recognized in *DeFreitas* and affirmed in its progeny. E.g., *State*

v. *Lopez*, 239 Conn. 56, 70–71, 681 A.2d 950 (1996); *State v. Mayette*, 204 Conn. 571, 576–77, 529 A.2d 673 (1987). The exception applies in both criminal and civil cases. See *Reilly v. DiBianco*, 6 Conn. App. 556, 563–64, 507 A.2d 106, cert. denied, 200 Conn. 804, 510 A.2d 193 (1986).

Recognizing the possible unreliability of this type of evidence, admissibility is conditioned on the statement's trustworthiness. E.g., *State v. Hernandez*, 204 Conn. 377, 390, 528 A.2d 794 (1987). Section 8-6 (4) sets forth three factors a court shall consider in determining a statement's trustworthiness, factors well entrenched in the common-law analysis. E.g., *State v. Rivera*, 221 Conn. 58, 69, 602 A.2d 571 (1992). Although the cases often cite a fourth factor, namely, the availability of the declarant as a witness; e.g., *State v. Lopez*, supra, 239 Conn. 71; *State v. Rosado*, 218 Conn. 239, 244, 588 A.2d 1066 (1991); this factor has been eliminated because the unavailability of the declarant is always required and, thus, the factor does nothing to change the equation from case to case. Cf. *State v. Gold*, 180 Conn. 619, 637, 431 A.2d 501, cert. denied, 449 U.S. 920, 101 S. Ct. 320, 66 L. Ed. 2d 148 (1980) ("application of the fourth factor, availability of the declarant as a witness, does not bolster the reliability of the [statement] inasmuch as [the declarant] was unavailable at the time of trial").

Drafter's Note: The brackets in the preceding parenthetical are in the current Code and do not signify deleted language.

Section 8-6 (4) preserves the common-law definition of "against penal interest" in providing that the statement be one that "so far tend[s] to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true." Thus, statements other than outright confessions of guilt may qualify under the exception as well. *State v. Bryant*, 202 Conn. 676, 695, 523 A.2d 451 (1987); *State v. Savage*, 34 Conn. App. 166, 172, 640 A.2d 637, cert. denied, 229 Conn. 922, 642 A.2d 1216 (1994).

The usual scenario involves the defendant's use of a statement that implicates the declarant, but exculpates the defendant. Connecticut case law, however, makes no distinction between statements that inculcate the declarant

but exculpate the defendant, and statements that inculpate both the declarant and the defendant. Connecticut law supports the admissibility of this so-called “dual-inculpatory” statement provided that corroborating circumstances clearly indicate its trustworthiness. *State v. Schiappa*, supra, 248 Conn. 154–55.

When a narrative contains both disserving statements and collateral, self serving or neutral statements, the Connecticut rule admits the entire narrative, letting the “trier of fact assess its evidentiary quality in the complete context.” *State v. Bryant*, supra, 202 Conn. 697; accord *State v. Savage*, supra, 34 Conn. App. 173–74.

Connecticut has adopted the Federal Rule’s definition of unavailability, as set forth in Fed. R. Evid. 804 (a), for determining a declarant’s unavailability under this exception. *State v. Frye*, 182 Conn. 476, 481–82 & n.3, 438 A.2d 735 (1980); accord *State v. Schiappa*, supra, 248 Conn. 141–42.

(5) Statement concerning ancient private boundaries.

Section 8-6 (5) reflects the common law concerning private boundaries. See *Porter v. Warner*, 2 Root (Conn.) 22, 23 (1793). Section 8-6 (5) captures the exception in its current form. *Wildwood Associates, Ltd. v. Esposito*, 211 Conn. 36, 44, 557 A.2d 1241 (1989); *DiMaggio v. Cannon*, 165 Conn. 19, 22–23, 327 A.2d 561 (1973); *Koennicke v. Maiorano*, 43 Conn. App. 1, 13, 682 A.2d 1046 (1996).

“Unavailability,” for purposes of this hearsay exception, is limited to the declarant’s death. See *Wildwood Associates, Ltd. v. Esposito*, supra, 211 Conn. 44; *Rompe v. King*, 185 Conn. 426, 429, 441 A.2d 114 (1981); C. Tait & J. LaPlante, supra, § 11.10.2, p. 371.

The requirement that the declarant have “peculiar means of knowing the boundary” is part of the broader common-law requirement that the declarant qualify as a witness as if he were testifying at trial. E.g., *Wildwood Associates, Ltd. v. Esposito*, supra, 211 Conn. 44; *Putnam, Coffin & Burr, Inc. v. Halpern*, 154 Conn. 507, 514, 227 A.2d 83 (1967). It is intended that this general requirement remain in effect, even though not expressed in the text of the exception. Thus, statements otherwise qualifying for admission under the text of Section 8-6 (5) nevertheless may be

excluded if the court finds that the declarant would not qualify as a witness had he testified in court.

Although the cases generally speak of “ancient” private boundaries; e.g., *Wildwood Associates, Ltd. v. Esposito*, supra, 211 Conn. 44; *Putnam, Coffin & Burr, Inc. v. Halpern*, supra, 154 Conn. 514; but see, e.g., *DiMaggio v. Cannon*, supra, 165 Conn. 22–23; no case actually defines “ancient” or decides what limitation that term places, if any, on the admission of evidence under this exception.

(6) Reputation of a past generation.

Section 8-6 (6) recognizes the common-law hearsay exception for reputation, or what commonly was referred to as “traditional” evidence, to prove public and private boundaries or facts of public or general interest. E.g., *Hartford v. Maslen*, 76 Conn. 599, 615, 57 A. 740 (1904); *Wooster v. Butler*, 13 Conn. 309, 316 (1839). See generally C. Tait & J. LaPlante, supra, § 11.17.

Section 8-6 (6) retains both the common-law requirement that the reputation be that of a past generation; *Kempf v. Wooster*, 99 Conn. 418, 422, 121 A. 881 (1923); *Dawson v. Orange*, 78 Conn. 96, 108, 61 A. 101 (1905); and the commonlaw requirement of antiquity. See *Hartford v. Maslen*, supra, 76 Conn. 616.

Because the hearsay exception for reputation or traditional evidence was disfavored at common law; id., 615; Section 8-6 (6) is not intended to expand the limited application of this common-law exception.

(7) Statement of pedigree and family relationships.

Out-of-court declarations describing pedigree and family relationships have long been excepted from the hearsay rule. *Ferguson v. Smazer*, 151 Conn. 226, 230–31, 196 A.2d 432 (1963); *Shea v. Hyde*, 107 Conn. 287, 289, 140 A. 486 (1928); *Chapman v. Chapman*, 2 Conn. 347, 349 (1817). Statements admissible under the exception include not only those concerning genealogy, but those revealing facts about birth, death, marriage and the like. See *Chapman v. Chapman*, supra, 349.

Dicta in cases suggest that forms of unavailability besides death may qualify a declarant’s statement for admission under this exception. See *Carter v. Girasuolo*, 34

Conn. Sup. 507, 511, 373 A.2d 560 (1976); cf. *Ferguson v. Smazer*, supra, 151 Conn. 230 n.2.

The declarant's relationship to the family or person to whom the hearsay statement refers must be established independently of the statement. *Ferguson v. Smazer*, supra, 151 Conn. 231.

(8) Forfeiture by Wrongdoing.

This provision has roots extending far back in English and American common law. See, e.g., *Lord Marley's Case*, 6 State Trials 769 (1666) (Eng.); *Reynolds v. United States*, 98 U.S. 145 (1878). "The rationale for the rule has its foundation in the maxim that no one shall be permitted to take advantage of his own wrong." *Reynolds*, 98 U.S. at 159. See also, *State v. Henry*, 76 Conn. App. 515 (2003). Section 8-6(8) represents a departure from Fed. R. Evid. 804(b)(6), which provides an exception for statements by unavailable witnesses, where the party against which the statement is offered "engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." Subsection (8) requires more than mere "acquiescence."