

Minutes of the Meeting
Rules Committee
March 31, 2008

On Monday, March 31, 2008 the Rules Committee met in the Attorneys' Conference Room at 9:30 a.m. and recessed at 9:55 a.m. to attend a Supreme Court public hearing in the Supreme Court Hearing Room concerning revisions to court rules. The Committee reconvened its meeting at 10:18 a.m. and adjourned at 1:19 p.m.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. C. IAN MCLACHLAN
HON. BARRY C. PINKUS
HON. PATTY JENKINS PITTMAN
HON. RICHARD A. ROBINSON

Judges Roland D. Fasano and Michael R. Sheldon were not in attendance at this meeting.

Also in attendance was Carl E. Testo, Counsel to the Rules Committee.

Agenda

1. After making revisions to Appendices B and G of the minutes of the meeting held on March 20, 2008, the Committee approved the minutes of that meeting.

2. The Committee considered proposals submitted by Michael P. Bowler, Statewide Bar Counsel, on behalf of the Statewide Grievance Committee to amend Sections 2-27, 2-32, 2-35, 2-38 and 2-50 of the attorney discipline rules.

After discussion, the Committee made a further revision to the proposed revision to Section 2-35 and unanimously voted to submit to public hearing the revisions to Sections 2-27, 2-32, 2-35, 2-38 and 2-50 as set forth in Appendix A attached hereto.

3. In light of revisions to Section 2-15A that were approved by the Rules Committee at the March 20, 2008 meeting for public hearing, Attorney David Atkins

forwarded a suggestion to the Rules Committee that a commentary be added concerning the transition provisions of subsection (g) of that section.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 2-15A that it approved at a prior meeting as further amended by the addition of the commentary to Section 2-15A (g) as set forth in Appendix B attached hereto.

4. The Rules Committee considered proposed revisions to the juvenile rules submitted by Judge Christine E. Keller on behalf of the Juvenile Task Force and letters from the Center for Children's Advocacy and from Chief Child Protection Attorney Carolyn Signorelli concerning the Task Force's proposed revision to Section 32a-1 (c).

Judge Keller attended the meeting and addressed the Committee concerning the Task Force's proposals and answered questions from the Rules Committee thereon.

After discussion, the Committee made further revisions to some of the proposals and, with Justice Zarella abstaining, unanimously voted to submit to public hearing the revisions to the juvenile rules as set forth in Appendix C attached hereto.

The Committee agreed to ask the Superior Court judges, when the proposals are submitted to them for adoption, to make the changes effective on August 1, 2008.

The Committee asked the undersigned to make technical amendments to the commentaries where necessary so that they conform to the style and format of Practice Book commentaries.

5. The Committee considered a proposal by Judge Kari A. Dooley to amend Section 30a-6 of the juvenile rules in light of C.G.S. § 46b-183b. Judge Keller had addressed this issue with the Rules Committee in connection with her discussion of the Juvenile Task Force's proposals and advised the Committee that the Task Force does not recommend that Section 30a-6 be amended as suggested by Judge Dooley.

After discussion, the Committee unanimously denied Judge Dooley's request to amend the rule.

6. The Rules Committee considered a letter from Attorney Susan Hackett on behalf of the Association of Corporate Counsel proposing that the definition of "organization" in Section 2-15A (b) (2) concerning authorized house counsel be amended.

After discussion, the Committee tabled the matter until the fall.

The Committee unanimously denied a suggestion by Attorney Hackett to amend Section 2-15A to allow authorized house counsel to engage in pro bono work.

7. The Committee considered a proposal submitted by Joseph R. Mirrione, President of the Connecticut Trial Lawyers Association, to amend the proposed revision to Section 13-4 concerning disclosure of expert witnesses, which was approved by the Committee at a prior meeting for submission to public hearing.

After discussion, the Committee unanimously denied Attorney Mirrione's proposed further revisions to the rule.

8. The Committee considered proposals by the Connecticut Criminal Defense Lawyers Association to amend Sections 37-2, concerning information and materials to be provided to the defendant prior to arraignment, and Section 40-11, concerning information and materials discoverable by the defendant as of right.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 37-2 as set forth in Appendix D attached hereto.

The Committee tabled further consideration of the proposed revision to Section 40-11 to the fall.

9. The Committee tabled a proposal by Attorney Veronica Halpine to further amend the proposed revisions to Rule 1.14 of the Rules of Professional Conduct that were approved by the Rules Committee at a prior meeting for submission to public hearing.

10. At a prior meeting the Rules Committee approved the addition of the following commentary to Section 13-30:

The purpose of the provision in subsection (d) that allows the deponent to make changes in form or substance to the deposition is to allow the deponent to correct errors in the transcription. If a deponent realizes that his or her testimony was incorrect, such changes are not contemplated by this subsection.

Parties have a continuing duty to disclose pursuant to Section 13-15.

With regard to a lawyer's duty to correct material evidence given by the lawyer, or his or her client or witness, that the lawyer comes to know is false, see Rule 3.3 (a) (3) of the Rules of Professional Conduct.

At this meeting the Committee considered a proposal by Judge Sheldon to amend

Section 13-30 (d) to provide that when a deponent signs the deposition he or she is certifying that the deposition is a true record of the deponent's testimony. This change was suggested in light of the first paragraph of the above commentary.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 13-30 (d) as set forth in Appendix E attached hereto.

11. The Rules Committee continued its consideration of a proposal by Attorney James F. Sullivan to amend Practice Book Section 13-30 (b), concerning speaking objections at depositions, and comments thereon from various members of the Civil Division Task Force.

After discussion, the Committee unanimously voted to submit to public hearing the revision to Section 13-30 (b) as set forth in Appendix F attached hereto.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (Mins 3-31-08)

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, the name and address of 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 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] probable cause is found by the grievance panel, the statewide grievance committee or a reviewing committee [for violations of said rule or this section]. [Prior to] Contemporaneously with the commencement of a presentment or the filing of a grievance complaint [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 thirty days from the issuance of the notice [the reasonable opportunity] to seek a court order restricting publication of any such records disclosing confidential information. During the thirty day period, or the pendency of any such motion, any document filed with the court or as part of a grievance record shall refer to such clients or third persons by pseudonyms or with appropriate redactions, unless otherwise ordered by the court.

(f) Violation of this section shall constitute misconduct.

COMMENTARY: The above changes make this rule consistent with the changes made to Section 2-50 below and provide a procedure that allows a client or third person whose identity may be publicly disclosed through the disclosure of records under this section to take steps to prevent disclosure of his or her identity without delaying the disciplinary proceeding.

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

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

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

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

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

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

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

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

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

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

(ii) Each period of limitation in this subparagraph is tolled during any period in which: (1) the alleged misconduct remains undiscovered due to active concealment; (2) the

alleged misconduct would constitute a violation of Rule 1.8 (c) and the conditions precedent of the instrument have not been satisfied; (3) the alleged misconduct is part of a continuing course of misconduct; or (4) the aggrieved party is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation.

(F) the complaint alleges misconduct occurring in a superior court, appellate court or supreme court action and the court has been made aware of the allegations of misconduct and has rendered a decision finding misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the statewide grievance committee;

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

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

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

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

(3) If a complaint alleges only a fee dispute within the meaning of subsection (a) (2) (A) of this section, the statewide bar counsel in conjunction with the chairperson or attorney designee and the nonattorney member may stay further proceedings on the complaint on such terms and conditions deemed appropriate, including referring the parties to fee arbitration. The record and result of any such fee arbitration shall be filed with the statewide bar counsel and shall be dispositive of the complaint. A party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(b) The statewide bar counsel, chair or attorney designee and nonattorney member shall have fourteen days from the date the complaint was filed to determine whether to

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

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

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

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

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

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

(h) On the request of the respondent and for good cause shown, or on its own motion, the grievance panel may conduct a hearing on the complaint. The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided, however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

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

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

complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee. The panel 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 such action and affording the respondent the opportunity to be heard.

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

COMMENTARY: The above change makes this section consistent with the changes made to Section 2-50 below.

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. 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 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 there was a determination by a grievance panel, a reviewing committee or the statewide grievance committee that there was probable cause that the respondent was guilty of misconduct [if 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 above changes make this section consistent with the changes made to Section 2-50 below.

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

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee [reprimanding] imposing sanctions or conditions against the respondent, in accordance with Section 2-37(a). [except that a] A respondent may not appeal a decision by a reviewing committee [reprimanding] imposing sanctions or conditions against the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested, 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] imposing sanctions or conditions against the respondent pursuant to Section 2-35 (i), including the publication of the notice of a reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. Enforcement of a decision by a reviewing committee [reprimanding] imposing sanctions or conditions against the respondent, including the publication of the notice of a reprimand in

accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g). If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision [reprimanding] imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision [reprimanding] imposing sanctions or conditions against 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)] imposing sanctions or conditions against the respondent. An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

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

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

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

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

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

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

COMMENTARY: The above changes clarify that an attorney may file an appeal to the Superior Court from any sanction imposed on the attorney under Section 2-37.

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 not 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.]

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

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

(3) 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 without a finding of probable cause that the attorney is guilty of misconduct.

(4) All records of complaints dismissed pursuant to Section 2-32 (a) (2) and 2-32 (c).

(c) All records enumerated in subsection (a) pertaining to grievance complaints that have been filed on or after July 1, 1986 in which probable cause has been found that the attorney is guilty of misconduct shall be public, whether or not the complaint is subsequently dismissed.

[(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) [(d) Unless otherwise ordered by the court, all [non-public] records that are not public 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 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. Records of such grievance complaints shall not be public.

(f) 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.

COMMENTARY: The above changes will make public the entire record of the grievance complaint once probable cause has been found that the attorney is guilty of misconduct regardless of whether the complaint is subsequently dismissed.

APPENDIX B (03-31-08 Mins)

Sec. 2-15A. — Authorized House Counsel

(a) Purpose

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

(b) Definitions

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

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

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

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

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

(2) **Organization.** An “organization” for the purpose of this rule is a corporation, partnership, association, or 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[,] and 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 or any foreign jurisdiction in which the applicant is licensed to practice law certifying that the applicant is a member in good standing;

(B) a sworn statement by the applicant:

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

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

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

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

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

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

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

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

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

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

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

(e) Termination or Withdrawal of Registration

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

(A) the termination or resignation of employment with the organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another organization within 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) through (C) or a new certificate as provided in subsection (e) (1) (A) must be filed with the bar examining committee by the authorized house counsel within 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: The above changes enable lawyers who are admitted to practice law in a foreign country but in no United States jurisdiction to register as authorized house counsel.

The transition provisions of subsection (g) shall apply to any applicant becoming eligible to become an authorized house counsel as a result of an amendment to this rule if

application for registration is made within six months of the effective date of such amendment, and the effective date of such amendment shall be deemed the effective date of this rule for such purpose.

APPENDIX C (3-31-08 mins)

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

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

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

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

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

(e) All appearances in juvenile matters shall be deemed to continue during the period of delinquency [or family with service needs] probation, or family with service needs

supervision[, or] during the period of any commitment to the commissioner of the department of children and families or protective supervision. [or during the period until final adoption following termination of parental rights]; [however, in the absence of a specific request, no] An attorney appointed by the Chief Child Protection Attorney to represent a parent in a [prior] pending neglect or uncared for proceeding shall [automatically] continue to represent the parent for any subsequent petition to terminate parental rights if the parent appears at the first hearing on the termination petition and qualifies for appointed counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section [35-4 (b)] 35a-20, and with [petitions for extensions,] motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

COMMENTARY: The amendments to this section are consistent with existing practice and assure that at the first hearing there is an attorney present.

CHAPTER 26 DEFINITIONS

Sec. 26-1. Definitions Applicable to Proceedings on Juvenile Matters

In these definitions and in the rules of practice and procedure on juvenile matters, the singular shall include the plural and the plural, the singular where appropriate.

(a)(1) "Child" means any person under sixteen years of age and, for purposes of delinquency matters and family with service needs matters, "child" means any person (A) under sixteen years of age whose delinquent act or family with service needs conduct occurred prior to the person's sixteenth birthday or, (B) sixteen years of age or older who, prior to attaining sixteen years of age, has violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs, and, subsequent to attaining sixteen years of age, violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; (2) "Youth" means any person sixteen or seventeen years

of age; (3) "Youth in crisis" means any youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4) The definitions of the terms "abused," "mentally deficient," "delinquent," "delinquent act," "dependent," "neglected," "uncared for," "alcohol-dependent child," "family with service needs," "drug-dependent child," "serious juvenile offense," "serious juvenile offender," and "serious juvenile repeat offender" shall be as set forth in General Statutes § 46b-120. (5) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

(b) "Commitment" means an order of the judicial authority whereby custody and/or guardianship of a child or youth are transferred to the commissioner of the department of children and families.

(c) "Complaint" means a written allegation or statement presented to the judicial authority that a child's or youth's conduct as a delinquent or situation as a child from a family with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

(d) "Detention" means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquent complaint.

(e) "Family support center" means a community-based service center for children and families involved with a complaint that has been filed with the Superior Court under General Statutes § 46b-149, that provides multiple services, or access to such services, for the purpose of preventing such children and families from having further involvement with the court as families with service needs.

[(e)] (f) "Guardian" means a person who has a judicially created relationship with a child or youth which is intended to be permanent and self sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child or youth: protection, education, care and control of the person, custody of the person and decision making.

[(f)] (g) "Hearing" means an activity of the court on the record in the presence of a judicial authority and shall include (1) "Adjudicatory hearing": A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) "Contested hearing on an order of temporary custody" means a hearing on an ex parte order of temporary custody or an order to [show cause] appear which is held [within] not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the [parent or guardian] respondent; (3) "Dispositive hearing": The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child or youth, orders whatever action is in the best interests of the child, youth or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing. (4) "Preliminary hearing" means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, neglected, or dependent. A preliminary hearing on any ex parte custody order or order to appear shall be held [within] not later than ten days from the issuance of the order. (5) "Plea hearing" is a hearing at which (i) A parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

[(g)] (h) "Parent" means a biological mother or father or adoptive mother or father except a biological or adoptive mother or father whose parental rights have been terminated; or the father of any child or youth born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (B) he has

acknowledged in writing to be the father of such child or youth, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (F) he has been named in the petition as the father of the minor child or youth by the mother.

[(h)] (i) "Parties" includes: (1) The child or youth who is the subject of a proceeding and those additional persons as defined herein; (2) "Legal party": Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) "Intervening party": Any person whose interest in the matter before the judicial authority is not of such a nature and kind as to entitle legal service or notice as a prerequisite to the judicial authority's jurisdiction to adjudicate the matter pending before it but whose participation therein, at the discretion of the judicial authority, may promote the interests of justice. An "intervening party" may in any proceeding before the judicial authority be given notice thereof in any manner reasonably appropriate to that end, but no such "intervening party" shall be entitled, as a matter of right, to provision of counsel by the court.

[(i)] (j) "Permanency plan" means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b [(b)] (c), 46b-129 (k) and 46b-141.

[(j)] (k) "Petition" means a formal pleading, executed under oath, alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be [executed] filed by any one of the parties authorized to do so by statute[, provided a delinquency petition may be executed by either a probation officer or juvenile prosecutor].

[(k)] (l) "Information" means a formal pleading [executed] filed by a prosecutor alleging that a child or youth in a delinquency matter is within the judicial authority's jurisdiction.

[(l)] (m) "Probation" means a legal status created in delinquency cases following conviction whereby a respondent child is permitted to remain in the home or in the physical custody of a relative or other fit person subject to supervision by the court through the court's probation officers and upon such terms as the judicial authority determines, subject to the continuing jurisdiction of the judicial authority.

[(m)] (n) "Respondent" means a [child] person who is alleged to be a delinquent or a child from a family with service needs, or a youth in crisis, or a parent or a guardian of a child or youth who is the subject of a petition alleging that the child is uncared for, neglected, or dependent or requesting termination of parental rights.

[(n)] (o) "Specific steps" means those judicially determined steps the parent or guardian and the commissioner of the department of children and families should take in order for the parent or guardian to retain or regain custody of a child or youth.

(p) "Staff secure facility" means a residential facility (1) that does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein, (2) that may establish reasonable rules restricting entrance to and egress from the facility, and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

[(o)] (q) "Supervision" includes: (1) "Nonjudicial supervision": A legal status without the filing of a petition or a court conviction or adjudication but following the [child or youth's] child's admission to a complaint wherein a probation officer exercises supervision over the child [or youth] with the consent of the child [or youth] and the parent; (2) "Protective supervision": A disposition following adjudication in neglected, uncared for or dependent cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": A legal status [equivalent] similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or §46b-133e.

[(p)] (r) “Take into Custody Order” means an order by a judicial authority that a child be taken into custody and immediately turned over to a detention [supervisor] superintendent where probable cause has been found that the child has committed a delinquent act and the child meets the criteria set forth in practice book section 31a-13.

(s) “Victim” means the person who is the victim of a delinquent act, a parent or guardian of such person, the legal representative of such person or an advocate appointed for such person pursuant to General Statutes § 54-221.

COMMENTARY: The changes in subsection (a) are made to standardize terms.

New subsection (e) adopts the definition of “family support center” in June Special Session, Public Act 07-4, Sec. 31 (a).

The revision in subsection (f) reflects General Statutes § 46b-120(1) and (2) that define child and youth separately in child protection cases; therefore, youth must be added.

Changes in subsection (g) (2) are intended to adopt provisions of General Statutes § 46b-129(d), as amended by Public Act 06-102, Sec. 9. The type of hearing addressed in subsection (g) (3) occurs in delinquency, family with service needs, and child protection matters; therefore, “youth” has been added. The revision in subsection (g) (4) adopts provisions of General Statutes § 46b-129(d), as amended by Public Act 06-102, Sec. 9.

Subsection (h) applies to child protection matters; therefore it has been amended to reference both child and youth.

Subsection (i) has been revised to reflect that not every hearing requires legal service; therefore, to be more inclusive, notice is added.

The changes in subsection (j) are made to standardize terms. Because the definition applies to child protection matters, it has been amended to reference both child and youth.

Use of the term “filed” in subsection (k) reflects existing procedure. The deleted phrase in this subsection is redundant, as the phrase that immediately precedes it includes these individuals.

The use of the term “filed” in subsection (l) reflects existing procedure.

The more general term “person” is used in subsection (n) to encompass all terms that are later listed: child, youth, and parent.

The change in subsection (o) is made to standardize terms.

New subsection (p) adopts the definition of “staff secure facility” in June Special Session, Public Act 07-4, Sec. 32 (c).

The changes in subsection (q) are made to standardize terms and for clarification. The change is made in (q) (1) because the statute does not provide for nonjudicial handling of youth in crisis matters. The statutory reference is added in subsection (q) (3) because it provides for suspended proceedings for participation in the school violence prevention program.

The amendment to subsection (r) adds language to include the legal standard.

New subsection (s) adopts the definition of “victim” in General Statutes § 46b-122.

CHAPTER 27

RECEPTION AND PROCESSING OF [NONJUDICIAL] DELINQUENCY, AND FAMILY WITH SERVICE NEEDS[, OR YOUTH IN CRISIS] COMPLAINTS[,] OR PETITIONS

Sec. 27-1A. Referrals for Nonjudicial Handling of Delinquency Complaints

(a) Any police summons accompanied by a police report alleging an act of delinquency shall be in writing and signed by the police officer and filed with the clerk of the superior court for juvenile matters. After juvenile identification and docket numbers are [entered] assigned, the summons and report shall be referred to the probation department for possible nonjudicial handling. [Any family with service needs or youth in crisis complaint or petition may be designated by the probation department for nonjudicial handling.]

(b) If the probation officer [initiates] determines that a delinquency[, family with service needs or youth in crisis petition] complaint is [that may be] eligible for nonjudicial handling, the probation officer [shall] may cause a [summons] notice to be [issued or] mailed to the child and parent or guardian [containing a notice to appear] setting forth with reasonable particularity the [allegations of the petition] contents of the complaint and fixing a time and location of the court and date not less than seven days, excluding Saturdays, Sundays, and holidays, subsequent to [service or] mailing.

(c) Delinquency [M]matters eligible for nonjudicial handling shall be designated as such on the docket. If the prosecuting authority objects to the designation, the judicial authority shall determine if such designation is appropriate. The judicial authority may refer

to the office of juvenile probation a matter so designated and may, sua sponte, refer a matter for nonjudicial handling prior to adjudication.

COMMENTARY: Entirely new processing procedures for family with service needs (FWSN) matters are addressed in new Section 27-9 of this chapter. Throughout this chapter specific references are now made only to delinquency and FWSN matters. Youth in crisis matters will be addressed in accordance with policies established by the Chief Court Administrator.

In subsection (a) use of the term 'assigned' more accurately reflects proper procedure. The change from "shall" to "may" in subsection (b) provides for the situation when a child is previously issued a summons to appear by a police officer and additional notice by a probation officer may not be necessary. Other technical changes in this section are made to reflect the fact that nonjudicial cases are processed based upon complaints filed without petitions.

Sec. 27-4. Additional Offenses and Misconduct

Any additional police summons, delinquency complaint, [or] delinquency petition, or information regarding a child which is received by the court prior to action by the judicial authority on any pending request for nonjudicial handling shall be consolidated with the initial offenses or misconduct for purposes of eligibility for nonjudicial handling.

COMMENTARY: The revisions to this section are for clarification and to reflect the fact that an information may also be used in these cases.

Sec. 27-4A. Ineligibility for Nonjudicial Handling of Delinquency Complaint

In the case of a delinquency complaint, [A] a child shall not be eligible for nonjudicial handling if one or more of the following apply, unless waived by the judicial authority:

(1) The alleged misconduct:

(A) is a serious juvenile offense under General Statutes § 46b-120, or any other felony or violation of General Statutes § 53a-54d;

(B) concerns the theft or unlawful use or operation of a motor vehicle; or

(C) concerns the sale of, or possession of with intent to sell, any illegal drugs or the use or possession of a firearm.

(2) The child was previously [adjudged] convicted delinquent or adjudged a child from a family with service needs.

(3) The child admitted nonjudicially at least twice previously to [have] having been delinquent [or a child from a family with service needs].

(4) The alleged misconduct was committed by a child while on probation or under judicial supervision.

(5) If the nature of the alleged misconduct warrants judicial intervention.

COMMENTARY: The change made in subsection (2) adopts terminology used in General Statutes § 46b-140(a). Additional changes are made in this section because entirely new processing procedures for family with service needs matters are now addressed in new Section 27-9.

Sec. 27-5. Initial Interview For Delinquency Nonjudicial Handling Eligibility

(a) At the initial interview to determine eligibility for nonjudicial handling of a delinquency complaint, held at the time of arraignment or notice date, the probation officer shall inquire of the child and parent or guardian whether they have read the court documents and understand the nature of the complaint set forth therein. Any allegations of misconduct being considered for nonjudicial handling, including any additional allegations not contained in the summons or notice to appear because they were filed with the court after the issuance of that notice shall likewise be explained in simple and nontechnical language.

(b) The probation officer shall inform the child and parent or guardian of their rights under Section 30a-1. If either the child or the parent or guardian state that they wish to be represented by counsel, or if the probation officer determines that a judicial hearing is necessary, the interview shall end. Any further interview to consider nonjudicial handling shall take place with counsel present unless waived.

COMMENTARY: The revision to this section clarifies that this process is only to be used for delinquency complaints.

Sec. 27-6. Denial of Responsibility

Where the child denies responsibility for the alleged misconduct, the interview shall end and the child and the parent or guardian shall be informed that, if the evidence warrants, the case will be set down for a [judicial] plea hearing [to determine the child's responsibility for the alleged misconduct, for which hearing the child must have counsel unless waived and for which hearing the judicial authority will provide counsel if the parties parent or guardian of the child cannot afford counsel].

COMMENTARY: The revisions to this section are made because procedures concerning the plea hearing and appointment of counsel are now set forth in Section 30a-1 and to clarify that this process is only to be used for delinquency.

Sec. 27-7. —Written Statement of Responsibility

(a) Where the child and the parent or guardian affirm that they are ready to go forward with the investigation, with or without counsel, and to make a statement concerning the child's responsibility for the alleged misconduct, such affirmation must be embodied in a written statement of responsibility executed by both child and parent, or guardian, and, in the case of the child, in the presence of the parent or guardian.

(b) If a child orally acknowledges responsibility for the alleged misconduct but refuses to execute a written statement of responsibility, such an oral admission shall not be accepted as the equivalent of an admission, and the case shall be dealt with in the manner prescribed in Section 27-6. If the written statement of responsibility is executed, the probation officer shall [accept it as authorization to] proceed with the nonjudicial handling of the case [those aspects of investigation which are essential to the compiling of the predispositional study].

(c) The age, intelligence and maturity of the child and the mutuality of interests between parent or guardian and child shall be weighed in determining their competency to execute such written statement of responsibility.

COMMENTARY: The above change clarifies that this process is only to be used for delinquency. A predispositional study is not prepared in a case that is handled nonjudicially.

Sec. 27-8A. Nonjudicial Supervision-Delinquency

(a) If a child has acknowledged responsibility for the alleged misconduct which is not one for which a judicial hearing is mandated pursuant to Section 27-4A, and the probation officer has then found from investigation of the child's total circumstances that some form of court accountability less exacting than that arising out of a court appearance appears to be in the child's best interests, the officer may, subject to the conditions imposed by subsection (b) hereof, place the child on nonjudicial supervision for a term established by the juvenile probation supervisor for a period not to exceed 180 days.

(b) Whenever the probation officer seeks to effect nonjudicial supervision, the parent and the child shall have a right to a conference with the probation officer's administrative superior, or a court hearing. Whenever a parent or child elects to pursue either or both rights, supervision shall be held in abeyance until the outcome thereof.

(c) Such nonjudicial supervision when completed shall constitute a resolution of the case, and thereafter a child may not again be presented for formal court action on the same summons, complaint or petition or the facts therein set forth, provided however, that a judicial hearing may be initiated on the original summons, complaint, or petition, or information during said nonjudicial supervision if there has been a failure to comply with terms of the supervision and any oral or written statement of responsibility shall not be used against the child. When the judicial authority refers the file for nonjudicial handling, the referral order should provide that upon successful completion of any nonjudicial handling, the matter will be dismissed and erased immediately without the filing of a request, application or petition for erasure, for all purposes except for subsequent consideration for nonjudicial handling under Section 27-4A.

COMMENTARY: The revisions to subsection (c) are made because an information may also be used in these cases and to clarify the nonjudicial erasure provision.

(NEW) Sec. 27-9. Family with Service Needs Referrals

(a) Any complaint alleging that a child is from a family with service needs shall be referred to a probation officer, who shall determine its sufficiency as a family with service needs complaint. If the probation officer determines the complaint is sufficient, the probation officer shall, after initial assessment promptly refer the child and the child's

family to a suitable community-based program or other service provider or to a family support center for voluntary services.

(b) If the child and the child's family are referred to a community-based program or other service provider and the person in charge of such program or provider determines that the child and the child's family can no longer benefit from its services, such person shall inform the probation officer, who shall, after an appropriate assessment, either refer the child and the child's family to a family support center for additional services or determine whether or not to file a petition with the court. If the child and the child's family are referred to a family support center and the person in charge of the family support center determines that the child and the child's family can no longer benefit from its services, such person shall inform the probation officer, who may file a petition with the court.

(c) When a judicial authority, after a petition has been filed, refers a child alleged to be from a family with service needs to community based services or other services or a family support center pursuant to General Statutes Section 46b-149(g), the referral order should provide that upon successful resolution, the matter will be dismissed and erased without the filing of a request, application, or petition for erasure for all purposes except subsequent consideration for non-judicial handling of a delinquency complaint under Section 27-4A.

COMMENTARY: This new section is intended to adopt provisions of General Statutes § 46b-149 as amended by June Special Session, Public Act 07-4, Sec. 30. It also provides for dismissal and erasure of petitions as previously provided for family with service needs matters in Section 27-8A(c).

CHAPTER 30 DETENTION

(NEW) Sec. 30-2A. Family With Service Needs and Detention

(a) No child who has been adjudicated as a child from a family with service needs in accordance with General Statutes § 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the

court following such an adjudication, and no such child who is charged or found to be in violation of any such order may be ordered detained in any juvenile detention center.

(b) No non-delinquent juvenile runaway from another state may be held in a juvenile detention center in accordance with the provisions of General Statutes § 46b-151 to 46b-151g inclusive.

COMMENTARY: This new section is intended to adopt provisions of General Statutes § 46b-148(a), as amended by Public Act 05-250, Sec. 2. The language of the above rule differs slightly from the statute. The statute references commitments to detention centers which is confusing due to the distinctly different commitment of a delinquent to the Department of Children and Families.

Sec. 30-4. Notice to Parents by Detention Personnel

[If, u]Upon admission, [the officer or other person who brings the child to detention has not complied with the duty of notifying the parent or guardian as set forth in Section 30-1A,] the detention [supervisor] superintendent or a designated representative shall make efforts to immediately notify the parent or guardian in the manner calculated most speedily to effect such notice and, upon the parent's or guardian's appearance at the detention facility, shall advise the parent or guardian of his or her rights and note the child's rights, including the child's right to a detention hearing.

COMMENTARY: The above change reflects that the position is now juvenile detention superintendent, as opposed to supervisor. Regardless of whether a police officer has notified a child's parent or guardian, the detention superintendent should also make efforts to notify the child's parent or guardian.

Sec. 30-6. Basis for Detention

No child shall be held in detention unless it appears from the available facts that there is probable cause to believe that the child is responsible for the acts alleged and that there is (1) a strong probability that the child will run away prior to court hearing or disposition, or (2) a strong probability that the child will commit or attempt to commit other offenses injurious to the child or to the community before court disposition, or (3) probable cause to believe that the child's continued residence in the home pending disposition will not safeguard the best interests of the child or the community because of

the serious and dangerous nature of the act or acts set forth in the attached delinquency petition or information, or (4) a need to hold the child for another jurisdiction, or (5) a need to hold the child to assure the child's appearance before the court, in view of a previous failure to respond to the court process. The court in exercising its discretion to detain under General Statutes § 46b-133 (d) may consider a suspended detention order with graduated sanctions as an alternative to detention in accordance with graduated sanctions procedures established by the judicial branch.

COMMENTARY: The revision to this section is made to clarify that an information may also be used in these cases.

Sec. 30-7. Place of Detention Hearings

The initial detention hearing may be conducted in the superior court for juvenile matters at the detention facility where the child is held and, thereafter, detention hearings shall be held at the superior court for juvenile matters [case] of appropriate venue.

COMMENTARY: The revision to this section is made for clarification and to be consistent with General Statutes § 17a-76(b).

Sec. 30-8. Initial Order for Detention; Waiver of Hearing

Such initial order of detention may be signed without a hearing only if there is a written waiver of the detention hearing by the child and the child's attorney and there is a finding by the judicial authority that the circumstances outlined in Section 30-6 pertain to the child in question. An order of detention entered without a hearing shall authorize the detention of the child for a period not to exceed ten days, including the date of admission, and may further authorize the detention [supervisor] superintendent or a designated representative to release the child to the custody of a parent, guardian or some other suitable person, with or without conditions of release, if detention is no longer necessary, except that no child shall be released from detention who is alleged to have committed a serious juvenile offense except by order of a judicial authority of the superior court. Such an ex parte order of detention shall not be renewable without a detention hearing before the judicial authority.

COMMENTARY: The revision to this section is made to standardize terms.

Sec. 30-10. Orders of a Judicial Authority after Initial Detention Hearing

(a) At the conclusion of the initial detention hearing, the judicial authority shall issue an order for detention on finding probable cause to believe that the child has committed a delinquent act and that at least one of the factors outlined in Section 30-6 applies to the child.

(b) If the child is placed in detention, such order for detention shall be for a period not to exceed fifteen days, including the date of admission, or until the dispositional hearing is held, whichever is the shorter period, unless, following a further detention review hearing, the order is renewed. Such detention review hearing may not be waived.

(c) If the child is not placed in detention but released on a suspended order of detention on conditions, such suspended order of detention shall continue to the dispositional hearing or until further order of the judicial authority. Said suspended order of detention may be reviewed by the judicial authority every fifteen days. Upon a finding of probable cause that the child has violated any condition, a judicial authority may issue a take into custody order or order such child to appear in court for a hearing on revocation of the suspended order of detention. Such an order to appear shall be served upon the child in accordance with General Statutes § 46b-128 (b), or, if the child is represented, by serving the order to appear upon the child's counsel, who shall notify the child of the order and the hearing date. After a hearing and upon a finding that the child has violated reasonable conditions imposed on release, the judicial authority may impose different or additional conditions of release or may remand the child to detention.

(d) In conjunction with any order of release from detention the judicial authority may, in accordance with General Statutes § 46b-133 (f), order the child to participate in a program of periodic drug testing and treatment as a condition of such release. The results of any such drug test shall be admissible only for the purposes of enforcing the conditions of release from detention.

COMMENTARY: The above change is made in light of new Section 30-2A.

Sec. 30-11. Detention after Dispositional Hearing

While awaiting implementation of the judicial authority's order in a delinquency case, a child may be held in detention subsequent to the dispositional hearing, provided a

hearing to review the circumstances and conditions of such detention order shall be conducted every fifteen days and such hearing may not be waived.

COMMENTARY: The above change is made in light of new Section 30-2A.

CHAPTER 31a
DELINQUENCY, FAMILY WITH SERVICE NEEDS AND
YOUTH IN CRISIS MOTIONS AND APPLICATIONS

Sec. 31a-1. Motions and Amendments

(a) A motion other than one made during a hearing shall be in writing and have annexed to it a proper order and, where appropriate, shall be in the form called for by Section 4-1. A motion shall state in paragraphs successively numbered the specific grounds upon which it is made. A copy of the written motion shall be served on the opposing party or counsel pursuant to Sections 10-12 through 10-17.

(b) Motions shall be filed not later than ten days after the [date the matter is scheduled for trial] setting of the trial date except with the permission of the judicial authority. All motions shall be calendared to be heard by the judicial authority [within] not later than fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived. Any motion filed in a case on trial or assigned for trial may be disposed of by the judicial authority at its discretion or ordered [upon the docket] to be scheduled for hearing.

(c) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or the consideration of a motion without the need for oral argument or testimony, or the motion states on its face that there is such an agreement, the motion may be granted without a hearing.

(d) A petition or information may be amended at any time by the judicial authority on its own motion or in response to the motions of any party prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition or charges in the information justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances.

COMMENTARY: The changes in subsection (b) are made for clarity because the current language is confusing in that it can be interpreted to mean that motions can be filed ten days after the actual trial date.

The change to “not later than” is made for clarity. The term “upon the docket” is antiquated and is therefore replaced.

The revision to subsection (d) is made because an information may also be used in these cases.

(NEW) Sec. 31a-1A. Continuances and Advancements

(a) Motions for continuances or changes in scheduled court dates must be submitted in writing in compliance with Section 31a-1(a) and filed no later than seven days prior to the scheduled date. Such motions must state the precise reasons for the request, the name of the judicial authority scheduled to hear the case, and whether or not all other parties consent to the request. After consulting with the judicial authority, the clerk will handle bona fide emergency requests submitted less than seven days prior to scheduled court dates.

(b) Trials that are not completed within the allotted prescheduled time will be subject to continuation at the next available court date.

COMMENTARY: This new section addresses continuances in these cases, and is similar to Section 34a-5.

Sec. 31a-5. Motion for Judgment of Acquittal

(a) After the close of the juvenile prosecutor’s case in chief, upon motion of the child or youth or upon its own motion, the judicial authority shall order the entry of a judgment of acquittal as to any principal offense charged and as to any lesser included offense for which the evidence would not reasonably permit an adjudication or finding of guilty. Such judgment of acquittal shall not apply to any lesser included offense for which the evidence would reasonably permit a finding of guilty.

(b) The judicial authority shall either grant or deny the motion before calling upon the child or youth to present the [defendant’s] respondent’s case in chief. If the motion is not granted, the [defendant] respondent may offer evidence without having reserved the right to do so.

COMMENTARY: The change in subsection (b) is made to standardize terms used in delinquency cases.

Sec. 31a-13. Take into Custody Order

(a) Upon application in a delinquency proceeding, a take into custody order may be issued by the judicial authority:

(1) Upon a finding of probable cause to believe that the child is responsible for: (i) a delinquent act, including violation of court orders of probation [or supervision conditions] or the failure of the child charged with a delinquent act, duly notified, to attend a pretrial, probation or evaluation appointment, or (ii) for failure to comply with any duly warned condition of a suspended order of detention. The judicial authority also must find at the time it issues a take into custody order that a ground for detention pursuant to Section 30-6 exists before issuing the order.

(2) For failure to appear in court in response to a delinquency petition or summons served in hand or to a direct notice previously provided in court.

(b) Any application for a take into custody order must be supported by a sworn statement alleging facts to substantiate probable cause, and where applicable, a petition or information charging a delinquent act.

(c) Any child detained under a take into custody order is subject to Sections 30-1A through 30-11.

COMMENTARY: The change in subsection (a) (1) is intended to adopt provisions of General Statutes § 46b-148(a), as amended by Public Act 05-250 (b), that provide that a child adjudicated as a child from a family with service needs cannot be the subject of a take into custody order.

(NEW) Section 31a-13A. Temporary Custody Order – Family With Service Needs Petition

If it appears from the allegations of a petition or other sworn affirmation that there is: (1) A strong probability that the child may do something that is injurious to himself or herself prior to court disposition; (2) a strong probability that the child will run away prior to the hearing; or (3) a need to hold the child for another jurisdiction, a judicial authority may vest temporary custody of such child in some suitable person or agency. A hearing on temporary custody shall be held not later than ten days after the date on which a judicial authority signs an order of temporary custody. Following such hearing, the judicial

authority may order that the child's temporary custody continue to be vested in some suitable person or agency.

COMMENTARY: This new section is intended to adopt provisions of June Special Session, Public Act 07-4, Sec. 30(f).

Sec. 31a-14. Physical and Mental Examinations

(a) No physical and/or mental examination or examinations by any physician, psychologist, psychiatrist or social worker shall be ordered by the judicial authority of any child denying delinquent behavior or status as a child or youth from family with service needs or youth in crisis prior to the adjudication, except (1) with the agreement of the child's or youth's parent or guardian and attorney, (2) when the child or youth has executed a written statement of responsibility, (3) when the judicial authority finds that there is a question of the child's or youth's competence to understand the nature of the proceedings or to participate in the defense, or a question of the child or youth having been mentally capable of unlawful intent at the time of the commission of the alleged act, or (4) where the child or youth has been detained and as an incident of detention is administered a physical examination to establish the existence of any contagious or infectious condition.

(b) Any information concerning a child or youth that is obtained during any mental health screening or assessment of such child or youth shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or youth, or provision of services to the child or youth, or pursuant to General Statutes § § 17a-101 to 17a-101e, inclusive, 17b-450, 17b-451 or 51-36a. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.

~~[(b)]~~(c) Upon a showing that the mental health of a child or youth is at issue, either prior to adjudication for the reasons set forth in subsection (a) herein or subsequent thereto as a determinate of disposition, the judicial authority may order a child's or youth's [detention] placement for a period not to exceed thirty days in a hospital or other

institution empowered by law to treat mentally ill children for study and a report on the child's or youth's mental condition.

COMMENTARY: The revision to subsection (a) is made to clarify that the process applies to youth in crisis.

New subsection (b) is intended to adopt provisions of General Statutes § 46b-124(j), which codified Public Act 05-152.

Revisions to subsection (c) are for clarification.

Sec. 31a-16. Discovery

(a) The child or youth or the juvenile prosecutor shall be permitted pretrial discovery in accordance with subsections (b), (c) and (d) of this section by interrogatory, production, inspection or deposition of a person in delinquency, family with service needs or youth in crisis matters if the information or material sought is not otherwise obtainable and upon a finding that proceedings will not be unduly delayed.

(b) Motions or requests for discovery shall be filed with the court in accordance with Section 31a-1. The clerk shall calendar any such motion or request for a hearing. Objections to such motions or requests may be filed with the court and served in accordance with Sections 10-12 through 10-17 [within] not later than ten days of the filing of the motion or request unless the judicial authority, for good cause shown, allows a later filing. Upon its own motion or upon the request or motion of a party, the judicial authority may, after a hearing, order discovery. The judicial authority shall fix the times for filing and for responding to discovery motions and requests and, when appropriate, shall fix the hour, place, manner, terms and conditions of responses to the motions and requests, provided that the party seeking discovery shall be allowed a reasonable opportunity to obtain information needed for the preparation of the case.

(c) Motions or requests for discovery should not be filed unless the moving party has attempted unsuccessfully to obtain an agreement to disclose from the party or person from whom information is being sought.

(d) The provisions of Sections 40-2 through 40-6, inclusive, 40-7 (b), 40-8, through 40-16, inclusive, and 40-26 through 40-58, inclusive, of the rules of procedure in criminal matters shall be applied by the judicial authority in determining whether to grant, limit or set conditions on the requested discovery, issue any protective orders, or order appropriate

sanctions for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request.

COMMENTARY: The change made in this section is for clarification.

Sec. 31a-17. Disclosure of Defenses in Delinquency Proceedings

The child in a delinquency case shall disclose defenses to the charged offenses in accordance with Sections 40-17 through 40-25 of the rules of criminal procedure. Such disclosures shall be made [within] not later than ten days after the matter is scheduled for trial except with the permission of the judicial authority.

COMMENTARY: The change made in this section is for clarification.

Sec. 31a-18. Modification of Probation and Supervision

(a) At any time during the period of probation, supervision or suspended commitment, after hearing and for good cause shown, the judicial authority may modify or enlarge the conditions, whether originally imposed by the judicial authority under this section or otherwise. The judicial authority may extend the period of probation as deemed appropriate by the judicial authority. The judicial authority shall cause a copy of any such order to be delivered to the child or youth and to such child's or youth's parent, guardian or other person having control over such child or youth, and the child's or youth's probation officer.

(b) [Any modification of the terms of probation or supervision, including discharge, shall be given in writing to] [t]The child, attorney, juvenile prosecutor [and] or parent [who] may, in the event of disagreement, in writing request the judicial authority [within] not later than five days of the receipt thereof for a hearing on the propriety of the modification. In the absence of any request, the modification of the terms of probation may be effected by the probation officer with the approval of the supervisor and the judicial authority.

COMMENTARY: The changes in this section are intended to adopt provisions of General Statutes § 46b-140a(a) and to standardize terms.

Sec. 31a-19. Motion for Extension of Delinquency Commitment; Motion for Review of Permanency Plan

(a) The commissioner of the department of children and families may file a motion for an extension of a delinquency commitment beyond the eighteen-month or four-year period on the grounds that such extension is for the best interests of the child or the community. The clerk [of the court] shall give notice to [the parent or guardian and to] the child, the child's parent or guardian, all counsel of record at the time of disposition and, if applicable, the guardian ad litem [at least] not later than fourteen days prior to the hearing upon such motion. The judicial authority may, after hearing and upon finding such extension is in the best interests of the child or the community, continue the commitment for an additional period of not more than eighteen months.

(b) Not later than twelve months after a child is committed as a delinquent to the commissioner of the department of children and families, the judicial authority shall hold a permanency hearing. Such a hearing will be held every twelve months thereafter if the child remains committed. Such hearing may include the submission of a motion to the judicial authority by the commissioner to either modify or extend the commitment.

(c) At least sixty days prior to each permanency hearing required under subsection (b) of this section, the commissioner of the department of children and families shall file a permanency plan with the judicial authority. At each permanency hearing, the judicial authority shall review and approve a permanency plan that is in the best interests of the child and takes into consideration the child's need for permanency. The judicial authority shall also determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

COMMENTARY: The changes in this section are made to standardize terms and for clarification.

(NEW) Sec. 31a-19A. Motion for Extension or Revocation of Family With Service Needs Commitment; Motion for Review of Permanency Plan

(a) The commissioner of the department of children and families may file a motion for an extension of a commitment of a child who has been adjudicated as a child from a family with service needs on the grounds that an extension would be in the best interests of the child. The clerk shall give notice to the child, the child's parent or guardian, all counsel of record at the time of disposition and, if applicable, the guardian ad litem not later than fourteen days prior to the hearing upon such motion. The judicial authority may,

after hearing and upon finding that such extension is in the best interests of the child and that there is no suitable less restrictive alternative, continue the commitment for an additional indefinite period of not more than eighteen months.

(b) The commissioner of the department of children and families may at any time file a motion to revoke a commitment of a child who has been adjudicated as a child from a family with service needs, or the parent or guardian of such child, may at any time but not more often than once every six months file a motion with the judicial authority which committed the child to revoke such commitment. The clerk shall notify the child, the child's parent or guardian, all counsel of record at the time of disposition, if applicable, the guardian ad litem, and the commissioner of the department of children and families of any motion filed to revoke a commitment under this subsection, and of the time when a hearing on such motion will be held.

(c) Not later than twelve months after the commitment of a child who has been adjudicated as a child from a family with service needs to the commissioner of the department of children and families, the judicial authority shall hold a permanency hearing. Such a hearing will be held every twelve months thereafter if the child remains committed. Such a hearing also may include the submission of a motion to the judicial authority by the commissioner of the department of children and families, the child's parent or guardian to either extend or revoke the commitment.

(d) At least sixty days prior to each permanency hearing required under subsection (c) of this section, the commissioner of the department of children and families shall file a permanency plan with the judicial authority. At each permanency hearing, the judicial authority shall review and approve a permanency plan that is in the best interests of the child and takes into consideration the child's need for permanency. That judicial authority shall also determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

COMMENTARY: This new section adopts provisions of June Special Session, Public Act 07-4, Sec. 30(i). The federal Adoption and Safe Families Act, 42 U.S.C. § 620-679, requires permanency plans for family with service needs matters. There has been a gradual shift away from petitions to motions in addressing post disposition matters; the above rule reflects this shift in practice.

(NEW) Sec. 31a-20. Petition for Violation of Family With Service Needs Post-Adjudicatory Orders

(a) When a child who has been adjudicated as a child from a family with service needs violates any valid order which regulates future conduct of the child made by the judicial authority following such an adjudication, a probation officer, on receipt of a complaint setting forth the facts alleged to be a violation, or on the probation officer's own motion on the basis of his or her knowledge of such a violation, may file a petition with the court alleging that the child has violated a valid court order and setting forth the facts claimed to constitute such a violation.

(b) The judicial authority will ensure that the child is provided an evidentiary hearing on the allegations contained in the petition and that counsel is assigned for the child or youth pursuant to Section 30a-1 of these rules or that counsel of record is notified of the evidentiary hearing.

(c) Upon a finding by the judicial authority by clear and convincing evidence that the child has violated a valid court order, the judicial authority may (1) order the child to remain in such child's home or in the custody of a relative or any other suitable person, subject to the supervision of a probation officer, (2) upon a finding that there is no less restrictive alternative appropriate to the needs of the child and the community, enter an order that directs or authorizes a peace officer or other appropriate person to place the child in a staff-secure facility under the auspices of the Court Support Services Division of the Judicial Branch for a period not to exceed forty-five days, with review by the judicial authority every fifteen days to consider whether continued placement is appropriate, at the end of which period the child shall be returned to the community and may be subject to the supervision of probation officer, or (3) order that the child be committed to the care and custody of the commissioner of the department of children and families for a period not to exceed eighteen months and that the child cooperate in such care and custody.

COMMENTARY: This new section is intended to adopt provisions of June Special Session, Public Act 07-4, Sec. 32(a).

**CHAPTER 32a
RIGHTS OF PARTIES
NEGLECTED, UNCARED FOR AND DEPENDENT
CHILDREN AND TERMINATION OF PARENTAL RIGHTS**

Sec. 32a-1. Right to Counsel and to Remain Silent

(a) At the first hearing in which the parents or guardian appear, [T]he judicial authority shall advise and explain to the parents or guardian of a child or youth their right to silence and to counsel [prior to commencement of any proceeding].

[(b) The parents or guardian of a child or youth and the child or youth have the rights of confrontation and cross-examination and may be represented by counsel in each and every phase of any and all proceedings in juvenile matters, including appeals, and if they are unable to afford counsel, counsel will be appointed to represent them if such is their request. The judicial authority shall appoint counsel for these parties or any of them (1) upon request and upon a finding that the party, is, in fact, financially unable to employ counsel, or (2) in the case of counsel for the child, whether a request is made or not, in any proceeding on a juvenile matter in which the custody of a child is at issue, or if in the opinion of the judicial authority the interests of the child and the parents conflict, or (3) in the case of counsel for the child and the parent, whether a request is made or not, if in the opinion of the judicial authority a fair hearing necessitates such an appointment.]

(b) The child or youth has the rights of confrontation and cross-examination and shall be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals. The judicial authority before whom a juvenile matter is pending shall notify the Chief Child Protection Attorney who shall assign an attorney to represent the child or youth.

(c) The judicial authority on its own motion or upon the motion of any party, may appoint a separate attorney guardian ad litem to speak for the child or youth upon a finding that such appointment is necessary to protect the best interest of the child or youth. An attorney guardian ad litem shall be appointed for a child or youth who is a parent in a termination of parental rights proceeding or any parent who is found to be incompetent by the judicial authority.

(d) The parents or guardian of the child or youth have the rights of confrontation and cross-examination and may be represented by counsel in each and every phase of any and all proceedings in child protection matters, including appeals. The judicial authority shall determine if the parents or guardian of the child or youth are eligible for counsel. Upon a finding that such parents or guardian of the child or youth are unable to afford counsel, the judicial authority shall notify the Chief Child Protection Attorney of such

finding, and the Chief Child Protection Attorney shall assign an attorney to provide representation.

(e) If the judicial authority, even in the absence of a request for appointment of counsel, determines that the interests of justice require the provision of an attorney to represent the child's or youth's parent or parents or guardian, or other party, the judicial authority may appoint an attorney to represent any such party and shall notify the Chief Child Protection Attorney who shall assign an attorney to represent any such party. For the purposes of determining eligibility for appointment of counsel, the judicial authority shall cause the parents or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the parents' or guardian's liabilities and assets, income and sources thereof, and such other information as the Commission on Child Protection shall designate and require on forms adopted by said commission.

[(c)] (f) Where under the provisions of this section, the judicial authority so appoints counsel for any such party who is found able to pay, in whole or in part, the cost thereof, [it] the judicial authority shall assess as costs on the appropriate form against such parents, guardian or custodian, including any agency vested with the legal custody of the child or youth, the expense so incurred and paid for by the [court] Chief Child Protection Attorney in providing such counsel, to the extent of their financial ability to do so, in accordance with the rates established by the Commission on Child Protection for compensation of counsel. Reimbursement to the appointed attorney of unrecovered costs shall be made to that attorney by the [judicial branch] Chief Child Protection Attorney upon the attorney's certification of his or her unrecovered expenses to the [judicial branch] Chief Child Protection Attorney.

[(d)] (g) Notices of initial hearings on petitions, shall contain a statement of the respondent's right to counsel and that if the respondent is unable to afford counsel, counsel will be appointed to represent the respondent, that the respondent has a right to refuse to make any statement and that any statement the respondent makes may be introduced in evidence against him or her.

[(e)] (h) Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, uncared-for or dependent, shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement

unless such person shall have been advised of [his] the right to retain counsel, and that if [he] such person is unable to afford counsel, counsel will be [appointed] assigned to provide [represent] representation [him], that such person [he] has a right to refuse to make any statement and that any statements [he] such person makes may be introduced in evidence against such person [him].

COMMENTARY: Subsection (b) of this section has been transferred with amendments to new subsections (b), (c) and (d). These new subsections are intended to adopt provisions of General Statutes § 46b-129a which specifies that the child shall have the right to counsel and a guardian ad litem in child protection proceedings.

Additional changes to this section adopt provisions of Public Act 07-159, Secs. 4 and 7, which amended General Statutes § 46b-136 and General Statutes § 45a-708. These provisions require that any parent in termination of parental rights proceedings who is a minor or an incompetent shall be appointed an attorney guardian ad litem.

The amendment to subsection (g) adopts provisions of General Statutes § 46b-137(b).

The revisions to subsection (h) are technical corrections.

Sec. 32a-2. Hearing Procedure; Subpoenas

(a) All hearings are essentially civil proceedings except where otherwise provided by statute. Testimony may be given in narrative form and the proceedings shall at all times be as informal as the requirements of due process and fairness permit.

(b) Issuance, service, and compliance with subpoenas are governed by General Statutes § 52-143 et seq.

(c) Any pro se [indigent] party may request the clerk of the court to issue subpoenas for persons to testify before the judicial authority. Pro se [indigent] parties [and court-appointed counsel] shall obtain prior approval from the judicial authority to issue subpoenas and, if indigent, may seek reimbursement for the costs thereof.

Sec. 32a-3. Standards of Proof

(a) The standard of proof applied in a neglect, uncared for or dependency proceeding is a fair preponderance of the evidence.

(b) The standard of proof applied in a decision to terminate parental rights or a finding that efforts to reunify a parent with a child or youth are no longer appropriate, is clear and convincing evidence.

(c) Any Indian child or youth custody proceedings, except delinquency, involving removal of an Indian child or youth from a parent or Indian custodian for placement shall, in addition, comply with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

Sec. 32a-4. Child or Youth Witness

(a) All oral testimony shall be given under oath. For child or youth witnesses, the oath may be “you promise that you will tell the truth.” The judicial authority may, however, admit the testimony of a child or youth without the imposition of a formal oath if the judicial authority finds that the oath would be meaningless to the particular child or youth, or would otherwise inhibit the child or youth from testifying freely and fully.

(b) Any party who intends to call a child or youth as a witness shall first file a motion seeking permission of the judicial authority.

(c) In any proceeding when testimony of a child or youth is taken, an adult who is known to the child or youth and with whom the child or youth feels comfortable shall be permitted to sit in close proximity to the child or youth during the child’s or youth’s testimony without obscuring the child or youth from view and the attorneys shall ask questions and pose objections while seated and in a manner which is not intimidating to the child or youth. The judicial authority shall minimize any distress to a child or youth in court.

(d) The judicial authority with the consent of all parties may privately interview the child or youth. Counsel may submit questions and areas of concern for examination. The knowledge gained in such a conference shall be shared on the record with counsel and, if there is no legal representative, with the parent.

(e) When the witness is the child or youth of the respondent, the respondent may be excluded from the hearing room upon a showing by clear and convincing evidence that the child or youth witness would be so intimidated or inhibited that trustworthiness of the child or youth witness is seriously called into question. In such an instance, if the

respondent is without counsel, the judicial authority shall summarize for the respondent the nature of the child's or youth's testimony.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

Sec. 32a-5. Consultation with Child or Youth [in the Court]

(a) In any permanency hearing held with respect to the child or youth, including, but not limited to, any hearing regarding the transition of the child or youth from foster care to independent living, the judicial authority shall assure that there is consultation with the child or youth in an age-appropriate manner regarding the proposed permanency or transition plan for the child or youth.

(b) For good cause shown, the child or youth who is the subject of [the] a hearing may be excluded from the courtroom.

COMMENTARY: The Social Security Act, 42 U.S.C. § 675(5)(C), requires new subsection (a). The federal law requires that an attorney consult with his or her child client on that child's position on any proposed permanency or transition plan and report it to the judicial authority at the permanency hearing.

(NEW) Sec. 32a-9 Competency of Parent

(a) In any proceeding for the termination of parental rights, either upon its own motion or a motion of any party alleging specific factual allegations of mental impairment that raise a reasonable doubt about the parent's competency, the judicial authority shall appoint an evaluator who is an expert in mental illness to assess such parent's competency; the judicial authority shall thereafter conduct a competency hearing within ten days of receipt of the evaluator's report.

(b) At a competency hearing held under section (a), the judicial authority shall determine whether the parent is incompetent and if so, whether competency may be restored within a reasonable time, considering the age and needs of the child or youth, including the possible adverse impact of delay in the proceedings. If competency may be restored within a reasonable time, the judicial authority shall stay proceedings and shall issue specific steps the parent shall take to have competency restored. If competency may not be restored within a reasonable time, the judicial authority may make reasonable

accommodations to assist the parent and his or her attorney in the defense of the case, including the appointment of a guardian ad litem if one has not already been provided.

COMMENTARY: The need for competency assessments in termination of parental rights cases is outlined in *In re Alexander V.*, 223 Conn. 557 (1992).

CHAPTER 33a
PETITIONS FOR NEGLECT, UNCARED FOR,
DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS:
INITIATION OF PROCEEDINGS, ORDERS OF TEMPORARY CUSTODY
AND PRELIMINARY HEARINGS

Sec. 33a-2. Service of Summons, Petitions and Ex Parte Orders

(a) A summons accompanying a petition alleging that a child or youth is neglected, uncared for or dependent, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least fourteen days before the date of the initial plea hearing on the petition, which shall be held not more than forty-five days from the date of filing the petition.

(b) A summons accompanying a petition for termination of parental rights, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least ten days prior to the date of the initial plea hearing on the petition, which shall be held not more than thirty days [from] after the filing of the petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(c) A summons accompanying simultaneously filed coterminous petitions, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least ten days prior to the date of the initial plea hearing on the petition, which shall be held not more than thirty days [from] after the filing of the petitions except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(d) A summons accompanying any petition filed with an application for order of temporary custody shall be served by the petitioner on the respondents and provided to the office of the attorney general as soon as practicable after the issuance of any ex parte

order or order to appear, along with such order, any sworn statements supporting the order, the summary of facts, the specific steps provided by the judicial authority, and the notice required by Section 33a-6.

COMMENTARY: Revisions to this section adopt provisions of Public Act 04-128, which amended General Statutes §§ 17a-112(i) and 45a-716(a).

Sec. 33a-3. Venue

All child protection petitions shall be filed within the juvenile matters district where the child or youth resided at the time of the filing of the petition, but any child or youth born in any hospital or institution where the mother is confined at the time of birth shall be deemed to have residence in the district wherein such child's or youth's mother was living at the time of her admission to such hospital or institution. When placement of a child or youth has been effected prior to filing of a petition, venue shall be in the district wherein the custodial parent is living at the time of the filing of the petition.

COMMENTARY: The revisions to this section are made to standardize terms.

Sec. 33a-4. Identity or Location of Respondent Unknown

(a) If the identity or present location of a respondent is unknown when a petition is filed, an affidavit shall be attached reciting the efforts to identify and locate that respondent. [The judicial authority shall require reasonable efforts to identify and locate the absent respondent.] Notice by publication to unidentified persons shall be required in any petition for termination of parental rights.

(b) Subject to section 32a-1 of these rules, [T]he judicial authority may [appoint] notify the Chief Child Protection Attorney to assign counsel for an unidentified parent or an absent parent who has received only constructive notice of termination of parental rights proceedings, for the limited purposes of conducting a reasonable search for the unidentified or absent parents and reporting to the judicial authority before any adjudication.

COMMENTARY: The deletion in subsection (a) removes language that is redundant and that inaccurately suggests that a different reasonable efforts finding is required.

The revisions to subsection (b) are made in light of Section 32a-1 as revised above.

Sec. 33a-6. Order of Temporary Custody; Ex Parte Orders and Orders to Appear

(a) If the judicial authority finds, based upon the specific allegations of the petition and other verified affirmations of fact provided by the applicant, that there is reasonable cause to believe that: (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from his surroundings and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety, the judicial authority shall, upon proper application at the time of filing of the petition or at any time subsequent thereto, either (A) issue an order to the respondents or other persons having responsibility for the care of the child or youth to appear at such time as the judicial authority may designate to determine whether the judicial authority should vest in some suitable agency or person the child's or youth's temporary care and custody pending disposition of the petition, or (B) issue an order ex parte vesting in some suitable agency or person the child's or youth's temporary care and custody.

(b) A preliminary hearing on any ex parte custody order or order to appear issued by the judicial authority shall be held as soon as practicable but [no more] not later than ten days [from] after the issuance of such order.

(c) If the application is filed subsequent to the filing of the petition, a motion to amend the petition or to modify protective supervision shall be filed no later than the next business date before such preliminary hearing.

(d) Upon issuance of an ex parte order or order to appear, the judicial authority shall provide to the commissioner of the department of children and families and the respondents specific steps necessary for each to take for the respondents to retain or regain custody of the child or youth.

(e) An ex parte order or order to appear shall be accompanied by a conspicuous notice to the respondents written in clear and simple language containing at least the following information: (i) That the order contains allegations that conditions in the home have endangered the safety and welfare of the child or youth; (ii) that a hearing will be held on the date on the form; (iii) that the hearing is the opportunity to present the [parents'] respondents' position concerning the alleged facts; (iv) that the respondent has the right to remain silent; (v) that an attorney will be appointed for [parents] respondents who cannot afford an attorney by the Chief Child Protection Attorney; (vi) that such

[parents] respondents may apply for [a court-appointed attorney] state paid representation by going in person to the court address on the form and are advised to go as soon as possible in order for the attorney to prepare for the hearing; and (vii) if such [parents] respondents have any questions concerning the case or appointment of counsel, any such [parent] respondent is advised to go to the court, or [call] contact the clerk's office office [at the court], or contact the Chief Child Protection Attorney as soon as possible.

(f) Upon application for [appointed counsel] state paid representation, the judicial authority shall promptly determine eligibility and, if the respondent is eligible, promptly [appoint counsel] notify the Chief Child Protection Attorney who shall assign an attorney to provide representation. In the absence of such a request prior to the preliminary hearing, the [judicial authority] Chief Child Protection Attorney shall ensure that standby counsel is available at such hearing to assist and/or represent the respondents.

COMMENTARY: The changes in subsection (b) are intended to adopt provisions of Public Act 06-102, Sec. 9, which amended General Statutes § 46b-129(b). The changes in subsections (e) and (f) are intended to adopt provisions of Public Act 07-159, Sec. 4. Other revisions to this section are made to standardize terms.

Sec. 33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

(a) At the preliminary hearing on the order of temporary custody or order to appear, or at the first hearing on a petition for neglect, uncared for, dependency, or termination of parental rights, the judicial authority shall:

(1) first determine whether all necessary parties are present and that the rules governing service on or notice to [for] nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents have been complied with, and shall note these facts for the record;

(2) inform the respondents of the allegations contained in all petitions and applications that are the subject of the hearing;

(3) inform the respondents of their right to remain silent;

(4) ensure that an attorney, and where appropriate, a separate guardian ad litem, has been [appointed] assigned to represent the child or youth by the Chief Child Protection

Attorney, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), [and] 46b-136 and section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel [appointed] assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the Chief Child Protection Attorney to [and, upon request, appoint] assign an attorney to represent any respondent who is unable to afford representation, as determined by the judicial authority;

(6) advise the respondents of the right to a hearing on the petitions and applications, to be held [within] not later than ten days [from] after the date of the preliminary hearing if the hearing is pursuant to an ex parte order of temporary custody or an order to appear;

(7) notwithstanding any prior statements acknowledging responsibility, inquire of the custodial respondent in neglect, uncared for and dependency matters, and of all respondents in termination matters, whether the allegations of the petition are presently admitted or denied;

(8) make any interim orders, including visitation, that the judicial authority determines are in the best interests of the child or youth, and order specific steps the commissioner and the respondents shall take for the respondents to regain or to retain custody of the child or youth;

(9) take steps to determine the identity of the father of the child or youth, including ordering genetic testing, if necessary and appropriate, and order service of the amended petition citing in the putative father and notice of the hearing date, if any, to be made upon him;

(10) if the person named as the putative father appears, and admits that he is the biological father, provide him and the mother with the notices which comply with General Statutes § 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms which comply with General Statutes § 17b-27, which documents shall be executed and filed in accordance with [chapter 815y of the] General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters; and

(11) in the event that the person named as a putative father appears and denies that he is the biological father of the child or youth, advise him that he may have no

further standing in any proceeding concerning the child or youth, and either order genetic testing to determine paternity or direct him to execute a written denial of paternity on a form promulgated by the office of the chief court administrator. Upon execution of such a form by the putative father, the judicial authority may remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction.

(b) At the preliminary hearing on the order of temporary custody or order to appear, the judicial authority may provide parties an opportunity to present argument with regard to the sufficiency of the sworn statements.

(c) If any respondent fails, after proper service, to appear at the preliminary hearing, the judicial authority may enter or sustain an order of temporary custody.

(d) Upon request, or upon its own motion, the judicial authority shall schedule a hearing on the order for temporary custody or the order to [show cause] appear to be held as soon as practicable but not [more] later than ten days [from] after the date of the preliminary hearing. Such hearing shall be held on consecutive days except for compelling circumstances or at the request of the respondents.

[(e) When the allegations are denied, necessitating testimony in support of the petitioner's allegations, the case shall be continued for a case status conference and a subsequent hearing before a judicial authority who has not read the case status conference memo. Said case status conference may be waived by the judicial authority, on its own motion or upon request of the parties.]

(e) Subject to the requirements of Sec. 33a-7 (a) (6), upon motion of any party or on its own motion, the judicial authority may consolidate the hearing on the order of temporary custody or order to appear with the adjudicatory phase of the trial on the underlying petition. At a consolidated order of temporary custody and neglect adjudication hearing the judicial authority shall determine the outcome of the order of temporary custody based upon whether or not continued removal is necessary to ensure the child's or youth's safety, irrespective of its findings on whether there is sufficient evidence to support an adjudication of neglect or uncared for. Nothing in this subsection prohibits the judicial authority from proceeding to disposition of the underlying petition immediately after such consolidated hearing if the social study has been filed and the parties had previously

agreed to sustain the order of temporary custody and waived the ten-day hearing or the parties should reasonably be ready to proceed.

COMMENTARY: The change in subsection (a) (1) is in response to federal requirements and adopts provisions of Public Act 06-37, which required notification to grandparents, and of Public Act 07-174, Sec. 3.

The changes in subsections (a) (4) and (a) (5) adopt provisions of Public Act 07-159, Sec. 5.

The changes in subsection (a) (6) adopt provisions of Public Act 06-102, Sec. 9, and General Statutes § 46b-129(d).

The changes in subsections (a) (9) through (a) (11) adopt provisions of General Statutes § 46b-129(d)(7); specifically the option of genetic testing to determine the identity of the father. Where a respondent has in another court been legally adjudicated the father, genetic testing is not appropriate absent reopening of an original judgment of paternity.

Current subsection (e) is deleted because the substance of the subsection also appears in subsection 35a-2 (a), which is a more appropriate place for it.

New subsection (e) makes it clear that the judicial authority may consolidate matters that involve the same child in one hearing or trial.

Sec. 33a-8. Emergency, Life-Threatening Medical Situations—Procedures

When an emergency medical situation exists which requires the immediate assumption of temporary custody of a child or youth by the commissioner of the department of children and families in order to save the child's or youth's life, [the application for a temporary custody order shall be filed together with a neglect or uncared for petition.] [T]two physicians under oath must attest to the need for such medical treatment. Oral permission by the judicial authority may be given after receiving sworn oral testimony of two physicians that the specific surgical or medical intervention is absolutely necessary to preserve the child's or youth's life. The judicial authority may grant the temporary custody order ex parte or may schedule an immediate hearing prior to issuing said order. At any immediate hearing the two physicians shall be available for testifying, and the judicial authority shall appoint counsel for the child or youth and notify the Chief Child Protection Attorney as soon as practicable that said counsel has been appointed. If

the judicial authority grants the temporary custody order ex-parte by oral permission, based on the sworn oral testimony from the physicians, the commissioner of the department of children and families shall file the application for a temporary custody order together with a neglect or uncared for petition on the next business day following the granting of such order.

COMMENTARY: The revisions to this section clarify the procedure concerning emergency medical situations. Notice to the Chief Child Protection Attorney is appropriate in light of the statutes concerning that office.

Sec. 34a-1. Motions, Requests and Amendments

(a) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to juvenile matters in the superior court as defined by General Statutes § 46b-121.

(b) The provisions of Sections 8-2, 9-5, 9-22, 10-12 (a), 10-13, 10-14, 10-17, 10-18, 10-29, 10-62, 11-4, 11-5, 11-6, 11-7, 11-8, 11-10, 11-11, 11-12, 11-13, 12-1, 12-2, [and] 12-3 and 17-21 of the rules of practice shall apply to juvenile matters as defined by General Statutes § 46b-121.

(c) A motion or request, other than a motion made orally during a hearing, shall be in writing. An objection to a request shall also be in writing. A motion, request or objection to a request shall have annexed to it a proper order and where appropriate shall be in the form called for by Section 4-1. The form and manner of notice shall adequately inform the interested parties of the time, place and nature of the hearing. A motion, request, or objection to a request whose form is not therein prescribed shall state in paragraphs successively numbered the specific grounds upon which it is made. A copy of all written motions requests, or objections to requests shall be served on the opposing party or counsel pursuant to Sections 10-12 (a) and (c), 10-13, 10-14 and 10-17. All motions or objections to requests shall be given an initial hearing by the judicial authority within fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived; any motion in a case on trial or assigned for trial may be disposed of by the judicial authority at its discretion or ordered upon the docket.

(d) A petition may be amended at any time by the judicial authority on its own motion or in response to a motion prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that

the new allegations in the petition justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances.

(e) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or agree that the motion may be considered without the need for oral argument or testimony and the motion states on its face that there is such an agreement, the judicial authority may consider and rule on the motion without a hearing.

COMMENTARY: The proposed revision adds the military affidavit rule for child protection cases. Case law supports this addition.

CHAPTER 35a
HEARINGS CONCERNING NEGLECTED, UNCARED FOR AND DEPENDENT CHILDREN
AND TERMINATION OF PARENTAL RIGHTS

Sec. 35a-1. [Adjudicatory Hearing; Actions by Judicial Authority] Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

[(a) The judicial authority shall first determine whether all necessary parties are present and that the rules governing service for nonappearing parties have been complied with, and shall note these facts for the record. The judicial authority shall then inform the unrepresented parties of the substance of the petition.]

[(b)] (a) Notwithstanding any prior statements acknowledging responsibility, the judicial authority shall inquire whether the allegations of the petition are presently admitted or denied. This inquiry shall be made of the [custodial] parent(s) or guardian in neglect, uncared for or dependent matters; and of [all appearing] the parents in termination matters.

[(c)] (b) [A] An admission to allegations or a written plea of nolo contendere signed by the respondent may be accepted by the judicial authority. Before accepting an admission or plea of nolo contendere, the judicial authority shall determine whether the right to counsel has been waived, and that the parties understand the content and consequences of their admission or plea. If the allegations are admitted or the plea accepted, the judicial authority shall make its adjudicatory finding as to the validity of the facts alleged in the petition and may proceed to a dispositional hearing. Where appropriate, the judicial authority may permit a noncustodial parent or guardian to stand silent as to the entry of an adjudication.

[(d) A verbatim stenographic or electronic recording of all hearings shall be kept, any transcript of which shall be part of the record of the case.]

COMMENTARY: The substance of current subsection (a) appears in subsections 33a-7 (1) and (2), therefore, subsection (a) is unnecessary. The revisions to new subsection (a) are for clarification. The revisions to new subsection (b) clarify that, in lieu of taking evidence in the adjudicatory phase, the defendant may admit to allegations in the petition by an admission or a written plea of nolo contendere. The amendment concerning standing silent is consistent with *In re David L.*, 54 Conn. App. 185 (1999). Subsection (d) has been relocated to new Section 35a-1A.

(NEW) Sec. 35a-1A. Record of the Case

A verbatim stenographic or electronic recording of all hearings shall be kept, any transcript of which shall be part of the record of the case.

COMMENTARY: This new section has been relocated from subsection 35a-1 (d).

(NEW) Sec. 35a-1B. Exclusion of Unnecessary Persons from Courtroom

Any judicial authority hearing a child protection matter may, during such hearing, exclude from the room in which such hearing is held any person whose presence is, in the opinion of the judicial authority, not necessary.

COMMENTARY: This new section adopts provisions of General Statutes § 46b-122.

Sec. 35a-2. Case Status Conference or Judicial Pretrial

(a) When the allegations of the petition are denied, necessitating testimony in support of the petitioner's allegations, the case shall be continued for a case status conference and/or a judicial pretrial. The case status conference or judicial pretrial may be waived by the judicial authority upon request of all the parties.

(b) Parties with decision-making authority to settle must be present or immediately accessible during a case status conference or judicial pretrial. Continuances will be granted only in accordance with Section 34a-5.

(c) At the case status conference and/or judicial pretrial, all attorneys and pro se parties will be prepared to discuss the following matters:

(1) Settlement;

(2) Simplification and narrowing of the issues;
(3) Amendments to the pleadings;
[(4) Such other actions as may aid in the disposition of the case;]
[(5)] (4) The setting of firm trial dates;
[(6)] (5) Preliminary witness lists;
[(7)] (6) Identification of necessary arrangements for trial including, but not limited to, application for writ of habeas corpus for incarcerated parties, transportation, interpreters, and special equipment[.];

(7) Such other actions as may aid in the disposition of the case.

(d) When necessary, the judicial authority may issue a trial management order including, but not limited to, an order fixing a date prior to trial by which all parties are to exchange proposed witness and exhibit lists and copies of proposed exhibits not previously exchanged. Failure to comply with this order may result in the imposition of sanctions as the ends of justice may require.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

Sec. 35a-3. Coterminous Petitions

When coterminous petitions are filed, the judicial authority first determines by a fair preponderance of the evidence whether the child or youth is neglected, uncared for or dependent; if so, then the judicial authority determines whether statutory grounds exist to terminate parental rights by clear and convincing evidence; if so, then the judicial authority determines whether termination of parental rights is in the best interests of the child or youth by clear and convincing evidence. If the judicial authority determines that termination grounds do not exist or termination of parental rights is not in the best interests of the child or youth, then the judicial authority may consider by a fair preponderance of the evidence any of the dispositional alternatives available under the neglect, uncared for or dependent petition.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

Sec. 35a-4. Intervening Parties

(a) In making a determination upon a motion to intervene by any grandparent of the child or youth, the judicial authority shall consider:

- (1) the timeliness of the motion as judged by all the circumstances of the case;
- (2) whether the [applicant] movant has a direct and immediate interest in the case.

(b) Other persons including, but not limited to, siblings may move to intervene in the dispositional phase of the [trial] case and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or youth or in the interests of justice.

(c) In making a determination upon a motion to intervene by any other [applicant] person, the judicial authority shall consider:

- (1) the timeliness of the motion as judged by all the circumstances of the case;
- (2) whether the [applicant] movant has a direct and immediate interest in the case;
- (3) whether the [applicant's] movant's interest is not adequately represented by existing parties;

(4) whether the intervention may cause delay in the proceedings or other prejudice to the existing parties;

(5) the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority.

(d) Upon the granting of such motion, such grandparent or other [applicant] person may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to [appointment of counsel at state expense] state paid representation by [the court] the Chief Child Protection Attorney.

(e) When a judicial authority grants a motion to intervene in proceedings concerning a pending neglect or uncared for petition, the judicial authority may determine at the time of disposition of the petition whether good cause exists to permit said intervenor to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.

COMMENTARY: The revisions to subsections (a) and (b) are made to standardize terms and for clarification.

The revisions to subsection (c) are made because the use of the word "applicant" misleadingly implies application for counsel.

The revisions to subsection (d) are intended to adopt provisions General Statutes §§ 46b-123e and 46b-136. The Chief Child Protection Attorney (CCPA) is not authorized to provide counsel to intervenors unless the judicial authority determines that the interests of justice require that the CCPA provide representation to an intervenor.

New subsection (e) clarifies that intervenors may continue to participate in post-disposition proceedings only with the approval of the judicial authority.

Sec. 35a-5. [Foster Parents' and Siblings' Right to Be Heard] Notice and Right to be Heard

(a) Any foster parent, prospective adoptive parent or relative caregiver [has the] shall be notified of and have a right to be heard in any proceeding held concerning [the placement or revocation of commitment of] a [foster] child or youth living with such foster parent, prospective adoptive parent or relative caregiver. The commissioner of the department of children and families shall provide written notice of all court proceedings concerning any child or youth to any such foster parent, prospective adoptive parent or relative caregiver of such child or youth. Records of such notice shall be kept by the commissioner of the department of children and families and information about notice given in each case provided to the court.

(b) Upon motion of any sibling of any child or youth committed to the commissioner of the department of children and families pursuant to General Statutes § 46b-129, the sibling shall have the right to be heard concerning visitation with and placement of any such child or youth.

COMMENTARY: The revisions to subsection (a) are intended to adopt provisions of Public Act 07-174, Sec. 3, General Statutes § 46b-129(o) and federal law.

The revisions to subsection (b) are made to standardize terms.

Sec. 35a-6. Post-Disposition Role of Former Guardian

When a court of competent jurisdiction has ordered legal guardianship of a child or youth to a person other than the biological parents of the child or youth prior to the juvenile court proceeding, the juvenile court shall determine at the time of the commitment of the child or youth to the commissioner of the department of children and families whether good cause exists to allow said legal guardian to participate in future proceedings

as a party and what, if any further actions the commissioner of the department of children and families and the guardian are required to take.

COMMENTARY: The revisions to this section are made to standardize terms.

(NEW) Sec. 35a-7 Consolidation

Upon motion of any party or on its own motion, the judicial authority may consolidate separate petitions for trial. In determining whether to consolidate, the judicial authority shall consider whether consolidation will expedite the business of the court without causing delay or injustice.

COMMENTARY: This new section clarifies that the judicial authority may resolve matters involving the same child or children of the same parent or parents in one hearing or trial.

Sec. 35a-7A. Evidence

(a) In the adjudicatory phase, the judicial authority is limited to evidence of events preceding the filing of the petition or the latest amendment, except where the judicial authority must consider subsequent events as part of its determination as to the existence of a ground for termination of parental rights.

(b) In the discretion of the judicial authority, evidence on adjudication and disposition may be heard in a non-bifurcated hearing, provided disposition may not be considered until the adjudicatory phase has concluded.

(NEW) 35a-7B. Adverse Inference

If a party requests that the judicial authority draw an adverse inference from a parent's or guardian's failure to testify or the judicial authority intends to draw an adverse inference, either at the start of any trial or after the close of the petitioner's case in chief, the judicial authority shall notify the parents or guardian that an adverse inference may be drawn from their failure to testify.

COMMENTARY: If an adverse inference is not requested, hearing the warning at the start of every trial may compel a parent or guardian to testify in every case, even where an adverse inference is not being requested. *In re: Samantha C.*, 268 Conn. 614, 666-73

(2004) permits the judicial authority to take an adverse inference from a party's failure to testify provided the party is given fair warning of that possibility.

Sec. 35a-8. Burden of Proceeding

(a) The petitioner shall be prepared to substantiate the allegations of the petition. [If a custodial parent respondent fails to appear, the judicial authority may default that parent,] All parties except the child or youth shall be present at trial unless excused for good cause shown. Failure of any party to appear in person or by their statutorily permitted designee may result in a default or nonsuit for failure to appear for trial, as the case may be, and evidence may be introduced and judgment rendered. [In the event of a coterminous hearing the judicial authority shall ensure that the parents are given adequate time to appear.]

(b) The clerk shall give notice by mail to the defaulted party and the party's attorney of the default and of any action taken by the judicial authority. The clerk shall note [on the docket] the date that such notice is given or mailed.

COMMENTARY: The revisions in subsection (a) regarding default are made to emphasize the need for all parties, not just the custodial parent, to be present at trial. The last sentence is deleted because there is no statutory or case law distinction for the type of or time for notice required for coterminous petitions. There is not a different notice standard for respondents to coterminous petitions.

The revisions to subsection (b) are made to clarify that this information is recorded in the court file, not on the docket.

Sec. 35a-9. Dispositional Hearing; Evidence and Social Study

The judicial authority may admit into evidence any testimony relevant and material to the issue of the disposition, including events occurring through the close of the evidentiary hearing, but no disposition may be made by the judicial authority until any mandated social study has been submitted to the judicial authority. Said study shall be marked as an exhibit subject to the right of any party to be heard on a motion in limine requesting redactions and to require that the author, if available, appear for cross-examination.

COMMENTARY: The revision to this section reflects existing practice and makes clear that social studies may contain objectionable material that the opposing party should be able to challenge prior to admission into evidence.

Sec. 35a-12. Protective Supervision—Conditions and Modification

(a) When protective supervision is ordered, the judicial authority will set forth any conditions of said supervision including duration, specific steps and review dates. [Parental noncompliance with the order of protective supervision shall be a ground for a motion to modify the disposition. Upon finding that the circumstances so warrant, the judicial authority on its own motion or acting on a motion of any party and after notice is given and hearing has been held, may modify a previously entered disposition of protective supervision in accordance with the applicable General Statutes.]

(b) A protective supervision order shall be scheduled for an in court review and reviewed by the judicial authority at least thirty days prior to its expiration. At said review, an updated social study shall be provided to the judicial authority.

(c) If an extension of protective supervision is being sought by the commissioner of the department of children and families or any other party in interest, including counsel for the minor child or youth, then a written motion for the same shall be filed not less than thirty days prior to such expiration. Such motion shall be heard either at the in court review of protective supervision if it is held within thirty days of such expiration or at a hearing to be held within ten days after the filing of such motion. For good cause shown and under extenuating circumstances, such written motion may be filed in a period of less than thirty days prior to the expiration of the protective supervision and the same shall be docketed accordingly. The motion shall set forth the reason(s) for the extension of the protective supervision and the period of the extension being sought. If the judicial authority orders such extension of protective supervision, the extension order shall be reviewed by the judicial authority at least thirty days prior to its expiration.

(d) Parental or guardian noncompliance with the order of protective supervision shall be a ground for a motion to modify the disposition. Upon finding that the best interests of the child so warrant, the judicial authority on its own motion or acting on a motion of any party and after notice is given and hearing has been held, may modify a previously entered disposition of protective supervision in accordance with the applicable General Statutes.

COMMENTARY: This section has been reformatted into several subsections for clarification. The text deleted in subsection (a) has been relocated with amendments to new subsection (d). The last line in subsection (c) is added for clarification. In new subsection (d), the reference to the guardian is intended to adopt provisions of General Statutes § 46b-129(j). Other revisions in subsections (a) and (b) are made to standardize terms and for clarification.

Sec. 35a-13. Findings as to Continuation in the Home, Efforts to Prevent Removal

Whenever the judicial authority orders a child or youth to be removed from the home, the judicial authority shall make written findings: (1) at the time of the order that continuation in the home is contrary to the welfare of the child or youth; and (2) at the time of the order or within sixty days [thereafter] after the child or youth has been removed from the home, whether the commissioner of the department of children and families has made reasonable efforts to prevent removal or whether such efforts were not possible.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification. Federal regulation 45 CFR 1356.21(b)(1), adopted to implement the Adoption and Safe Families Act, requires that the “prevent removal” finding be made within sixty days after the removal of the child or youth from the home.

Sec. 35a-14. Motions for Review of Permanency Plan [and to Maintain or Revoke the Commitment]

(a) Motions for review of the permanency plan [and to maintain or revoke the commitment] shall be filed nine months after the placement of the child or youth in the custody of the commissioner of the department of children and families pursuant to a voluntary placement agreement, or removal of a child or youth pursuant to General Statutes § 17a-101g or an order of a court of competent jurisdiction whichever is earlier. At the date custody is vested by order of a court of competent jurisdiction, or if no order of temporary custody is issued, at the date when commitment is ordered, the judicial authority shall set a date by which the subsequent motion for review of the permanency plan [and to maintain or revoke the commitment] shall be filed. The commissioner of the department of children and families shall propose a permanency plan that conforms to the

statutory requirements and shall provide a social study to support said plan, including information indicating what steps the commissioner has taken to implement it. Nothing in this section shall preclude any party from filing a motion for revocation of commitment separate from a motion for review of permanency plan [and to maintain or revoke the commitment] pursuant to General Statutes § 46b-129(m) and subject to [sub]section 35A-14A [(c) of this rule].

(b) Once a motion for review of the permanency plan [and to maintain or revoke the commitment] has been filed, the clerk of the court shall set a hearing [within] not later than ninety days thereafter. The court shall provide notice to the child or youth, and the parent or guardian of such child or youth and any other party found entitled to such notice of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing. Any party who is in opposition to [a] any such motion shall file a written objection and state the reasons therefor within thirty days after the filing of the commissioner[’s] of the department of children and families’ motion for review of permanency plan [or a motion for revocation of commitment which] and the objection shall be considered at the hearing. The court shall hold an evidentiary hearing in connection with any contested motion for review of the permanency plan. If there is no objection or motion for revocation filed, then the motion [or motions shall] may be granted by the judicial authority at the date of said hearing.

(c) Whether to [maintain] approve the permanency plan [or revoke the commitment] is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether it is in the best interests of the child or youth to [maintain] approve the permanency plan [or revoke] upon a fair preponderance of the evidence. [The party seeking to maintain the commitment has the burden of proof that it is in the best interest of the child to maintain the commitment. The party seeking revocation of commitment has the burden of proof that no cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interest of the child. If a motion for revocation is denied, a new motion shall not be filed by the movant until at least six months has elapsed from the date of the filing of the prior motion unless waived by the judicial authority.] The commissioner of the department of children and families shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth.

(d) [The commissioner of the department of children and families shall propose a permanency plan that conforms to the statutory requirements and shall provide a social study to support said plan, including information indicating what steps the commissioner has taken to implement it.] At [the] each hearing on [the] a motion for review of permanency plan, the judicial authority shall [determine whether efforts to reunify the child with the parent have been made, whether such efforts are still appropriate, and whether the commissioner has made reasonable efforts to achieve the permanency plan for the child] review the status of the child, the progress being made to implement the permanency plan, determine a timetable for attaining the permanency plan, determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services, and determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan. The judicial authority shall also determine whether the proposed goal of the permanency plan as set forth in General Statutes § 46b-129(k)(2) is in the best interests of the child or youth by a fair preponderance of the evidence, taking into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. If a permanency plan is not approved by the judicial authority, it shall order the filing of a revised plan and set a hearing to review said revised plan within sixty days.

[(e) If the judicial authority determines at the hearing on the motion for review of permanency plan and to maintain or revoke the commitment that further efforts to reunify the child with the parent are appropriate, the judicial authority shall provide the parent with specific steps the parent shall take to address problems preventing reunification. Six months after such hearing, the judicial authority shall hold another hearing to assess the parent's progress. If the judicial authority finds that the parent has failed to make sustained and significant progress, the judicial authority shall redetermine whether further reunification efforts are appropriate. If the judicial authority determines efforts are not appropriate, it shall order the filing of a revised permanency plan and set a hearing to review said revised plan.]

[(f)](e) As long as a child or youth remains in the custody of the commissioner of the department of children and families, the commissioner shall file a motion for review of permanency plan [and to maintain or revoke commitment] nine months after the prior

permanency plan hearing. No later than twelve months after the prior [approval of a] permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with subsection (d)[,]. [unless such child has been adopted, returned home or guardianship of the child has been transferred pursuant to an order of the judicial authority.]

[(g) A determination that further efforts to reunify the child with the parent are not appropriate need not be made at subsequent permanency review hearings if the judicial authority has previously determined that such efforts are not appropriate. A determination as to whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan must be made at each hearing on the motion for review of permanency plan.]

[(h)] (f) Whenever an approved permanency plan needs revision, the commissioner of the department of children and families shall file a motion for review of the revised permanency plan. The commissioner [is] shall not be precluded from initiating a proceeding in the best interests of the child or youth considering the needs for safety and permanency.

(g) Where a petition for termination of parental rights is granted, the guardian or statutory parent of the child or youth shall report to the judicial authority not later than thirty days after the date the judgment is entered on a permanency plan and on the status of the child or youth. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. The judicial authority may convene a hearing upon the filing of a report and shall convene and conduct a permanency hearing for the purpose of reviewing the permanency plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129(k), whichever is earlier, and at least once a year thereafter while the child or youth remains in the custody of the commissioner of the department of children and families. At each court hearing, the judicial authority shall make factual findings whether or not reasonable efforts to achieve the permanency plan or promote adoption have been made.

COMMENTARY: The changes to subsections (a) and (b) are intended to adopt provisions of General Statutes § 46b-129(k)(1), as amended by Public Act 06-102.

The changes in subsections (c) and (d) are intended to adopt provisions of General Statutes § 46b-129(k)(3), as amended by Public Act 06-102. For clarification, the provisions that address the revocation of a commitment have been transferred to new Section 35a-14A.

The changes in new subsection (e) are intended to adopt provisions of General Statutes § 46b-129, as amended by Public Act 06-102. Additional revisions in this subsection have been made to standardize terms.

Current subsection (g) has been deleted in its entirety; its substance is in subsection (d).

The substance of new subsection (g) has been transferred from Section 35a-17 with revisions adopted from Public Act 06-102, Sec. 8, that amended General Statutes § 17a-112(o).

(NEW) 35a-14A. Revocation

A party may file a motion seeking revocation of commitment. The judicial authority may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child or youth. Whether to revoke the commitment is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether to revoke the commitment upon a fair preponderance of the evidence. The party seeking revocation of commitment has the burden of proof that no cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interests of the child. If a motion for revocation is denied, a new motion shall not be filed by the movant until at least six months has elapsed from the date of the filing of the prior motion unless waived by the judicial authority.

COMMENTARY: To clarify the revocation process, various provisions of section 35a-14 have been transferred, with revisions, to the above new section.

Sec. 35a-15. Reunification Efforts—Aggravating Factors

Whenever [the commissioner] any party seeks a finding of the existence of an aggravating factor negating the requirement that reasonable efforts be made to reunify a child or youth with a parent, the [commissioner] movant shall, file a [petition, or] motion [if

a case is already pending,] requesting such finding and the judicial authority shall proceed in accordance with General Statutes § 17a-111b(b).

COMMENTARY: The revisions to this section are made to standardize terms. These changes are also intended to adopt provisions of Public Act 06-102, Sec. 6(b).

Sec. 35a-16. Modifications

Motions to modify dispositions are dispositional in nature based on the prior adjudication and the judicial authority shall determine whether a modification is in the best interests of the child or youth upon a fair preponderance of the evidence. Unless filed by the commissioner of the department of children and families, any modification motion to return [the] a child or youth to the custody of the parent without protective supervision shall be treated as a motion for revocation of commitment.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

[Sec. 35a-17. Motions to Review Plan for Child Whose Parents' Rights Have Been Terminated

Where a petition for termination of parental rights is granted, the guardian of the child or statutory parent shall report to the judicial authority within thirty days of the date judgment is entered on a permanency plan and on the status of the child. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. A hearing shall be held before the judicial authority for the purpose of reviewing the plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129 (k), whichever is earlier, and at least once a year thereafter until such time as a proposed adoption or transfer of guardianship is finalized. At each court hearing, the judicial authority will make factual findings whether or not reasonable efforts to achieve permanency or promote adoption have been made.]

COMMENTARY: The substance of this section has been transferred to subsection 35a-14(g).

Sec. 35a-18. Opening Default

Any order or decree entered through a default may be set aside within four months succeeding the date of such entry of the order or decree upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a defense in whole or in part existed at the time of the rendition of such order or of such decree, and that the party so defaulted was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant, and shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the party failed to appear. The judicial authority shall order reasonable notice of the pendency of such motion to be given to all parties to the action, and may enjoin enforcement of such order or decree until the decision upon such written motion, unless said action shall prejudice or place the child's or youth's health, safety or welfare in jeopardy. A hearing on said motion shall be held as a priority matter but no later than fifteen days after the same has been filed with the clerk [of the juvenile court], unless otherwise agreed to by the parties and sanctioned by the judicial authority. In the event that said motion is granted the matter shall be scheduled for an immediate pretrial or case status conference within fourteen days thereof, and failing a resolution at that time, then the matter shall be scheduled for a trial as expeditiously as possible.

COMMENTARY: The revisions to this section are made to be consistent with the use of the term "clerk" in sections 35a-8, 35a-10, and 35a-14 and for clarification. In Section 35a-19, a distinction must be made between Superior Court for Juvenile Matters clerk and Probate clerk, so those references in that section are more specific.

Sec. 35a-19. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) [(1)] Any appearance filed for any party in the court of probate shall continue in the superior court until withdrawn or replaced. [The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian, and an advisement of rights notice to be served on any non-appearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights, and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing not less than ten days before the date of the hearing.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner or any other investigating agency will be notified of the need to have a representative present at the initial hearing.]

(d) (1) The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian, and an advisement of rights notice to be served on any non-appearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of

parental rights, and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing which shall be held not more than thirty days from the date of receipt petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

COMMENTARY: The revisions to this section are made to standardize terms and for clarification.

The deleted language in subsection (c) (1) has been relocated to new subsection (d) (1) with revisions that adopt provisions of General Statutes § 45a-609(a).

The deleted language in subsection (c) (2) has been relocated to new subsection (d) (2) with revisions that adopt provisions of Public Act 04-128 that amended General Statutes § 45a-716(a).

The deleted language in subsection (c) (3) has been relocated to new subsection (d) (3) with a revision made to standardize terms.

Sec. 35a-20. [Petitions] Motions for Reinstatement of Parent as Guardian or Modification of Guardianship Post-disposition

(a) Whenever a parent or legal guardian whose guardianship rights to a child or youth were removed and transferred to another person by the superior court for juvenile matters seeks reinstatement as that child's or youth's guardian, or modification of guardianship post-disposition, the parent or legal guardian may file a [petition] motion with the court that ordered the transfer of guardianship.

(b) A parent, legal guardian or other interested party seeking guardianship of the child or youth after guardianship rights to that child or youth were transferred to another person by the superior court for juvenile matters may file a motion with the court that ordered the transfer of guardianship.

(c) The clerk [of the court] shall assign such [petition] motion a hearing date and issue a summons to the current guardian and the nonmoving parent or parents. The [petitioner] moving party shall cause a copy of such [petition] motion and summons to be served on the child's or youth's current legal guardian(s) and the nonmoving parent or parents.

(d) Before acting on such [petition] motion, the judicial authority shall determine if the court still has custody jurisdiction and shall request, if necessary, that the commissioner of the department of children and families conduct an investigation and submit written findings and recommendations before rendering a decision.

COMMENTARY: This section has been expanded to address situations where parties ask the judicial authority to address guardianship post-disposition. An example is as follows: a mother initially has guardianship of the child; the Department of Children and Families then files a neglect petition listing the mother and father as respondents; and, finally, the judicial authority transfers guardianship to the grandmother at the disposition. Then, post-disposition, the father wants to file a petition for guardianship. This would not be considered a reinstatement, but a modification of guardianship. Additionally, revisions to this section have been made to reflect a gradual shift from petitions to motions in addressing post disposition matters.

Sec. 35a-21. Appeals

(a) Appeals from final judgments or decisions of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment or decision from which the appeal is taken in the manner provided by the rules of appellate procedure.

(b) If an indigent party wishes to appeal a final decision and if the trial counsel declines to represent the party because in counsel's professional opinion the appeal lacks merit, counsel shall file a timely motion to withdraw and to extend time in which to take an appeal. The judicial authority shall then forthwith notify the Chief Child Protection Attorney to [appoint] assign another attorney to review this record who, if willing to represent the party on appeal, will be [appointed] assigned by the Chief Child Protection Attorney for this purpose. If the second attorney determines[d] that there is no merit to an appeal, that attorney shall make this known to the judicial authority and the Chief Child Protection

Attorney at the earliest possible moment, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may [be appointed] file an appearance to represent the party on the appeal.

(c) The time to take an appeal shall not be extended past forty days from the date of the issuance of notice of the rendition of the judgment or decision.

COMMENTARY: The revisions to this section are made for clarification and are intended to adopt provisions of Public Act 07-159.

APPENDIX D (Mins 3-31-08)

Sec. 37-2. —Information and Materials to Be Provided to the Defendant Prior to Arraignment

Prior to the arraignment of the defendant before the judicial authority to determine the existence of probable cause to believe such person committed the offense charged or to determine the conditions of such person's release pursuant to Section 38-4, the prosecuting authority shall provide the defendant or counsel with a copy of ~~any~~ either (1) the arrest warrant affidavit and the reports or statements relied upon in said affidavit; or (2) any police report and any other report or statement referred to in said police report submitted to the court for the purpose of making such determination; except that the judicial authority may, upon motion of the prosecuting authority and for good cause shown, limit the disclosure of any such affidavit or report, or portion thereof.

COMMENTARY: The above change specifies the documents that are to be provided to the defendant by the prosecuting authority prior to arraignment.

APPENDIX E (Mins 03-31-08)

Sec. 13-30. — Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Any objection during a deposition must be stated concisely and in a nonargumentative manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent certifying that the deposition is a true record of the deponent's testimony, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 13-31 (c) (4) the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then securely seal the

deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked "Deposition of (*here insert the name of the deponent*)," shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (i) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice of deposition and (ii) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party

pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall at such party's expense provide a copy of the deposition transcript and any permanent electronic record including audio or video tape to each adverse party.

COMMENTARY: The purpose of the provision in subsection (d) that allows the deponent to make changes in form or substance to the deposition is to allow the deponent to correct errors in the transcription. If a deponent realizes that his or her testimony was incorrect, such changes are not contemplated by this subsection.

Parties have a continuing duty to disclose pursuant to Section 13-15.

With regard to a lawyer's duty to correct material evidence given by the lawyer, or his or her client or witness, that the lawyer comes to know is false, see Rule 3.3 (a) (3) of the Rules of Professional Conduct.

APPENDIX F (Mins 033108)

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(b) All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. [Any objection during a deposition must be stated concisely and in a nonargumentative manner.] Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 13-31 (c) (4) the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present,

and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then securely seal the deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked "Deposition of (*here insert the name of the deponent*)," shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the court at the time of trial.

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(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (i) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a

notice served in the same manner as a notice of deposition and (ii) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall at such party's expense provide a copy of the deposition transcript and any permanent electronic record including audio or video tape to each adverse party.

COMMENTARY: The above change to subsection (b) clarifies the procedure to be followed in making objections during depositions. It is taken from N.Y. Ct. Rules, § 221.1(b).