OFFICIAL

2012

CONNECTICUT PRACTICE BOOK

(Revision of 1998)

OFFICIAL

2012

CONNECTICUT PRACTICE BOOK

(Revision of 1998)

CONTAINING

RULES OF PROFESSIONAL CONDUCT

CODE OF JUDICIAL CONDUCT

RULES FOR THE SUPERIOR COURT

RULES OF APPELLATE PROCEDURE

APPENDIX OF FORMS

INDEX OF OFFICIAL JUDICIAL BRANCH FORMS

SUPERIOR COURT STANDING ORDERS

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EXPLANATORY NOTES

The Superior Court Rules as organized herein were first published in the Connecticut Law Journal dated July 29, 1997. This 2012 edition of the Practice Book contains amendments to the Rules of Professional Conduct, Superior Court Rules and the Rules of Appellate Procedure. The amendments were published in the Connecticut Law Journals dated June 7, 2011, and July 5, 2011.

A parenthetical notation about the origin of each rule is found at the end of every section in this volume. The notation (P.B. 1978-1997, Sec.___) indicates the number of the section in the 1978-1997 Practice Book corresponding to the current section. Current numbers of any sections corresponding to the sections in the 1978-1997 Practice Book appear in the Reference Tables following the text of the rules. The notation (1998) indicates that the section was new in the 1998 Practice Book, taking effect October 1, 1997. The notation (See P.B. 1978-1997, Sec.___) (1998) indicates that the section was *modeled* on a rule in the 1978-1997 Practice Book but was actually adopted for the first time to take effect October 1, 1997.

There may be significant differences between the rules in this volume and those in the1978-1997 Practice Book on which they were *modeled*. The temporary numbers assigned to those rules in the July 29, 1997 Connecticut Law Journal, where they where originally published, appear in the Reference Tables following the text of the rules.

Where a section was adopted or amended after 1997, a parenthetical notation to that effect appears either immediately following the text of the section or following the parenthetical notation concerning the derivation of the section. Where the title to a section has been amended, a parenthetical notation appears immediately following the title. The Table of Practice Book Changes, following the text of the rules, documents the dates on which rules were adopted, repealed, amended, or transferred to another section.

Histories describing the nature of amendments and Commentaries indicating the intended purpose of new rules or amendments to existing rules are printed following the text of new or amended rules. Histories are included for only those rules that were adopted or amended to take effect in the year corresponding to the current edition of the Practice Book. For example, Histories corresponding to the rule changes taking effect January 1, 2000, appeared only in the 2000 edition of the Practice Book and not in subsequent editions. Users wanting to access the Histories documenting rule changes made in a given year should not discard the corresponding edition. Commentaries to rules or amendments also are to be found only in the edition of the Practice Book corresponding to the year of the rule or amendment, with the exception of the Commentaries to the rules on sealing of files and closure of the courtroom, which will be retained on a cumulative basis.

The Commentaries to the rules of practice are included in this volume for informational purposes only. *Commentaries to those rules are not adopted by the Judges and Justices when they vote to adopt proposed rule changes. Commentaries to the Rules of Professional Conduct and Code of Judicial Conduct are adopted by the Judges and Justices and are printed in every edition of the Practice Book.*

Beginning in 2000, Amendment Notes were incorporated into the Rules of Professional Conduct and the Code of Judicial Conduct. Those notes, approved by the Rules Committee of the Superior Court to explain the revisions to the Rules of Professional Conduct and Code of Judicial Conduct, appear only in the edition of the Practice Book corresponding to the year of the revision and not in subsequent editions.

The system used to number each section is based on the chapter in which the section is located. Each section has a two part number. The first part of the number designates the

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chapter, and the second part designates the number of the section within that chapter. (Chapter 1 begins with 1-1, chapter 2 with 2-1, etc.) The internal breakdown of individual rules follows the style of the General Statutes. Subsections are designated by lower case letters in parentheses, (a), (b), subdivisions are designated by numbers in parentheses, (1), (2), and subparagraphs are designated by upper case letters in parentheses, (A), (B).

The Rules of Appellate Procedure, as well as the Superior Court Rules, were reorganized in 1998. The reorganization of the Rules of Appellate Procedure was completed subsequent to the publication of the July 29, 1997 Connecticut Law Journal and was published in this volume for the first time in 1998. The goal in reorganizing the Rules of Appellate Procedure was to present them in the order in which an appellant might approach the appeal process, i.e., rules on whether to appeal, how to file, what to do next, when argument will take place, opinions and reargument. Rules on various special proceedings were organized into separate chapters. No substantive changes were made in the course of reorganization, but there were editorial changes.

In 2002, an Appendix was added following the Index. The Appendix contains certain forms that previously had been in Volume 2 of the 1978-1997 Practice Book. In 2010, an Index of Official Judicial Branch Forms used in Civil, Family and Juvenile Matters was added to the Practice Book, following the Appendix of Forms. In 2012, the Appendix of Superior Court Standing Orders, which was added in 2010, was removed. A notice referring the reader to the Judicial Branch website for access to the Superior Court Standing Orders was substituted in its place.

Effective January 1, 2003, the rules pertaining to procedure in juvenile matters were amended and reorganized. The amendments initially were published in the Connecticut Law Journal of July 23, 2002. The July 23, 2002 Connecticut Law Journal gave notice that the rules on juvenile matters, which, since 1998, had been found in chapters 26 through 35, had been moved to chapters 26a through 35a. In the Practice Book itself, however, the original numbers of the juvenile rules were retained wherever possible.

Every year certain nonsubstantive, technical editorial changes are made to a number of the rules. Some, but not all, of these changes are explained in Technical Change notes. In 2012, the Technical Change notes alert the reader to the fact that ‘‘self-represented’’ was substituted for ‘‘pro se’’ throughout the Rules of Professional Conduct, Code of Judicial Conduct, and Superior Court Rules.

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THE ATTORNEY'S OATH

You solemnly swear or solemnly and sincerely affirm, as the case may be, that you will do nothing dishonest, and will not knowingly allow anything dishonest to be done in court, and that you will inform the court of any dishonesty of which you have knowledge; that you will not knowingly maintain or assist in maintaining any cause of action that is false or unlawful; that you will not obstruct any cause of action for personal gain or malice; but that you will exercise the office of attorney, in any court in which you may practice, according to the best of your learning and judgment, faithfully, to both your client and the court; so help you God or upon penalty of perjury. (General Statutes § 1-25 and annotations.)

(Amended pursuant to Public Act 02-71 to take effect Oct. 1, 2002.)

RULES OF PROFESSIONAL CONDUCT

Preamble

Scope

Rules

Commentaries

Preamble: A Lawyer's Responsibilities

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others on the client's behalf.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. All lawyers should work to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or

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secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

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

Scope

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do

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not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

The Commentary accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Commentaries are intended as guides to interpretation, but the text of each Rule is authoritative. Commentaries do not add obligations to the Rules but provide

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guidance for practicing in compliance with the Rules. The Commentaries are sometimes used to alert lawyers to their responsibilities under other law, such as court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general.

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

RULES OF PROFESSIONAL CONDUCT

Rule

1.0. Terminology

Client-Lawyer Relationships

1.1. Competence
1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer
1.3. Diligence
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1.5. Fees
1.6. Confidentiality of Information
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Rule

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Rule 1.0. Terminology

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

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

(c) ''Confirmed in writing,'' when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the

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person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See subsection (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

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

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

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

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

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

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

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

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

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

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

(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

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

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

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

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

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

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

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

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Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

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

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

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

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer shall acknowledge in writing to the client the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

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

CLIENT-LAWYER RELATIONSHIPS

Rule 1.1. Competence

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

(P.B. 1978-1997, Rule 1.1.)

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

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

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer

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and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2 (c).

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

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

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

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

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

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

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

(P.B. 1978-1997, Rule 1.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008.)

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

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

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

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

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

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

Although this Rule affords the lawyer and client substantial latitude to limit the scope of representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to

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a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

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

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

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

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

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

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

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

(P.B. 1978-1997, Rule 1.3.)

COMMENTARY: A lawyer must pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's work load must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4 (a) (2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Rule 1.4. Communication

(a) A lawyer shall:

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

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

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

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(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

(P.B. 1978-1997, Rule 1.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

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

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a) (4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

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

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

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

Rule 1.5. Fees

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

(8) Whether the fee is fixed or contingent.

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

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where the lawyer will be paid by the court or a state agency.

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

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

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

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

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

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

(2) The total fee is reasonable.

(P.B. 1978-1997. Rule 1.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

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

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

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

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

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

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a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

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

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

Rule 1.6. Confidentiality of Information

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

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

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

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

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

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

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

(d) A lawyer may reveal such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(P.B. 1978-1997, Rule 1.6.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

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

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

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

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

Subsection (c) (1) is a limited exception to the Rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0 (e), that is likely to result in substantial injury to the financial or property interests of another. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client

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can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (c) (1) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2 (d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13 (c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

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

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

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

A lawyer entitled to a fee is permitted by subsection (d) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, subsection (c) (6) permits the lawyer to make such disclosures as are necessary to comply with the law.

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

Subsection (b) requires and subsection (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

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

Acting Competently to Preserve Confidentiality. A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the

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use of a means of communication that would otherwise be prohibited by this Rule.

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

Rule 1.7. Conflict of Interest: Current Clients

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

(a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under subsection (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or the same proceeding before any tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(P.B. 1978-1997, Rule 1.7.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: **General Principles.** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0 (f) and (c).

Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under subsection (a) and obtain their informed consent, confirmed in writing. The clients affected under subsection (a) include both of the clients referred to in subsection (a) (1) and the one or more clients whose representation might be materially limited under subsection (a) (2).

A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of subsection (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Commentary to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Commentary to Rule 1.3 and Scope.

If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of subsection (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9; see also the next paragraph in this Commentary and the first paragraph under the "Special Considerations in Common Representation" heading, below.

Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9 (c).

Identifying Conflicts of Interest: Directly Adverse. Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation. Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of

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action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons. In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts. The lawyer's own interests must not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients; see also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

A lawyer is prohibited from engaging in a sexual relationship with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8 (j).

Interest of Person Paying for a Lawyer's Service. A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8 (f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of subsection (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations. Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in subsection (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under subsection (b) (1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

Subsection (b) (2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

Subsection (b) (3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or the same proceeding before any tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0 [n]), such representation may be precluded by subsection (b) (1).

Informed Consent. Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0 (f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See second and third paragraphs under the "Special Considerations in Common Representation" heading in this Commentary, below (effect of common representation on confidentiality).

Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing. Subsection (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records

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and transmits to the client following an oral consent. See Rule 1.0 (c); see also Rule 1.0 (o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0 (c). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent. A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict. Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of subsection (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future conflicts that might arise and the actual and reasonably foreseeable adverse consequences of those conflicts, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under subsection (b).

Conflicts in Litigation. Subsection (b) (3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a) (2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of subsection (b) are met.

Ordinarily, a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying subsection (a) (1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts. Conflicts of interest under subsections (a) (1) and (a) (2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see second paragraph under "Identifying Conflicts of Interest: Directly Adverse" heading in this Commentary, above. Relevant factors in determining whether there is significant risk of material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See first paragraph under "Identifying Conflicts of Interest: Material Limitation" heading in this Commentary, above.

For example, conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration, the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients

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have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation. In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege.

As to the duty of confidentiality, continued common representation will almost certainly be inappropriate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and the lawyer should inform each client that each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. To that end, the lawyer must, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides prior to disclosure that some matter material to the representation should be disclosed to the lawyer but be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2 (c).

Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients. A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13 (a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Conflict Charged by an Opposing Party. Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Rule 1.8. Conflict of Interest: Prohibited Transactions

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

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

(2) The client or former client is advised in writing that the client or former client should consider

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the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction;

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

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

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

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

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

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

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

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

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

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

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

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

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

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

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

(h) A lawyer shall not:

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

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

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

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

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

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

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

(P.B. 1978-1997, Rule 1.8.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008.)

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

Subsection (a) (1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a) (2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a) (3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0 (f) (definition of informed consent).

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

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

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

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

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

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

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advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

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

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

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

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

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

Aggregate Settlements. Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2 (a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0 (f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

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

Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation. Subsection (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like subsection (e), the general rule, which has its basis in common-law champerty and maintenance, is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in subsection (e). In addition, subsection (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for

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reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of subsection (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interest and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

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

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

Rule 1.9. Duties to Former Clients

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

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9 (c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(P.B. 1978-1997, Rule 1.9.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the interest of the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See last paragraph of this Commentary, below. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental

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permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving between Firms. When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Subsection (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9 (c). Thus, if a lawyer, while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10 (b) for the restrictions on a firm once a lawyer has terminated association with the firm.

Application of subsection (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof rests upon the firm whose disqualification is sought.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9 (c).

Subsection (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under subsections (a) and (b). See Rule 1.0 (f). With regard to the effectiveness of an advance waiver, see Commentary to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

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

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

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

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

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

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

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

(P.B. 1978-1997, Rule 1.10.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

The Rule in subsection (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

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

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

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

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

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

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

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

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9 (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

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

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term ''confidential government information'' means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9; and

(2) Shall not:

(i) Participate in a matter in which the lawyer participated personally and substantially while in

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private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially; except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12 (b) and subject to the conditions stated in Rule 1.12 (b).

(e) As used in this Rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

(P.B. 1978-1997, Rule 1.11.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0 (f) for the definition of informed consent.

Subsections (a) (1), (a) (2) and (d) (1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, subsection (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subsection (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subsections (a) (2) and (d) (2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subsection (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subsection (d). As with subsections (a) (1) and (d) (1), Rule 1.10 is not applicable to the conflicts of interest addressed by these subsections.

This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary, obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subsection (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subsections (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subsection (d), the latter agency is not required to screen the lawyer as subsection (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Commentary to Rule 1.13.

Subsections (b) and (c) contemplate a screening arrangement. See Rule 1.0 (*l*) (requirements for screening procedures). These subsections do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subsection (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subsections (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

For purposes of subsection (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

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

(a) Except as stated in subsection (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally as a judge or other adjudicative officer or law clerk

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to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

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

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(P.B. 1978-1997, Rule 1.12.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0 (b) and (e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subsection (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subsection are met.

Requirements for screening procedures are stated in Rule 1.0 (*l*). Subsection (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

Unless the lawyer reasonably believes that it is not in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in subsection (d), if

(1) Despite the lawyer's efforts in accordance with subsection (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law and

(2) The lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Subsection (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to subsections (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those subsections, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or

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other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(P.B. 1978-1997, Rule 1.13.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: **The Entity as the Client.** An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Commentary apply equally to unincorporated associations. "Other constituents" as used in this Commentary means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Subsection (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0 (g), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

In determining how to proceed under subsection (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the persons involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably believe conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

Subsection (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules. The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 and 4.1. Subsection (c) of this Rule supplements Rule 1.6 (b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6 (b) (1)–(6). Under subsection (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6 (b) (2) and 1.6 (b) (3) may permit the lawyer to disclose confidential information. In such circumstances, Rule 1.2 (d) may also be applicable, in which event, withdrawal from the representation under Rule 1.6 (a) (1) may be required.

Subsection (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in subsection (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to subsection (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these subsections, must proceed as the lawyer reasonably believes

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necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency. The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role. There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation. Subsection (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions. Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.14. Client with Impaired Capacity

(Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) When a client's capacity to make or communicate adequately considered decisions in connection with a representation is impaired, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client is unable to make or communicate adequately considered decisions, is likely to suffer substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a legal representative.

(c) Information relating to the representation of a client with impaired capacity is protected by Rule 1.6. When taking protective action pursuant to subsection (b), the lawyer is impliedly authorized under Rule 1.6 (a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

(P.B. 1978-1997, Rule 1.14.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Jan. 1, 2009.)

COMMENTARY: The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or is unable to make or communicate adequately considered decisions, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with impaired capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation under these rules. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not constitute a waiver of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under subsection (b), must look to the client, and not family members, to make decisions on the client's behalf.

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If a legal representative has already been appointed for the client, the lawyer should look to the representative for decisions on behalf of the client only when such decisions are within the scope of the authority of the legal representative. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2 (d).

Taking Protective Action. If a lawyer reasonably believes that a client is likely to suffer substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in subsection (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then subsection (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

In determining the extent of the client's impaired capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

If a legal representative has not been appointed, the lawyer should consider whether appointment of a legal representative is necessary to protect the client's interests. In addition, rules of procedure in litigation sometimes provide that minors or persons with impaired capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition. Disclosure of the client's impaired capacity could adversely affect the client's interests. For example, raising the question of impaired capacity could, in some circumstances, lead to proceedings for involuntary conservatorship and/or commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so by these rules or other law, the lawyer may not disclose such information. When taking protective action pursuant to subsection (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, subsection (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance. In an emergency where the health, safety or a financial interest of a person with impaired capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

A lawyer who acts on behalf of a person with impaired capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.15. Safekeeping Property

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

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

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

(3) "Federal Funds Target Rate" means the target level for the federal funds rate set by the

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Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term ''Federal Funds Target Rate'' means the upper limit of such range.

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

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

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

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

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

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

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

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

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the

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expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

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

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

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

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

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

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

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

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

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

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable

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fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

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

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

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

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

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

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

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

(A) Establishing that all funds the organization might receive pursuant to subsection (h) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) With respect to client trust accounts required by this Rule:

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

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

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

(k) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

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

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

(P.B. 1978-1997, Rule 1.15.) (Amended June 26, 2006, to take effect Sept. 1, 2006; amended June 29, 2007, to take effect Sept. 1, 2007; amended June 30, 2008, to take effect Aug. 1, 2008; amended June 21, 2010, to take effect Aug. 1, 2010; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, subsections (i) through (m) were added.

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

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

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account

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and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

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

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

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

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

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

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

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (i) (8).

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

The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection (i) (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in subdivisions (1) through (9) of subsection (h) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under subdivision (10) of subsection (h) because it is ''reasonably related'' to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this subdivision include correspondence between the client and lawyer relating to a

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disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

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

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

The requirements in subdivision (2) of subsection (j) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

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

Subsections (*l*) and (m) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTES: The above revisions are based on the ABA Model Rules for Client Trust Account Records.

Rule 1.16. Declining or Terminating Representation

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

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

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

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

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

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

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writing to the client before or within a reasonable time after the termination of the representation.

(P.B. 1978-1997, Rule 1.16.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

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

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

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself or herself.

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

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

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

Rule 1.17. Sale of Law Practice

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

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

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

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

(1) the proposed sale;

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

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

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

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

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

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

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

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

This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another

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lawyer as would otherwise be permitted by Rule 1.5 (e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

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

Client Confidences, Consent and Notice. Negotiations between a seller and a prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and must be told that the decision to consent or make other arrangements must be made within ninety days. If nothing is heard from the client within that time, consent to the sale is presumed.

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

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

Fee Arrangements between Client and Purchaser. The sale may not be financed by increases in fees charged exclusively to the clients of the purchased practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

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

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

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

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

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

Rule 1.18. Duties to Prospective Client

(a) A person who discusses or communicates with a lawyer concerning the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to subsection (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in subsection (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in subsection (d).

(d) When the lawyer has received disqualifying information as defined in subsection (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably

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necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client.

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

COMMENTARY: Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

Not all persons who transmit information to a lawyer are entitled to protection under this Rule. A person who transmits information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of subsection (a).

It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Subsection (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0 (f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

Even in the absence of an agreement, under subsection (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

Under subsection (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under subsection (d) (1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of subsection (d) (2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0 (*l*) (requirements for screening procedures).

Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

(P.B. 1978-1997, Rule 2.1.)

COMMENTARY: **Scope of Advice.** A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice. In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation.

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A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 2.2. Intermediary

[Repealed as of Jan. 1, 2007.]

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

(P.B. 1978-1997, Rule 2.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: **Definition.** An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. A legal evaluation of a client should also be distinguished from a report by counsel for an insured to the insured's carrier on the status of the matter that is the subject of representation, provided the report does not contain matter that is detrimental to the client's relationship with the insurance carrier. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client. When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent. Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6 (a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6 (a) and 1.0 (f).

Financial Auditors' Requests for Information. When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4. Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer

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is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

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

COMMENTARY: Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subsection (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege as well as the inapplicability of the duty of confidentiality. The extent of disclosure required under this subsection will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0 [n]), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(P.B. 1978-1997, Rule 3.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(P.B. 1978-1997, Rule 3.2.)

COMMENTARY: Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

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Rule 3.3. Candor toward the Tribunal

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in subsections (a) and (b) continue at least to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) When, prior to judgment, a lawyer becomes aware of discussion or conduct by a juror which violates the trial court's instructions to the jury, the lawyer shall promptly report that discussion or conduct to the trial judge.

(P.B. 1978-1997, Rule 3.3.)

COMMENTARY: This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0 (n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subsection (a) (3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2 (d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2 (d), see the Commentary to that Rule. See also the Commentary to Rule 8.4 (2).

Legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subsection (a) (2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence. Subsection (a) (3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness' testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in subsections (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements.

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0 (g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony

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will be false, the lawyer must honor the client's decision to testify.

Remedial Measures. Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done.

The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2 (d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process. Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, subsection (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding. Nothing in Rule 3.3 (e) is meant to limit a lawyer's obligation to take appropriate action after judgment has entered.

Duration of Obligation. A practical time limit on the obligation to rectify false evidence or false statements of fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. In criminal and juvenile delinquency matters, the duty to correct a newly discovered and material falsehood continues until the defendant or delinquent is discharged from custody or released from judicial supervision, whichever occurs later. The lawyer shall notify the tribunal that false evidence or false statements of fact were made.

Ex Parte Proceedings. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal. Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16 (a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16 (b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(4) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(5) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(6) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(A) The person is a relative or an employee or other agent of a client; and

(B) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

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(7) Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

(P.B. 1978-1997, Rule 3.4.)

COMMENTARY: The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Subdivision (1) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

With regard to subdivision (2), it is not improper to pay a witness' expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Subdivision (6) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

Rule 3.5. Impartiality and Decorum

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

A lawyer shall not:

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

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

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

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

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

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

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

(P.B. 1978-1997, Rule 3.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008.)

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

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

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

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

Rule 3.6. Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding subsection (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subsection shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer associated in a firm or government agency with a lawyer subject to subsection (a) shall make a statement prohibited by subsection (a).

(P.B. 1978-1997, Rule 3.6.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: (1) It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also

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has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberations over questions of public policy.

(2) Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4 (3) requires compliance with such Rules.

(3) The Rule sets forth a basic general prohibition against a lawyer making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

(4) Certain subjects would not ordinarily be considered to present a substantial likelihood of material prejudice, such as:

(a) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(b) information contained in a public record;

(c) that an investigation of the matter is in progress;

(d) the scheduling or result of any step in litigation;

(e) a request for assistance in obtaining evidence and information necessary thereto;

(f) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(g) in a criminal case: in addition to subparagraphs (a) through (f):

(i) identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(5) There are, on the other hand, certain subjects which are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(e) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(6) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudical comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

(7) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

(8) See Rule 3.8 (5) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

(P.B. 1978-1997, Rule 3.7.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule. The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, subsection (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in subsections (a) (1) through (a) (3). Subsection (a) (1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subsection (a) (2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover,

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in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these two exceptions, subsection (a) (3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, subsection (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest. In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by subsection (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by subsection (a) (3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0 (c) for the definition of "confirmed in writing" and Rule 1.0 (f) for the definition of "informed consent."

Subsection (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by subsection (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(4) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

(P.B. 1978-1997, Rule 3.8.)

COMMENTARY: A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also Rule 3.3 (d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

Subdivision (3) does not apply to an accused appearing as a self-represented party with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (4) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3 (a) through (c), 3.4 (1) through (3), and 3.5.

(P.B. 1978-1997, Rule 3.9.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity

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of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3 (a) through (c), 3.4 (a) through (c) and 3.5.

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(1) Make a false statement of material fact or law to a third person; or

(2) Fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

(P.B. 1978-1997, Rule 4.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: **Misrepresentation.** A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact. This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client. Under Rule 1.2 (d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Subdivision (2) states a specific application of the principle set forth in Rule 1.2 (d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under subdivision (2) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(P.B. 1978-1997, Rule 4.2.)

COMMENTARY: This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

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

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

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than

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the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(P.B. 1978-1997, Rule 4.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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

The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

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

Rule 4.4. Respect for Rights of Third Persons

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

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

(P.B. 1978-1997, Rule 4.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subsection (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

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

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(P.B. 1978-1997, Rule 5.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Subsection (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0 (d). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Subsection (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Subsection (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subsection (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be

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necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Subsection (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4 (1).

Subsection (c) (2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of subsection (b) on the part of the supervisory lawyer even though it does not entail a violation of subsection (c) because there was no direction, ratification or knowledge of the violation.

Apart from this Rule and Rule 8.4 (1), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2 (a).

Rule 5.2. Responsibilities of a Subordinate Lawyer

A lawyer is bound by the Rules of Professional Conduct notwithstanding that that lawyer acted at the direction of another person.

(P.B. 1978-1997, Rule 5.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(P.B. 1978-1997, Rule 5.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Subdivision (1) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See first paragraph of Commentary to Rule 5.1. Subdivision (2) applies to lawyers who have supervisory authority over the work of a nonlawyer. Subdivision (3) specifies the circumstances in which a lawyer

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is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price; and

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(P.B. 1978-1997, Rule 5.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8 (f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Rule 5.5. Unauthorized Practice of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

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

Subdivision (c) (3) requires that the services be with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is admitted to practice. A significant aspect of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities and the resulting legal issues involve multiple jurisdictions. Subdivision (c) (4) requires that the services provided in this jurisdiction in which the lawyer is not admitted to practice be for (1) an existing client, i.e., one with whom the lawyer has a previous relationship and not arising solely out of a Connecticut-based matter and (2) arise out of or be substantially related to the legal services provided to that client in a jurisdiction in which the lawyer is admitted to practice. Without both, the lawyer is prohibited from practicing law in the jurisdiction in which the lawyer is not admitted to practice.

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

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

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

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

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(1) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

(P.B. 1978-1997, Rule 5.6.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Subdivision (1) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Subdivision (2) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

PUBLIC SERVICE

Rule 6.1. Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(P.B. 1978-1997, Rule 6.1.)

COMMENTARY: The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services. Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services recommended by this Rule.

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

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(1) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(2) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(3) The client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(P.B. 1978-1997, Rule 6.2.)

COMMENTARY: A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel. For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(1) If participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(2) Where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(P.B. 1978-1997, Rule 6.3.)

COMMENTARY: Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

(P.B. 1978-1997, Rule 6.4.)

COMMENTARY: Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2 (b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9 (a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter.

(b) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel.

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Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9 (c), are applicable to the limited representation.

(c) Except as provided in subsection (a) (2), Rule 1.10 is inapplicable to a representation governed by this Rule.

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

COMMENTARY: Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice only clinics or self-represented party counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, subsection (a) requires compliance with Rules 1.7 or 1.9 (a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, subsection (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by subsection (a) (2). Subsection (a) (2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a). By virtue of subsection (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 (a) and 1.10 become applicable.

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(P.B. 1978-1997, Rule 7.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

Statements, even if literally true, that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

See also Rule 8.4 (5) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 7.2. Advertising

(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) (1) A copy or recording of an advertisement or communication shall be kept for three years after its last dissemination along with a record of when and where it was used. An electronic advertisement or communication shall be copied once every three months on a compact disc or similar technology and kept for three years after its last dissemination.

(2) A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any advertisement or communication made pursuant to this Rule shall include the name of at

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least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

(e) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media.

(f) Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee and, if broadcast, shall appear for the same duration as the information regarding the lawyer's fee. If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(i) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of Rule 7.3, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail addresses and domain names, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(10) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(P.B. 1978-1997, Rule 7.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; whether and to what extent the client will be responsible for any court costs and expenses of litigation; lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

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Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising. Subsection (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer. A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and address client complaints; and [iv] do not refer prospective clients to lawyers who own, operate or are employed by the referral service).

A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

Rule 7.3. Personal Contact with Prospective Clients

(a) A lawyer shall not initiate personal, live telephone, or real-time electronic contact, including telemarketing contact, with a prospective client for the purpose of obtaining professional employment, except in the following circumstances:

(1) If the prospective client is a close friend, relative, former client or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable legal services organization;

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization;

(4) If the prospective client is a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

(b) A lawyer shall not contact, or send, a written or electronic communication to, a prospective client for the purpose of obtaining professional employment if:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer;

(2) It has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(3) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(4) The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter; or

(5) The written or electronic communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than forty days prior to the mailing of the communication.

(c) Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled ''Advertising Material'' in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any, and at the beginning and ending of any communication by audio or video recording or other electronic means. If the written communication is in the form of a self-mailing brochure or pamphlet, the label ''Advertising Material'' in red ink shall appear on the address panel of the brochure or pamphlet.

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Brochures solicited by clients or prospective clients need not contain such mark. No reference shall be made in the communication to the communication having any kind of approval from the Connecticut bar. Written communications mailed to prospective clients shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.

(d) The first sentence of any written communication concerning a specific matter shall be: "If you have already retained a lawyer for this matter, please disregard this letter."

(e) A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(f) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "**Sample**" in bold letters in red ink in a type size one size larger than the largest type used in the contract and the words "**Do Not Sign**" in bold letters shall appear on the client signature line.

(g) Written communications shall be on letter-sized paper rather than legal-sized paper and shall not be made to resemble legal pleadings or other legal documents. This provision does not preclude the mailing of brochures and pamphlets.

(h) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the client.

(i) Notwithstanding the prohibitions in subsection (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

(P.B. 1978-1997, Rule 7.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Unrestricted solicitation involves definite social harms. Among these are harassment, overreaching, provocation of nuisance litigation and schemes for systematic fabrication of claims, all of which were experienced prior to adoption of restrictions on solicitation. Measures reasonably designed to suppress these harms are constitutionally legitimate. At the same time, measures going beyond realization of such objectives would appear to be invalid under relevant decisions of the United States Supreme Court.

The use of general advertising and written, recorded and electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone, or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic conversations between a lawyer to a prospective client can be disputed and are not subject to a third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

In determining whether a contact is permissible under Rule 7.3 (b), it is relevant to consider the time and circumstances under which the contact is initiated. For example, a person undergoing active medical treatment for traumatic injury is unlikely to be in an emotional state in which reasonable judgment about employing a lawyer can be exercised. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3 (b).

The requirement in Rule 7.3 (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2. Subsection (i) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan.

TECHNICAL CHANGE: Where capitalization was used as a means for showing emphasis in a rule, it was replaced in 2012 with bold font, and corresponding changes were made to any language that previously indicated the usage of uppercase letters.

Rule 7.4. Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

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(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

(P.B. 1978-1997, Rule 7.4.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

COMMENTARY: This Rule permits a lawyer to indicate fields of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. A lawyer may indicate that the lawyer "concentrates in," "focuses on," or that the practice is "limited to" particular fields of practice as long as the statements are not false or misleading in violation of Rule 7.1. However, the lawyer may not use the terms "specialist," "certified," "board-certified," "expert" or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A.

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

Rule 7.4A. Certification as Specialist

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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National Labor Relations Board, analogous state boards, federal and state courts, and arbitrators.

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

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

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

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

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

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

(P.B. 1978-1997, Rule 7.4A.) (Amended June 20, 2005, to take effect Jan. 1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

Rule 7.4B. Legal Specialization Screening Committee

(a) The chief justice, upon recommendation of the Rules Committee of the superior court, shall appoint a committee of five members of the bar of this state which shall be known as the ''Legal Specialization Screening Committee.'' The Rules Committee of the superior court shall designate one appointee as chair of the Legal Specialization Screening Committee and another as vice chair to act in the absence or disability of the chair.

(b) When the committee is first selected, two of its members shall be appointed for a term of one year, two members for a term of two years, and one member for a term of three years, and thereafter all regular terms shall be three years. Terms shall commence on July 1. In the event that a vacancy arises in this position before the end of a term, the Chief Justice, upon recommendation of the Rules Committee of the superior court, shall appoint a member of the bar of this state to fill the vacancy for the balance of the term. The Legal Specialization Screening Committee shall act only with a concurrence of a majority of its members, provided, however, that three members shall constitute a quorum.

(c) The Legal Specialization Screening Committee shall have the power and duty to:

(1) Receive applications from boards or other entities for authority to certify lawyers practicing in this state as being specialists in a certain area or areas of law.

(2) Investigate each applicant to determine whether it meets the criteria set forth in Rule 7.4A (a).

(3) Submit to the Rules Committee of the superior court a written recommendation, with reasons therefor, for approval or disapproval of each application, or for the termination of any prior approval granted by the Rules Committee.

(4) Adopt regulations and develop forms necessary to carry out its duties under this section. The regulations and forms shall not become effective until first approved by the Rules Committee of the superior court.

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(5) Consult with such persons deemed by the committee to be knowledgeable in the fields of law to assist it in carrying out its duties.

(P.B. 1978-1997, Rule 7.4B.)

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

Any board or entity seeking the approval of the Rules Committee of the superior court for authority to certify lawyers practicing in this state as being specialists in a certain field or fields of law as set forth in Rule 7.4A (e), shall file an original and six copies of its application with the Legal Specialization Screening Committee pursuant to Rule 7.4B.

(P.B. 1978-1997, Rule 7.4C.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(P.B. 1978-1997, Rule 7.5.)

COMMENTARY: A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." Although the United States supreme court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

With regard to subsection (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) Knowingly make a false statement of material fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(P.B. 1978-1997, Rule 8.1.)

COMMENTARY: The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Subdivision (2) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This Rule is subject to the provisions of the fifth amendment to the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

(P.B. 1978-1997, Rule 8.2.)

COMMENTARY: Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office

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and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. A lawyer may not condition settlement of a civil dispute involving allegations of improprieties on the part of a lawyer on an agreement that the subject misconduct not be reported to the appropriate disciplinary authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or General Statutes § 51-81d (f) or obtained while serving as a member of a bar association ethics committee or the Judicial Branch Committee on Judicial Ethics.

(P.B. 1978-1997, Rule 8.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Aug. 1, 2008.)

COMMENTARY: Self-regulation of the legal profession requires that members of the profession initiate a disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subsections (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(P.B. 1978-1997, Rule 8.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (1), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of

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minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4).

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2 (d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust, such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Rule 8.5. Disciplinary Authority; Choice of Law

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

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) For any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(P.B. 1978-1997, Rule 8.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: **Disciplinary Authority.** It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, ABA *Model Rules for Lawyer Disciplinary Enforcement.* A lawyer who is admitted pursuant to Practice Book Sections 2-16 or 2-17 et seq. is subject to the disciplinary authority of this jurisdiction under Rule 8.5 (a) and appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law. A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

Subsection (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

Subsection (b) (1) provides that, as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provides otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, subsection (b) (2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

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CODE OF JUDICIAL CONDUCT

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For the Code of Judicial Conduct as it read prior to 2011, see editions of the Practice Book prior to the 2011 edition.

AMENDMENT NOTE: This is a major rewrite of the Code of Judicial Conduct, adopted by the judges of the superior court on June 21, 2010, the judges of the appellate court on July 15, 2010, and the justices of the supreme court on July 1, 2010, to take effect January 1, 2011. It is based on the Model Code adopted by the ABA in 2007. Our prior Code, which was adopted with an effective date of October 1, 1974, was based on the Model Code adopted by the ABA in 1972. In the early 1990s, the ABA adopted a revised Model Code; however, the major changes in the Model Code were not adopted by the judges of Connecticut.

PREAMBLE

(1) An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based on the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

(2) Judges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

(3) The Code of Judicial Conduct establishes standards for the ethical conduct of judges in matters affecting the performance of their judicial duties and the fair and efficient operation of the courts or other tribunals on which they serve. Although it is not intended as an exhaustive guide for the conduct of judges, who must be guided in their professional and personal lives by general ethical standards as well as by the law, which includes this Code, it is intended to assist judges in maintaining the highest standards of professional and personal conduct, as it affects their judicial work.

SCOPE

(1) The Code of Judicial Conduct consists of four Canons, numbered Rules[1] under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge.

(2) The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined hereunder only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as ‘‘may’’ or ‘‘should,’’ the conduct being addressed is committed to the sound personal and professional discretion of the judge in question, and no disciplinary action shall be taken for action or inaction within the bounds of such discretion.

(3) The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term ‘‘must,’’ it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question,

[1] References herein to numbered Rules are to the Rules of this Code, unless stated otherwise.

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properly understood, is obligatory as to the conduct at issue.

(4) Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

(5) The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted in such a way as to impinge on the essential independence of judges in making judicial decisions.

(6) Although these Rules are binding and enforceable, it is not contemplated that every transgression will necessarily result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules and should depend on factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity on the judicial system or other persons.

(7) The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

As used in this Code, the following definitions shall apply:

''Appropriate authority'' means the authority having responsibility for taking corrective action in connection with the conduct or violation to be reported under Rules 2.14 and 2.15.

''Confidential'' means information that is not available to the public. Confidential information may include, but is not limited to, information that is sealed by statute, rule or court order or lodged with the court or communicated in camera. See Rule 3.5.

''Contribution'' means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 3.7, and 4.1.

''De minimis,'' in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

''Domestic partner'' means a person with whom another person maintains a household and an intimate relationship, other than a spouse. See Rules 2.11, 2.13, 3.13, and 3.14.

''Economic interest'' means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge. See Rules 1.3, 2.11, and 3.2.

''Fiduciary'' includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

''Impartial,'' ''impartiality,'' and ''impartially'' mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

''Impending matter'' is any matter a judge knows is imminent or reasonably expects to be commenced in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

''Impropriety'' includes conduct that violates the law or provisions of this Code and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

''Independence'' means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

''Integrity'' means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4 and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

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"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.2, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, decisional law, and this Code. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.2, 3.4, 3.7, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, and 4.3.

"Member of the judge's family" means any relative of a judge related by consanguinity within the third degree as determined by the common law, a spouse or domestic partner or an individual related to a spouse or domestic partner within the third degree as so determined, including an individual in an adoptive relationship within the third degree. See Rules 3.5, 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any member of the judge's family or other person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections, partisan elections and nonpartisan elections. See Rule 4.3.

"Spouse" means a person to whom one is legally married or joined in a civil union. See Rules 2.11, 3.13, and 3.14.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

APPLICATION

The Application section establishes when and to whom the various Rules apply.

I. APPLICABILITY OF THIS CODE

(a) Except as provided in subsection (b), the provisions of the Code apply to all judges of the superior court, senior judges, judge trial referees, state referees, family support magistrates appointed pursuant to General Statutes § 46b-231 (f), and family support magistrate referees.

(b) State referees and family support magistrate referees are not required to comply with Rules 3.4 and 3.8.

II. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT: If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

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CODE OF JUDICIAL CONDUCT

Canon
1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule
1.1. Compliance with the Law
1.2. Promoting Confidence in the Judiciary
1.3. Avoiding Abuse of the Prestige of Judicial Office

Canon
2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule
2.1. Giving Precedence to the Duties of Judicial Office
2.2. Impartiality and Fairness
2.3. Bias, Prejudice, and Harassment
2.4. External Influences on Judicial Conduct or Judgment
2.5. Competence, Diligence, and Cooperation
2.6. Ensuring the Right to Be Heard
2.7. Responsibility to Decide
2.8. Decorum, Demeanor, and Communication with Jurors
2.9. Ex Parte Communications
2.10. Judicial Statements on Pending and Impending Cases
2.11. Disqualification
2.12. Supervisory Duties
2.13. Administrative Appointments
2.14. Disability and Impairment
2.15. Responding to Judicial and Lawyer Misconduct
2.16. Cooperation with Disciplinary Authorities

Canon
3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule
3.1. Extrajudicial Activities in General
3.2. Appearances before Governmental Bodies and Consultation with Government Officials
3.3. Testifying as a Character Witness
3.4. Appointments to Governmental Positions
3.5. Use of Confidential Information
3.6. Affiliation with Discriminatory Organizations
3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities
3.8. Appointments to Fiduciary Positions
3.9. Service as Arbitrator or Mediator
3.10. Practice of Law
3.11. Financial, Business, or Remunerative Activities
3.12. Compensation for Extrajudicial Activities
3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value
3.14. Reimbursement of Expenses and Waivers of Fees or Charges
3.15. Reporting Requirements

Canon
4. A judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rule
4.1. Political Activities of Judges in General
4.2. Activities of Judges as Candidates for Reappointment or Elevation to Higher Judicial Office
4.3. Activities of Judges Who Become Candidates for Public Office

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Canon 1. A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and shall avoid Impropriety and the Appearance of Impropriety.

Rule 1.1. Compliance with the Law

A judge shall comply with the law.

(Effective Jan. 1, 2011.)

COMMENT: This rule deals with the judge's personal conduct. A judge's professional conduct in enforcing the law is covered by Rule 2.2. When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule.

Rule 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

(Effective Jan. 1, 2011.)

COMMENT: (1) Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety as defined in this Rule. This principle applies to both the professional and personal conduct of a judge.

(2) A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.

(3) Conduct that compromises the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

(4) Judges may initiate or participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

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(5) A judge may initiate or participate in community activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.

(Effective Jan. 1, 2011.)

COMMENT: (1) It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

(2) A judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

(3) Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

(4) Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Code or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

Canon 2. A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.

Rule 2.1. Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

(Effective Jan. 1, 2011.)

COMMENT: (1) To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities in such a way as to minimize the risk of conflicts that would result in disqualification. A judge's personal extrajudicial activities shall not be conducted in such a way as to interfere unduly with the duties of judicial office. See Canon 3.

(2) Although it is not a duty of judicial office, judges are encouraged to initiate or participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2. Impartiality and Fairness

A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

(Effective Jan. 1, 2011.)

COMMENT: (1) To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

(2) Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

(3) When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule.

(4) It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Rule 2.3. Bias, Prejudice, and Harassment

(a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(b) A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice or engage in harassment including, but not limited to, bias, prejudice, or harassment based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation and shall not condone such conduct by court staff, court officials, or others subject to the judge's direction and control.

(c) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice or engaging in harassment, based on attributes including, but not limited to, race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, lawyers, or others.

(d) The restrictions of subsections (b) and (c) do not preclude judges or lawyers from making legitimate reference to the listed factors or similar factors when they are relevant to an issue in a proceeding.

(Effective Jan. 1, 2011.)

COMMENT: (1) A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

(2) Examples of manifestations of bias or prejudice include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based on stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and criminality; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

(3) Harassment, as referred to in subsections (b) and (c), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

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(4) Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4. External Influences on Judicial Conduct or Judgment

(a) A judge shall not be swayed in the performance of the judge's judicial duties by public clamor or fear of criticism.

(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge's judicial conduct or judgment.

(Effective Jan. 1, 2011.)

COMMENT: An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. The integrity of judicial decision making is undermined if it is based in whole or in part on inappropriate outside influences.

Rule 2.5. Competence, Diligence, and Cooperation

(a) A judge shall perform judicial and administrative duties competently and diligently.

(b) A judge shall cooperate with other judges and court officials in the administration of court business.

(Effective Jan. 1, 2011.)

COMMENT: (1) Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

(2) A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

(3) Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

(4) In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6. Ensuring the Right to Be Heard

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(b) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

(Effective Jan. 1, 2011.)

COMMENT: (1) The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

(2) The judge plays an important role in overseeing the settlement of disputes but should be careful that efforts to further settlements do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding on appropriate settlement practices for a case are: (a) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (b) whether the parties and their counsel are relatively sophisticated in legal matters, (c) whether the case will be tried by the judge or a jury, (d) whether the parties participate with their counsel in settlement discussions, (e) whether any parties are unrepresented by counsel, and (f) whether the matter is civil or criminal.

(3) Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11 (a) (1).

Rule 2.7. Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

(Effective Jan. 1, 2011.)

COMMENT: Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties and a proper concern for the burdens that may be imposed on the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Rule 2.8. Decorum, Demeanor, and Communication with Jurors

(a) A judge shall require order and decorum in proceedings before the court.

(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(c) Although a judge may thank jurors for their willingness to serve, a judge shall not commend or criticize jurors with respect to their verdict in a

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case other than in an instruction, order or opinion in a proceeding, if appropriate.

(Effective Jan. 1, 2011.)

COMMENT: (1) The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(2) Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(3) A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but shall be careful to avoid discussion of the merits of the case.

(4) This rule does not purport to prevent a judge from returning a jury for further deliberations if its verdict is insufficient in amount, inaccurate, inconsistent with the court's instructions or otherwise improper in form or substance.

Rule 2.9. Ex Parte Communications

(a) A judge shall not initiate, permit, or consider ex parte communications or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and to respond to the notice and to the written advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing on the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) A judge serving as a fact finder shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

(Effective Jan. 1, 2011.)

COMMENT: (1) To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(2) Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

(3) The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

(4) A judge may initiate, permit, or consider ex parte communications expressly authorized by law.

(5) A judge may consult with other judges on pending matters but must avoid ex parte discussions of a case with judges who are disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.

(6) The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic. Nothing in this Rule is intended to relieve a judge of the independent duty to investigate allegations of juror misconduct. See *State* v. *Santiago*, 245 Conn. 301, 715 A.2d 1 (1998).

(7) A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of subsection (a) (2).

Rule 2.10. Judicial Statements on Pending and Impending Cases

(a) A judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(b) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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(c) A judge may consult with other judges or court staff, court officials, and others subject to the judge's direction and control whose function is to aid the judge in carrying out the judge's adjudicative responsibilities. However, a judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by subsections (a) and (b).

(d) Notwithstanding the restrictions in subsection (a), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(Effective Jan. 1, 2011.)

COMMENT: (1) This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

(2) This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

Rule 2.11. Disqualification

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) acting as a lawyer in the proceeding;

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(C) was a material witness concerning the matter.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a) (1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding.

(d) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(e) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council. When the judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge and shall thereafter proceed in accordance with Practice Book Section 1-22 (b).

(f) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be

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the sole basis for recusal by the judge in lawsuits where the attorney general appears.

(Effective Jan. 1, 2011.)

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a) (1) through (5) apply. In many jurisdictions, the term ''recusal'' is used interchangeably with the term ''disqualification.''

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required.

(5) The Rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(6) Subsection (d) is intended to make clear that the restrictions imposed by *Dacey* v. *Connecticut Bar Assn.*, 184 Conn. 21, 441 A.2d 49 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

AMENDMENT NOTE: Comment (7) to Rule 2.11 was adopted by the judges of the appellate court on July 15, 2010, and the justices of the supreme court on July 1, 2010. It was not, however, adopted by the judges of the superior court.

(7) A justice of the supreme court or a judge of the appellate court is not disqualified from sitting on a proceeding merely because he or she previously practiced law with the law firm or attorney who filed an amicus brief in the matter, or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney.

Rule 2.12. Supervisory Duties

(a) A judge shall take reasonable measures to ensure that court staff, court officials, and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code.

(b) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

(Effective Jan. 1, 2011.)

COMMENT: (1) A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

(2) Public confidence in the judicial system depends on timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13. Administrative Appointments

(a) In making or facilitating administrative appointments, a judge:

(1) shall act impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(b) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(Effective Jan. 1, 2011.)

COMMENT: (1) Appointees of a judge include, but are not limited to, assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and judicial marshals. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by subsection (a).

(2) Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

Rule 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol or by a mental, emotional, or physical condition, shall take appropriate action, which may include notifying appropriate judicial authorities or a confidential referral to a lawyer or judicial assistance program.

(Effective Jan. 1, 2011.)

COMMENT: (1) ''Appropriate action'' means action intended and reasonably likely to help the judge or lawyer in question address the problem. Depending on the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

(2) Taking or initiating corrective action by way of notifying judicial administrators or referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending on the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

(3) A client security fund has been established to promote public confidence in the judicial system and the integrity of the legal profession by, among other things, a lawyers assistance program providing crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or

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gambling problems or who have behavioral health problems. See Practice Book Section 2-68.

Rule 2.15. Responding to Judicial and Lawyer Misconduct

(a) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall take appropriate action including informing the appropriate authority.

(b) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall take appropriate action including informing the appropriate authority.

(c) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(d) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(e) A judge is not required to disclose information gained by the judge while serving as a member of a committee that renders assistance to ill or impaired judges or lawyers or while serving as a member of a bar association professional ethics committee or the Judicial Branch Committee on Judicial Ethics.

(Effective Jan. 1, 2011.)

COMMENT: (1) Taking appropriate action under the circumstances to address known misconduct is a judge's obligation. Except as otherwise provided in subsection (e), subsections (a) and (b) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

(2) A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under subsections (c) and (d), except as otherwise provided in subsection (e). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body.

(3) Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include, but are not limited to, communicating directly with the lawyer who may have committed the violation or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16. Cooperation with Disciplinary Authorities

(a) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(b) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

(Effective Jan. 1, 2011.)

COMMENT: Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in subsection (a), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Canon 3. A Judge Shall Conduct the Judge's Personal and Extrajudicial Activities to Minimize the Risk of Conflict with the Obligations of Judicial Office.

Rule 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law. However, when engaging in extrajudicial activities, a judge shall not:

(1) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(2) participate in activities that will lead to frequent disqualification of the judge;

(3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(4) engage in conduct that would appear to a reasonable person to be coercive; or

(5) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

(Effective Jan. 1, 2011.)

COMMENT: (1) To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

(2) Participation in both law related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

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(3) Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based on their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices unlawful discrimination. See Rule 3.6.

(4) While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending on the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7 (a), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

Rule 3.2. Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(1) in connection with matters concerning the law, the legal system, or the administration of justice;

(2) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(3) when the judge is acting in a matter involving the judge's legal or economic interests or when the judge is acting in a fiduciary capacity.

(Effective Jan. 1, 2011.)

COMMENT: (1) Judges possess special expertise in matters of law, the legal system, and the administration of justice and may properly share that expertise with governmental bodies and executive or legislative branch officials.

(2) In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests; Rule 2.10, governing public comment on pending and impending matters; and Rule 3.1 (3), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(3) In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, a judge should state affirmatively that the judge is not acting in his or her official capacity and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3. Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

(Effective Jan. 1, 2011.)

COMMENT: A judge who, without being duly summoned, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Rule 3.4. Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

(Effective Jan. 1, 2011.)

COMMENT: (1) Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

(2) A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

(3) This rule is intended to prohibit a judge from participation in governmental committees, boards, commissions or other governmental positions that make or implement public policy unless they concern the law, the legal system or the administration of justice.

Rule 3.5. Use of Confidential Information

A judge shall not intentionally disclose or use confidential information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties unless the judge is acting on information necessary to protect the health or safety of the judge, a member of the judge's family, court personnel, a judicial officer or any other person if consistent with other provisions of this Code.

(Effective Jan. 1, 2011.)

COMMENT: In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

Rule 3.6. Affiliation with Discriminatory Organizations

(a) A judge shall not hold membership in any organization that practices unlawful discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, physical or mental disability, or sexual orientation. When a judge learns that an organization to which the judge belongs engages

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in unlawful discrimination, the judge must resign immediately from the organization.

(b) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices unlawful discrimination on one or more of the bases identified in subsection (a). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

(Effective Jan. 1, 2011.)

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(a) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit including, but not limited to, the following activities:

(1) assisting such an organization or entity in planning related to fund-raising and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge may encourage lawyers to provide pro bono publico legal services.

(Effective Jan. 1, 2011.)

COMMENT: (1) The activities permitted by subsection (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law related, charitable, and other organizations.

(2) Even for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely on a judge's independence, integrity, and impartiality.

(3) Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of subsection (a) (4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

(4) Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

(5) In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services if, in doing so, the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Rule 3.8. Appointments to Fiduciary Positions

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

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(c) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable but in no event later than one year after becoming a judge.

(Effective Jan. 1, 2011.)

COMMENT: A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Rule 3.9. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

(Effective Jan. 1, 2011.)

COMMENT: This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of official judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Rule 3.10. Practice of Law

Except as provided herein, a judge shall not practice law. A judge may act as a self-represented party and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but is prohibited from serving as the family member's lawyer in any forum.

(Effective Jan. 1, 2011.)

COMMENT: A judge may act as a self-represented party in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Rule 3.11. Financial, Business, or Remunerative Activities

(a) A judge may hold and manage investments of the judge and members of the judge's family.

(b) A judge shall not serve as an officer, director, manager, general partner or advisor of any business entity except for:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) A judge shall not engage in financial activities permitted under subsections (a) and (b) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(Effective Jan. 1, 2011.)

COMMENT: (1) Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or to appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

(2) As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Rule 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(Effective Jan. 1, 2011.)

COMMENT: (1) A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

(2) Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Rule 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(b) Unless otherwise prohibited by law, or by subsection (a), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or

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interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based on the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household but that incidentally benefit the judge.

(c) Unless otherwise prohibited by law or by subsection (a), a judge may accept the following items and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(A) an event associated with a bar related function or other activity relating to the law, the legal system, or the administration of justice; or

(B) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

(Effective Jan. 1, 2011.)

COMMENT: (1) Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions on the acceptance of such benefits, according to the magnitude of the risk. Subsection (b) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under subsection (a) from accepting the gift, or required under subsection (c) to publicly report it.

(2) Gift giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Subsection (b) (2) places no restrictions on the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances and does not require public reporting.

(3) Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based on longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

(4) Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed on judges and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

Rule 3.14. Reimbursement of Expenses and Waivers of Fees or Charges

(a) Unless otherwise prohibited by Rules 3.1 and 3.13 (a) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge or a reasonable allowance therefor and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(c) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

(Effective Jan. 1, 2011.)

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COMMENT: (1) Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

(2) Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based on an assessment of all the circumstances. Per diem allowances shall be reasonably related to the actual costs incurred. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

(3) A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15. Reporting Requirements

(a) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13 (c), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $250; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14 (a), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $250.

(b) When public reporting is required by subsection (a), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(c) The public report required by subsection (a) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.

(d) Reports made in compliance with this Rule shall be filed as public documents in the office of the chief court administrator or other office designated by law.

(Effective Jan. 1, 2011.)

Canon 4. A Judge Shall Not Engage in Political or Campaign Activity that is Inconsistent with the Independence, Integrity, or Impartiality of the Judiciary.

Rule 4.1. Political Activities of Judges in General

(a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) seek, accept, or use endorsements from a political organization;

(7) knowingly, or with reckless disregard for the truth, make any false or misleading statement in connection with the appointment or reappointment process;

(8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are

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inconsistent with the impartial performance of the adjudicative duties of judicial office.

(b) A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under subsection (a).

(c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

(Effective Jan. 1, 2011.)

COMMENT:

General Considerations

(1) Even when subject to reappointment or when seeking elevation to a higher office, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based on the expressed views or preferences of the public, a judge makes decisions based on the law and the facts of every case. Therefore, in furtherance of this interest, judges must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions on the political activities of all judges and sitting judges seeking reappointment or appointment to a higher judicial office.

Participation in Political Activities

(2) Public confidence in the independence and impartiality of the judiciary is eroded if judges are perceived to be subject to political influence. Although judges may register to vote as members of a political party, they are prohibited by subsection (a) (1) from assuming leadership roles in political organizations.

(3) Subsections (a) (2) and (a) (3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

(4) Although members of the families of judges are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in subsection (a) (3) against a judge publicly endorsing candidates for public office. A judge must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

(5) Judges retain the right to participate in the political process as voters in both primary and general elections.

Statements and Comments Made By a Sitting Judge When Seeking Reappointment for Judicial Office or Elevation to a Higher Judicial Office

(6) Judges must be scrupulously fair and accurate in all statements made by them. Subsection (a) (7) obligates judges to refrain from making statements that are false or misleading or that omit facts necessary to make the communication considered as a whole not materially misleading.

(7) Judges are sometimes the subject of false, misleading, or unfair allegations made by third parties or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a judge. In other situations, false or misleading allegations may be made that bear on a judge's integrity or fitness for judicial office. As long as the judge does not violate subsections (a) (7), (a) (8), or (a) (9), the judge may make a factually accurate public response. See Rule 2.10.

(8) Subject to subsection (a) (8), a judge is permitted to respond directly to false, misleading, or unfair allegations made against him or her, although it is preferable for someone else to respond if the allegations relate to a pending case.

(9) Subsection (a) (8) prohibits judges from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

(10) The role of a judge is different from that of a legislator or executive branch official. Sitting judges seeking reappointment or elevation must conduct themselves differently from persons seeking other offices. Narrowly drafted restrictions on the activities of judges provided in Canon 4 allow judges to provide the appointing authority with sufficient information to permit it to make an informed decision.

(11) Subsection (a) (9) makes applicable to judges the prohibition that applies to judges in Rule 2.10 (b), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(12) The making of a pledge, promise, or commitment is not dependent on, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the judge has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

(13) A judge may make promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A judge may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

(14) Judges may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Subsection (a) (13) does not specifically address judicial responses to such inquiries. Depending on the wording and format of such questionnaires, judges' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating subsection (a) (13), therefore, judges who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially. Judges who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person

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as undermining a judge's independence or impartiality or that it might lead to frequent disqualification. See Rule 2.11.

Rule 4.2. Activities of Judges as Candidates for Reappointment or Elevation to Higher Judicial Office

A judge who is a candidate for reappointment or elevation to higher judicial office may:

(a) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(b) seek endorsements for the appointment from any person or organization other than a partisan political organization, provided that such endorsement or the request therefor would not appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

(Effective Jan. 1, 2011.)

COMMENT: (1) When seeking support or when communicating directly with an appointing or confirming authority, a judge must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1 (a) (9).

(2) It is never acceptable to seek an endorsement of an advocacy group or a group whose interests have or are likely to come before the judge.

Rule 4.3. Activities of Judges Who Become Candidates for Public Office

(a) Upon becoming a candidate for an elective public office either in a party primary or a general election, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention.

(b) Upon becoming a candidate for an appointive public office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

(Effective Jan. 1, 2011.)

COMMENT: (1) In campaigns for elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in public campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office and the political promises that the judge would be compelled to make in the course of campaigning for elective public office together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

(2) The "resign to run" rule set forth in subsection (a) ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents postcampaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive public office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule. However, the judge should be careful to avoid presiding over matters affecting the entity to which the judge is seeking public office.

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 1-1. Scope of Rules; Definitions

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

(a) The rules for the superior court govern the practice and procedure in the superior court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. These rules also relate to the admission, qualifications, practice and removal of attorneys.

(b) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to civil, family, criminal and juvenile matters in the superior court.

(c) (1) The term ''judicial authority,'' as used in the rules for the superior court, means the superior court, any judge thereof, each judge trial referee when the superior court has referred a case to such trial referee pursuant to General Statutes § 52-434, and for purposes of the small claims rules only, any magistrate appointed by the chief court administrator pursuant to General Statutes § 51-193*l*.

(2) Except as otherwise provided, the words ''write,'' ''written'' and ''writing'' as used in the rules for the superior court shall mean typed or printed either on paper or, when electronically submitted or issued, in a digital format that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to Section 4-4.

(3) Except as otherwise provided, the words ''paper'' and ''document'' as used in the rules for the superior court shall include an electronic submission that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to Section 4-4 and a paper or document converted to a digital format by the judicial branch.

(P.B. 1978-1997, Sec. 1.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Scope of Rules.'' In 2012, what was subsection (c) was designated as subdivision (1) of subsection (c), and subdivisions (2) and (3) of subsection (c) were added.

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 1-2. Assignments to Take Precedence

Assignments for oral argument in the supreme court and appellate court shall take precedence over all other judicial branch assignments.

(P.B. 1998.)

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Sec. 1-3. Divisions of Superior Court

The superior court shall be divided into four divisions: family, civil, criminal and housing.

(P.B. 1978-1997, Sec. 2.)

Sec. 1-4. Family Division

The family division of the superior court shall consist of the following parts:

(1)—J—Juvenile matters including neglect, dependency, delinquency, families with service needs and termination of parental rights.

(2) S—Support and paternity actions.

(3) D—All other family relations matters, including dissolution of marriage or civil union cases.

(P.B. 1978-1997, Sec. 3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 1-5. Civil Division

The civil division of the superior court shall consist of the following parts:

(1) H—Summary process cases and all other landlord and tenant matters returnable to the geographical areas.

(2) S—Small claims actions.

(3) A—Administrative appeals.

(4) J—Jury matters.

(5) C—Court matters.

(P.B. 1978-1997, Sec. 4.)

Sec. 1-6. Criminal Division

The criminal division of the superior court shall consist of the following parts:

(1) A—Capital felonies, class A felonies, and unclassified felonies punishable by sentences of more than twenty years.

(2) B—Class B felonies and unclassified felonies punishable by sentences of more than ten years but not more than twenty years.

(3) C—Class C felonies and unclassified felonies punishable by sentences of more than five years but not more than ten years.

(4) D—Class D felonies and all other crimes, violations, motor vehicle violations, and infractions.

(P.B. 1978-1997, Sec. 5.)

Sec. 1-7. Housing Division (Only in Judicial Districts Specified by Statute)

The housing division of the superior court shall consist of the following part:

(1) H—Housing matters as defined by General Statutes § 47a-68.

(P.B. 1978-1997, Sec. 5A.)

Sec. 1-8. Rules to Be Liberally Interpreted

The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice.

(P.B. 1978-1997, Sec. 6.)

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

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

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

(c) Upon recommendation by the Rules Committee, the judges of the superior court may, by vote at a meeting or by mail vote as set forth in subsection (d), waive the provisions of subsection (b) if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously, provided that the adoption of any rules or changes in existing rules in connection with such waiver shall be on an interim basis until a public hearing has been held and the judges have thereafter acted on such revisions and such action has become effective. With respect to such rules adopted on an interim basis the judges shall prescribe the effective date thereof following publication in the Connecticut Law Journal.

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

(P.B. 1978-1997, Sec. 7.)

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

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

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the Rules Committee's anticipated agenda for the upcoming year.

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

(c) The chair of the Rules Committee shall forward to the Judiciary Committee for review and comment all proposed revisions to the Practice Book and to the Code of Evidence which the Rules Committee has decided to submit to public hearing at least 35 days in advance of the public hearing thereon. If the chair of the Rules Committee shall receive any comments from the Judiciary Committee with respect to such proposed revisions, he or she shall forward such comments to the members of the Rules Committee for their consideration in connection with the public hearing.

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

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 1-9B. —Emergency Powers of Rules Committee

(a) In the event that the governor declares a public health emergency pursuant to General Statutes § 19a-131a or a civil preparedness emergency pursuant to General Statutes § 28-9 or both, the chief justice, or if the chief justice is incapacitated or unavailable, the chairperson of the Rules Committee may call a meeting of the Superior Court Rules Committee.

(b) No quorum shall be required at this meeting as long as a good faith effort has been made to contact all members of the Rules Committee to advise them of the meeting. The meeting may be held in person or by electronic means. Public notice should be given of the Rules Committee meeting, but failure to give such notice shall not impair the validity of actions taken at the meeting as long as a good faith effort has been made to provide such notice.

(c) At such meeting the Rules Committee shall have the power to adopt on an interim basis any new rules and to amend or suspend in whole or in part on an interim basis any existing rules concerning practice and procedure in the superior court that the committee deems necessary in light of the circumstances of the declared emergency. Any new rules and any amendments to and suspensions of existing rules adopted pursuant to this section should be published in the Connecticut Law Journal and on the Judicial Branch website, but failure to so publish shall not impair the validity of such rules as long as a good faith effort has been made to so publish.

(d) Any such new rules and amendments to and suspensions of existing rules adopted pursuant to this section shall remain in effect for the duration of the declared emergency or until such time, as soon as practicable, as a meeting of the superior court judges can be convened, in person or electronically, to consider and vote on the changes.

(Adopted June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 1-10. Possession of Electronic Devices in Court Facilities

(Amended June 29, 2007, to take effect Jan. 1, 2008.)

(a) Personal computers may be used for notetaking in a courtroom. If the judicial authority finds that the use of computers is disruptive of the court proceeding, it may limit such use. No other electronic devices shall be used in a courtroom unless authorized by a judicial authority or permitted by these rules.

(b) The possession and use of electronic devices in court facilities are subject to policies promulgated by the chief court administrator.

(P.B. 1978-1997, Sec. 7B.) (Amended June 20, 2005, to take effect Oct. 1, 2005; June 26, 2006, subsection (b) extended for a one year period commencing Oct. 1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008; June 29, 2007, subsection (b) extended for a one year period commencing Oct. 1, 2007; amended June 30, 2008, to take effect Aug. 1, 2008.)

Sec. 1-10A. Definition of ''Media''

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008.)

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

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

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

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

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

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

(3) Proceedings involving sexual assault;

(4) Proceedings involving trade secrets;

(5) In jury trials, all proceedings held in the absence of the jury unless the trial court determines that such coverage does not create a risk to any party's rights or other fair trial risks under the circumstances;

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

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

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

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

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, what was the language in subdivision (3) of subsection (b) was moved to what is now subdivision (4). ''Proceedings involving sexual assault'' replaced the language in subdivision (3) of subsection (b) in 2012.

Also, in 2012, what was subdivision (4) of subsection (b) became subdivision (5), and after ''absence of the jury,'' the following language was added: ''unless the trial court determines that such coverage does not create a risk to any party's rights or other fair trial risks under the circumstances.''

In 2012, what was subdivision (5) of subsection (b) became subdivision (6), and what was subdivision (6) became subdivision (7).

COMMENTARY—2012: The above changes prohibit the broadcasting, televising, recording or photographing of certain proceedings.

Sec. 1-11. Media Coverage of Criminal Proceedings

[Repealed as of Jan. 1, 2012.]

HISTORY—2012: At the time of its repeal, this section read: ''(Amended June 29, 2007, to take effect Jan. 1, 2008.)

''(a) Except as otherwise provided by this section and as provided in Sections 1-11A and 1-11C, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in criminal proceedings.

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

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

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

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

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

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

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

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

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

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

"(j) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

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

"(*l*) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such conference the trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.

"(P.B. 1978-1997, Sec. 7C.) (Amended June 29, 2007, to take effect Jan. 1, 2008.)"

COMMENTARY—2012: The above section is deleted in light of the revisions to Section 1-11C.

Sec. 1-11A. Media Coverage of Arraignments

(a) The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments in the manner set forth in this section, as implemented by the judicial authority.

(b) Any media representative desiring to broadcast, televise, record or photograph an arraignment shall send an e-mail request for electronic coverage to a person designated by the chief court administrator. Said designee shall promptly transmit any such request to the administrative judge, presiding judge of criminal matters, arraignment judge, clerk and the supervising marshal. The administrative judge shall ensure that notice is provided to the state's attorney and the attorney for the defendant or, where the defendant is unrepresented, to the defendant. Electronic coverage shall not be permitted until the state's attorney and the attorney for the defendant, or the defendant if he or she has no attorney, have had an opportunity to object to the request on the record and the judicial authority has ruled on the objection. If a request for coverage is denied or is granted over the objection of any party, the judicial authority shall articulate orally or in writing the reasons for its decision on the request and such decision shall be final.

(c) Broadcasting, televising, recording or photographing of the following are prohibited:

(1) any criminal defendant who has not been made subject to an order for electronic coverage and, to the extent practicable, any person other than court personnel or other participants in the arraignment for which electronic coverage is permitted;

(2) conferences involving the attorneys and the judicial authority at the bench or communications between the defendant and his or her attorney or other legal representative;

(3) close ups of documents of counsel, the clerk or the judicial authority;

(4) the defendant while exiting or entering the lockup;

(5) to the extent practicable, any restraints on the defendant;

(6) to the extent practicable, any judicial marshals or department of correction employees escorting the defendant while he or she is in the courtroom; and

(7) proceedings in cases transferred from juvenile court prior to a determination by the adult court that the matter was properly transferred.

(d) Only one (1) still camera, one (1) television camera and one (1) audio recording device, which do not produce a distracting sound or light, shall be employed to cover the arraignment, unless otherwise ordered by the judicial authority.

(e) The operator of any camera, television or audio recording equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom.

(f) All personnel and equipment shall be situated in an unobtrusive manner within the courtroom. The location of any such equipment and personnel shall be determined by the judicial authority. The location of the camera, to the extent possible, shall provide access to optimum coverage. Once the judicial authority designates the position for a camera, the operator of the camera must remain in that position and not move about until the arraignment is completed.

(g) Videographers, photographers and equipment operators must conduct themselves in the

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courtroom quietly and discreetly, with due regard for the dignity of the courtroom.

(h) If there are multiple requests to broadcast, televise, record or photograph the same arraignment, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority.

(i) On camera reporting and interviews shall only be conducted outside of the courthouse.

(Adopted June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section read: "The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments. The judicial authority shall articulate the reasons for its decision on a request for electronic coverage of an arraignment and such decision shall be final. The judicial authority in its discretion may require pooling arrangements by the media."

COMMENTARY—2012: The revisions to this section delineate the specific procedures that must be followed and implemented in connection with the authorization by the judicial authority of media coverage of arraignments. Any media representative desiring to cover such arraignments must send an e-mail request for electronic coverage to a person designated by the chief court administrator. Electronic coverage shall not be permitted until the parties have had an opportunity to object to the request and the judicial authority has ruled on the objection. The decision on the objection is final. The persons and events that are prohibited from being broadcast, televised, recorded or photographed are specifically delineated in the rule as revised. The number and types of recording devices, and the manner and location of their operation are also set out in the rule. If there are multiple requests for electronic coverage, pooling arrangements are required, and on-camera reporting and interviews shall only be conducted outside of the courthouse.

Sec. 1-11B. Media Coverage of Civil Proceedings

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

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

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

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

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

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

(g) The trial judge in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant

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at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. ''Participant'' for the purpose of this section shall mean any party, lawyer or witness.

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

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

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

(k) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

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

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

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

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008.)

Sec. 1-11C. Media Coverage of Criminal Proceedings

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

(a) Except as authorized by Section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B.

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

(c) As used in this rule, the word ''trial'' in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness. ''Criminal proceeding'' shall mean any hearing or testimony, or any portion thereof, in open court and on the record except an arraignment subject to Section 1-11A.

(d) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a

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written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice, and the judicial authority shall allow such coverage except as otherwise provided.

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

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

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

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

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

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

(k) (1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. Microphones, related wiring and equipment essential for the broadcasting, televising or recording shall be unobtrusive and shall be located in places designated in advance by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only.

(2) Only one still camera photographer shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio recorder shall be permitted in the courtroom for purposes of recording the proceeding or trial. Microphones, related wiring and equipment essential for the recording shall be unobtrusive and shall be located in places designated in advance by the trial judge.

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

(m) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

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

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

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, "Pilot Program for Media Coverage of Criminal Proceedings."

Prior to 2012, this section read: "(a) Notwithstanding the provisions of Section 1-11, and except as otherwise provided in Section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B, in a single judicial district of the superior court to be chosen by the chief court administrator based on the following considerations:

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

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

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

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

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

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

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

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

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

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

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

"(h) The judge presiding over the proceeding or trial in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection

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of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. 'Participant' for the purpose of this section shall mean any party, lawyer or witness.

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

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

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

"(*l*) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

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

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

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

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

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

COMMENTARY—2012: The above revisions permit broadcasting, televising, recording or photographing of criminal trials around the state. Such coverage will no longer be limited to the pilot area in Hartford.

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

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

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

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

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

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

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

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

(c) Except as provided in this section or as otherwise provided by law, all trial proceedings in

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the pilot program shall be presumed to be open to the public.

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

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

(f) Upon the filing of any motion to deny or limit public access to a trial proceeding governed by this section, or upon the determination of the judicial authority, upon its own motion, that the ordering of such relief should be considered, the judicial authority shall schedule a hearing on the motion and shall, where practicable, post a notice of the hearing on the judicial website so that all interested persons can attend the hearing and present appropriate legal arguments in support of or in opposition to the motion. Such notice shall set forth the date, time, location and the general subject matter of the hearing, and shall identify the underlying proceeding solely by reference to the first name and first initial of the last name of the child who is the subject of the proceeding or, if the proceeding involves more than one child, by reference to the first name and first initial of the last name of the eldest of the children involved. All memoranda of law and other written submissions in support of or in opposition to the motion shall be served on all parties of record and be filed with the court, where they shall become part of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124.

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

(h) Prior to the commencement of any trial proceeding accessible to the public, the judicial authority shall hold a pretrial conference with counsel for all parties to anticipate, evaluate and

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resolve prospective problems with the conduct of an open proceeding and to ensure compliance with the protective provisions of subsection (d).

(i) The Rules Committee shall evaluate the efficacy of this section on or before December 31, 2010, and shall receive recommendations from the chief court administrator, the juvenile access pilot program advisory board and other sources.

(Adopted June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 1-12. Court Opening

The sessions of the superior court will be opened at 10:00 a.m., unless otherwise ordered.

(P.B. 1978-1997, Sec. 299.)

Sec. 1-13. Recess and Adjournment

The court is "not in session" or "not actually in session," as those phrases are used in the statutes and rules, at all times (1) after adjournment and before opening and (2) during recess. The court is in recess or in adjournment provided it has not been adjourned without date. The order for a recess or an adjournment other than without date may be revoked and the court reconvened by direction of the presiding judge at any time.

(P.B. 1978-1997, Sec. 300.)

Sec. 1-13A. Contempt

(a) Any person or court officer misbehaving or disobeying any order of a judicial authority in the course of any judicial proceeding may be adjudicated in contempt and appropriately punished.

(b) Contempt may be either criminal or civil. When criminal, it may be summary or nonsummary criminal contempt.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-14. —Criminal Contempt

Conduct that is directed against the dignity and authority of the court shall be criminal contempt, and may be adjudicated summarily or nonsummarily. The sanction for a criminal contempt is punitive to vindicate the authority of the court.

(P.B. 1978-1997, Sec. 985.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-15. —Who May Be Punished

[Repealed as of Jan. 1, 2000.]

Sec. 1-16. —Summary Criminal Contempt

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

Misbehavior or misconduct in the court's presence causing an obstruction to the orderly administration of justice shall be summary criminal contempt, and may be summarily adjudicated and punished by fine or imprisonment, or both. Prior to any finding of guilt, the judicial authority shall inform the defendant of the charges against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances. Upon an adjudication, the judicial authority shall immediately impose sentence of not more than one hundred dollars, or six months imprisonment, or both for each contumacious act. Execution of any sentence during the pendency of a trial or hearing may be deferred to the close of proceedings.

(P.B. 1978-1997, Sec. 988.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-17. —Deferral of Proceedings

The judicial authority should defer criminal contempt proceedings when: (1) the misconduct does not rise to an obstruction to the orderly administration of justice; (2) the judicial authority has become personally embroiled; (3) the misconduct did not occur in the presence of the court; and (4) the judicial authority does not instantly impose summary criminal contempt upon the commission of the contumacious act.

(P.B. 1978-1997, Sec. 989.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-18. —Nonsummary Contempt Proceedings

A criminal contempt deferred under Section 1-17 shall be prosecuted by means of an information. The judicial authority may, either upon its own order or upon the request of the prosecuting authority, issue a summons or an arrest warrant for the accused. The case shall proceed as any other criminal prosecution under these rules and the General Statutes. The sentence shall be pronounced in open court and shall not exceed six months imprisonment or a fine of five hundred dollars, or both, for each contumacious act.

(P.B. 1978-1997, Sec. 991.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-19. —Judicial Authority Disqualification in Nonsummary Contempt Proceedings

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

The trial and all related proceedings upon which nonsummary contempt proceedings are based shall be heard by a judicial authority other than the trial judge or the judicial authority who had either issued the order which was later disobeyed or deferred criminal contempt proceedings under Section 1-17.

(P.B. 1978-1997, Sec. 992.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-20. —Where No Right to Jury Trial in Nonsummary Proceeding

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

In a nonsummary contempt proceeding, if the judicial authority declares in advance of trial that the total effective sentence, if the defendant is found guilty, shall not exceed thirty days imprisonment, or a fine of ninety-nine dollars, no right to

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jury trial shall affix. If the total effective sentence may exceed thirty days or a fine in excess of ninety-nine dollars, the defendant shall be accorded the right to a jury trial.

(P.B. 1978-1997, Sec. 993.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-21. —Nonsummary Judgment

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

In a nonsummary contempt proceeding, the judgment file of contempt shall be prepared within a reasonable time by the clerk and shall be signed by the judicial authority and entered on the record.

(P.B. 1978-1997, Sec. 994.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-21A. —Civil Contempt

The violation of any court order qualifies for criminal contempt sanctions. Where, however, the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses. Where the violation of a court order renders the order unenforceable, the judicial authority should consider referral for nonsummary criminal contempt proceedings.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council. When the judicial authority has been made aware of the filing of such lawsuit or complaint, he or she shall so advise the attorneys and parties to the proceeding and either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.

(P.B. 1978-1997, Sec. 996.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 1-23. Motion for Disqualification of Judicial Authority

A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.

(P.B. 1978-1997, Sec. 997.)

Sec. 1-24. Record of Off-Site Judicial Proceedings

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008.)

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 2-1. County Court Designations concerning Bar Admission Process

(a) For the purposes of this chapter, each superior court location designated below shall be the superior court for the county in which it is situated: the superior court for the judicial district of Fairfield at Bridgeport shall be the superior court for Fairfield county; the superior court for the judicial district of New Haven at New Haven shall be the superior court for New Haven county; the superior court for the judicial district of Litchfield at Litchfield shall be the superior court for Litchfield county; the superior court for the judicial district of Hartford at Hartford shall be the superior court for Hartford county; the superior court for the judicial district of Middlesex at Middletown shall be the superior court for Middlesex county; the superior court for the judicial district of Tolland at Rockville shall be the superior court for Tolland county; the superior court for the judicial district of New London at Norwich shall be the superior court for New London county; and the superior court for the judicial district of Windham at Putnam shall be the superior court for Windham county.

(b) The chief clerk for each judicial district court location mentioned above shall be the clerk for the corresponding superior court county location.

(P.B. 1978-1997, Sec. 8.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

Sec. 2-2. Admission

No person shall be admitted as an attorney except as herein provided.

(P.B. 1978-1997, Sec. 9.)

Sec. 2-3. Examining Committee

There shall be an examining committee appointed by the judges of the superior court consisting of twenty-four members, of whom at least one shall be a judge of said court, and the rest attorneys residing in this state. The term of office of each member shall be three years from the first day of September succeeding appointment, and the terms shall continue to be arranged so that those of eight members shall expire annually. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. All other vacancies shall be filled by the judges for unexpired terms only, provided that the chief justice may fill such vacancies until the next annual meeting of the judges, and in the event of the foreseen absence or the illness or the disqualification of a member of the committee the chief justice may make a pro tempore appointment to the committee to serve during such absence, illness or disqualification. At any meeting of the committee the members present shall constitute a quorum.

(P.B. 1978-1997, Sec. 11.)

Sec. 2-4. —Regulations by Examining Committee

The committee shall have the power and authority to implement these rules by regulations relevant thereto and not inconsistent therewith. Such regulations may be adopted at any regular meeting of the committee or at any special meeting called for that purpose. They shall be effective ninety days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee or by the judges of the superior court. A copy shall be provided to the chief justice.

(P.B. 1978-1997, Sec. 12.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''provided'' was substituted for ''mailed'' in the last sentence of this section, after ''shall be.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 2-4A. —Records of Examining Committee

The records and transcripts, if any, of hearings conducted by the state bar examining committee or the several standing committees on recommendations for admission to the bar shall be available only to such committee, to a judge of the superior court, to the statewide grievance committee, to disciplinary counsel or, with the consent of the

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applicant, to any other person, unless otherwise ordered by the court.

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

Sec. 2-5. —Examination of Candidates for Admission

The committee shall further have the duty, power and authority to provide for the examination of candidates for admission to the bar; to determine whether such candidates are qualified as to prelaw education, legal education, good moral character and fitness to practice law; and to recommend to the court for admission to the bar qualified candidates.

(P.B. 1978-1997, Sec. 13.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-5A. —Good Moral Character and Fitness to Practice Law

(Amended June 20, 2011, to take effect Sept. 1, 2011.)

(a) Good moral character shall be construed to include, but not be limited to, the following:

(1) The qualities of honesty, fairness, candor and trustworthiness;

(2) Observance of fiduciary responsibility;

(3) Respect for and obedience to the law; and

(4) Respect for the legal rights of others and the judicial process, as evidenced by conduct other than merely initiating or pursuing litigation.

(b) Fitness to practice law shall be construed to include the following:

(1) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal work, making appropriate reasoned legal judgments, and recognizing and solving ethical dilemmas;

(2) The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities, with or without the use of aids or devices; and

(3) The capability to perform legal tasks in a timely manner.

(Adopted June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Sept. 1, 2011.)

HISTORY—September, 2011: Prior to September 1, 2011, this section was entitled, "Fitness to Practice Law." In 2011, subsection (a) was added, and what was previously the language in this section was designated as subsection (b), with items (1), (2) and (3) designated as subdivisions (1), (2) and (3) of subsection (b).

COMMENTARY—September, 2011: The above changes make clear what good moral character entails.

Sec. 2-6. —Personnel of Examining Committee

Such personnel within the legal services division of the office of the chief court administrator as may be assigned from time to time by the chief court administrator shall assist the examining committee in carrying out its duties.

(P.B. 1978-1997, Sec. 14.)

Sec. 2-7. Number of Times an Applicant May Sit for the Examination

There is no restriction on the number of times an applicant may sit for the examination.

(P.B. 1978-1997, Sec. 15A.)

Sec. 2-8. Qualifications for Admission

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

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

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

(3) The applicant is a person of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee. Any inquiries or procedures used by the bar examining committee that relate to physical or mental disability must be narrowly tailored and necessary to a determination of the applicant's current fitness to practice law, in accordance with the Americans with Disabilities Act and amendment twenty-one of the Connecticut constitution, and conducted in a manner consistent with privacy rights afforded under the federal and state constitutions or other applicable law.

(4) The applicant has met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the administrative director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has paid such application fee as the committee shall from time to time determine.

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

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

(8) As an alternative to satisfying the committee that the applicant has met the committee's educational requirements, the applicant who meets all the remaining requirements of this section may, upon payment of such investigation fee as the committee shall from time to time determine, substitute proof satisfactory to the committee that: (A)

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the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the commonwealth of Puerto Rico or in one or more district courts of the United States for ten or more years and at the time of filing the application is a member in good standing of such a bar; (B) the applicant has actually practiced law in such a jurisdiction for not less than five years during the seven year period immediately preceding the filing date of the application; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant's working time to the practice of law in Connecticut.

(P.B. 1978-1997, Sec. 16.) (Amended June 29, 2007, to take effect Jan. 1, 2008; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-9. Certification of Applicants Recommended for Admission; Conditions of Admission

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) The committee shall certify to the clerk of the superior court for the county in which the applicant seeks admission and to the clerk of the superior court in New Haven the name of any such applicant recommended by it for admission to the bar and shall notify the applicant of its decision.

(b) The committee may, in light of the physical or mental disability of a candidate that has caused conduct or behavior that would otherwise have rendered the candidate currently unfit to practice law, determine that it will only recommend an applicant for admission to the bar conditional upon the applicant's compliance with conditions prescribed by the committee relevant to the disability and the fitness of the applicant. Such determination shall be made after a hearing on the record is conducted by the committee or a panel thereof consisting of at least three members appointed by the chair, unless such hearing is waived by the applicant. Such conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued treatment, abstinence, or other support. The conditional admission period shall not exceed five years, unless the conditionally admitted attorney fails to comply with the conditions of admission, and the bar examining committee or the court determines, in accordance with the procedures set forth in Section 2-11, that a further period of conditional admission is necessary. The committee shall notify the applicant by mail of its decision and that the applicant must sign an agreement with the bar examining committee under oath affirming acceptance of such conditions and that the applicant will comply with them. Upon receipt of this agreement from the applicant, duly executed, the committee shall recommend the applicant for admission to the bar as provided herein. The committee shall forward a copy of the agreement to the statewide bar counsel, who shall be considered a party for purposes of defending an appeal under Section 2-11A.

(P.B. 1978-1997, Sec. 17.) (Amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-10. Admission by Superior Court

(a) Each applicant who shall be recommended for admission to the bar shall present himself or herself to the superior court, or to either the supreme court or the appellate court sitting as the superior court, at such place and at such time as shall be prescribed by the committee, or shall be prescribed by the supreme court or the appellate court, and such court may then, upon motion, admit such person as an attorney. The administrative director shall give notice to each clerk of the names of the newly admitted attorneys. At the time such applicant is admitted as an attorney the applicant shall be sworn as a commissioner of the superior court.

(b) The administrative judge of said judicial district or a designee or the chief justice of the supreme court or a designee or the chief judge of the appellate court or a designee may deliver an address to the applicants so admitted respecting their duties and responsibilities as attorneys.

(P.B. 1978-1997, Sec. 18.)

Sec. 2-11. Monitoring Compliance with Conditions of Admission; Removal or Modification of Conditions

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) If an applicant is admitted to the bar after signing an agreement with the bar examining committee under oath affirming acceptance of the conditions prescribed by the committee pursuant to Section 2-9 (b) and that he or she will comply with them, the statewide bar counsel shall monitor the attorney's compliance with those conditions pursuant to regulations adopted by the statewide grievance committee governing such monitoring. The attorney so admitted or the statewide bar counsel may make application to the bar examining committee to remove or modify the conditions previously agreed to by such attorney as circumstances warrant. The bar examining committee, or a panel thereof consisting of at least three members appointed by its chair, shall conduct a hearing on the application, which shall be on the record, and shall also receive and consider a

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report from the statewide bar counsel on the matter. Such hearing may be waived by the applicant and the statewide bar counsel. If, upon such application, the bar examining committee modifies such conditions, the attorney shall sign an agreement with the bar examining committee under oath affirming acceptance of the modified conditions and that he or she will comply with them, and the statewide bar counsel shall monitor the attorney's compliance with them. The statewide bar counsel shall be considered a party for purposes of defending an appeal under Section 2-11A. All information relating to conditional admission of an applicant or attorney shall remain confidential unless otherwise ordered by the court.

(b) Upon the failure of the attorney to comply with the conditions of admission or the monitoring requirements adopted by the statewide grievance committee, the statewide bar counsel shall apply to the court in the judicial district of Hartford at Hartford for an appropriate order. The court, after hearing upon such application, may take such action as it deems appropriate. Thereafter, upon application of the attorney or of the statewide bar counsel and upon good cause shown, the court may set aside or modify the order rendered pursuant hereto.

(P.B. 1978-1997, Sec. 18A.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

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

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

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

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

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

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

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide bar counsel in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the bar examining committee, except that the

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court may, in its discretion, award to the appellant reasonable fees and expenses if the court determines that the action of the bar examining committee was undertaken without any substantial justification. ''Reasonable fees and expenses'' means any expenses not in excess of $7500 which the court finds were reasonably incurred in opposing the committee's action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

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

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 2-12. County Committees on Recommendations for Admission

(a) There shall be in each county a standing committee on recommendations for admission, consisting of not less than three nor more than seven members of the bar of that county, who shall be appointed by the judges of the superior court to hold office for three years from the date of their appointment and until their successors are appointed. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. Appointments to fill vacancies which have arisen by reasons other than revocation or suspension may be made by the chief justice until the next annual meeting of the judges of the superior court, and, in the event of the foreseen absence or the illness or the disqualification of a member of the committee, the chief justice may make a pro tempore appointment to the committee to serve during such absence, illness or disqualification.

(b) Any application for admission to the bar may be referred to the committee for the county through which the applicant seeks admission, which shall investigate the applicant's moral character and fitness to practice law and report to the bar of the county whether the applicant has complied with the rules relating to admission to the bar, is a person of good moral character, is fit to practice law and should be admitted.

(P.B. 1978-1997, Sec. 19.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut or would have entitled him or her to take the examination in Connecticut at the time of his or her admission to the bar of which he or she is a member, and that at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section, shall satisfy the state bar examining committee that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood in reciprocal jurisdictions for at least five of the ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood in such reciprocal jurisdiction for at least five of the ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; (3) is a citizen of the United States or an alien lawfully residing in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut and/or to supervise law students within a clinical law program at an accredited Connecticut law school while a member of the faculty of such school may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining committee shall from time to time determine, upon compliance with the following requirements: Such application, duly verified, shall be filed with the administrative director of the bar examining committee and shall set forth his or her qualifications

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as hereinbefore provided. There shall be filed with such application the following affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the state bar examining committee, his or her practice of law as defined under (2) of this subsection; where applicable, an affidavit from the dean of the accredited Connecticut law school at which the applicant has accepted employment attesting to the employment relationship and term; affidavits from two members of the bar of Connecticut of at least five years' standing, certifying that the applicant is of good moral character and is fit to practice law; and an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the state bar examining committee.

(b) For the purpose of this rule, the "practice of law" shall include the following activities, if performed in a reciprocal jurisdiction after the date of the applicant's admission to that jurisdiction:

(1) representation of one or more clients in the practice of law;

(2) service as a lawyer with a state, federal, or territorial agency, including military services; however, such service for a federal agency, including military service, need not be performed in a reciprocal jurisdiction;

(3) teaching law at an accredited law school, including supervision of law students within a clinical program;

(4) service as a judge in a state, federal, or territorial court of record;

(5) service as a judicial law clerk; or

(6) any combination of the above.

(c) An attorney who, within the ten years immediately preceding the date of application, was engaged in the supervision of law students within a clinical law program of one or more accredited law schools in another jurisdiction or jurisdictions while a member of the faculty of such school or schools, whether or not any such jurisdiction is a reciprocal jurisdiction, may apply such time toward the satisfaction of the requirement of subdivision (a) (2) (A) of this section. If such time is so applied, the attorney shall file with his or her application an affidavit from the dean of the law school or schools of each such other jurisdiction attesting to the employment relationship and the period of time the applicant engaged in the supervision of law students within a clinical program at such school.

(P.B. 1978-1997, Sec. 21.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section read: "(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut or would have entitled him or her to take the examination in Connecticut at the time of his or her admission to the bar of which he or she is a member, and that at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section, shall satisfy the appropriate standing committee on recommendations for admission that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood in such reciprocal jurisdiction for at least five of the seven years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood in such reciprocal jurisdiction for at least five of the seven years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; (3) is a citizen of the United States or an alien lawfully residing in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut and to devote the major portion of his or her working time to the practice of law in Connecticut, and/or to supervise law students within a clinical law program at an accredited Connecticut law school while a member of the faculty of such school may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining committee shall from time to time determine, upon compliance with the following requirements: Such application, duly verified, shall be filed with the administrative director of the bar examining committee and shall set forth his or her qualifications as hereinbefore provided. There shall be filed with such application the following certificates or affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the standing committee on recommendations for admission to the bar, his or her practice of law as defined under (2) of this section; where applicable, an affidavit from the dean of the accredited Connecticut law school at which the applicant has accepted employment attesting to the employment relationship and term; affidavits from two members of the bar of Connecticut of at least five years' standing certifying that the applicant is of good moral character and is

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fit to practice law, and a certificate from the state bar examining committee that his or her educational qualifications are such as would entitle the applicant to take the examination in Connecticut or would have entitled the applicant to take the examination in Connecticut at the time of his or her admission to the bar of which the applicant is a member; and an affidavit from the applicant certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the state bar examining committee.

"(b) An attorney who, within the seven years immediately preceding the date of application, was engaged in the supervision of law students within a clinical law program of one or more accredited law schools in another jurisdiction or jurisdictions while a member of the faculty of such school or schools, whether or not any such jurisdiction is a reciprocal jurisdiction, may apply such time toward the satisfaction of the requirement of subdivision (a) (2) (A) of this section. If such time is so applied, the attorney shall file with his or her application an affidavit from the dean of the law school or schools of each such other jurisdiction attesting to the employment relationship and the period of time the applicant engaged in the supervision of law students within a clinical program at such school. An attorney so engaged for five of the seven years immediately preceding the date of application will be deemed to satisfy the threshold requirement of subdivision (a) (2) of this section if such attorney is duly licensed to practice law before the highest court of any state or territory of the United States or in the District of Columbia whether or not such jurisdiction is reciprocal to Connecticut."

COMMENTARY—2012: The above changes substitute the state bar examining committee for the standing committees on recommendations for admission in the admission without examination process. Additionally, the change expands the five of seven years requirement to five of ten years to allow for intervening, legitimate periods of time away from the practice of law. Finally, the requirement that each applicant must have the intent to devote the major portion of working time to the practice of law in Connecticut is repealed.

New subsection (b) above provides a definition of the practice of law that is consistent with ABA recommendations and the term as defined in other jurisdictions.

Sec. 2-14. —Action by Bar; Temporary License

[Repealed as of Jan. 1, 2012.]

HISTORY—2012: At the time of its repeal, this section read: "Upon the filing of such application, certificates and affidavits, the administrative director of the bar examining committee shall send a copy thereof to the chair of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify the clerk of the superior court for the county in which the applicant seeks admission who shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting endorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the bar of the county. Such admission shall, however, be upon a temporary license for a period of one year.

"(P.B. 1978-1997, Sec. 22.)"

COMMENTARY—2012: The above rule is repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

Sec. 2-15. —Permanent License

[Repealed as of Jan. 1, 2012.]

HISTORY—2012: At the time of its repeal, this section read: "(a) Not less than thirty nor more than sixty days before the expiration of such temporary license, the applicant may file a motion that such license be made permanent with the clerk, who shall forthwith give notice thereof to the standing committee on recommendations for admission. Said committee shall claim the motion for the short calendar as soon as it is prepared to make recommendations thereon to the court. If it shall appear to the court at a hearing thereon that said applicant has, since admission, devoted the major portion of his or her working time to the practice of law in the state of Connecticut and intends to continue so to practice, and that the applicant's good moral character and fitness to practice law remain satisfactory, such license shall be made permanent; but if the applicant shall fail to make such motion or if the court shall upon the hearing thereon refuse to make such finding, then said temporary license shall terminate upon its expiration, but the court may for good cause shown continue said hearing and extend said license for a period of not more than three months from the original date of its expiration.

"(b) Provided, however, that whenever, during the period for which such temporary license may have been issued, such licensee has entered the military or naval service of the United States and by reason thereof has been unable to continue in practice in Connecticut, the period between such entrance and final discharge from such service, or other termination thereof, shall not be included in computing the term of such temporary license; and upon satisfactory proof to the court hearing said motion for a permanent license of such entrance and discharge or other termination, and of compliance with the other requirements of this section, the court may make such license permanent.

"(P.B. 1978-1997, Sec. 23.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)"

COMMENTARY—2012: The above rule is repealed in light of the change made in Section 2-13 that substitutes the state bar examining committee for the standing committees on recommendation for admission in the admission without examination process.

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

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defined herein, in Connecticut without the requirement of taking the bar examination so long as they are exclusively employed by an organization.

(b) **Definitions**

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

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

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

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

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

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

(c) **Activities**

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

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

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

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

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

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

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

(d) **Registration**

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

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

(B) a sworn statement by the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) **Discipline**

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

(2) **Notification to Other States**. The statewide bar counsel shall be authorized to notify each entity governing the practice of law in the state or territory of the United States, or the District of

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Columbia, in which the authorized house counsel is licensed to practice law, of any disciplinary action against the authorized house counsel.

(g) **Transition**

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

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 22, 2009, to take effect Jan. 1, 2010.)

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

An attorney who is in good standing at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, (c) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, (d) agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and (e) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first appeared pro hac vice in this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is to be tried. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action. Any person granted permission to appear in a matter pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 and shall pay such fee when due as prescribed by those sections for each year such person appears in the matter. If the clerk for the judicial district or appellate court in which the matter is pending is notified that such person has failed to pay the fee as required by this section, the court shall determine after a hearing the appropriate sanction, which may include termination of the privilege of appearing in the matter.

(P.B. 1978-1997, Sec. 24.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, after (b), the following language was inserted: "certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, (c)." Also, in 2012, what was (c) is now (d), and what was (d) is now (e). The last two sentences of this section were added in 2012.

COMMENTARY—2012: The revisions require an attorney seeking permission to appear pro hac vice in a matter before the court to certify that the attorney has paid the client security fund fee required by Section 2-70 for the calendar year in which the application is made, and, if the application is granted, to pay the annual fee for each subsequent year in which the attorney appears in the matter. The revisions also provide that if the clerk for the judicial district or appellate court in which the matter is pending is notified that the attorney has failed to pay the fee as required, the court shall determine the appropriate sanction after a hearing, which may include termination of the privilege of appearing in the matter.

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Sec. 2-17. Foreign Legal Consultants; Licensing Requirements

Upon recommendation of the bar examining committee, the court may license to practice as a foreign legal consultant, without examination, an applicant who:

(1) has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and has engaged in the practice of law in that country, and has been in good standing as an attorney or counselor at law (or the equivalent of either) in that country, for a period of not less than five of the seven years immediately preceding the date of application;

(2) possesses the good moral character and fitness to practice law requisite for a member of the bar of this court; and

(3) is at least twenty-six years of age.

(P.B. 1978-1997, Sec. 24B.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-18. —Filings to Become Foreign Legal Consultant

(a) An applicant for a license to practice as a foreign legal consultant shall file with the administrative director of the bar examining committee:

(1) a typewritten application in the form prescribed by the committee;

(2) a certified check, cashier's check, or money order in the amount of $500 made payable to the bar examining committee;

(3) a certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as an attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

(4) two letters of recommendation, one from a member in good standing of the Connecticut bar and another from either a member in good standing of the bar of the country in which the applicant is licensed as an attorney, or from a judge of one of the courts of original jurisdiction of said country, together with a duly authenticated English translation of each letter if it is not in English.

(b) Upon a showing that strict compliance with the provisions of Section 2-17 (1) and subdivisions (3) or (4) of subsection (a) of this section is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a foreign legal consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(c) The committee shall investigate the qualifications, moral character, and fitness of any applicant for a license to practice as a foreign legal consultant and may in any case require the applicant to submit any additional proof or information as the committee may deem appropriate. The committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(P.B. 1978-1997, Sec. 24C.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-19. —Scope of Practice of Foreign Legal Consultants

A person licensed to practice as a foreign legal consultant under these rules is limited to advising Connecticut clients only on the law of the foreign country in which such person is admitted to practice law. Such person shall not:

(1) in any way hold himself or herself out as a member of the bar of the state of Connecticut; or

(2) use in this state any title other than ''Foreign Legal Consultant,'' but in conjunction therewith may indicate the foreign country in which he or she is licensed to practice law.

(P.B. 1978-1997, Sec. 24D.)

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

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

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

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

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

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

(C) a duly acknowledged instrument in writing setting forth the foreign legal consultant's address in the state of Connecticut or United States, and designating the clerk of the superior court for the

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judicial district of Hartford at Hartford as his or her agent upon whom process may be served. Such service shall have the same effect as if made personally upon the foreign legal consultant, in any action or proceeding thereafter brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of the state of Connecticut, and

(3) a written commitment to notify the clerk of the foreign legal consultant's resignation from practice in the foreign country of his or her admission or in any other state or jurisdiction in which said person has been admitted to practice law, or of any censure, reprimand, suspension, revocation or other disciplinary action relating to his or her right to practice in such country, state or jurisdiction.

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

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

(P.B. 1978-1997, Sec. 24E.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

Sec. 2-21. —Affiliation of Foreign Legal Consultant with the Bar of the State of Connecticut

(a) A foreign legal consultant licensed under these rules shall not be a member of the Connecticut bar, provided, however, that a foreign legal consultant shall be considered an affiliate of the bar subject to the same conditions and requirements as are applicable to an active or inactive member of the bar under the court's rules governing the bar of the state of Connecticut, insofar as such conditions and requirements may be consistent with the provisions of these rules.

(b) A foreign legal consultant licensed under these rules shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

"I, _____, do solemnly swear (or affirm) that as a foreign legal consultant with respect to the laws of _____, licensed by this court, I will conduct myself uprightly and according to the laws of the State of Connecticut and the rules of the court."

(P.B. 1978-1997, Sec. 24F.)

Sec. 2-22. Disposition of Fees for Admission to the Bar

(a) All fees paid under the preceding sections of these rules shall be transmitted to the treasurer of the bar examining committee. Such fees, together with any interest earned thereon, shall be applied to the payment of the necessary and reasonable expenses incurred by the bar examining committee, the standing committees on recommendations for admission in the several counties and the staff assigned by the chief court administrator pursuant to Section 2-6, and to the salaries and benefits of such staff. Such reasonable expenses shall not include charges for telephone and office space utilized by such staff in the performance of their duties. Expenses shall not be paid except upon authorization of the chair of the bar examining committee, or the chair's designee. The bar examining committee and the county standing committees shall follow such established judicial branch guidelines, directives and policies with regard to fiscal, personnel and purchasing matters as deemed by the chief court administrator to be applicable to them. Surplus moneys may, with the approval of the committee, be turned over from time to time to the executive secretary of the judicial branch for deposit as court revenue in the general fund of the state of Connecticut.

(b) The bar examining committee, when necessary, shall contract with individuals to serve as proctors and with attorneys to serve as bar examination graders and with law school faculty and other qualified persons to provide bar examination essay questions and shall establish an appropriate fee schedule for such services.

(P.B. 1978-1997, Sec. 25.)

Sec. 2-23. Roll of Attorneys

(a) The statewide bar counsel shall forward to the clerk for Hartford county for certification a roll of the attorneys of the state and the said clerk shall keep said roll. The clerk for any other county in which an attorney is admitted shall forthwith certify such action, with the date and the residence of the attorney, to the clerk for Hartford county,

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the statewide bar counsel and the administrative director of the bar examining committee.

(b) The clerk for any county in which an attorney is suspended, disbarred, resigned, placed in an inactive status, reinstated, or otherwise formally and publicly disciplined by the court shall forthwith certify such action with the date, the residence of the attorney and a certified copy of the court order to the statewide bar counsel and to the clerk for Hartford county, and shall notify them of the death of any attorney in his or her county of which such clerk knows.

(c) The clerk for Hartford county shall forthwith notify the clerks of the superior court and the clerk of the United States district court for the district of Connecticut, at New Haven, of all suspensions, disbarments, resignations, placements in inactive status, retirements, revocations of retirements, or reinstatements.

(P.B. 1978-1997, Sec. 26.)

Sec. 2-24. Notice by Attorney of Admission in Other Jurisdictions

An attorney who is admitted to practice at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, shall send to the Connecticut statewide bar counsel written notice of all such jurisdictions in which he or she is admitted to practice within thirty days of admission to practice in such jurisdiction.

(P.B. 1978-1997, Sec. 26A.)

Sec. 2-25. Notice by Attorney of Disciplinary Action in Other Jurisdictions

An attorney shall send to the statewide bar counsel written notice of all disciplinary actions imposed by the courts of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, within thirty days of the order directing the disciplinary action.

(P.B. 1978-1997, Sec. 26B.)

Sec. 2-26. Notice by Attorney of Change in Address

An attorney shall send prompt written notice of a change in mailing and street address to the statewide grievance committee on a registration form approved by the statewide bar counsel and to the clerks of the courts where the attorney has entered an appearance.

(P.B. 1978-1997, Sec. 27.)

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

(Amended June 29, 2007, to take effect Jan.1, 2008.)

(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 Rule 1.15 of the Rules of Professional Conduct and 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 by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after termination of the representation.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct, 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 lawyer's office e-mail address and business telephone number, 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. 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; the lawyer's office e-mail address; and the lawyer's birth date. Unless otherwise ordered by the court, all nonpublic information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees,

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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 Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the Rule and this section. 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 probable cause is found by the grievance panel, the statewide grievance committee or a reviewing committee. Contemporaneously with the commencement of a presentment or the filing of a grievance complaint, 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 shall be subject to the client or third person having thirty days from the issuance of the notice 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.

(P.B. 1978-1997, Sec. 27A.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007, and with respect to subsection (e), July 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (b) read: ''(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.''

In 2012, ''Rule 1.15 of the Rules of Professional Conduct,'' was substituted for ''subsection (b) of this section'' in the first sentence of subsection (c), after ''pursuant to.''

Also, in 2012, ''the lawyer's office e-mail address and business telephone number'' was added to the first sentence of subsection (d) after ''practice of law.'' Also, '', and any other information requested on such form'' was deleted from the end of the first sentence of subsection (d), following ''any such account.'' In the third sentence of subsection (d), ''the lawyer's office e-mail address'' was added after ''the lawyer's home address.''

Prior to 2012, the first sentence of subsection (e) read: ''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.''

COMMENTARY—2012: The financial record keeping requirements previously set forth in subsection (b) have been moved to Rule 1.15 (i) of the Rules of Professional Conduct.

The above changes to subsection (d) will assist the statewide grievance committee in locating, identifying and communicating with members of the bar.

Sec. 2-28. Overdraft Notification

(a) The terms used in this section are defined as follows:

(1) ''Financial institution'' includes banks, savings and loan associations, credit unions, savings

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banks and any other business or person which accepts for deposit funds held in trust by attorneys.

(2) ''Properly payable'' refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under law.

(3) ''Insufficient funds'' refers to the status of an account that does not contain sufficient funds available to pay a properly payable instrument.

(4) ''Uncollected funds'' refers to funds deposited in an account and available to be drawn upon but not yet deemed by the financial institution to have been collected.

(b) Attorneys shall deposit all funds held in any fiduciary capacity in accounts clearly identified as ''trust,'' ''client funds'' or ''escrow'' accounts, referred to herein as ''trust accounts,'' and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation in Connecticut, whether as trustee, agent, guardian, executor or otherwise. Where an attorney fiduciary has the right to draw by a properly payable instrument on such trust account in which the funds of more than one client are kept, such account shall be maintained only in financial institutions approved by the statewide grievance committee. No such trust account in which the funds of more than one client are kept shall be maintained in any financial institution in Connecticut which does not file the agreement required by this section. Violation of this subsection shall constitute misconduct.

(c) Attorneys regularly maintaining funds in a fiduciary capacity shall register any account in which the funds of more than one client are kept with the statewide grievance committee in accordance with Section 2-27 (d).

(d) A financial institution shall be approved as a depository for attorney trust accounts only if it files with the statewide grievance committee an agreement, in a form provided by the committee, to report to the committee the fact that an instrument has been presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No report shall be required if funds in an amount sufficient to cover the deficiency in the trust account are deposited within one business day of the presentation of the instrument. No report shall be required in the case of an instrument presented and paid against uncollected funds.

(e) Any such agreement shall not be cancelled by a financial institution except upon thirty days written notice to the statewide grievance committee. The statewide grievance committee shall establish rules governing approval and termination of approved status for financial institutions, and shall publish annually a list of approved institutions. Any such agreement shall apply to all branches of the financial institution in Connecticut and shall not be cancelled except upon thirty days notice in writing to the statewide grievance committee.

(f) The financial institution shall report to the statewide grievance committee within seven business days from the date of such presentation, any instrument presented against insufficient funds on any trust funds account unless funds in an amount sufficient to cover the deficiency in the account are deposited within one business day of the presentation of the instrument. The report shall be accompanied by a copy of the instrument.

(g) The statewide grievance committee may delegate to the statewide bar counsel the authority to investigate overdraft notifications and determine that no misconduct has occurred or that no further action is warranted. Any determination that misconduct may have occurred and a grievance complaint should be initiated, unless such complaint is premised upon the failure of an attorney to file an explanation of an overdraft, shall be made by the statewide grievance committee.

(h) Upon receipt of notification of an overdraft, the statewide grievance committee, its counsel or disciplinary counsel may request that the attorney produce such books of account and statements of reconciliation, and any other records required to be maintained pursuant to Section 2-27 (b) for review, examination or audit. Failure of the attorney to respond to inquiries of the statewide grievance committee, its counsel, or disciplinary counsel, or to produce the requested books of account and statements of reconciliation or other records shall be grounds for disciplinary counsel to file an application for an interim suspension in accordance with the provisions of Section 2-42.

(i) Every attorney practicing or admitted to practice in Connecticut shall, as a condition thereof, be conclusively presumed to have authorized the reporting and production requirements of this section. Where an attorney qualifies as executor of a will or as trustee or successor fiduciary, the attorney fiduciary shall have a reasonable time after qualification to bring preexisting trust accounts into compliance with the provisions of this section.

(P.B. 1978-1997, Sec. 27A.1.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

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Sec. 2-28A. Attorney Advertising; Mandatory Filing

(a) Any attorney who advertises services to the public through any media, electronic or otherwise, or through written or recorded communication pursuant to Rule 7.2 of the Rules of Professional Conduct shall file a copy of each such advertisement or communication with the statewide grievance committee either prior to or concurrently with the attorney's first dissemination of the advertisement or written or recorded communication, except as otherwise provided in subsection (b) herein. The materials shall be filed in a format prescribed by the statewide grievance committee, which may require them to be filed electronically. Any such submission in a foreign language must include an accurate English language translation.

The filing shall consist of the following:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, DVDs, audiotapes, compact discs, print media, photographs of outdoor advertising);

(2) A transcript, if the advertisement or communication is in video or audio format;

(3) A list of domain names used by the attorney primarily to offer legal services, which shall be updated quarterly;

(4) A sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(5) A statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used.

(b) The filing requirements of subsection (a) do not extend to any of the following materials:

(1) An advertisement in the public media that contains only the information, in whole or in part, contained in Rule 7.2 (i) of the Rules of Professional Conduct, provided the information is not false or misleading;

(2) An advertisement in a telephone directory;

(3) A listing or entry in a regularly published law list;

(4) An announcement card stating new or changed associations, new offices, or similar changes relating to an attorney or firm, or a tombstone professional card;

(5) A communication sent only to:

(i) Existing or former clients;

(ii) Other attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies and/or

(iii) Members of a not-for-profit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by an attorney; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the attorney who is recommended, furnished, or paid for by the organization.

(6) Communication that is requested by a prospective client.

(7) The contents of an attorney's Internet website that appears under any of the domain names submitted pursuant to subdivision (3) of subsection (a).

(c) If requested by the statewide grievance committee, an attorney shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written or recorded communications.

(d) The statewide bar counsel shall review advertisements and communications filed pursuant to this section that have been selected for such review on a random basis. If after such review the statewide bar counsel determines that an advertisement or communication does not comply with the Rules of Professional Conduct, the statewide bar counsel shall in writing advise the attorney responsible for the advertisement or communication of the noncompliance and shall attempt to resolve the matter with such attorney. If the matter is not resolved to the satisfaction of the statewide bar counsel, he or she shall forward the advertisement or communication and a statement describing the attempt to resolve the matter to the statewide grievance committee for review. If, after reviewing the advertisement or communication, the statewide grievance committee determines that it violates the Rules of Professional Conduct, it shall forward a copy of its file to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(e) The procedure set forth in subsection (d) shall apply only to advertisements and communications that are reviewed as part of the random review process. If an advertisement or communication comes to the attention of the statewide bar counsel other than through that process, it shall be handled pursuant to the grievance procedure that is set forth in Sections 2-29 et seq.

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(f) The materials required to be filed by this section shall be retained by the statewide grievance committee for a period of one year from the date of their filing, unless, at the expiration of the one year period, there is pending before the statewide grievance committee, a reviewing committee, or the court a proceeding concerning such materials, in which case the materials that are the subject of the proceeding shall be retained until the expiration of the proceeding or for such other period as may be prescribed by the statewide grievance committee.

(g) Except for records filed in court in connection with a presentment brought pursuant to subsection (d), records maintained by the statewide bar counsel, the statewide grievance committee and/or the disciplinary counsel's office pursuant to this section shall not be public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(h) Violation of subsections (a) or (c) shall constitute misconduct.

(Adopted June 26, 2006, to take effect July, 1, 2007; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 2-28B. —Advisory Opinions

(a) An attorney who desires to secure an advance advisory opinion concerning compliance with the Rules of Professional Conduct of a contemplated advertisement or communication may submit to the statewide grievance committee, not less than 30 days prior to the date of first dissemination, the material specified in Section 2-28A (a) accompanied by a fee established by the chief court administrator. It shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement.

(b) An advisory opinion shall be issued, without a hearing, by the statewide grievance committee or by a reviewing committee assigned by the statewide grievance committee. Such reviewing committee shall consist of at least three members of the statewide grievance committee, at least one-third of whom are not attorneys.

(c) An advisory opinion issued by the statewide grievance committee or a reviewing committee finding noncompliance with the Rules of Professional Conduct is not binding in a disciplinary proceeding, but a finding of compliance is binding in favor of the submitting attorney in a disciplinary proceeding if the representations, statements, materials, facts and written assurances received in connection therewith are not false or misleading. The finding constitutes admissible evidence if offered by a party. If a request for an advisory opinion is made within 60 days of the effective date of this section, the statewide grievance committee or reviewing committee shall issue its advisory opinion within 45 days of the filing of the request. Thereafter, the statewide grievance committee or reviewing committee shall issue its advisory opinion within 30 days of the filing of the request. For purposes of this section, an advisory opinion is issued on the date notice of the opinion is transmitted to the attorney who requested it pursuant to subsection (a) herein.

(d) If requested by the statewide grievance committee or a reviewing committee, the attorney seeking an advisory opinion shall promptly submit information to substantiate statements or representations made or implied in such attorney's advertisement. The time period set forth in subsection (c) herein shall be tolled from the date of the committee's request to the date the requested information is filed with the committee.

(e) If an advisory opinion is not issued by the statewide grievance committee or a reviewing committee within the time prescribed in this section, the advertisement or communication for which the opinion was sought shall be deemed to be in compliance with the Rules of Professional Conduct.

(f) If, after receiving an advisory opinion finding that an advertisement or communication violates the Rules of Professional Conduct, the attorney disseminates such advertisement or communication, the statewide grievance committee, upon receiving notice of such dissemination, shall forward a copy of its file concerning the matter to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(g) Except for advisory opinions, all records maintained by the statewide grievance committee pursuant to this section shall not be public. Advisory opinions issued pursuant to this section shall not be public for a period of 30 days from the date of their issuance. During that 30 day period the advisory opinion shall be available only to the

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attorney who requested it pursuant to subsection (a), to the statewide grievance committee or its counsel, to reviewing committees, to grievance panels, to disciplinary counsel, to a judge of the superior court, and, with the consent of the attorney who requested the opinion, to any other person. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

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

Sec. 2-29. Grievance Panels

(a) The judges of the superior court shall appoint one or more grievance panels in each judicial district, each consisting of two members of the bar who do not maintain an office for the practice of law in such judicial district and one nonattorney who resides in such judicial district, and shall designate as an alternate member a member of the bar who does not maintain an office for the practice of law in such judicial district. Terms shall commence on July 1. Appointments shall be for terms of three years. No person may serve as a member and/or as an alternate member for more than two consecutive three year terms, but may be reappointed after a lapse of one year. The appointment of any member or alternate member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. In the event that a vacancy arises on a panel before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall appoint an attorney or nonattorney, depending on the position vacated, who meets the appropriate condition set forth above to fill the vacancy for the balance of the term.

(b) Consideration for appointment to these positions shall be given to those candidates recommended to the appointing authority by the administrative judges.

(c) In the event that more than one panel has been appointed to serve a particular judicial district, the executive committee of the superior court shall establish the jurisdiction of each such panel.

(d) An attorney who maintains an office for the practice of law in the same judicial district as a respondent may not participate as a member of a grievance panel concerning a complaint against that respondent.

(e) In addition to any other powers and duties set forth in this chapter, each panel shall:

(1) On its own motion or on complaint of any person, inquire into and investigate offenses whether or not occurring in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the bar in this state.

(2) Compel any person by subpoena to appear before it to testify in relation to any matter deemed by the panel to be relevant to any inquiry or investigation it is conducting and to produce before it for examination any books or papers which, in its judgment, may be relevant to such inquiry or investigation.

(3) Utilize a court reporter or court recording monitor employed by the judicial branch to record any testimony taken before it.

(f) 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.

(P.B. 1978-1997, Sec. 27B.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-30. Grievance Counsel for Panels and Investigators

(a) The judges of the superior court shall appoint, as set forth below, attorneys to serve either on a part-time or full-time basis as grievance counsel for grievance panels, and shall appoint one or more investigators either on a full-time or part-time basis. The investigators so appointed shall serve the statewide grievance committee, the reviewing committees and the grievance panels and shall be under the supervision of the statewide bar counsel. These appointments shall be for a term of one year commencing July 1. In the event that a vacancy arises in any of these positions before the end of a term, the executive committee of the superior court shall appoint a qualified individual to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the judicial branch. Such appointees may be placed on the judicial branch payroll or be paid on a contractual basis.

(b) Consideration for appointment to the position of grievance counsel for a grievance panel shall be given to those candidates recommended to the appointing authority by the resident judges

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in the judicial district or districts to which the appointment is to be made.

(c) The executive committee of the superior court shall determine the number of grievance counsel to serve one or more grievance panels.

(P.B. 1978-1997, Sec. 27D.)

Sec. 2-31. Powers and Duties of Grievance Counsel

Grievance counsel shall have the following powers and duties:

(1) Upon referral of the complaint to the grievance panel, to confer with and, if possible, meet with the complainants and assist them in understanding the grievance process set forth in these rules and to answer questions complainants may have concerning that process.

(2) To investigate all complaints received by the grievance panel from the statewide bar counsel involving alleged misconduct of an attorney subject to the jurisdiction of the superior court.

(3) To assist the grievance panels in carrying out their duties under this chapter.

(4) When determined to be necessary by the statewide grievance committee, to assist reviewing committees of the statewide grievance committee in conducting hearings before said reviewing committees.

(5) If the grievance panel has dismissed the complaint, to assist the complainant in understanding the reasons for the dismissal.

(P.B. 1978-1997, Sec. 27E.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

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

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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.

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(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.

(P.B. 1978-1997, Sec. 27F.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; amended June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date of two latest amendments changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 2-33. Statewide Grievance Committee

(a) The judges of the superior court shall appoint twenty-one persons to a committee to be known as the "statewide grievance committee." At least seven shall not be attorneys and the remainder shall be members of the bar of this state. The judges shall designate one member as chair and another as vice-chair to act in the absence or disability of the chair.

(b) All members shall serve for a term of three years commencing on July 1. Except as otherwise provided herein, no person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term; a member may be reappointed after a lapse of one year. If the term of a member who is on a reviewing committee expires while a complaint is pending before that committee, the judges or the executive committee may extend the term of such member to such time as the reviewing committee has completed its action on that complaint. In the event of such an extension the total number of statewide grievance committee members may exceed twenty-one. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall fill the vacancy for the balance of the term or for any other appropriate period. Unless otherwise provided in this chapter, the committee must have at least a quorum present to act, and a quorum shall be eleven. The committee shall act by a vote of a majority of those present and voting, provided that a minimum of six votes for a particular action is necessary for the committee to act. Members present but not voting due to disqualification, abstention, silence or a refusal

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to vote, shall be counted for purposes of establishing a quorum, but not counted in calculating a majority of those present and voting.

(c) In addition to any other powers and duties set forth in this chapter, the statewide grievance committee shall:

(1) Institute complaints involving violations of General Statutes § 51-88.

(2) Adopt rules to carry out its duties under this chapter which are not inconsistent with these rules.

(3) Adopt rules for grievance panels to carry out their duties under this chapter which are not inconsistent with these rules.

(4) In its discretion, disclose that it or the statewide bar counsel has referred a complaint to a panel for investigation when such disclosure is deemed by the committee to be in the public interest.

(P.B. 1978-1997, Sec. 27G.)

Sec. 2-34. Statewide Bar Counsel

(a) The judges of the superior court shall appoint an attorney to act as statewide bar counsel, and such additional attorneys to act as assistant bar counsel as are necessary, for a term of one year commencing July 1. In the event that a vacancy arises in any such position before the end of a term, the executive committee of the superior court shall appoint an attorney to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the judicial branch. Such individuals shall be in the legal services division of the office of the chief court administrator and shall perform such other duties as may be assigned to them in that capacity.

(b) In addition to any other powers and duties set forth in this chapter, the statewide bar counsel or an assistant bar counsel shall:

(1) Report to the national disciplinary data bank such requested information as is officially reported to the statewide bar counsel concerning attorneys who have resigned pursuant to Section 2-52, or whose unethical conduct has resulted in disciplinary action by the court or by the statewide grievance committee, or who have been placed on inactive status pursuant to Sections 2-56 through 2-62.

(2) Receive and maintain information forwarded to the statewide bar counsel by the national disciplinary data bank.

(3) Receive and maintain records forwarded to the statewide bar counsel by the clerks of court pursuant to Sections 2-23 and 2-52 and by complainants pursuant to Section 2-32.

(4) For a fee established by the chief court administrator, certify the status of individuals who are or were members of the bar of this state at the request of bar admission authorities of other jurisdictions or at the request of a member of the bar of this state with respect to such member's status. In certifying the status of an individual, no information shall be provided to the requesting entity, other than public information, without a waiver from that individual.

(5) Assist the statewide grievance committee and the reviewing committees in carrying out their duties under this chapter.

(P.B. 1978-1997, Sec. 27H.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 2-34A. Disciplinary Counsel

(a) There shall be a chief disciplinary counsel and such disciplinary counsel and staff as are necessary. The chief disciplinary counsel and the disciplinary counsel shall be appointed by the judges of the superior court for a term of one year commencing July 1, except that initial appointments shall be from such date as the judges determine through the following June 30. In the event that a vacancy arises in any of these positions before the end of a term, the executive committee of the superior court may appoint a qualified individual to fill the vacancy for the balance of the term. The chief disciplinary counsel and disciplinary counsel shall be assigned to the office of the chief court administrator for administrative purposes and shall not engage in the private practice of law. The term ''disciplinary counsel'' as used in the rules for the superior court shall mean the chief disciplinary counsel or any disciplinary counsel.

(b) In addition to any other powers and duties set forth in this chapter, disciplinary counsel shall:

(1) Investigate each complaint which has been forwarded, after a determination that probable cause exists that the respondent is guilty of misconduct, by a grievance panel to the statewide grievance committee for review pursuant to Section 2-32 (i) and pursue such matter before the statewide grievance committee or reviewing committee. When, after a determination of no probable cause by a grievance panel, a complaint is forwarded to the statewide grievance committee because it contains an allegation that the respondent committed a crime, and the statewide grievance committee or a reviewing committee determines that a hearing shall be held concerning the complaint pursuant to Section 2-35 (c), the disciplinary counsel shall present the matter to such committee.

(2) Pursuant to Section 2-82, discuss and may negotiate a disposition of the complaint with the

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respondent or, if represented by an attorney, the respondent's attorney, subject to the approval of the statewide grievance committee or a reviewing committee or the court.

(3) Remove irrelevant information from the complaint file and thereafter permit discovery of information in the file.

(4) Have the power to subpoena witnesses for any hearing before a grievance panel, a reviewing committee or the statewide grievance committee convened pursuant to these rules.

(5) In his or her discretion, recommend dispositions to the statewide grievance committee or the reviewing committee after the hearing on a complaint is concluded.

(6) At the request of the statewide grievance committee or a reviewing committee, prepare and file complaints initiating presentment proceedings in the superior court, whether or not the alleged misconduct occurred in the actual presence of the court, and prosecute same.

(7) At the request of a grievance panel made pursuant to Section 2-29, pursue the matter before the grievance panel on the issue of probable cause.

(8) Investigate and prosecute complaints involving the violation by any person of General Statutes § 51-88.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Oct. 1, 2003, and amendment adopted June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date of adopted rule and amendment changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

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

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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. 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

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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.

(P.B. 1978-1997, Sec. 27J.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 2-36. Action by Statewide Grievance Committee on Request for Review

Within sixty days of the expiration of the thirty day period for the filing of a request for review under Section 2-35 (g), or, with regard to grievance complaints filed on or after January 1, 2004, within sixty days of the expiration of the fourteen day period for the filing of a response by disciplinary counsel to a request for review under that section, the statewide grievance committee shall issue a written decision affirming the decision of the reviewing committee, dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37, directing the disciplinary counsel to file a presentment against the respondent in the superior court or referring the complaint to the same or a different reviewing committee for further investigation and a decision. Before issuing its decision, the statewide grievance committee may, in its discretion, request oral argument. The statewide grievance committee shall forward a copy of its decision to the complainant, the disciplinary counsel, the respondent, the reviewing committee and the grievance panel which investigated the complaint. The decision shall be a matter of public record. A decision of the statewide grievance committee shall be issued only if the respondent has timely filed a request for review under Section 2-35 (g).

(P.B. 1978-1997, Sec. 27M.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-37. Sanctions and Conditions Which May Be Imposed by Committees

(a) A reviewing committee or the statewide grievance committee may impose one or more of the following sanctions and conditions in accordance with the provisions of Sections 2-35 and 2-36:

(1) reprimand;

(2) restitution;

(3) assessment of costs;

(4) an order that the respondent return a client's file to the client;

(5) a requirement that the respondent attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;

(6) an order to submit to fee arbitration;

(7) with the respondent's consent, an order to submit to periodic audits and supervision of the attorney's trust accounts to insure compliance with the provisions of Section 2-27 and the related Rules of Professional Conduct;

(8) with the respondent's consent, a requirement that the respondent undertake treatment, at his or her own expense, for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse.

(b) In connection with subsection (a) (6), 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.

(c) Failure of the respondent to comply with any sanction or condition imposed by the statewide grievance committee or a reviewing committee may be grounds for presentment before the superior court.

(P.B. 1978-1997, Sec. 27M.1.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

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

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee imposing sanctions or conditions against the respondent, in accordance with Section 2-37 (a). A respondent may not appeal a decision by a reviewing committee imposing sanctions or conditions against the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested, to the office of the statewide bar counsel as agent for the statewide grievance committee and to the office of the chief disciplinary counsel.

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

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

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

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

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

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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.

(P.B. 1978-1997, Sec. 27N.) (Amended June 29, 1998, to take effect Sept. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; amended June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date of two prior amendments changed to Jan. 1, 2004; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 2-39. Reciprocal Discipline

(a) Upon being informed that a lawyer admitted to the Connecticut bar has resigned, been disbarred, suspended or otherwise disciplined, or placed on inactive disability status in another jurisdiction, and that said discipline or inactive disability status has not been stayed, the disciplinary counsel shall obtain a certified copy of the order and file it with the superior court for the judicial district wherein the lawyer maintains an office for the practice of law in this state, except that, if the lawyer has no such office, the disciplinary counsel shall file the certified copy of the order from the other jurisdiction with the superior court for the judicial district of Hartford at Hartford. No entry fee shall be required for proceedings hereunder.

(b) Upon receipt of a certified copy of the order, the court shall forthwith cause to be served upon the lawyer a copy of the order from the other jurisdiction and an order directing the lawyer to file within thirty days of service, with proof of service upon the disciplinary counsel, an answer admitting or denying the action in the other jurisdiction and setting forth, if any, reasons why commensurate action in this state would be unwarranted. Such certified copy will constitute prima facie evidence that the order of the other jurisdiction entered and that the findings contained therein are true.

(c) Upon the expiration of the thirty day period the court shall assign the matter for a hearing. After hearing, the court shall take commensurate action unless it is found that any defense set forth in the answer has been established by clear and convincing evidence.

(d) Notwithstanding the above, a reciprocal discipline action need not be filed if the conduct giving rise to discipline in another jurisdiction has already been the subject of a formal review by the court or statewide grievance committee.

(P.B. 1978-1997, Sec. 28A.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended August 24, 2001, to take effect Jan. 1, 2002; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-40. Discipline of Attorneys Convicted of a Felony and Other Matters in Connecticut

(a) The clerk of the superior court location in this state in which an attorney is convicted of a serious crime as defined herein shall transmit, immediately upon the imposition of sentence, a certificate of the conviction to the disciplinary counsel and to the statewide grievance committee. The attorney shall also notify the disciplinary counsel in writing of his or her conviction. The disciplinary counsel or designee shall, pursuant to Section 2-47, file a presentment against the attorney predicated upon the conviction. No entry fee shall be required for proceedings hereunder. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less.

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

(c) The term ''serious crime'' as used herein shall mean any felony or any larceny or any crime for which the attorney was sentenced to a term of incarceration or for which a suspended period of incarceration was imposed.

(d) The provisions of subsection (e) of this section notwithstanding, after sentencing an attorney who has been convicted of a serious crime, the sentencing judge may in his or her discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the conviction. Thereafter,

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upon good cause shown, the judge who placed the attorney on suspension or any other judge before whom a presentment is pending may, in the interest of justice, set aside or modify the interim suspension.

(e) A presentment filed pursuant to this section shall be heard by the judge who presided at the sentencing. A hearing on the presentment complaint addressing the issue of the eligibility of such attorney to continue the practice of law in this state shall be held within thirty days of sentencing or the filing of the presentment, whichever is later. Such hearing shall be prosecuted by the disciplinary counsel or an attorney designated pursuant to Section 2-48. At such hearing the attorney shall have the right to counsel, to be heard in his or her own defense and to present evidence and witnesses in his or her behalf. After such hearing, the judge shall enter an order dismissing the matter or imposing discipline upon such attorney in the form of suspension for a period of time, disbarment or such other discipline as the judge deems appropriate.

(f) Whenever the judge enters an order suspending or disbarring an attorney pursuant to subsections (d) or (e) of this section, the judge may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.

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

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

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

(P.B. 1978-1997, Sec. 28B.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

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

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

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

(c) The term "serious crime" as used herein shall mean any felony or any larceny as defined in the jurisdiction in which the attorney was convicted or any crime for which the attorney was sentenced to a term of incarceration or for which a suspended period of incarceration or a period of probation was imposed.

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

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

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

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

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

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

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

(P.B. 1978-1997, Sec. 28B.1.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-42. Conduct Constituting Threat of Harm to Clients

(a) If there is a disciplinary proceeding pending against a lawyer, or if there has been a notice of overdraft in accordance with the provisions of Section 2-28 (f) and the grievance panel, the reviewing committee, the statewide grievance committee or the disciplinary counsel believes that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, or that there has been an unexplained overdraft in the lawyer's trust funds account, the panel or committee shall so advise the disciplinary counsel. The disciplinary counsel shall, upon being so advised or upon his or her own belief, apply to the court for an order of interim suspension. The disciplinary counsel shall provide the lawyer with notice that an application for interim suspension has been filed and that a hearing will be held on such application.

(b) The court, after hearing, pending final disposition of the disciplinary proceeding, may, if it finds that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, enter an order of interim suspension, or may order such other interim action as deemed appropriate. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension or other order entered pursuant hereto. Whenever the court enters an interim suspension order pursuant hereto, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the suspended attorney's interests.

(c) No entry fee shall be required for proceedings hereunder. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers.

(P.B. 1978-1997, Sec. 28C.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-43. Notice by Attorney of Alleged Misuse of Clients' Funds and Garnishments of Lawyers' Trust Accounts

(a) When any complaint, counterclaim, cross complaint, special defense or other pleading in a judicial or administrative proceeding alleges a lawyer's misuse of funds handled by the lawyer in his or her capacity as a lawyer or a fiduciary, the person signing the pleading shall mail a copy thereof to the statewide bar counsel.

(b) In any case where a lawyer's trust account, as defined in Section 2-28 (b), is garnisheed, or otherwise liened, the party who sought the garnishment or lien shall mail a copy of the garnishee process or writ of attachment to the statewide bar counsel.

(P.B. 1978-1997, Sec. 28D.)

Sec. 2-44. Power of Superior Court to Discipline Attorneys and to Restrain Unauthorized Practice

The superior court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law.

(P.B. 1978-1997, Sec. 29.)

Sec. 2-44A. Definition of the Practice of Law

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

(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any

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other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

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

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

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

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

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

"Documents" includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

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

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

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

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

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

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

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

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

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

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

(6) Acting as a legislative lobbyist.

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

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

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

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

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

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

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

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

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

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

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

(Adopted June 29, 2007, to take effect Jan. 1, 2008.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 2-45. —Cause Occurring in Presence of Court

If such cause occurs in the actual presence of the court, the order may be summary, and without complaint or hearing; but a record shall be made of such order, reciting the ground thereof. Without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction.

(P.B. 1978-1997, Sec. 30.)

Sec. 2-46. Suspension of Attorneys Who Violate Support Orders

(a) Except as otherwise provided in this section, the procedures of General Statutes §§ 46b-220 through 46b-223 shall be followed with regard to the suspension from the practice of law of attorneys who are found to be delinquent child support obligors.

(b) A judge, upon finding that an attorney admitted to the bar in this state is a delinquent child support obligor as defined in General Statutes § 46b-220 (a), may, pursuant to General Statutes § 46b-220 (b), issue a suspension order concerning that attorney.

(c) If the attorney obligor fails to comply with the conditions of the suspension order within thirty days of its issuance, the department of social services, a support enforcement officer, the attorney for the obligee or the obligee, as provided in the suspension order, shall file with the clerk of the superior court which issued the suspension order an affidavit stating that the conditions of the suspension order have not been met, and shall serve the attorney obligor with a copy of such affidavit in accordance with Sections 10-12 through 10-17. The affidavit shall be filed within forty-five days of the expiration of the thirty day period.

(d) Upon receipt of the affidavit, the clerk shall forthwith bring the suspension order and the affidavit to a judge of the superior court for review. If the judge determines that pursuant to the provisions of General Statutes § 46b-220 the attorney obligor should be suspended, the judge shall suspend the attorney obligor from the practice of law, effective immediately.

(e) A suspended attorney who has complied with the conditions of the suspension order concerning reinstatement, shall file a motion with the court to vacate the suspension. Upon proof of such compliance, the court shall vacate the order of suspension and reinstate the attorney. The provisions of Section 2-53 shall not apply to suspensions under this section.

(f) The clerk shall notify the statewide bar counsel of any suspensions and reinstatements ordered pursuant to this section.

(P.B. 1978-1997, Sec. 30A.)

Sec. 2-47. Presentments and Unauthorized Practice of Law Petitions

(a) Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the disciplinary counsel. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the attorney before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the disciplinary counsel or an attorney appointed pursuant to Section 2-48.

(b) The sole issue to be determined in a disciplinary proceeding predicated upon conviction of a felony, any larceny or crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed shall be the extent of the final discipline to be imposed.

(c) A petition to restrain any person from engaging in the unauthorized practice of law not occurring in the actual presence of the court may be made by written complaint to the superior court in the judicial district where such violation occurs. When offenses have been committed by the same person in more than one judicial district, presentment for all offenses may be made in any one of such judicial districts. Such complaint may be

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prosecuted by the state's attorney, by the disciplinary counsel, or by any member of the bar by direction of the court. Upon the filing of such complaint, a rule to show cause shall issue to the defendant, who may make any proper answer within twenty days from the return of the rule and who shall have the right to be heard as soon as practicable, and upon such hearing the court shall make such lawful orders as it may deem just. Such complaints shall be proceeded with as civil actions.

(d) (1) If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the superior court, but the respondent has been disciplined pursuant to these rules by the statewide grievance committee, a reviewing committee or the court at least three times pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to such finding of misconduct in the instant case, the statewide grievance committee or the reviewing committee shall direct the disciplinary counsel to file a presentment against the respondent in the superior court. Service of the matter shall be made as in civil actions. The statewide grievance committee or the reviewing committee shall file with the court the record in the matter and a copy of the prior discipline issued against the respondent within such five year period. The sole issue to be determined by the court upon the presentment shall be the appropriate action to take as a result of the nature of the misconduct in the instant case and the cumulative discipline issued concerning the respondent within such five year period. Such action shall be in the form of a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the respondent before he or she may apply for readmission or reinstatement. This subsection shall apply to all findings of misconduct issued from the day of enactment forward and the determination of presentment shall consider all discipline pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to the finding of misconduct even if they predate the effective date of these rules.

(2) If the respondent has appealed the issuance of a finding of misconduct made by the statewide grievance committee or the reviewing committee, the court shall first adjudicate and decide that appeal in accordance with the procedures set forth in subsections (d) through (f) of Section 2-38. In the event the court denies the respondent's appeal of the finding of misconduct, the court shall then adjudicate the presentment brought under this section. In no event shall the court review the merits of the matters for which the prior reprimands were issued against the respondent.

(e) No entry fee shall be required for the filing of any complaint pursuant to this section.

(P.B. 1978-1997, Sec. 31.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-47A. Disbarment of Attorney for Misappropriation of Funds

In any disciplinary proceeding where there has been a finding by a judge of the superior court that a lawyer has knowingly misappropriated a client's funds or other property held in trust the discipline for such conduct shall be disbarment.

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

Sec. 2-48. Designee to Prosecute Presentments

The executive committee of the superior court may choose one or more members of the bar of this state to prosecute presentments. The chief court administrator may also contract with members of the bar of this state to prosecute presentments, actions for reciprocal discipline, actions for interim suspension and disciplinary proceedings predicated on the conviction of an attorney of a felony or other crime set out in Section 2-40.

(P.B. 1978-1997, Sec. 31A.)(Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-49. Restitution

Whenever restitution has been made the panel or committee investigating the attorney's conduct shall nevertheless determine if further proceedings are necessary. If it is found that further proceedings are deemed unnecessary, such decision shall be reviewed by the statewide grievance committee in accordance with the provisions of this chapter.

(P.B. 1978-1997, Sec. 31B.)

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

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

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

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(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 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 of pending grievance complaints in which probable cause has not yet been determined.

(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 (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.

(d) Unless otherwise ordered by the court, all 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.

(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.

(P.B. 1978-1997, Sec. 32.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 2-51. Costs and Expenses

Costs may be taxed against the respondent in favor of the state, if the respondent be found guilty of the offense charged in whole or in part, at the discretion of the court. The court may also, upon any such complaint by the state's attorney or by the statewide grievance committee, as the case may be, audit and allow (whatever may be the result of the proceeding) reasonable expenses to be taxed as part of the expenses of the court.

(P.B. 1978-1997, Sec. 34.)

Sec. 2-52. Resignation of Attorney

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

(b) Such resignation shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, to the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court

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after a hearing following a report by the statewide grievance committee, whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

(P.B. 1978-1997, Sec. 35.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 20, 2005, to take effect Jan.1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008.)

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

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

(b) The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.

(c) The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.

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

(e) The applicant shall pay to the clerk of the superior court $200 at the time his or her application is filed. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.

(f) An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.

(g) In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.

(P.B. 1978-1997, Sec. 36.) (Amended Nov. 17, 1999, on an interim basis, to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 21, 2010, to take effect Jan. 1, 2011.)

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Sec. 2-54. Publication of Notice of Reprimand, Suspension, Disbarment, Resignation, Placement on Inactive Status or Reinstatement

(a) Notice of the final action transferring an attorney to inactive status or reprimanding, suspending, or disbarring an attorney from practice in this state shall be published once in the Connecticut Law Journal by the authority accepting or approving such action. Notice of a reprimand by the statewide grievance committee or by a reviewing committee shall not be published until the expiration of any stay pursuant to Sections 2-35 (e) and 2-38.

(b) Notice of the resignation or reinstatement after suspension, disbarment, resignation or placement on inactive status of an attorney shall be published once in the Connecticut Law Journal by the authority accepting or approving such action.

(P.B. 1978-1997, Sec. 36A.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 2-55. Retirement of Attorney

Written notice of retirement from the practice of law, pursuant to the provisions of General Statutes § 51-81b, shall not constitute removal from the bar or the roll of attorneys, but it shall be noted on the roll of attorneys kept by the clerk in Hartford county who shall notify the statewide bar counsel of such retirement. The notice shall include the attorney's juris number and be filed in triplicate with such clerk. Upon the filing of such notice, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut. Retirement may be revoked at any time upon written notice to the clerk for Hartford county and the statewide bar counsel. Disciplinary proceedings against an attorney shall not be stayed or terminated on account of the attorney's retirement from the practice of law.

(P.B. 1978-1997, Sec. 37.) (Amended Nov. 17, 1999, on an interim basis pursuant to Section 1-9 (c), to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 2-56. Inactive Status of Attorney

During the time an order placing an attorney on inactive status is in effect, such attorney shall be precluded from practicing law. No entry fee shall be required for proceedings pursuant to this section and Sections 2-57 through 2-62. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers, and records and papers filed in connection therewith shall be open for inspection only to persons having a proper interest therein and upon order of the court. The court shall, in exercising discretion, weigh the public policy in favor of open proceedings, as well as the duty to protect the public, against the attorney's right to medical and mental health privacy and ability to pursue a livelihood.

(P.B. 1978-1997, Sec. 39.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-57. —Prior Judicial Determination of Incompetency or Involuntary Commitment

In the event an attorney is by a court of competent jurisdiction (1) declared to be incapable of managing his or her affairs or (2) committed involuntarily to a mental hospital for drug dependency, mental illness, or the addictive, intemperate, or excessive use of alcohol, the superior court, upon notice from a grievance panel, a reviewing committee, the statewide grievance committee or a state's attorney and upon proof of the fact of incapacity to engage in the practice of law, shall enter an order placing such attorney upon inactive status, effective immediately, for an indefinite period and until further order of the court. A copy of such order shall be served, in such manner as the court shall direct, upon such attorney, the attorney's conservator if any, and the director of any mental hospital in which the attorney may reside.

(P.B. 1978-1997, Sec. 40.)

Sec. 2-58. —No Prior Determination of Incompetency or Involuntary Commitment

(a) Whenever a grievance panel, a reviewing committee, the statewide grievance committee or the disciplinary counsel shall have reason to believe that an attorney is incapacitated from continuing to practice law by reason of mental infirmity or illness or because of drug dependency or addiction to alcohol, such panel, committee or counsel, shall petition the court to determine whether the attorney is so incapacitated and the court may take or direct such action as it deems necessary or proper for such determination, including examination of the attorney by such qualified medical expert or experts as the court shall designate, at the expense of the judicial branch. If, upon due consideration of the matter, the court is satisfied and concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney in an inactive status on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceedings against the attorney shall be held in abeyance.

(b) The court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and shall appoint an attorney, at the expense of the judicial

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branch, to represent any respondent who is without adequate representation.

(P.B. 1978-1997, Sec. 41.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-59. —Disability Claimed during Course of Disciplinary Proceeding

If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering, by reason of mental infirmity or illness, or because of drug dependency or addiction to alcohol, from a disability which makes it impossible for the respondent adequately to defend himself or herself, the court thereupon shall, in a proceeding instituted in substantial accordance with the provisions of Section 2-58, enter an order placing the respondent on inactive status until a determination is made of the respondent's capacity to defend himself or herself. Notice of the institution of inactive status proceedings shall be provided to the statewide bar counsel. If the court determines that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

(P.B. 1978-1997, Sec. 42.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-60. —Reinstatement upon Termination of Disability

(a) Any attorney placed upon inactive status under the provisions of these rules shall be entitled to apply for reinstatement, without the payment of an entry fee, at such intervals as the court may direct in the order placing the attorney on inactive status or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper, including the determination whether the attorney's disability has been removed, and including direction of an examination of the attorney by such qualified medical expert or experts as the court shall designate. The court shall direct that the expense of such an examination be paid either by the attorney or by the judicial branch.

(b) Where an attorney has been placed on inactive status by an order in accordance with the provisions of Section 2-57 and thereafter, in proceedings duly taken, has been judicially declared to be competent, the court may dispense with further evidence that his or her disability has been removed and may direct his or her return to active status upon such terms as are deemed proper and advisable.

(P.B. 1978-1997, Sec. 44.)

Sec. 2-61. —Burden of Proof in Inactive Status Proceedings

In a proceeding seeking an order to place an attorney on inactive status, the burden of proof shall rest with the petitioner. In a proceeding seeking an order terminating inactive status, the burden of proof shall rest with the inactive attorney.

(P.B. 1978-1997, Sec. 45.)

Sec. 2-62. —Waiver of Doctor-Patient Privilege upon Application for Reinstatement

The filing of an application for reinstatement by an attorney on inactive status shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since being placed on inactive status and shall furnish to the court written consent to each to divulge such information and records as are requested by court-appointed medical experts or by the clerk of the court.

(P.B. 1978-1997, Sec. 46.)

Sec. 2-63. Definition of Respondent

When used in Sections 2-29 through 2-62 the word "respondent" shall mean the attorney against whom a grievance complaint or presentment has been filed or a person who is alleged to have been engaged in the unauthorized practice of law pursuant to General Statutes § 51-88.

(P.B. 1978-1997, Sec. 46A.)

Sec. 2-64. Appointment of Attorney to Protect Clients' and Attorney's Interests

(a) Whenever an attorney is placed upon inactive status, suspended, disbarred, or resigns, the court, upon such notice to him or her as the court may direct, shall appoint an attorney or attorneys to inventory the files of the inactive, suspended, disbarred or resigned attorney and to take such action as seems indicated to protect the interests of the attorney's clients. The court may also appoint an attorney to protect the interests of the attorney placed on inactive status, suspended, disbarred or resigned with respect to such files, when the attorney is not otherwise represented and the court deems that such representation is

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necessary. If the discipline imposed is not effective immediately as a result of an appeal or stay, the court, after the hearing and consideration of the merits of the appeal or reason for the stay, may issue interim orders to protect the public during the pendency of the appeal period or stay, until the discipline order becomes effective. In case of an attorney's death, the court may appoint an attorney where no partner, executor or other responsible party capable of conducting the deceased attorney's affairs is known to exist or willing to assume the responsibility.

(b) Any attorney so appointed by the court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as is necessary to carry out the order of the court which appointed the attorney to make such inventory.

(c) Not less frequently than once each year and at such time as the attorney may be returned to active status, reinstated or readmitted to the practice of law or when the attorney appointed to protect clients' interests has finished rendering services to those clients, the appointed attorney shall file with the court, for its examination and approval, a report showing fees earned from the clients of the attorney, necessary disbursements, and the amount requested by the appointed attorney as a fee for services rendered, to be paid out of the funds received. Any attorney so appointed by the court for the inactive, suspended, disbarred, resigned or deceased attorney may also be reimbursed for his or her services from any amount found to be due to the inactive, suspended, disbarred, resigned or deceased attorney for services rendered to such clients. All attorney's fees paid to any attorney appointed hereunder shall be subject to court approval.

(d) Unless the attorney appointed to protect clients' interests is a partner or associate of the attorney, if the attorney is returned to active status, reinstated or readmitted, the appointed attorney shall immediately cease representing the clients of the attorney and shall return to the reinstated or readmitted attorney, or to the attorney returned to active status, such files as the appointed attorney may have received, and the appointed attorney and partners and associates shall not represent any person who was a client of the reinstated or readmitted attorney, or who was a client of an attorney returned to active status, on or before the date when he or she was placed upon inactive status, suspended, disbarred or resigned, unless the court which entered the order directing reinstatement, readmission, or return to active status shall order otherwise after written request to the court by the client whose interest is involved.

(P.B. 1978-1997, Sec. 46B.) (Amended June 24, 2002, to take effect July 1, 2003; May 1, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-65. Good Standing of Attorney

An attorney is in good standing in this state if the attorney has been admitted to the bar of this state, has registered with the statewide grievance committee in compliance with Section 2-27 (d), has complied with Section 2-70, and is not under suspension, on inactive status, disbarred, or resigned from the bar.

(P.B. 1978-1997, Sec. 46C.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 2-66. Practice by Court Officials

(a) No lawyer who is a judge of the supreme court, appellate court or superior court shall practice law in any state or federal court.

(b) The chief public defender, the deputy chief public defender, public defenders, assistant public defenders, deputy assistant public defenders, the chief state's attorney, the deputy chief state's attorney, state's attorneys, assistant state's attorneys and deputy assistant state's attorneys who have been appointed on a full-time basis will devote their full time to the duties of their offices, will not engage in the private practice of law, either civil or criminal, and will not be connected in any way with any attorney or law firm engaged in the private practice of law.

(c) No state's attorney or assistant state's attorney, no partner or associate of a law firm of which any of the aforementioned court officials is a partner or associate, shall appear as counsel in any criminal case in behalf of any accused in any state or federal court.

(d) No chief clerk, deputy chief clerk, clerk, deputy clerk or assistant clerk who has been appointed on a full-time basis shall appear as counsel in any civil or criminal case in any state or federal court. Such persons may otherwise engage in the practice of law as permitted by established judicial branch policy.

(e) No chief public defender, deputy chief public defender, public defender, assistant public defender or deputy assistant public defender shall appear in behalf of the state in any criminal case.

(P.B. 1978-1997, Sec. 47.)

Sec. 2-67. Payment of Attorneys by Bank and Trust Companies

(a) No attorney shall directly or indirectly receive payment from any bank or trust company for legal services rendered to others in the preparation of wills, codicils or drafts of such instruments or for

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advising others as to legal rights under existing or proposed instruments of that character.

(b) The violation of this section by an attorney may be cause for grievance proceedings.

(P.B. 1978-1997, Sec. 48.)

Sec. 2-68. Client Security Fund Established

(a) A client security fund is hereby established to promote public confidence in the judicial system and the integrity of the legal profession by reimbursing clients, to the extent provided for by these rules, for losses resulting from the dishonest conduct of attorneys practicing law in this state in the course of the attorney-client relationship and by providing crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(b) It is the obligation of all attorneys admitted to the practice of law in this state to participate in the collective effort to reimburse clients who have lost money or property as the result of the unethical and dishonest conduct of other attorneys and to provide crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(c) The client security fund is provided as a public service to persons using the legal services of attorneys practicing in this state and as a means of providing crisis intervention and referral assistance to impaired attorneys. All moneys and assets of the fund shall constitute a trust.

(d) The establishment, administration and operation of the fund shall not impose or create any obligation, expectation of recovery from or liability of the fund to any claimant or attorney, and all reimbursements therefrom shall be a matter of grace and not of right.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-68A. —Crisis Intervention and Referral Assistance

(a) The chief court administrator may enter into any contracts and take such other action as may be reasonably necessary to provide for crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(b) The crisis intervention and referral assistance shall be provided with the assistance of an advisory committee appointed by the chief court administrator that shall include one or more behavioral health professionals.

(Adopted May 3, 2005, to take effect May 17, 2005.)

Sec. 2-69. —Definition of Dishonest Conduct

(a) As used in Sections 2-68 through 2-81, inclusive, ''dishonest conduct'' means wrongful acts committed by an attorney, in an attorney-client relationship or in a fiduciary capacity arising out of an attorney-client relationship, in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value, including, but not limited to refusal to refund unearned fees received in advance as required by Rule 1.16 (d) of the Rules of Professional Conduct.

(b) ''Dishonest conduct'' does not include such wrongful acts committed in connection with the provision of investment services to the claimant by the attorney.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-70. —Client Security Fund Fee

(a) The judges of the superior court shall assess an annual fee in an amount adequate for the proper payment of claims and the provision of crisis intervention and referral assistance under these rules and the costs of administering the client security fund. Such fee, which the judges of the superior court have set at $110, shall be paid by each attorney admitted to the practice of law in this state and each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner in this state. Notwithstanding the above, an attorney who is disbarred, retired, resigned, or serving on active duty with the armed forces of the United States for more than six months in such year shall be exempt from payment of the fee, and an attorney who does not engage in the practice of law as an occupation and receives less than $450 in legal fees or other compensation for services involving the practice of law during the calendar year shall be obligated to pay one-half of such fee. No attorney who is disbarred, retired or resigned shall be reinstated pursuant to Sections 2-53 or 2-55 until such time as the attorney has paid the fee due for the year in which the attorney retired, resigned or was disbarred.

(b) An attorney or family support referee who fails to pay the client security fund fee in accordance with this section shall be administratively suspended from the practice of law in this state pursuant to Section 2-79 of these rules until such payment has been made. An attorney or family support referee who is under suspension for another reason at the time he or she fails to pay

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the fee, shall be the subject of an additional suspension which shall continue until the fee is paid.

(c) A judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner who fails to pay the client security fund fee in accordance with this section shall be referred to the judicial review council.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan.1, 2000; amended Nov. 17, 1999, on an interim basis pursuant to Section 1-9 (c), to take effect Jan.1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2004, to take effect July 13, 2004; amended May 3, 2005, to take effect May 17, 2005; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 2-71. —Eligible Claims

(a) A claim for reimbursement of a loss must be based upon the dishonest conduct of an attorney who, in connection with the defalcation upon which the claim is based, was a member of the Connecticut bar and engaged in the practice of law in this state.

(b) The claim shall not be eligible for reimbursement unless:

(1) the attorney was acting as an attorney or fiduciary in the matter in which the loss arose;

(2) the attorney has died, been adjudged incapable, not competent or insane, been disbarred or suspended from the practice of law in Connecticut, been placed on probation or inactive status by a Connecticut court, resigned from the Connecticut bar, or become the judgment debtor of the claimant with respect to such claim; and

(3) the claim is presented within four years of the time when the claimant discovered or first reasonably should have discovered the dishonest acts and the resulting losses or the claim was pending before the Connecticut Bar Association's client security fund committee as of the effective date of this rule.

(c) Except as provided by subsection (d) of this section, the following losses shall not be eligible for reimbursement:

(1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of the attorney causing the losses;

(2) losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) losses incurred by any financial institution which are recoverable under a ''banker's blanket bond'' or similar commonly available insurance or surety contract;

(4) losses incurred by any business entity controlled by the attorney, any person or entity described in subdivisions (c) (1), (2), or (3) herein;

(5) losses incurred by any governmental entity or agency.

(d) In cases of extreme hardship or special and unusual circumstances, the client security fund committee may, in its discretion, consider a claim eligible for reimbursement which would otherwise be excluded under these rules.

(e) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the client security fund committee may, in its discretion, deny the claim.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-72. —Client Security Fund Committee

(a) There is hereby established a client security fund committee which shall consist of fifteen members who shall be appointed by the chief justice. Nine of the members shall be attorneys, three shall not be attorneys and three shall be individuals who serve in one of the following capacities: superior court judge, judge trial referee, appellate court judge, supreme court justice, family support magistrate, family support referee or workers' compensation commissioner. Members shall be appointed for terms of three years, provided, however, that of the members first appointed, five shall serve for one year, five for two years and five for three years. No person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term, but a member may be reappointed after a lapse of one year. The appointment of any member may be revoked or suspended by the chief justice. In connection with such revocation or suspension, the chief justice shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reason other than revocation or suspension, the chief justice shall fill the vacancy for the balance of the term or for any other appropriate period.

(b) The client security fund committee shall elect from among its members a chair and a vice-chair who shall serve for a period of one year.

(c) Seven members of the client security fund committee shall constitute a quorum at its meetings. The chair may assign individual members of the committee to investigate and report on claims to the committee.

(d) Members shall serve without compensation, but shall be reimbursed for their necessary and

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reasonable expenses incurred in the discharge of their duties.

(e) The client security fund committee shall operate under the supervision of the superior court judges and report on its activities to the executive committee of the superior court on at least a quarterly basis.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-73. —Powers and Duties of Client Security Fund Committee

In addition to any other powers and duties set forth in Sections 2-68 through 2-81, the client security fund committee shall:

(a) Publicize its activities to the public and bar, including filing with the chief justice and the executive committee of the superior court an annual report on the claims made and processed and the amounts disbursed.

(b) Receive, investigate and evaluate claims for reimbursement.

(c) Determine in its judgment whether reimbursement should be made and the amount of such reimbursement.

(d) Prosecute claims for restitution against attorneys whose conduct has resulted in disbursements.

(e) Employ such persons and contract with any public or private entity as may be reasonably necessary to provide for its efficient and effective operations, which shall include, but not be limited to, the investigation of claims and the prosecution of claims for restitution against attorneys.

(f) Pay to the chief court administrator for the provision of crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems, any amounts required pursuant to Section 2-77.

(g) Perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-74. —Regulations of Client Security Fund Committee

The client security fund committee shall have the power and authority to implement these rules by regulations relevant to and not inconsistent with these rules. Such regulations may be adopted at any regular meeting of the client security fund committee or at any special meeting called for that purpose. The regulations shall be effective sixty days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee. A copy shall be provided to the chief justice, the chief court administrator, and the executive committee of the superior court.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''provided'' was substituted for ''mailed'' in the last sentence.

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 2-75. —Processing Claims

(a) Upon receipt of a claim the client security fund committee shall cause an appropriate investigation to be conducted and shall cause the attorney who is the subject of the claim or the attorney's representative to be notified by certified mail within ten days of the filing of such claim. The attorney or his or her representative shall have twenty days from the date the notice was mailed to file a response with the client security fund committee. Before processing a claim, the client security fund committee may require the claimant to pursue other remedies he or she may have.

(b) The client security fund committee shall promptly notify the statewide grievance committee of each claim and shall request the grievance committee to furnish it with a report of its investigation, if any, on the matter. The statewide grievance committee shall allow the client security fund committee access to its records during an investigation of a claim. The client security fund committee shall evaluate whether the investigation is complete and determine whether it should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct as is alleged in the claim.

(c) The client security fund committee may, to the extent permitted by law, request and receive from the state's attorneys and from the superior court information relative to the client security fund committee's investigation, processing and determination of claims.

(d) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final trial court judgment imposing civil or criminal liability therefor, shall be evidence that the attorney committed such dishonest act or conduct.

(e) The client security fund committee may require that a claimant, the subject attorney or any other person give testimony relative to a claim and may designate one or more members to

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receive the testimony and render a report thereon to the committee.

(f) The client security fund committee shall, on the basis of the record, make its determination in its sole and absolute discretion as to the validity of claims. A determination shall require an affirmative vote of at least seven members.

(g) Based upon the claims approved for reimbursement, the claims being processed and the amounts available in the client security fund, the client security fund committee shall determine in its sole and absolute discretion the amount, the order and the manner of the payment to be made on the approved claim.

(h) Reimbursements shall not include interest, expenses, or attorney's fees in processing the claim, and may be paid in a lump sum or in installments.

(i) The client security fund committee shall notify the claimant and the subject attorney of its determination, which shall be final and not be subject to review by any court.

(j) The approval or disapproval of a claim shall not be pertinent in any disciplinary proceeding.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-76. —Confidentiality

(a) Claims, proceedings and reports involving claims for reimbursement for losses caused by the dishonest conduct of attorneys are confidential until the client security fund committee authorizes a disbursement to the claimant, at which time the committee may disclose the name of the claimant, the attorney whose conduct produced the claim and the amount of the reimbursement. However, the client security fund committee may provide access to relevant information regarding such claims to the statewide grievance committee, grievance panels, to law enforcement agencies, to the office of the chief disciplinary counsel, and to a judge of the superior court. The client security fund committee may also disclose such information to any attorney retained or employed by the committee to protect the interests of the client security fund or the committee in any state or federal action in which the interests of the committee or the fund may be at issue, and may disclose such information as may be necessary to protect the rights of the committee in any action or proceeding in which the committee's right to receive restitution pursuant to Sections 2-80 or 2-81 is at issue. The client security fund committee may also provide statistical information regarding claims which does not disclose the names of claimants and attorneys until a disbursement is authorized.

(b) All information given or received in connection with the provision of crisis intervention and referral assistance under these rules shall be subject to the provisions of General Statutes § 51-81d (f).

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-77. —Review of Status of Fund

The client security fund committee shall periodically analyze the status of the fund, the approved claims and the pending claims, and the cost to the fund of providing crisis intervention and referral assistance to attorneys, to ensure the integrity of the fund for its intended purposes. Based upon the analysis and recommendation of the client security fund committee, the judges of the superior court may increase or decrease the amount of the client security fund fee and the superior court executive committee may fix a maximum amount on reimbursements payable from the fund.

The amount paid from the fund in any calendar year to the chief court administrator for the provision of crisis intervention and referral assistance to attorneys shall not exceed 15.9 percent of the amount received by the fund from payments of the client security fund fee in the prior calendar year. If less than the 15.9 percent maximum amount is paid from the fund in any calendar year for the provision of crisis intervention and referral assistance to attorneys, the remaining amount may not be carried over and added to the amount that may be paid from the fund for that purpose in any other year.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-78. —Attorney's Fee for Prosecuting Claim

No attorney shall accept any fee for prosecuting a claim on behalf of a claimant, except where specifically approved by the client security fund committee for payment out of the award.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-79. —Enforcement of Payment of Fee

(a) The client security fund committee shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that the attorney's license to practice law in this state may be administratively suspended unless within sixty days from the date of such notice the client security fund committee receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the client security fund committee does not receive such proof within the time

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required, it shall cause a second notice to be sent to the attorney advising the attorney that he or she will be referred to the superior court for an administrative suspension of the attorney's license to practice law in this state unless within thirty days from the date of the notice proof of the payment of the fee or exemption is received. The client security fund committee shall submit to the clerk of the superior court for the Hartford Judicial District a list of attorneys who did not provide proof of payment or exemption within thirty days after the date of the second notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as payment of the fee is made, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to pay the client security fund fee shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as the fee is paid. An attorney aggrieved by an order placing the attorney on administrative suspension for failing to pay the client security fund fee may make an application to the superior court to have the order vacated, by filing the application with the superior court for the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the office of the client security fund committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

(b) If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court administrator shall send a notice to such person that he or she will be referred to the judicial review council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

(c) Family support referees shall be subject to the provisions of subsection (a) herein until such time as they come within the jurisdiction of the judicial review council, when they will be subject to the provisions of subsection (b).

(d) The notices required by this section shall be sent by certified mail, return receipt requested or with electronic delivery confirmation to the last address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d), and to the home address of the judge, judge trial referee, state referee, family support magistrate, family support referee or workers' compensation commissioner.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 2-80. —Restitution by Attorney

An attorney whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim. An attorney's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-81. —Restitution and Subrogation

(a) An attorney whose dishonest conduct results in reimbursement to a claimant shall be liable to the fund for restitution; and the client security fund committee may bring such action as it deems advisable to enforce such obligation.

(b) As a condition of reimbursement, a claimant shall be required to provide the fund with a pro tanto transfer of the claimant's rights against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the client security fund committee as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event that the claimant commences an action to recover unreimbursed losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the client security fund committee of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the client security fund committee undertakes to achieve restitution for the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-82. Admission of Misconduct; Discipline by Consent

(a) The disciplinary counsel to whom a complaint is forwarded after a finding that probable

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cause exists that the respondent is guilty of misconduct may negotiate a proposed disposition of the complaint with the respondent or, if the respondent is represented by an attorney, with the respondent's attorney. Such a proposed disposition shall be based upon the respondent's admission of misconduct, which shall consist of either (1) an admission by the respondent that the material facts alleged in the complaint, or a portion thereof describing one or more acts of misconduct to which the admission relates, are true, or (2) if the respondent denies some or all of such material facts, an acknowledgment by the respondent that there is sufficient evidence to prove such material facts by clear and convincing evidence.

(b) If disciplinary counsel and the respondent agree to a proposed disposition of the matter, they shall place their agreement in writing and submit it, together with the complaint, the record in the matter, and the respondent's underlying admission of misconduct, for approval as follows: (i) by the court, in all matters involving possible suspension or disbarment, or possible imposition of a period of probation or other sanctions beyond the authority of the statewide grievance committee, as set forth in Section 2-37; or (ii) by a reviewing committee of the statewide grievance committee, in all other matters. If, after a hearing, the admission of misconduct is accepted and the proposed disposition is approved by the court or the reviewing committee, the matter shall be disposed of in the manner agreed to. If any resulting admission of misconduct or proposed disposition is rejected by the court or the reviewing committee, the admission of misconduct and proposed disposition shall be withdrawn, shall not be made public, and shall not be used against the respondent in any subsequent proceedings. In that event, the matter shall be referred for further proceedings to a different judicial authority or reviewing committee, as appropriate.

(c) If disciplinary counsel and the respondent are unable to agree to a proposed disposition of the matter, the respondent may nonetheless tender an admission of misconduct, which shall be in accordance with subsection (a) of this section. If such an admission of misconduct without proposed disposition is tendered, disciplinary counsel shall cause it to be forwarded, together with the complaint and the record in the matter, for consideration, possible acceptance and disposition as follows: (i) by the court, in all matters involving possible suspension or disbarment, or possible imposition of a period of probation or other sanctions beyond the authority of the statewide grievance committee, as set forth in Section 2-37; or (ii) by a reviewing committee of the statewide grievance committee, in all other matters. If, after a hearing, the admission of misconduct is accepted by the court or the reviewing committee, the matter shall be disposed of and any resulting imposition of discipline shall be made public in the manner prescribed by these rules. If the admission of misconduct is rejected by the court or the reviewing committee, it shall be withdrawn, shall not be made public, and shall not be used against the respondent in any subsequent proceedings. In that event, the matter shall be referred for further proceedings to a different judicial authority or reviewing committee, as appropriate.

(d) A respondent who tenders an admission of misconduct and, if applicable, enters with disciplinary counsel into a proposed disposition of the matter, shall present to the court or the reviewing committee an affidavit stating the following:

(1) That the admission of misconduct and, if applicable, the proposed disposition are freely and voluntarily submitted; that the respondent is not making the admission of misconduct and, if applicable, the proposed disposition, as a result of any threats or other coercion or duress, or any promises or other inducements not set forth in the proposed disposition; that the respondent is fully aware of the consequences of such submissions;

(2) That the respondent is aware that there is presently pending a complaint, in connection with which probable cause has been found that the respondent committed the following acts of misconduct: (list specific acts); and

(3) Either (i) that the respondent admits that the material facts alleged in the complaint, or in that portion thereof to which the respondent's admission relates, are true, or (ii) if the respondent denies some or all of such material facts, that the respondent acknowledges that there is sufficient evidence to prove such material facts by clear and convincing evidence.

(e) The disciplinary counsel may recommend dismissal of acts of misconduct alleged in the complaint that are not admitted by the respondent. The respondent's admission of some acts of misconduct shall not foreclose the disciplinary counsel from pursuing discipline based upon other acts of misconduct alleged in the complaint.

(f) Prior to acceptance by the court or the reviewing committee of the admission of misconduct, the proposed disposition of the matter, if applicable, and the imposition of any discipline, the complainant will be given the right to comment thereon.

(g) In any disciplinary proceeding where the respondent already has other disciplinary matters

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pending before a court, either pursuant to an order of interim suspension under Section 2-42, or pursuant to a presentment filed under Sections 2-35, 2-40, 2-41 or 2-47, the respondent and disciplinary counsel may agree to a presentment. The respondent and disciplinary counsel shall stipulate that the order of presentment is requested for the purpose of consolidating all pending disciplinary matters before the court.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 2-83. Effective Dates

(a) The revisions to this chapter which are effective January 1, 2004, shall apply to all grievance complaints filed on or after that date, unless otherwise provided in these rules.

(b) The rules in effect on December 31, 2003, shall govern all grievance complaints filed on or before that date.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Oct. 1, 2003, and amendment adopted June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Jan. 1, 2004.)

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CHAPTER 3

APPEARANCES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 3-1. Appearance for Plaintiff on Writ or Complaint in Civil and Family Cases

When a writ has been signed by an attorney at law admitted to practice in the courts of this state, such writ shall contain the attorney's name, juris number, mailing address, and telephone number, all of which shall be typed or printed on the writ, and the attorney's appearance shall be entered for the plaintiff, unless such attorney by endorsement on the writ shall otherwise direct, or unless such attorney shall type or print on the writ the name, address, juris number and telephone number of the professional corporation or firm, of which such attorney shall be a member, entering its appearance for the plaintiff. The signature on the complaint of any person proceeding without the assistance of counsel pursuant to Section 8-1 shall be deemed to constitute the self-represented appearance of such party.

(P.B. 1978-1997, Sec. 64 (a).)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 3-2. Time to File Appearance

(a) After the writ has been filed the attorney for any party to any action, or any party himself or herself, may enter his or her appearance in writing with the clerk of the court location to which such action is returnable. Except where otherwise prescribed herein or by statute, an appearance for a party in a civil or family case should be filed on or before the second day following the return day. Appearances filed thereafter in such cases shall be accepted but an appearance for a party after the entry against such party of a nonsuit or judgment after default for failure to appear shall not affect the entry of the nonsuit or any judgment after default.

(b) An appearance in a criminal case or in a juvenile matter should be filed promptly but may be filed at any stage of the proceeding.

(P.B. 1978-1997, Sec. 64 (b); see also Secs. 66, 630, 1056.1.)

Sec. 3-3. Form and Signing of Appearance

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

(P.B. 1978-1997, Sec. 64 (b).) (Amended June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "filed on judicial branch form JD-CL-12" was substituted for "typed or printed on size $8^1/_2$ x 11 inch paper" in item (1) of the first sentence, and "include" was substituted for "be headed with" in item (2) of the first sentence.

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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Sec. 3-4. Filing Appearance

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

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

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

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

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

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

(P.B. 1978-1997, Sec. 64 (c); see also Secs. 630, 1056.1.)(P.B. 1998.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Filing Appearances with the Clerk—Copies.''

Prior to 2012, this section read: ''Appearances shall be filed with the clerk of the court location where the matter is pending. Whenever an appearance is filed in any civil or family action returnable to a judicial district of the superior court, only an original need be filed and the clerk with whom it is filed shall cause notice thereof to be given to all other counsel and pro se parties of record in the action. Whenever an appearance is filed in any criminal case or juvenile matter, only the original need be filed. Whenever an appearance is filed in any civil action returnable to a geographical area of the superior court, an original and sufficient copies for each party to the action must be filed. This section shall not apply to appearances entered pursuant to Section 3-1.''

COMMENTARY—2012: The above revision shifts the obligation to provide notice of the filing of an appearance from the clerk's office to the party filing the appearance in many instances.

Sec. 3-5. Service of Appearances on Other Parties

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

Service of appearances shall be made in accordance with Sections 10-12 through 10-17. Proof of service shall be endorsed on the appearance filed with the clerk. This section shall not apply to appearances entered pursuant to Section 3-1.

(See Secs. 64 (c), 630, 1056.1, P.B.1978-1997.)(P.B. 1998.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Service of Appearances on Other Parties—When Required.''

In 2012, subsections (a), (b), and (c) were deleted. Those subsections read: ''(a) In summary process actions the attorney for the defendant or, if there is no such attorney, the defendant himself or herself, in addition to complying with Section 3-4, shall mail or deliver a copy of the appearance to the attorney for the plaintiff or, if there is no such attorney, to the plaintiff himself or herself.

''(b) In delinquency and family with service needs proceedings, such attorney shall mail or deliver a copy of the appearance to the juvenile prosecutor; in other juvenile proceedings, such attorney shall mail or deliver a copy of the appearance to the attorney for the petitioner and to all other attorneys and pro se parties.

''(c) In criminal cases the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.''

Also, in 2012, what was subsection (d) became the first sentence of the current section, and the word ''such'' was deleted from the first sentence, before ''appearances.'' What is now the last sentence of this section was added in 2012.

COMMENTARY—2012: The above revision reflects the consolidation of provisions regarding on whom copies of appearances must be served in Section 3-4.

Sec. 3-6. Appearances for Bail or Detention Hearing Only

(a) An attorney, prior to the entering of an appearance by any other attorney, may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing for the fixing of bail. Such appearance shall be in writing and shall be styled, ''for the purpose of the bail hearing only.'' Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the bail hearing.

(b) An attorney may enter an appearance in a delinquency proceeding for the sole purpose of representing the respondent at any detention hearing; such appearance shall be in writing and styled ''for the purpose of detention hearing only.''

(See Sec. 633, P.B.1978-1997.)(P.B. 1998.)

Sec. 3-7. Consequence of Filing Appearance

(a) Except by leave of the judicial authority, no attorney shall be permitted to appear in court or to be heard in behalf of a party until the attorney's appearance has been entered. No attorney shall be entitled to confer with the prosecuting authority as counsel for the defendant in a criminal case until the attorney's appearance has been so entered.

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(b) After the filing of an appearance, the attorney or self-represented party shall receive copies of all notices required to be given to parties by statute or by these rules.

(c) The filing of an appearance by itself shall not waive the right to attack defects in jurisdiction or any claimed violation of constitutional rights.

(See also Secs. 630, 631, 1056.1, P.B.1978-1997.)(P.B. 1998.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 3-8. Appearance for Represented Party

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

(P.B. 1978-1997, Sec. 65.)

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

(P.B. 1978-1997, Sec. 77.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was

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replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

Sec. 3-10. Motion to Withdraw Appearance

(a) No motion for withdrawal of appearance shall be granted unless good cause is shown and until the judicial authority is satisfied that reasonable notice has been given to other attorneys of record and that the party represented by the attorney was served with the motion and the notice required by this section or that the attorney has made reasonable efforts to serve such party. All motions to withdraw appearance shall be set down for argument and when the attorney files such motion he or she shall obtain such argument date from the clerk.

(b) In civil and family cases a motion to withdraw shall include the last known address of any party as to whom the attorney seeks to withdraw his or her appearance and shall have attached to it a notice to such party advising of the following: (1) the attorney is filing a motion which seeks the court's permission to no longer represent the party in the case; (2) the date and time the motion will be heard; (3) the party may appear in court on that date and address the court concerning the motion; (4) if the motion to withdraw is granted, the party should either obtain another attorney or file an appearance on his or her own behalf with the court; and (5) if the party does neither, the party will not receive notice of court proceedings in the case and a nonsuit or default judgment may be rendered against such party.

(c) In criminal and juvenile matters, the motion to withdraw shall comply with subsections (b)(1), (2) and (3) of this section and the client shall also be advised by the attorney that if the motion to withdraw is granted the client should request court appointed counsel, obtain another attorney or file an appearance on his or her own behalf with the court and be further advised that if none is done, there may be no further notice of proceeding and the court may act.

(d) In addition to the above, each motion to withdraw appearance and each notice to the party or parties who are the subject of the motion shall state whether the case has been assigned for pretrial or trial and, if so, the date so assigned.

(e) The attorney's appearance for the party shall be deemed to have been withdrawn upon the granting of the motion without the necessity of filing a withdrawal of appearance.

(P.B. 1978-1997, Sec. 77 (d).) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 3-11. Appearance for Several Parties

Where there are several plaintiffs or defendants the appearance shall state specifically either that it is for all or that it is for certain specified parties; otherwise the appearance shall not be entered by the clerk.

(P.B. 1978-1997, Sec. 76.)

Sec. 3-12. Change in Name, Composition or Membership of a Firm or Professional Corporation

(a) Whenever the appearance of a firm or professional corporation (hereinafter collectively referred to as "unit") has been entered upon the record of the court and there is a change in the name, composition or membership of such unit, it shall be the duty of such unit forthwith to notify, in writing, the director of court operations of the judicial branch, giving the name, mailing address and telephone number of the successor firm, professional corporation or individual who will continue the major portion of such unit's business. In court locations having access to the automated roll of attorneys, upon receipt of such notice the appearance of such successor will be automatically entered in lieu of the appearance of the former unit in all pending cases. In other court locations, unless such successor unit files a notice to the clerks pursuant to Section 2-26 or withdraws its appearance under the provisions of Section 3-10, the former unit's original appearance shall remain on file in each case in which it had been entered and the clerk may rely on the information contained therein for the purpose of giving notice to such unit regarding court activities involving the cases in which the unit remains active.

(b) In each case where such successor will no longer represent the party or parties for whom the original unit had entered an appearance, it is the duty of the new attorney who will represent such party or parties to enter an appearance, and it is the duty of the successor firm, professional corporation or individual to withdraw such unit's appearance under the provisions of Section 3-10.

(P.B. 1978-1997, Sec. 78.)

Sec. 3-13. When Creditor May Appear and Defend

In any action in which property has been attached, any person may appear and defend in the name of the defendant, upon filing in the court an affidavit that he or she is a creditor of the defendant and has good reason to believe, and does believe, that the amount which the plaintiff claims was not justly due at the commencement of the suit and that he or she is in danger of being defrauded by a recovery by the plaintiff, and upon giving bond with surety to the plaintiff, in such amount as the judicial authority approves, for the

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payment of such costs as the plaintiff may thereafter recover. If the plaintiff recovers the whole claim, costs shall be taxed against the defendant to the time of the appearance of such creditor, and for the residue of the costs such creditor shall be liable upon his or her bond; if only a part of the plaintiff's claim is recovered, the whole costs shall be taxed against the defendant, and the creditor shall not be liable for the same; if judgment is rendered in favor of the defendant, costs shall be taxed in his or her favor against the plaintiff, but the judicial authority may order that the judgment and execution therefor shall belong to such creditor. No creditor so appearing shall be permitted to file a motion to dismiss, or to plead or give in evidence the statute of limitations, or to plead that the contract was not in writing according to the requirements of the statute, or to plead any other statutory defense consistent with the justice of the plaintiff's claim. (See General Statutes § 52-86 and annotations.)

(P.B. 1978-1997, Sec. 79.)

Sec. 3-14. Legal Interns

An eligible legal intern may, under supervision by a member of the Connecticut bar as provided in Section 3-15, appear in court with the approval of the judicial authority or before an administrative tribunal, subject to its permission, on behalf of any person, if that person has indicated in writing his or her consent to the intern's appearance and the supervising attorney has also indicated in writing approval of that appearance.

(P.B. 1978-1997, Sec. 68.)

Sec. 3-15. —Supervision of Legal Interns

The member of the bar under whose supervision an eligible legal intern does any of the things permitted by these rules shall:

(1) be an attorney who has been admitted to the Connecticut bar for at least three years, or one who is employed by an attorney of five years' standing, or one who is employed by an accredited law school in Connecticut, or one who is approved as a supervising attorney by the presiding judge in the case at bar;

(2) assume personal professional responsibility for the intern's work;

(3) assist the intern in his or her preparation to the extent the supervising attorney considers necessary;

(4) be present in court with the intern.

(P.B. 1978-1997, Sec. 69.)

Sec. 3-16. —Requirements and Limitations

(a) In order to appear pursuant to these rules, the legal intern must:

(1) be certified by a law school approved by the American Bar Association or by the state bar examining committee of the superior court;

(2) have completed legal studies amounting to at least two semesters of credit in a three or four year course of legal studies, or the equivalent if the school is on some basis other than a semester basis except that the dean may certify a student under this section who has completed less than two semesters of credit or the equivalent to enable that student to participate in a faculty supervised law school clinical program;

(3) be certified by the dean of his or her law school as being of good character and competent legal ability;

(4) be introduced to the court in which he or she is appearing by an attorney admitted to practice in that court;

(5) comply with the provisions of Section 3-21 if enrolled in a law school outside the state of Connecticut.

(b) A legal intern may not be employed or compensated directly by a client for services rendered. This section shall not prevent an attorney, legal aid bureau, law school, public defender agency or the state from compensating an eligible intern.

(P.B. 1978-1997, Sec. 70.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 3-17. —Activities of Legal Intern

(a) The legal intern, supervised in accordance with these rules, may appear in court or at other hearings in the following situations:

(1) where the client is financially unable to afford counsel; or

(2) where the intern is assisting a privately retained attorney; or

(3) where the intern is assisting an established legal aid bureau or organization, a public defender or prosecutor's office, or a state agency.

(b) In each case, the written consent and approval referred to in Section 3-14 shall be filed in the record of the case and shall be brought to the attention of the judicial authority or the presiding officer of the administrative tribunal.

(c) In addition, an intern may, under the supervision of a member of the bar:

(1) prepare pleadings and other documents to be filed in any matter;

(2) prepare briefs, abstracts and other documents.

(d) Each document or pleading must contain the name of the intern who participated in drafting it and must be signed by the supervising attorney.

(P.B. 1978-1997, Sec. 71.)

Sec. 3-18. —Certification of Intern

The certification of an intern by the law school dean:

(1) shall be filed with the clerk of the superior court in Hartford and, unless it is sooner withdrawn, shall remain in effect until the announcement of the results of the second Connecticut bar

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examination following the intern's graduation. For any intern who passes that examination, the certification shall continue in effect until the date of admission to the bar.

(2) shall terminate if the intern, prior to graduation, is no longer duly enrolled in an accredited law school.

(3) may be terminated by the dean at any time by mailing a notice to that effect to the clerk of the superior court in Hartford and to the intern. It is not necessary that the notice to the superior court state the cause for termination.

(4) may be terminated by the superior court at any time upon notice to the intern, to the dean and to the superior court in Hartford.

(P.B. 1978-1997, Sec. 72.)

Sec. 3-19. —Legal Internship Committee

There shall be established a legal internship committee appointed by the chief justice and composed of four judges, four practicing attorneys, three law professors, and three law students. This committee shall consult with the deans of law schools located in Connecticut, review the progress of the legal internship program, and consider any complaints or suggestions regarding the program.

(P.B. 1978-1997, Sec. 73.)

Sec. 3-20. —Unauthorized Practice

Nothing contained in these rules shall affect the right of any person who is not admitted to the practice of law to do anything that he or she might lawfully do prior to their adoption, nor shall they enlarge the rights of persons, not members of the bar or legal interns covered by these rules, to engage in activities customarily considered to be the practice of law.

(P.B. 1978-1997, Sec. 74.)

Sec. 3-21. —Out-of-State Interns

A legal intern who is certified under a legal internship program or student practice rule in another state or in the District of Columbia may appear in a court or before an administrative tribunal of Connecticut under the same circumstances and on the same conditions as those applicable to certified Connecticut legal interns, if the out-of-state intern files with the clerk of the superior court in Hartford, with a copy to the legal internship committee, a certification by the dean of his or her law school of his or her admission to internship or student practice in that state or in the District of Columbia, together with the text of that state's or the District of Columbia's applicable statute or rule governing such admissions.

(P.B. 1978-1997, Sec. 75.)

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CHAPTER 4

PLEADINGS

Sec.
4-1. Form of Pleading
4-2. Signing of Pleading
4-3. Filing and Endorsing Pleadings
4-4. Electronic Filing
4-5. Notice Required for Ex Parte Temporary Injunctions
4-6. Page Limitations for Briefs
4-7. Personal Identifying Information to Be Omitted or Redacted from Court Records in Civil and Family Matters

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 4-1. Form of Pleading

(a) All documents filed in paper format shall be typed or printed on size 8½ by 11 inch paper and shall have no back or cover sheet. Those subsequent to the complaint shall be headed with the title and number of the case, the name of the court, and the date and designation of the particular pleading, in conformity with the applicable form in the rules of practice which is set forth in the Appendix of Forms in this volume.

(b) At the bottom of the first page of each paper, a blank space of approximately two inches shall be reserved for notations of receipt or time of filing by the clerk and for statements by counsel pursuant to Section 11-18 (a) (2). Papers shall be punched with two holes, two and twelve-sixteenths inches apart, each centered seven-sixteenths of an inch from the upper edge, one being two and fourteen-sixteenths inches from the left-hand edge and the other being the same distance from the right-hand edge, and each four-sixteenths of an inch in diameter.

(c) All documents filed electronically shall be in substantially the same format as required by subsection (a) of this section.

(d) The clerk may require a party to correct any filed paper which is not in compliance with this section by substituting a paper in proper form.

(e) This section shall not apply to forms supplied by the judicial branch.

(P.B. 1978-1997, Sec. 118.) (Amended Aug. 24, 2001, to take effect Jan. 1, 2002; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "documents filed in paper format" was substituted for "papers" in the first sentence of subsection (a), after "[a]ll." Also, in 2012, ", and at the top of each page a blank space of two inches shall be reserved" was deleted from the first sentence of subsection (b), after "Section 11-18 (a) (2)."

What is now subsection (c) was added in 2012, and what was subsection (c) is now subsection (d). What was subsection (d) is now subsection (e).

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 4-2. Signing of Pleading

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

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

(P.B. 1978-1997, Sec. 119.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 4-3. Filing and Endorsing Pleadings

All pleadings, written motions, and papers in pending cases shall be filed with and kept by the clerk of the court, who shall endorse upon each the time when it is filed, and make a like entry upon the clerk's docket and the file.

(P.B. 1978-1997, Sec. 127.)

Sec. 4-4. Electronic Filing

Papers may be filed, signed or verified by electronic means that comply with procedures and technical standards established by the office of the chief court administrator, which may also set forth the manner in which such papers shall be kept by the clerk. A paper filed by electronic

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means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these rules.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 4-5. Notice Required for Ex Parte Temporary Injunctions

(a) No temporary injunction shall be granted without notice to each opposing party unless the applicant certifies one of the following to the court in writing:

(1) facts showing that within a reasonable time prior to presenting the application the applicant gave notice to each opposing party of the time when and the place where the application would be presented and provided a copy of the application; or

(2) the applicant in good faith attempted but was unable to give notice to an opposing party or parties, specifying the efforts made to contact such party or parties; or

(3) facts establishing good cause why the applicant should not be required to give notice to each opposing party.

(b) When an application for a temporary injunction is granted without notice or without a hearing, the court shall schedule an expeditious hearing as to whether the temporary injunction should remain in effect. Any temporary injunction which was granted without a hearing shall automatically expire thirty days following its issuance, unless the court, following a hearing, determines that said injunction should remain in effect.

(c) For purposes of this rule, notice to the opposing party means notice to the opposing party's attorney if the applicant knows who the opposing party's attorney is; if the applicant does not know who the opposing party's attorney is, notice shall be given to the opposing party. If the temporary injunction is sought against the state of Connecticut, a city or town, or an officer or agency thereof, notice shall be given to the attorney general or to the city or town attorney or corporation counsel, as the case may be.

(d) This section shall not apply to applications for relief from physical abuse filed pursuant to General Statutes § 46b-15 or to motions for orders of temporary custody in juvenile matters filed pursuant to General Statutes § 46b-129.

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 4-6. Page Limitations for Briefs

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

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

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

(a) As used in this section, "personal identifying information" means: an individual's date of birth; mother's maiden name; motor vehicle operator's license number; Social Security number; other government issued identification number except for juris, license, permit or other business-related identification numbers that are otherwise made available to the public directly by any government agency or entity; health insurance identification number; or any financial account number, security code or personal identification number (PIN). For purposes of this section, a person's name is specifically excluded from this definition of personal identifying information.

(b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or paper format, unless otherwise required by law or ordered by the court.

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

(Adopted June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011.)

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CHAPTER 5

TRIALS

Sec.
5-1. Trial Briefs
5-2. Raising Questions of Law Which May Be the Subject of an Appeal
5-3. Administering Oath
5-4. Examination of Witnesses
5-5. Objections to Evidence; Interlocutory Questions; Exceptions Not Required
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5-10. Sanctions for Counsel's Failure to Appear
5-11. Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining Order, Standing Criminal Protective Order or Standing Criminal Restraining Order Issued on Behalf of Party or Child

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 5-1. Trial Briefs

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

(P.B. 1978-1997, Sec. 285A.)

Sec. 5-2. Raising Questions of Law Which May Be the Subject of an Appeal

Any party intending to raise any question of law which may be the subject of an appeal must either state the question distinctly to the judicial authority in a written trial brief under Section 5-1 or state the question distinctly to the judicial authority on the record before such party's closing argument and within sufficient time to give the opposing counsel an opportunity to discuss the question. If the party fails to do this, the judicial authority will be under no obligation to decide the question.

(See Secs. 877, 285A, P.B.1978-1997.)(P.B. 1998.)

Sec. 5-3. Administering Oath

The oath or affirmation shall be administered deliberately and with due solemnity, as the witness takes the stand. The reporter shall note by whom it was administered.

(P.B. 1978-1997, Sec. 286.)

Sec. 5-4. Examination of Witnesses

The counsel who commences the examination of a witness, either in chief or on cross-examination, must alone conduct it; and no associate counsel will be permitted to interrogate the witness, except by permission of the judicial authority.

(P.B. 1978-1997, Secs. 287, 875.)

Sec. 5-5. Objections to Evidence; Interlocutory Questions; Exceptions Not Required

Whenever an objection to the admission of evidence is made, counsel shall state the grounds upon which it is claimed or upon which objection is made, succinctly and in such form as he or she desires it to go upon the record, before any discussion or argument is had. Argument upon such objection or upon any interlocutory question arising during the trial of a case shall not be made by either party unless the judicial authority requests it and, if made, must be brief and to the point.

(P.B. 1978-1997, Secs. 288, 850A.)

Sec. 5-6. Reception of Evidence Objected to

Whenever evidence offered upon trial is objected to as inadmissible, the judicial authority or committee trying such case shall not admit such evidence subject to the objection, unless both parties agree that it be so admitted; but, if either party requests a decision, such judicial authority or committee shall pass upon such objection and admit or reject the testimony. (See General Statutes § 52-208 and annotations.)

(P.B. 1978-1997, Sec. 289.)

Sec. 5-7. Marking Exhibits

Unless otherwise ordered by the judicial authority, the clerk shall mark all exhibits not marked in advance of trial and shall keep a list of all exhibits marked for identification or received in evidence during the course of the trial.

(P.B. 1978-1997, Sec. 291.)

Sec. 5-8. Interlocutory Matters

No more than one counsel on each side shall be heard on any question of evidence, or upon any

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interlocutory motion or motion to dismiss, without permission of the judicial authority.

(P.B. 1978-1997, Sec. 293.)

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

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

(P.B. 1978-1997, Sec. 294.)

Sec. 5-10. Sanctions for Counsel's Failure to Appear

Counsel who fails to appear on a scheduled date for any hearing or trial or who requests a continuance without cause or in any other way delays a case unnecessarily will be subject to sanctions pursuant to General Statutes § 51-84.

(P.B. 1978-1997, Sec. 983.)

Sec. 5-11. Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining Order, Standing Criminal Protective Order or Standing Criminal Restraining Order Issued on Behalf of Party or Child

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

(a) In any court proceeding in a family relations matter, as defined in General Statutes § 46b-1, or in any proceeding pursuant to General Statutes § 46b-38c, the court may, except as otherwise required by law and within available resources, upon motion of any party, order that the testimony of a party or a child who is a subject of the proceeding be taken outside the physical presence of any other party if a protective order, restraining order, standing criminal protective order or standing criminal restraining order has been issued on behalf of the party or child, and the other party is subject to the protective order or restraining order. Such order may provide for the use of alternative means to obtain the testimony of any party or child, including, but not limited to, the use of a secure video connection for the purpose of conducting hearings by videoconference. Such testimony may be taken outside the courtroom or at another location inside or outside the state. The court shall provide for the administration of an oath to such party or child prior to the taking of such testimony as required by law.

(b) Nothing in this section shall be construed to limit any party's right to cross-examine a witness whose testimony is taken pursuant to an order under subsection (a) hereof.

(c) An order under this section may remain in effect during the pendency of the proceedings in the family relations matter.

(Adopted June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Testimony of Party or Child in Family Relations Matter When Protective Order, Restraining Order or Standing Criminal Restraining Order Issued on Behalf of Party or Child.''

In 2012, '', standing criminal protective order'' was added to the first sentence of subsection (a), before ''or standing criminal restraining order.''

COMMENTARY—2012: The addition of ''standing criminal protective order'' is based on the substitution of that term for ''standing criminal restraining order'' in General Statutes §§ 17b-90, 18-81m, 46b-15c, 53a-40e and 53a-223a as amended by Public Acts 2010, No. 10-144, § 6.

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CHAPTER 6

JUDGMENTS

Sec.
6-1. Statement of Decision; When Required
6-2. Judgment Files; Captions and Contents
6-3. —Preparation; When; By Whom; Filing
6-4. —Signing of Judgment File
6-5. —Notation of Satisfaction

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 6-1. Statement of Decision; When Required

(a) The judicial authority shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of execution, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Sections 41-8 through 41-11, (4) in ruling on motions to suppress under Sections 41-12 through 41-17, (5) in granting a motion to set aside a verdict under Sections 16-35 through 16-38, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under General Statutes § 52-263, including those that do not terminate the proceedings. The judicial authority's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter and, if there is an appeal, the trial judge shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed in the trial court clerk's office.

This section does not apply in small claims actions and to matters listed in subsection (b).

(b) In any uncontested matter where no aspect of the matter is in dispute, in a pendente lite family relations matter whether contested or uncontested, or in any dismissal under Section 14-3, the oral or written decision as provided in subsection (a) is not required, except as provided in subsection (c). The clerk of the trial court shall, however, promptly notify the trial judge of the filing of the appeal.

(c) Within twenty days from the filing of an appeal from a contested pendente lite order or from a dismissal under Section 14-3 in which an oral or written decision has not been made pursuant to subsection (b), each party to the appeal shall file a brief with the trial court discussing the legal and factual issues in the matter. Within twenty days after the briefs have been filed by the parties, the judicial authority shall file a written memorandum of decision stating the factual basis for its decision on the issues in the matter and its conclusion as to each claim of law raised by the parties.

(P.B. 1978-1997, Sec. 334A.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 6-2. Judgment Files; Captions and Contents

The name and residence of every party to the action, at the date of judgment, must be given in the caption of every judgment file. In the captions of pleas, answers, etc., the parties may be described as John Doe v. Richard Roe et al., but this will not be sufficient in a judgment file, which must give all the data necessary for use in drawing any execution that may be necessary. All judgment files in actions for dissolution of marriage or civil union, legal separation and annulment shall state the date and place, including the city or town, of the marriage and the jurisdictional facts as found by the judicial authority upon the hearing.

(P.B. 1978-1997, Sec. 336.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 6-3. —Preparation; When; By Whom; Filing

(a) Judgment files in civil, criminal, family and juvenile cases shall be prepared when: (1) an appeal is taken; (2) a party requests in writing that the judgment be incorporated into a judgment file; (3) a judgment has been entered involving the granting of a dissolution of marriage or civil union, a legal separation, an annulment, injunctive relief, or title to property (including actions to quiet title but excluding actions of foreclosure), except in those instances where judgment is entered in such cases pursuant to Section 14-3 and no appeal has been taken from the judicial authority's judgment; (4) a judgment has been entered in a juvenile matter involving neglect, uncared for,

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dependent, termination, commitment of a delinquent child or commitment of a child from a family with service needs; (5) in criminal cases, sentence review is requested; or (6) ordered by the judicial authority.

(b) Unless otherwise ordered by the judicial authority, the judgment file in juvenile cases shall be prepared by the clerk and in all other cases, in the clerk's discretion, by counsel or the clerk. As to judgments of foreclosure, the clerk's office shall prepare a certificate of judgment in accordance with a form prescribed by the chief court administrator only when requested in the event of a redemption.

(c) Judgment files in family cases shall be filed within sixty days of judgment.

(P.B. 1978-1997, Sec. 337.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 6-4. —Signing of Judgment File

(a) Except as hereinafter provided, the judgment file, where it is necessary that it be prepared pursuant to Section 6-3, shall be signed by the clerk or assistant clerk unless otherwise ordered by the judicial authority.

(b) In all actions involving dissolution of marriage or civil union where counsel have appeared for both the plaintiff and the defendant, unless the judicial authority shall order otherwise, counsel for the parties shall endorse their approval of the judgment file immediately below the line for the subscribing authority in the following words: "I hereby certify that the foregoing judgment file conforms to the judgment entered by the court"; the clerk or assistant clerk, after ascertaining that the terms of the judgment have been correctly incorporated into the judgment file, may sign any judgment file so endorsed.

(c) In those cases in which there is no provision in this section for a clerk to sign a judgment file and in which a case has been tried and judgment has been directed in open court or by memorandum of decision and the trial judge shall die or become incapacitated before the judgment file is signed, any judge holding such court may examine the docket and file and, if it appears therefrom that the issues have been definitely decided and that the only thing remaining to be done is the signing of the judgment file, the judgment file may be drawn up by that judge or under that judge's direction and signed by him or her.

(d) Whenever a clerk or assistant clerk signs a judgment file, the signer's name shall be legibly typed or printed beneath such signature.

(P.B. 1978-1997, Sec. 338.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 6-5. —Notation of Satisfaction

When the judgment is satisfied in a civil action, the party recovering the judgment shall file written notice thereof with the clerk, who shall endorse judgment satisfied on the judgment file, if there is one, and make a similar notation on the file and docket sheet, giving the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

(P.B. 1978-1997, Sec. 339.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 30, 2003, to take effect Jan. 1, 2004.)

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CHAPTER 7

CLERKS; FILES AND RECORDS

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7-2. General Duties of Clerk
7-3. Financial Accounts
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7-4A. Identification of Cases
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7-21. Removing Exhibits and Other Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 7-1. Dockets; Clerk's Records

The clerk shall keep a record of all pending cases, including applications and petitions made to the court, together with a record of each paper filed and order made or judgment rendered therein, with the date of such filing, making or rendition. Duplicates of these records shall be kept with the original file in the case.

(P.B. 1978-1997, Sec. 250.)

Sec. 7-2. General Duties of Clerk

The clerk at each court location shall receive files, processes and documents, make records of all proceedings required to be recorded, have the custody of the files and records of the court location except those sent to the records center, make and certify true copies of the files and records at the court location of which each is the clerk, make and keep dockets of causes therein, issue executions on judgments and perform all other duties imposed on such clerks by law. Each such clerk shall collect and receive all fines and forfeitures imposed or decreed by the court, including fines paid after commitment. (See General Statutes § 51-52 and annotations.)

(P.B. 1978-1997, Sec. 395.)

Sec. 7-3. Financial Accounts

The clerk shall make and keep adequate accounts showing all receipts and disbursements. Records of such accounts shall be retained for such period as determined by the chief court administrator.

(P.B. 1978-1997, Sec. 396.)

Sec. 7-4. Daybook

The clerk shall keep daybooks in which to enter each case on the date upon which the matter is filed on a docket of the court location. Each entry shall state the first named plaintiff and the first named defendant, unless otherwise prohibited by statute or ordered by the judicial authority, the date of filing and the number assigned to the case. Daybooks shall be retained for a period determined by the chief court administrator.

(P.B. 1978-1997, Sec. 397.)

Sec. 7-4A. Identification of Cases

Except as otherwise required by statute, every case filed in the superior court shall be identified as existing in the records of the court by docket number and by the names of the parties, and this information shall be available to the public.

(Adopted May 14, 2003, to take effect July 1, 2003.)

COMMENTARY—2003: In all cases brought, the records of the clerk's office shall reflect a docket number and names of the parties involved. This information shall be available to any member of the public who shall request such information. The names of the parties reflected in the records of the clerk's office shall reflect the true identity of the parties unless permission has been granted for use of a pseudonym pursuant to Section 11-20A. If a motion for use of a pseudonym is granted, then the records of the clerk's office shall reflect that pseudonym.

Sec. 7-4B. Motion to File Record under Seal

(a) As used in this section, ''record'' means any affidavit, document, or other material.

(b) A party filing a motion requesting that a record be filed under seal or that its disclosure be limited shall lodge the record with the court

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pursuant to Section 7-4C when the motion is filed, unless the judicial authority, for good cause shown, orders that the record need not be lodged. The motion must be accompanied by an appropriate memorandum of law to justify the sealing or limited disclosure.

(c) If necessary to prevent disclosure, the motion, any objection thereto, and any supporting records must be filed in a public redacted version and lodged in a nonredacted version conditionally under seal.

(d) If the judicial authority denies the motion to seal or to limit disclosure, the clerk shall either (1) return the lodged record to the submitting party and shall not place it in the court file or (2) upon written request of the submitting party retain the record as a lodged record so that in the event the submitting party appeals the denial of the motion, the lodged record can be part of the record on appeal of the final judgment in the case. In the latter event or if the judicial authority grants the motion, the clerk shall follow the procedure set forth in Section 7-4C (e). If the lodged record is retained pursuant to (2) above, the clerk shall return it to the submitting party or destroy it upon the expiration of the appeal period if no appeal has been filed.

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY—2003: Sections 7-4B and 7-4C are necessary to provide a uniform procedure for the filing of motions to seal records and the processing of such motions by the clerks. These rules are based on Rule 243.2 of the California Rules of Court.

HISTORY—2005: In 2005, the words ''or limited disclosure'' were added to the end of subsection (b).

COMMENTARY—2005: The above change made the rule internally consistent.

Sec. 7-4C. Lodging a Record

(a) A ''lodged'' record is a record that is temporarily placed or deposited with the court but not filed.

(b) A party who moves to file a record under seal or to limit its disclosure shall put the record in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the court.

(c) The party submitting the lodged record must affix to the envelope or container a cover sheet that contains the case caption and docket number, the words ''Conditionally Under Seal,'' the name of the party submitting the record and a statement that the enclosed record is subject to a motion to file the record under seal.

(d) Upon receipt of a record lodged under this section, the clerk shall note on the affixed cover sheet the date of its receipt and shall retain but not file the record unless the court orders it filed.

(e) If the judicial authority grants the motion to seal the record or to limit its disclosure, the clerk shall prominently place on the envelope or container in bold letters the words **''Sealed by Order of the Court on (Date)'' or ''Disclosure Limited by Order of the Court on (Date),''** as appropriate, and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion. If the judicial authority denies the motion and the submitting party requests in writing that the record be retained as a lodged record, the clerk shall prominently place on the envelope or container in bold letters the words **''Motion Denied, Retain as Lodged Record''** and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion.

(Adopted May 14, 2003, to take effect July 1, 2003.)

TECHNICAL CHANGE: Where capitalization was used as a means for showing emphasis in a rule, it was replaced in 2012 with bold font, and corresponding changes were made to any language that previously indicated the usage of uppercase letters.

Sec. 7-5. Notice to Attorneys and Self-Represented Parties

The clerk shall give notice, by mail or by electronic delivery, to the attorneys of record and self-represented parties unless otherwise provided by statute or these rules, of all judgments, nonsuits, defaults, decisions, orders and rulings unless made in their presence. The clerk shall record in the court file the date of the issuance of the notice.

(P.B. 1978-1997, Sec. 398.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, '', by mail or by electronic delivery,'' was added to the first sentence of this section, before ''to the attorneys of record.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

Sec. 7-6. Filing of Papers

No document in any case shall be filed by the clerk unless it has been signed by counsel or a self-represented party and contains the title of the case to which it belongs, the docket number assigned to it by the clerk and the nature of the document. The document shall contain a certification of service in accordance with Sections 10-12 through 10-17, and, if required by Section 11-1, a proper order and order of notice if one or both are necessary.

(P.B. 1978-1997, Sec. 399.)

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TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 7-7. Custody of Files

Clerks will not permit files, records, transcripts, or exhibits to be taken from their offices, except for use in the courtroom or upon order of a judicial authority. No person shall take any file from the custody of the clerk or from the courtroom without the express authority of a judicial authority or a clerk of the court and unless a proper receipt is given to the clerk on a form prescribed by the office of the chief court administrator.

(P.B. 1978-1997, Sec. 400.)

Sec. 7-8. Lost File or Pleading

If any file or pleading be mislaid, lost or destroyed the clerk may permit the original duplicate or a sworn copy to be substituted therefor in the files, and such substitution shall be certified by the clerk thereon.

(P.B. 1978-1997, Sec. 402.)

Sec. 7-9. Completing Records

The clerk may, when so directed by a judicial authority, make up, amend and complete any imperfect or unfinished record in such manner as the judicial authority may direct. (See General Statutes § 51-52a (b).)

(P.B. 1978-1997, Sec. 403.)

Sec. 7-10. Retention and Destruction of Files and Records; Withdrawals, Dismissals, Satisfactions of Judgment

The files in all civil, family and juvenile actions, including summary process and small claims, which, before a final judgment has been rendered on the issues, have been terminated by the filing of a withdrawal or by a judgment of dismissal or nonsuit when the issues have not been resolved on the merits or upon motion by any party or the court, or in which judgment for money damages only has been rendered and a full satisfaction of such judgment has been filed, may be destroyed upon the expiration of one year after such termination or the rendition of such judgment.

(P.B. 1978-1997, Sec. 403B.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 7-11. —Judgments on the Merits—Stripping and Retention

(a) With the exception of actions which affect the title to land and actions which have been disposed of pursuant to Section 7-10, the files in civil, family and juvenile actions in which judgment has been rendered may be stripped and destroyed pursuant to the schedule set forth in subsection (d) below, except that requests relating to discovery, responses and objections thereto may be stripped after the expiration of the appeal period.

(b) When a file is to be stripped, all papers in the file shall be destroyed except:

(1) The complaint, including any amendment thereto, substituted complaint or amended complaint;

(2) All orders of notice, appearances and officers' returns;

(3) All military or other affidavits;

(4) Any cross complaint, third-party complaint, or amendment thereto;

(5) All responsive pleadings;

(6) Any memorandum of decision;

(7) The judgment file or notation of the entry of judgment, and all modifications of judgment;

(8) All executions issued and returned.

(c) Upon the expiration of the stripping date, or at any time if facilities are not available for local retention, the file in any action set forth in subsection (d) may be transferred to the records center or other proper designated storage area, where it shall be retained for the balance of the retention period. Files in actions concerning dissolution of marriage or civil union, legal separation, or annulment may, upon agreement with officials of the state library, be transferred to the state library at the expiration of their retention period.

(d) The following is a schedule which sets forth when a file may be stripped and the length of time the file shall be retained. The time periods indicated below shall run from the date judgment is rendered except receivership actions or actions for injunctive relief which shall run from the date of the termination of the receivership or injunction.

	Type of Case	*Stripping Date*	*Retention Date*
(1)	Administrative appeals		3 years
(2)	Contracts (where money damages are not awarded)	1 year	20 years
(3)	Eminent domain (except as provided in Section 7-12)		10 years
(4)	Family		
	-Dissolution of marriage or civil union, legal separation, annulment and change of name	5 years	75 years
	-Delinquency		Until subject is 25 years of age
	-Family with service needs		Until subject is 25 years of age
	-Termination of parental rights		Permanent
	-Neglect and uncared for		75 years
	-Emancipation of minor		5 years
	-Orders in relief from physical abuse (General Statutes § 46b-15)		5 years

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	-Other		75 years
(5)	Family support magistrate matters		75 years
	-Uniform reciprocal enforcement of support (General Statutes §§ 46b-180 through 46b-211)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return.
	-Uniform Interstate Family Support Act (General Statutes §§ 46b-212 through 46b-213v)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return.
(6)	Landlord/Tenant		
	-Summary process		3 years
	-Housing code enforcement (General Statutes § 47a-14h)		5 years
	-Contracts/Leases (where money damages are not awarded)	1 year	20 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
(7)	Miscellaneous		
	-Bar discipline		50 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
	-Mandamus, habeas corpus, arbitration, petition for new trial, action for an accounting, interpleader		10 years
	-Injunctive relief (where no other relief is requested)		5 years
(8)	Property (except as provided in Section 7-12)	5 years	26 years
(9)	Receivership		10 years
(10)	Small Claims		15 years
(11)	Torts (except as noted below)	1 year	26 years
	-Money damages if the judgment was rendered in an action to recover damages for personal injury caused by sexual assault where the party at fault was convicted under General Statutes § 53a-70 or § 53a-70a (except where a satisfaction of judgment has been filed)		Permanent
(12)	Wills and estates		10 years
(13)	Asset forfeiture (General Statutes § 54-36h)		10 years
(14)	Alcohol and drug commitment (General Statutes § 17a-685)		10 years
(15)	All other civil actions (except as provided in Section 7-12)		75 years

(P.B. 1978-1997, Sec. 403C.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 26, 2006 to take effect Jan. 1, 2007.)

Sec. 7-12. —Actions Affecting the Title to Land

Files in any actions concerning title to land which are terminated by a final judgment affecting any right, title or interest in real property shall be retained for forty years in the office of the clerk of the court location in which the judgment is rendered and thereafter may be transferred to the state library pursuant to Section 7-15 (b) or to the judicial branch record center.

(P.B. 1978-1997, Sec. 403D.)

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

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

(a) Upon the disposition of any criminal case, except a case in which a felony or a capital felony conviction resulted, or any motor vehicle case, including any matter brought pursuant to the commission of an infraction or a violation, the file may be stripped of all papers except (1) the executed arrest warrant and original affidavit in support of probable cause, the misdemeanor/motor vehicle summons, prosecutorial summons or the complaint ticket, (2) the uniform arrest report, (3) the information or indictment and any substitute information, (4) a written plea of nolo contendere, (5) documents relating to programs for adjudication and treatment as a youthful offender, programs relating to family violence education, community service labor, accelerated pretrial rehabilitation, pretrial drug education, pretrial alcohol education and treatment, determination of competency to stand trial or suspension of prosecution or any other programs for adjudication or treatment which may be created from time to time, (6) any official receipts, (7) the judgment mittimus, (8) any written notices of rights, (9) orders regarding probation, (10) any exhibits on file, (11) any transcripts on file of proceedings held in the matter, and (12) the transaction sheet.

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

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

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

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

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

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

(h) In cases in which there has been a conviction of a misdemeanor charge but not a conviction of a felony charge, the file shall be destroyed upon the expiration of ten years from the date of disposition.

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

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

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

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

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

(P.B. 1978-1997, Sec. 403E.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 7-14. —Reports from Adult Probation and Family Division

(a) The office of adult probation shall maintain one copy of each presentence investigation report for twenty-five years. Copies of such reports in the custody of the clerk pursuant to Section 43-8 may be destroyed upon the expiration of one year from the date of final disposition of the case.

(b) Except as provided in General Statutes § 45a-757, the family division of the superior court shall maintain one copy of each case study report prepared pursuant to Section 25-60 for two years beyond the youngest child's eighteenth birthday and copies of such reports in the custody of the clerk may be destroyed upon the expiration of one year from the date of final disposition of the case.

(P.B. 1978-1997, Sec. 403F.)

Sec. 7-15. —Retention Ordered by Chief Court Administrator; Transfer to State Library

(a) The chief court administrator may require that any files and records of the judicial branch, the retention of which is not otherwise provided for by rule or statute, be retained either for a specific period or permanently, and may authorize the transfer of any such files and records to the records center or other proper facility for retention. Such files and records may be destroyed upon the expiration of the specific period required for their retention.

(b) Except where prohibited by rule or statute, any files and records of the judicial branch may, with the written consent of the chief court administrator and upon agreement with the appropriate officials of the state library, be transferred to the state library for retention.

(P.B. 1978-1997, Sec. 403G.)

Sec. 7-16. —Motion to Prevent Destruction of File

Upon the motion of any interested party, the judicial authority may, for good cause shown, exempt from destruction for a specified period the file in any case which has gone to judgment for reasons other than dismissal.

(P.B. 1978-1997, Sec. 403H.)

Sec. 7-17. Clerks' Offices

Clerks' offices shall be open each weekday from Monday to Friday inclusive, between 9 o'clock in the forenoon and 5 o'clock in the afternoon, but they shall not be open on legal holidays. The chief court administrator may increase the hours of the clerk's office for the purpose of the acceptance of bonds or for other limited purposes for one or more court locations. If the last day for filing any matter in the clerk's office falls on a day

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on which such office is not open as thus provided or is closed pursuant to authorization by the administrative judge in consultation with the chief court administrator or the chief court administrator due to the existence of special circumstances, then the last day for filing shall be the next business day upon which such office is open. Except as provided below, a document that is electronically received by the clerk's office for filing after 5 o'clock in the afternoon on a day on which the clerk's office is open or that is electronically received by the clerk's office for filing at any time on a day on which the clerk's office is closed, shall be deemed filed on the next business day upon which such office is open. If a party is unable to electronically file a document because the court's electronic filing system is nonoperational for thirty consecutive minutes from 9 o'clock in the forenoon to 3 o'clock in the afternoon or for any period of time from 3 o'clock to 5 o'clock in the afternoon of the day on which the electronic filing is attempted, and such day is the last day for filing the document, the document shall be deemed to be timely filed if received by the clerk's office on the next business day the electronic system is operational.

(P.B. 1978-1997, Sec. 405.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 21, 2004, to take effect July 13, 2004; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 7-18. Hospital, Psychiatric and Medical Records

Hospital, psychiatric and medical records shall not be filed with the clerk unless such records are submitted in a sealed envelope clearly identified with the case caption, the subject's name and the health care provider, institution or facility from which said records were issued. Such records shall be opened only pursuant to court order.

(P.B. 1978-1997, Secs. 397B, 1011E.)

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

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

(P.B. 1978-1997, Sec. 395A.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

Sec. 7-20. Records of Short Calendar Matters

The clerk shall keep a record of all matters assigned for hearing on the civil short calendar together with the disposition made of them. Such records shall be retained for such period and in such format as determined by the chief court administrator.

(P.B. 1978-1997, Sec. 397A.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 7-21. Removing Exhibits and Other Papers

Unless otherwise ordered by the judicial authority, it is the duty of attorneys and self-represented parties, upon the final determination of any civil case, to remove from the courthouse all exhibits that have been entered into evidence, briefs, depositions, and memoranda and, if not so removed, such items may be destroyed by the clerk four months after the final determination of the case, without notice.

(P.B. 1978-1997, Sec. 401.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

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SUPERIOR COURT—PROCEDURE IN CIVIL MATTERS

CHAPTER 8

COMMENCEMENT OF ACTION

Sec.		Sec.	
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8-2.	Waiver of Court Fees and Costs	8-8.	Member of Community Defending to Give Bond
8-3.	Bond for Prosecution	8-9.	Bond by Nonresident in Realty Action
8-4.	Certification of Financial Responsibility	8-10.	Surety Company Bond Acceptable
8-5.	Remedy for Failure to Give Bond	8-11.	Action on Probate Bond; Endorsement of Writ
8-6.	Bond Ordered by Judicial Authority	8-12.	Renewal of Bond

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 8-1. Mesne Process

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

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

(1) Applications for change of name.

(2) Proceedings pertaining to arbitration.

(3) Probate appeals.

(4) Administrative appeals.

(5) Verified petitions for paternity.

(6) Verified petitions for support orders.

(7) Any actions or proceedings in which an attachment, garnishment or replevy is sought.

(8) Applications for custody.

(9) Applications for visitation.

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

(P.B. 1978-1997, Sec. 49.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 8-2. Waiver of Court Fees and Costs

(a) Prior to the commencement of an action, or at any time during its pendency, a party may file with the clerk of the court in which the action is pending, or in which the party intends to return a writ, summons and complaint, an application for waiver of fees payable to the court and for payment by the state of the costs of service of process. The application shall set forth the facts which are the basis of the claim for waiver and for payment by the state of any costs of service of process; a statement of the applicant's current income, expenses, assets and liabilities; pertinent records of employment, gross earnings, gross wages and all other income; and the specific fees and costs of service of process sought to be waived or paid by the state and the amount of each. The application and any representations shall be supported by an affidavit of the applicant to the truth of the facts recited.

(b) The clerk with whom such an application is filed shall refer it to the court of which he or she is clerk. If the court finds that a party is indigent and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

(c) There shall be a rebuttable presumption that a person is indigent and unable to pay a fee or fees or the cost of service of process if (1) such person receives public assistance or (2) such person's income after taxes, mandatory wage deductions and child care expenses is one hundred twenty-five per cent or less of the federal poverty

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level. For purposes of this subsection, ''public assistance'' includes, but is not limited to, state-administered general assistance, temporary family assistance, aid to the aged, blind and disabled, food stamps and supplemental security income.

(d) Nothing in this section shall preclude the court from finding that a person whose income does not meet the criteria of subsection (c) of this section is indigent and unable to pay a fee or fees or the cost of service of process. If an application for the waiver of the payment of a fee or fees or the cost of service of process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application.

(P.B. 1978-1997, Sec. 50.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 8-3. Bond for Prosecution

(a) Except as provided below, if the plaintiff in any civil action is not an inhabitant of this state, or if it does not appear to the authority signing the process that the plaintiff is able to pay the costs of the action should judgment be rendered against the plaintiff, he or she shall, before such process is signed, enter into a recognizance to the adverse party with some substantial inhabitant of this state as surety, or some substantial inhabitant of this state shall enter into a recognizance to the adverse party, that the plaintiff shall prosecute the action to effect, and answer all damages in case the plaintiff does not make his or her plea good; and no such recognizance shall be discharged by any amendment or alteration of the process between the time of signing and of serving it. (See General Statutes § 52-185 and annotations.)

(b) No recognizance shall be required of a self-represented complainant in a summary process action.

(P.B. 1978-1997, Sec. 51.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with '' self-represented.''

Sec. 8-4. Certification of Financial Responsibility

(a) Except as provided below, in all actions wherein costs may be taxed against the plaintiff, no mesne process shall be issued until the recognizance of a third party for costs has been taken, unless the authority signing the writ shall certify thereon that he or she has personal knowledge as to the financial responsibility of the plaintiff and deems it sufficient.

(b) No recognizance shall be required of a self-represented complainant in a summary process action.

(c) No attorney shall enter into a recognizance upon a writ which such attorney signs.

(P.B. 1978-1997, Sec. 52.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with '' self-represented.''

Sec. 8-5. Remedy for Failure to Give Bond

(a) When there has been a failure to comply with the provisions of Sections 8-3 and 8-4; the validity of the writ and service shall not be affected unless the neglect is made a ground of a motion to dismiss.

(b) If the judicial authority, upon the hearing of the motion to dismiss, directs the plaintiff to file a bond to prosecute in an amount deemed sufficient by the judicial authority, the action shall be dismissed unless the plaintiff complies with the order of the judicial authority within two weeks of such order.

(c) Upon the filing of such bond, the case shall proceed in the same manner and to the same effect as to rights of attachment and in all other respects as though the neglect had not occurred. The judicial authority may, in its discretion, order, as a condition to the acceptance of the bond, that the plaintiff pay to the defendant costs not to exceed the costs in full to the date of the order. (See General Statutes § 52-185 and annotations.)

(P.B. 1978-1997, Sec. 53.)

Sec. 8-6. Bond Ordered by Judicial Authority

If the judicial authority in which any action is pending finds that any bond taken therein for prosecution, or on appeal, is insufficient, or that the plaintiff has given no bond for prosecution and is not able to pay the costs, it shall order a sufficient bond to be given before trial, unless the trial will thereby necessarily be delayed. In determining the sufficiency of the bond to be given, the judicial authority shall consider only the taxable costs which the plaintiff may be responsible for under General Statutes § 52-257, except that in no event shall the judicial authority consider the fees or charges of expert witnesses notwithstanding that such fees or charges may be allowable under that section. Any party failing to comply with such order may be nonsuited or defaulted, as the case may be. Bonds for the prosecution of any civil action or appeal, pending in any court, may be taken in vacation by its clerk. (See General Statutes § 52-186 and annotations.)

(P.B. 1978-1997, Sec. 54.)

Sec. 8-7. Request to Furnish Bond

No order for a bond for prosecution will be made by the judicial authority unless it be shown that the adverse party has been requested in writing

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to furnish the same and has refused such request or has failed to file a satisfactory bond within a reasonable time after the request was made.
(P.B. 1978-1997, Sec. 55.)

Sec. 8-8. Member of Community Defending to Give Bond

If, in any action against a community, any individual member of such community appears to defend, he or she shall procure bond with surety to the acceptance of the court in which the action is pending, to save such community harmless from all costs which may arise by reason of such appearance, which bond shall be payable to such community and be filed in such court. Any such individual member who successfully defends against such action shall be entitled to the costs recoverable from the plaintiff unless the community likewise appeared and incurred the costs of such defense. (See General Statutes § 52-187 and annotations.)
(P.B. 1978-1997, Sec. 56.)

Sec. 8-9. Bond by Nonresident in Realty Action

Each nonresident defendant in any civil action relating to real estate or any interest therein, if any relief other than money damages is claimed, may be ordered by the judicial authority, during the pendency of such action, to give such bond to such other party or parties to such action as the judicial authority may direct, conditioned for the payment of costs. Judgment as on default may be rendered against any defendant who fails to comply with such order. (See General Statutes § 52-188.)
(P.B. 1978-1997, Sec. 57.)

Sec. 8-10. Surety Company Bond Acceptable

Any surety company chartered by this state or authorized to do business herein may be accepted as surety or recognizor upon any bond or recognizance required by law in any civil action or in any proceeding instituted under the statutes of this state and, in any case where a bond or recognizance is by law required, the bond of such company, duly executed and conditioned for the performance of the obligations expressed in such bond or recognizance, may be accepted by the person having authority thereto, and shall be filed by him or her in the court to which such action or proceeding is returnable or pending. (See General Statutes § 52-189 and annotations.)
(P.B. 1978-1997, Sec. 58.)

Sec. 8-11. Action on Probate Bond; Endorsement of Writ

The writ in any action brought upon a probate bond, or bond taken to a judge of probate and such judge's successors in office, shall be dismissed unless, before its issue, some responsible inhabitant of the state signs a written endorsement upon it, agreeing to be responsible for the costs of suit. If the endorser dies or removes from this state, a new endorser on such writ shall be substituted; and the court before which the suit is pending may at any time order the substitution of a new endorser to be approved by it. For any failure to comply with such an order the plaintiff may be nonsuited. (See General Statutes § 52-190 and annotations.)
(P.B. 1978-1997, Sec. 59.)

Sec. 8-12. Renewal of Bond

Bonds given in the course of any judicial proceedings may, for reasonable cause and upon due notice, be renewed, or other bonds taken in lieu of them, by the court, or by the judge before whom the matter is pending.
(P.B. 1978-1997, Sec. 60.)

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CHAPTER 9

PARTIES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 9-1. Continuance for Absent or Nonresident Defendant

Every civil action in which the defendant is an inhabitant of this state but is absent therefrom at the commencement of the suit and continues to be absent until after the return day, without having entered any appearance therein, shall be continued or postponed for thirty days by order of the judicial authority. If the defendant does not then appear and no special reason is shown for further delay, judgment by default may be rendered against the defendant. If the defendant is not an inhabitant or resident of this state at the commencement of the action and does not appear therein, the judicial authority shall continue or postpone it for a period of three months and may, if it deems further notice advisable, direct such further notice of the pendency of the action to be given to the defendant by publication in some newspaper, or otherwise, as it deems expedient, or may authorize any person empowered to serve process by the laws of the foreign jurisdiction in which such defendant resides to serve upon such defendant a copy of the summons and complaint and of the order of notice and such person shall make affidavit of his or her doings thereon on the original order of notice. If, upon the expiration of such three months, the defendant does not then appear and no special reason is shown for further delay, judgment may be rendered against such defendant by default. Upon the expiration of any such continuance, it shall be presumed prima facie that no special reason for further delay exists. In actions of foreclosure, including prayers for relief incident thereto and part thereof, judgment may then be rendered upon the plaintiff's motion for judgment of foreclosure. The provisions of this section shall not apply in the case of any civil action brought under and pursuant to General Statutes § 47-33 or § 52-69 and no continuance or postponement of any such action or additional notice of the pendency thereof shall be required unless the judicial authority so orders. (See General Statutes § 52-87 and annotations.)

(P.B. 1978-1997, Sec. 80.)

Sec. 9-2. Defense by Garnishee; Continuance

In any action by foreign attachment, if the defendant does not appear, any garnishee may be admitted to defend his or her principal; but, if the defendant is not in this state and does not appear, personally or by attorney, and the garnishee does not appear to defend, the action shall be continued, postponed or adjourned for a period of three months from the return day of the writ. Any continuance, postponement or adjournment, prescribed in this or Section 9-1, shall not be granted or, if granted, shall terminate whenever the judicial authority finds that the absent or nonresident defendant, or authorized agent or attorney, has received actual notice of the pendency of the case at least twelve days prior to such finding, and thereupon, unless some special reason is shown for further delay, the cause may be brought to trial. (See General Statutes § 52-88 and annotations.)

(P.B. 1978-1997, Sec. 81.)

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Sec. 9-3. Joinder of Parties and Actions; Interested Persons as Plaintiffs

All persons having an interest in the subject of the action, and in obtaining the judgment demanded, may be joined as plaintiffs, except as otherwise expressly provided; and, if one who ought to be joined as plaintiff declines to join, such person may be made a defendant, the reason therefor being stated in the complaint. (See General Statutes § 52-101 and annotations.)

(P.B. 1978-1997, Sec. 83.)

Sec. 9-4. —Joinder of Plaintiffs in One Action

All persons may be joined in one action as plaintiffs in whom any right of relief in respect to or arising out of the same transaction or series of transactions is alleged to exist either jointly or severally when, if such persons brought separate actions, any common question of law or fact would arise; provided, if, upon the motion of any party, it would appear that such joinder might embarrass or delay the trial of the action, the judicial authority may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for the relief to which he, she or they may be entitled; and there shall be but one entry fee, one jury fee, if claimed for jury trial, and such other costs as may by rule be prescribed.

(P.B. 1978-1997, Sec. 84.)

Sec. 9-5. —Consolidation of Actions

(a) Whenever there are two or more separate actions which should be tried together, the judicial authority may, upon the motion of any party or upon its own motion, order that the actions be consolidated for trial.

(b) If a party seeks consolidation, the motion to consolidate shall be filed in all of the court files proposed to be consolidated, shall include the docket number and judicial district of each of the cases, and shall contain a certification specifically stating that the motion was served in accordance with Sections 10-12 through 10-17 on all parties to such actions. The certification shall specifically recite the name and address of each counsel and self-represented party served, the date of such service and the name and docket number of the case in which that person has appeared. The moving party shall give reasonable notice to all such parties of the date on which the motion will be heard on short calendar. The judicial authority shall not consider the motion unless it is satisfied that such notice was given.

(c) The court files in any actions consolidated pursuant to this section shall be maintained as separate files and all documents submitted by counsel or the parties shall bear only the docket number and case title of the file in which it is to be filed.

(P.B. 1978-1997, Sec. 84A.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 9-6. —Interested Persons as Defendants

Any person may be made a defendant who has or claims an interest in the controversy, or any part thereof, adverse to the plaintiff, or whom it is necessary, for a complete determination or settlement of any question involved therein, to make a party. (See General Statutes § 52-102 and annotations.)

(P.B. 1978-1997, Sec. 85.)

Sec. 9-7. Class Actions; Prerequisites to Class Actions

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(P.B. 1978-1997, Sec. 87.)

Sec. 9-8. —Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Section 9-7 are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of: (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the adjudications or substantially impair or impede their ability to protect their interests, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient

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adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of class action.

(P.B. 1978-1997, Sec. 88.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 9-9. —Procedure for Class Certification and Management of Class

(Amended June 22, 2009, to take effect Jan. 1, 2010.)

(a) (1) (A) When a person sues or is sued as a representative of a class, the court must, at an early practicable time, determine by order whether to certify the action as a class action.

(B) An order certifying a class action must define the class and the class claims, issues or defenses, and must appoint class counsel.

(C) An order under Section 9-9 (a) (1) (A) may be altered or amended before final judgment.

(2) (A) For any class certified under Section 9-8 (1) or (2), the court must direct notice to the class.

(B) For any class certified under Section 9-8 (3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues or defenses;

(iv) that a class member may enter an appearance through counsel if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and

(vi) the binding effect of a class judgment on class members under Section 9-8 (3).

(3) The judgment in an action maintained as a class action under Section 9-8 (1) or (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Section 9-8 (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Section 9-9 (a) (2) (B) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of Sections 9-7 and 9-8 shall then be construed and applied accordingly.

(b) In the conduct of actions to which Sections 9-7 et seq. apply, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and to present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

(c) (1) (A) The court must approve any settlement, withdrawal, or compromise of the claims, issues, or defense of a certified class. Court approval is not required for settlement, withdrawal or compromise of a claim in which a class has been alleged but no class has been certified.

(B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, withdrawal or compromise.

(C) The court may approve a settlement, withdrawal, or compromise that would bind class members only after a hearing and on finding that the settlement, withdrawal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, withdrawal, or compromise of an action in which a class has been certified must file a statement identifying any agreement made in connection with the proposed settlement, withdrawal or compromise.

(3) In an action previously certified as a class action under Section 9-8 (3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class

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members who had an earlier opportunity to request exclusion but did not do so.

(4) (A) Any class member may object to a proposed settlement, withdrawal or compromise that requires court approval under (c) (1) (A).

(B) An objection made under (c) (4) (A) may be withdrawn only with the court's approval.

(d) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(1) In appointing class counsel, the court must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources counsel will commit to representing the class.

(2) The court may:

(i) consider any other matter pertinent to counsel's ability to represent the interests of the class fairly and adequately;

(ii) direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs; and

(iii) make further orders in connection with the appointment.

(e) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action. When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under subsection (d). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class. The order appointing class counsel may include provisions about the award of attorney's fees or nontaxable costs under subsection (f).

(f) In an action certified as a class action, the court may award reasonable attorney's fees and nontaxable costs authorized by law or by consent of the parties as follows:

(1) a request for an award of attorney's fees and nontaxable costs must be made by motion subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its conclusions of law on such motion.

(P.B. 1978-1997, Sec. 89.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 9-10. —Orders to Ensure Adequate Representation

The judicial authority at any stage of an action under this section may require such security and impose such terms as shall fairly and adequately protect the interests of the class in whose behalf the action is brought or defended. It may order that notice be given, in such manner as it may direct, of the pendency of the action, of a proposed settlement, of entry of judgment, or of any other proceedings in the action, including notice to the absent persons that they may come in and present claims and defenses if they so desire. Whenever the representation appears to the judicial authority inadequate fairly to protect the interests of absent parties who may be bound by the judgment, it may at any time prior to judgment order an amendment of the pleadings, eliminating therefrom all reference to representation of absent persons, and it shall order entry of judgment in such form as to affect only the parties to the action and those adequately represented.

(P.B. 1978-1997, Sec. 90.)

Sec. 9-11. Executor, Administrator or Trustee of Express Trust

An executor, administrator, or trustee of an express trust may sue or be sued without joining the persons represented by him or her and beneficially interested in the suit. The term ''trustee of an express trust'' shall be construed to include any person with whom, or in whose name, a contract is made for the benefit of another. (See General Statutes § 52-106 and annotations.)

(P.B. 1978-1997, Sec. 91.)

Sec. 9-12. Personal Representatives of Cocontractor

In suits on a joint contract, whether partnership or otherwise, the personal representatives of a deceased cocontractor may join, as plaintiffs, and be joined, as defendants, with the survivor; provided, where the estate of the decedent is in settlement in this state as an insolvent estate, his or her personal representatives cannot be joined as defendants. (See General Statutes § 52-78.)

(P.B. 1978-1997, Sec. 92.)

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Sec. 9-13. Persons Liable on Same Instrument

Persons severally and immediately liable on the same obligation or instrument, including parties to bills of exchange and promissory notes, and endorsers, guarantors, and sureties, whether on the same or by separate instruments, may all, or any of them, be joined as defendants, and a joint judgment may be rendered against those so joined.

(P.B. 1978-1997, Sec. 93.)

Sec. 9-14. Defendants Alternately Liable

Persons may be joined as defendants against whom the right to relief is alleged to exist in the alternative, although a right to relief against one may be inconsistent with a right to relief against the other.

(P.B. 1978-1997, Sec. 94.)

Sec. 9-15. Assignee of Part Interest

If a part interest in a contract obligation be assigned, the assignor retaining the remaining interest and the assignee may join as plaintiffs.

(P.B. 1978-1997, Sec. 95.)

Sec. 9-16. Assignment Pending Suit

If, pending the action, the plaintiff assigns the cause of action, the assignee, upon written motion, may either be joined as a coplaintiff or be substituted as a sole plaintiff, as the judicial authority may order; provided that it shall in no manner prejudice the defense of the action as it stood before such change of parties.

(P.B. 1978-1997, Sec. 96.)

Sec. 9-17. Unsatisfied Judgment against One Defendant

Where the plaintiff may at his or her option join several persons as defendants, or sue them separately, judgment without satisfaction against one shall not bar a suit against another.

(P.B. 1978-1997, Sec. 97.)

Sec. 9-18. Addition or Substitution of Parties; Additional Parties Summoned in by Court

The judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct that they be brought in. If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party. (See General Statutes § 52-107 and annotations.)

(P.B. 1978-1997, Sec. 99.)

Sec. 9-19. —Nonjoinder and Misjoinder of Parties

Except as provided in Sections 10-44 and 11-3 no action shall be defeated by the nonjoinder or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the judicial authority, at any stage of the cause, as it deems the interests of justice require. (See General Statutes § 52-108 and annotations.)

(P.B. 1978-1997, Sec. 100.)

Sec. 9-20. —Substituted Plaintiff

When any action has been commenced in the name of the wrong person as plaintiff, the judicial authority may, if satisfied that it was so commenced through mistake and that it is necessary for the determination of the real matter in dispute so to do, allow any other person to be substituted or added as plaintiff. (See General Statutes § 52-109 and annotations.)

(P.B. 1978-1997, Sec. 101.)

Sec. 9-21. —Counterclaim; Third Parties

When a counterclaim raises questions affecting the interests of third parties, the defendant may, and if required by the judicial authority shall, cause such parties to be summoned in as parties to such suit. (See General Statutes § 52-110 and annotations.)

(P.B. 1978-1997, Sec. 102.)

Sec. 9-22. —Motion to Cite in New Parties

Any motion to cite in or admit new parties must comply with Section 11-1 and state briefly the grounds upon which it is made.

(P.B. 1978-1997, Sec. 103.)

Sec. 9-23. Suit by Real Party in Interest

An action may be brought in all cases in the name of the real party in interest, but any claim or defense may be set up which would have been available had the plaintiff sued in the name of the nominal party in interest.

(P.B. 1978-1997, Sec. 104.)

Sec. 9-24. Change of Name by Minor Child

In all proceedings for change of name under General Statutes § 52-11, brought by a minor child through his or her next friend, the parents of such child, not named as next friends, shall be necessary parties and shall be cited in, in such manner as shall be ordered by the court or a judge thereof.

(P.B. 1978-1997, Sec. 105.)

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Sec. 9-25. Action on Bond to Municipal Officer

When any bond, note or other security is taken to any officer of a community or corporation in this state, wherein the beneficial interest belongs, or on the face of such security appears to belong, to such community or corporation, any action to recover or enforce the same may be maintained by such community or corporation in its own corporate name. (See General Statutes § 52-73a.)

(P.B. 1978-1997, Sec. 106.)

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CHAPTER 10

PLEADINGS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 10-1. Fact Pleading

Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation. If any such pleading does not fully disclose the ground of claim or defense, the judicial authority may order a fuller and more particular statement; and, if in the opinion of the judicial

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authority the pleadings do not sufficiently define the issues in dispute, it may direct the parties to prepare other issues, and such issues shall, if the parties differ, be settled by the judicial authority.
(P.B. 1978-1997, Sec. 108.)

Sec. 10-2. Pleading Legal Effect

Acts and contracts may be stated according to their legal effect, but in so doing the pleading should be such as fairly to apprise the adverse party of the state of facts which it is intended to prove. Thus an act or promise by a principal, other than a corporation, if in fact proceeding from an agent known to the pleader, should be so stated; and the obligation of a spouse to pay for necessaries furnished to his or her spouse, whom he or she has driven from the marital house, should be stated according to the facts.
(P.B. 1978-1997, Sec. 109.)

Sec. 10-3. Allegations Based on Statutory Grounds; Foreign Law

(a) When any claim made in a complaint, cross complaint, special defense, or other pleading is grounded on a statute, the statute shall be specifically identified by its number.

(b) A party to an action who intends to raise an issue concerning the law of any jurisdiction or governmental unit thereof outside this state shall give notice in his or her pleadings or other reasonable written notice.
(P.B. 1978-1997, Sec. 109A.)

Sec. 10-4. Implied Duty

It is unnecessary to allege any promise or duty which the law implies from the facts pleaded.
(P.B. 1978-1997, Sec. 110.)

Sec. 10-5. Untrue Allegations or Denials

Any allegation or denial made without reasonable cause and found untrue shall subject the party pleading the same to the payment of such reasonable expenses, to be taxed by the judicial authority, as may have been necessarily incurred by the other party by reason of such untrue pleading; provided that no expenses for counsel fees shall be taxed exceeding $500 for any one offense. Such expenses shall be taxed against the offending party whether that party prevails in the action or not. (See General Statutes § 52-99 and annotations.)
(P.B. 1978-1997, Sec. 111.)

Sec. 10-6. Pleadings Allowed and Their Order

The order of pleading shall be as follows:

(1) The plaintiff's complaint.

(2) The defendant's motion to dismiss the complaint.

(3) The defendant's request to revise the complaint.

(4) The defendant's motion to strike the complaint.

(5) The defendant's answer (including any special defenses) to the complaint.

(6) The plaintiff's request to revise the defendant's answer.

(7) The plaintiff's motion to strike the defendant's answer.

(8) The plaintiff's reply to any special defenses.
(P.B. 1978-1997, Sec. 112.)

Sec. 10-7. Waiving Right to Plead

In all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section.
(P.B. 1978-1997, Sec. 113.)

Sec. 10-8. Time to Plead

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall first advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of fifteen days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the initial time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements.
(P.B. 1978-1997, Sec. 114.)

Sec. 10-9. Common Counts

The common counts writ and complaint is hereby abolished.
(P.B. 1978-1997, Sec. 115.)

Sec. 10-10. Supplemental Pleadings; Counterclaims

Supplemental pleadings showing matters arising since the original pleading may be filed in actions for equitable relief by either party. In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim

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arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint; and if necessary, additional parties may be summoned in to answer any such counterclaim or cross claim. A defendant may also file a counterclaim or cross claim under this section against any other party to the action for the purpose of establishing that party's liability to the defendant for all or part of the plaintiff's claim against that defendant.

(P.B. 1978-1997, Sec. 116.)

Sec. 10-11. Impleading of Third Party by Defendant in Civil Action

(a) A defendant in any civil action may move the court for permission as a third party plaintiff to serve a writ, summons and complaint upon a person not a party to the action who is or may be liable to such defendant for all or part of the plaintiff's claim against him or her. Such a motion may be filed at any time before trial and such permission may be granted by the judicial authority if, in its discretion, it deems that the granting of the motion will not unduly delay the trial of the action or work an injustice upon the plaintiff or the party sought to be impleaded. The writ, summons and complaint so served shall be equivalent in all respects to an original writ, summons and complaint, and the person upon whom it is served, hereinafter called the third party defendant, shall have available to him or her all remedies available to an original defendant, including the right to assert setoffs or counterclaims against the third party plaintiff, and shall be entitled to file cross complaints against any other third party defendant. The third party defendant may also assert against the plaintiff any defenses which the third party plaintiff has to the plaintiff's claim and may assert any claim against the plaintiff arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim against the third party plaintiff.

(b) The plaintiff, within twenty days after the third party defendant appears in the action, may assert any claim against the third party defendant arising out of the transaction or occurrence which is the subject matter of the original complaint, and the third party defendant, as against such claim, shall have available to him or her all remedies available to an original defendant, including the right to assert setoffs or counterclaims against the plaintiff.

(c) A third party defendant may proceed under this section against any person not a party to the action who is or may be liable to such defendant for all or any part of the third party plaintiff's claim against him or her.

(d) When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this section would entitle a defendant to do so.

(e) When any civil action in which such a third party has been brought in is reached for trial, the judicial authority hearing the case may order separate trials of different parts of the action and may make such other order respecting the trial of the action as will do justice to the parties and expedite final disposition of the case.

(P.B. 1978-1997, Sec. 117.)

Sec. 10-12. Service of the Pleading and Other Papers; Responsibility of Counsel or Self-Represented Party: Documents and Persons to Be Served

(a) It is the responsibility of counsel or a self-represented party filing the same to serve on each other party who has appeared one copy of every pleading subsequent to the original complaint, every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper, except a request for mediation under General Statutes § 49-31*l*. When a party is represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the judicial authority.

(b) It shall be the responsibility of counsel or a self-represented party at the time of filing a motion for default for failure to appear to serve the party sought to be defaulted with a copy of the motion. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(c) Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties.

(P.B. 1978-1997, Sec. 121.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented." Also, in 2012, the citation in subsection (a) to Public Acts 2008, No. 08-176, § 16, was replaced with General Statutes § 49-31*l*, which codified the public act.

Sec. 10-13. —Method of Service

Service upon the attorney or upon a self-represented party, except service pursuant to Section 10-12 (c), may be by delivering a copy or by mailing it to the last known address of the attorney or party. Delivery of a copy within this section means handing it to the attorney or to the party; or leaving it at the attorney's office with a person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office,

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leaving it at the usual place of abode. Delivery of a copy within this rule may also mean electronic delivery to the last known electronic address of the attorney or party, provided that electronic delivery was consented to in writing by the person served. Service by mail is complete upon mailing. Service by electronic delivery is complete upon sending the electronic notice unless the party making service learns that the attempted service did not reach the electronic address of the person to be served. Service pursuant to Section 10-12 (c) shall be made in the same manner as an original writ and complaint is served or as ordered by the judicial authority.

(P.B. 1978-1997, Sec. 122.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 22, 2009, to take effect Jan. 1, 2010.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 10-14. —Proof of Service

(a) Proof of service pursuant to Section 10-12 (a) and (b) may be made by written acknowledgment of service by the party served, by a certificate of counsel for the party filing the pleading or paper or by the self-represented party, or by affidavit of the person making the service, but these methods of proof shall not be exclusive. Proof of service shall include the address at which such service was made. If proof of such service is made by a certificate of counsel or by the self-represented party, it shall be in substantially the following form:

I hereby certify that a copy of the above was mailed or electronically delivered on *(Date)* to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were electronically served. *(Here list the name of each party served and the address at which service was made.)*

Or

to the party against whom the default for failure to appear is claimed. *(Here list the name of each nonappearing party served and the address at which service was made.)*

(Individual Signature of Counsel or Self-Represented Party)

(b) Proof of service pursuant to Section 10-12 (c) shall be made in the same manner as proof of service is made of an original writ and complaint, unless the judicial authority ordered service in some other manner in which event service may be proved as prescribed in subsection (a) above.

(P.B. 1978-1997, Sec. 123.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 21, 2004, to take effect Jan. 1, 2005.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 10-15. —Numerous Defendants

In any action in which there is an unusually large number of defendants, the judicial authority, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross complaint, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other defendants and that the filing of any such pleading and service thereof upon the plaintiff shall be deemed to constitute due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the judicial authority directs.

(P.B. 1978-1997, Sec. 124.)

Sec. 10-16. —Several Parties Represented by One Attorney

When several parties have entered their appearance by one attorney or one firm of attorneys, such several parties shall be treated as a single party under this section.

(P.B. 1978-1997, Sec. 125.)

Sec. 10-17. —Service by Indifferent Person

Service of copies of any written pleading subsequent to the original complaint, motion, claim, notice or demand, when required by law or rule of the court, may be made by any indifferent person.

(P.B. 1978-1997, Sec. 126.)

Sec. 10-18. Penalty for Failing to Plead

Parties failing to plead according to the rules and orders of the judicial authority may be nonsuited or defaulted, as the case may be. (See General Statutes § 52-119 and annotations.)

(P.B. 1978-1997, Sec. 128.)

Sec. 10-19. Implied Admissions

Every material allegation in any pleading which is not denied by the adverse party shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief.

(P.B. 1978-1997, Sec. 129.)

Sec. 10-20. Contents of Complaint

The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a concise statement of the facts constituting the cause of action and, on a separate page of the complaint, a demand for relief which shall be a statement of the remedy or remedies sought. When money damages are sought in the demand for relief, the demand for relief shall include the information required by General Statutes § 52-91.

(P.B. 1978-1997, Sec. 131.)

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Sec. 10-21. Joinder of Causes of Action

In any civil action the plaintiff may include in the complaint both legal and equitable rights and causes of action, and demand both legal and equitable remedies; but, if several causes of action are united in the same complaint, they shall all be brought to recover, either (1) upon contract, express or implied, or (2) for injuries, with or without force, to person and property, or either, including a conversion of property to the defendant's use, or (3) for injuries to character, or (4) upon claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or (5) upon claims to recover personal property specifically, with or without damages for the withholding thereof, or (6) claims arising by virtue of a contract or by operation of law in favor of or against a party in some representative or fiduciary capacity, or (7) upon claims, whether in contract or tort or both, arising out of the same transaction or transactions connected with the same subject of action. The several causes of action so united shall all belong to one of these classes, and, except in an action for the foreclosure of a mortgage or lien, shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; and, in any case in which several causes of action are joined in the same complaint, or as matter of counterclaim or setoff in the answer, if it appears to the judicial authority that they cannot all be conveniently heard together, it may order a separate trial of any such cause of action or may direct that any one or more of them be deleted from the complaint or answer. (See General Statutes § 52-97 and annotations.)

(P.B. 1978-1997, Sec. 133.)

Sec. 10-22. —Transactions Connected with Same Subject

Transactions connected with the same subject of action within the meaning of subdivision (7) of Section 10-21, may include any transactions which grew out of the subject matter in regard to which the controversy has arisen; as, for instance, the failure of a bailee to use the goods bailed for the purpose agreed, also an injury to them by his or her fault or neglect; the breach of a covenant for quiet enjoyment by the entry of the lessor, also a trespass to goods, committed in the course of the entry. Injuries to character, within the meaning of subdivision (3) of Section 10-21, may embrace libel, slander, and malicious prosecution.

(P.B. 1978-1997, Sec. 134.)

Sec. 10-23. —Joinder of Torts

Where several torts are committed simultaneously against the plaintiff, as a battery accompanied by slanderous words, they may be joined, within the meaning of subdivision (7) of Section 10-21, as causes of action arising out of the same transaction, although they may belong to different classes of torts.

(P.B. 1978-1997, Sec. 135.)

Sec. 10-24. —Legal and Equitable Relief

A cause of action for legal relief for breach of contract may be joined with another cause of action for equitable relief growing out of another contract, although such contracts in no way relate to each other.

(P.B. 1978-1997, Sec. 136.)

Sec. 10-25. Alternative Relief

The plaintiff may claim alternative relief, based upon an alternative construction of the cause of action.

(P.B. 1978-1997, Sec. 137.)

Sec. 10-26. Separate Counts

Where separate and distinct causes of action, as distinguished from separate and distinct claims for relief founded on the same cause of action or transaction, are joined, the statement of the second shall be prefaced by the words *Second Count,* and so on for the others; and the several paragraphs of each count shall be numbered separately beginning in each count with the number one.

(P.B. 1978-1997, Sec. 138.)

Sec. 10-27. Claim for Equitable Relief

A party seeking equitable relief shall specifically demand it as such, unless the nature of the demand itself indicates that the relief sought is equitable relief.

(P.B. 1978-1997, Sec. 139.)

Sec. 10-28. Interest and Costs Need Not Be Claimed

Interest and costs need not be specially claimed in the demand for relief, in order to recover them.

(P.B. 1978-1997, Sec. 140.)

Sec. 10-29. Exhibits as Part of Pleading

(a) Any plaintiff desiring to make a copy of any document a part of the complaint may, without reciting it or annexing it, refer to it as Exhibit A, B, C, etc., as fully as if it had been set out at length; but in such case the plaintiff shall serve a copy of such exhibit or exhibits on each other party to the action forthwith upon receipt of notice of the appearance of such party and file the original or a copy of such exhibit or exhibits in court with proof of service on each appearing party. Where such copy or copies exceed in all two pages in length, if the plaintiff annexes them to, or incorporates them in, the complaint at full

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length, the plaintiff shall not be allowed in costs for such part of the fees of the officer for copies of such complaint left in service, as are chargeable for copying such instrument or instruments, except to the extent of two pages.

(b) When either the plaintiff or the defendant in any pleading subsequent to the complaint desires to make a copy of any document a part of his or her pleading, such party may, without reciting it therein, either annex it thereto, or refer to it therein, and shall serve it and file it in court with proof of service in the manner provided in Sections 10-12 through 10-17.

(P.B. 1978-1997, Sec. 141.)

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

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

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

(P.B. 1978-1997, Sec. 142.) (Amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 10-31. —Grounds of Motion to Dismiss

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

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

(P.B. 1978-1997, Sec. 143.)

Sec. 10-32. —Waiver Based on Certain Grounds

Any claim of lack of jurisdiction over the person or improper venue or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Sections 10-6 and 10-7 and within the time provided by Section 10-30.

(P.B. 1978-1997, Sec. 144.)

Sec. 10-33. —Waiver and Subject Matter Jurisdiction

Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action.

(P.B. 1978-1997, Sec. 145.)

Sec. 10-34. —Further Pleading by Defendant

If any motion to dismiss is denied with respect to any jurisdictional issue, the defendant may plead further without waiving the right to contest jurisdiction further.

(P.B. 1978-1997, Sec. 146.)

Sec. 10-35. Request to Revise

Whenever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading, or (2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading, or (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined in one defense, or (4) any other appropriate correction in an adverse party's pleading, the party desiring any such amendment in an adverse party's pleading may file a timely request to revise that pleading.

(P.B. 1978-1997, Sec. 147.)

Sec. 10-36. —Reasons in Request to Revise

The request to revise shall set forth, for each requested revision, the portion of the pleading sought to be revised, the requested revision, and the reasons therefor, and, except where the request is served electronically in accordance with Section 10-13, in a format that allows the recipient to insert electronically the objection and reasons therefore, provide sufficient space in which the party to whom the request is directed can insert an objection and reasons therefor.

(P.B. 1978-1997, Sec. 148.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section read: "The request to revise shall set forth, for each requested revision, the portion of the pleading sought to be revised, the requested revision, and the reasons therefor, followed by sufficient space

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in which the party to whom the request is directed can insert an objection and reasons therefore.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 10-37. —Granting of and Objection to Request to Revise

(a) Any such request, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and such request shall be deemed to have been automatically granted by the judicial authority on the date of filing and shall be complied with by the party to whom it is directed within thirty days of the date of filing the same, unless within thirty days of such filing the party to whom it is directed shall file objection thereto.

(b) The objection and the reasons therefor shall be inserted on the request to revise in the space provided under the appropriate requested revision. In the event that a reason for objection requires more space than that provided on the request to revise, it shall be continued on a separate sheet of paper which shall be attached to that document, except where the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the objection and reasons therefor. The request to revise on which objections have been inserted shall be appended to a cover sheet which shall comply with Sections 4-1 and 4-2 and the objecting party shall specify thereon to which of the requested revisions objection is raised. The cover sheet with the appended objections shall be filed with the clerk within thirty days from the date of the filing of the request for the next short calendar list. If the judicial authority overrules the objection, a substitute pleading in compliance with the order of the judicial authority shall be filed within fifteen days of such order.

(P.B. 1978-1997, Sec. 149.) (Amended June 20, 2012, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, the following language was added, after ''shall be attached to that document,'' to the second sentence of subsection (b): ''except where the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the objection and reasons therefor.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 10-38. —Waiver of Pleading Revisions

Whenever any party files any request to revise or any subsequent motion or pleading in the sequence provided in Sections 10-6 and 10-7, that party thereby waives any right to seek any further pleading revisions which that party might then have requested.

(P.B. 1978-1997, Sec. 150.)

Sec. 10-39. Motion to Strike

(a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint, or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56 (b), the failure to join or give notice to any interested person, or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.

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

(P.B. 1978-1997, Sec. 152.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

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

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

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

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not less than thirty days from the filing of the request.

(P.B. 1978-1997, Sec. 153.) (Amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

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

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

(P.B. 1978-1997, Sec. 154.)

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

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

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

(P.B. 1978-1997, Sec. 155.)

Sec. 10-43. —When Memorandum of Decision Required on Motion to Strike

Whenever a motion to strike is filed and more than one ground of decision is set up therein, the judicial authority, in rendering the decision thereon, shall specify in writing the grounds upon which that decision is based.

(P.B. 1978-1997, Sec. 156.)

Sec. 10-44. —Substitute Pleading; Judgment

Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules.

(P.B. 1978-1997, Sec. 157.) (Amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 10-45. —Stricken Pleading Part of Another Cause or Defense

Whenever the judicial authority grants a motion to strike the whole or any portion of any pleading or count which purports to state an entire cause of action or defense, and such pleading or portion thereof states or constitutes a part of another cause of action or defense, the granting of that motion shall remove from the case only the cause of action or defense which was the subject of the granting of that motion, and it shall not remove such pleading or count or any portion thereof so far as the same is applicable to any other cause of action or defense.

(P.B. 1978-1997, Sec. 158.)

Sec. 10-46. The Answer; General and Special Denial

The defendant in the answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. Any defendant who intends to controvert the right of the plaintiff to sue as executor, or as trustee, or in any other representative capacity, or as a corporation, or to controvert the execution or delivery of any written instrument or recognizance sued upon, shall deny the same in the answer specifically.

(P.B. 1978-1997, Sec. 160.)

Sec. 10-47. —Evasive Denials

Denials must fairly meet the substance of the allegations denied. Thus, when the payment of a certain sum is alleged, and in fact a lesser sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to the defendant; and where any matter of fact is alleged with divers circumstances, some of which are untruly stated, it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted, and the rest only denied.

(P.B. 1978-1997, Sec. 161.)

Sec. 10-48. —Express Admissions and Denials to Be Direct and Specific

Express admissions and denials must be direct, precise and specific, and not argumentative, hypothetical or in the alternative. Accordingly, any pleader wishing expressly to admit or deny a portion only of a paragraph must recite that portion; except that where a recited portion of a paragraph has been either admitted or denied, the remainder of the paragraph may be denied or admitted without recital. Admissions or denials of allegations identified only by a summary or generalization

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thereof, or by describing the facts alleged as "consistent" or "inconsistent" with other facts recited or referred to, are improper.
(P.B. 1978-1997, Sec. 162.)

Sec. 10-49. —Suit by Corporation; Admission by General Denial

In an action by a corporation, foreign or domestic, founded upon any contract, express or implied, the defendant shall not, under a general denial, be permitted to dispute, but shall be deemed to admit, the capacity of the plaintiff to make such contract.
(P.B. 1978-1997, Sec. 163.)

Sec. 10-50. —Denials; Special Defenses

No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff's own.
(P.B. 1978-1997, Sec. 164.)

Sec. 10-51. —Several Special Defenses

Where several matters of defense are pleaded, each must refer to the cause of action which it is intended to answer, and be separately stated and designated as a separate defense, as, *First Defense, Second Defense,* etc. Where the complaint or counterclaim is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count, Second Defense to First Count, First Defense to Second Count,* and so on. Any statement of a matter of defense resting in part upon facts pleaded in any preceding statement in the same answer may refer to those facts as thus recited, without otherwise repeating them.
(P.B. 1978-1997, Sec. 165.)

Sec. 10-52. —Admissions and Denials in Special Defense

No special defense shall contain a denial of any allegation of the complaint or counterclaim unless that denial is material to such defense. An admission of any allegation of the complaint or counterclaim in a special defense will be deemed to incorporate such allegation in the defense.
(P.B. 1978-1997, Sec. 166.)

Sec. 10-53. —Pleading Contributory Negligence

If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant and the defendant shall specify the negligent acts or omissions on which the defendant relies. (See General Statutes § 52-114 and annotations.)
(P.B. 1978-1997, Sec. 167.)

Sec. 10-54. —Pleading of Counterclaim and Setoff

In any case in which the defendant has either in law or in equity or in both a counterclaim, or right of setoff, against the plaintiff's demand, the defendant may have the benefit of any such setoff or counterclaim by pleading the same as such in the answer, and demanding judgment accordingly; and the same shall be pleaded and replied to according to the rules governing complaints and answers. (See General Statutes §§ 52-139 to 52-142.)
(P.B. 1978-1997, Sec. 168.)

Sec. 10-55. —Withdrawal of Action after Counterclaim

The withdrawal of an action after a counterclaim, whether for legal or equitable relief, has been filed therein shall not impair the right of the defendant to prosecute such counterclaim as fully as if said action had not been withdrawn, provided that the defendant shall, if required by the judicial authority, give bond to pay costs as in civil actions.
(P.B. 1978-1997, Sec. 169.)

Sec. 10-56. Subsequent Pleadings; Plaintiff's Response to Answer

The plaintiff's reply pleading to each of the defendant's special defenses may admit some and deny others of the allegations of that defense, or by a general denial of that defense put the defendant upon proof of all the material facts alleged therein.
(P.B. 1978-1997, Sec. 171.)

Sec. 10-57. —Matter in Avoidance of Answer

Matter in avoidance of affirmative allegations in an answer or counterclaim shall be specially pleaded in the reply. Such a reply may contain two or more distinct avoidances of the same defense or counterclaim, but they must be separately stated.
(P.B. 1978-1997, Sec. 172.)

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Sec. 10-58. —Pleadings Subsequent to Reply

Further pleadings, subsequent in their nature, may be had if necessary by leave of the judicial authority.

(P.B. 1978-1997, Sec. 173.)

Sec. 10-59. Amendments; Amendment as of Right by Plaintiff

The plaintiff may amend any defect, mistake or informality in the writ, complaint or petition and insert new counts in the complaint, which might have been originally inserted therein, without costs, during the first thirty days after the return day. (See General Statutes § 52-128 and annotations.)

(P.B. 1978-1997, Sec. 175.)

Sec. 10-60. —Amendment by Consent, Order of Judicial Authority, or Failure to Object

(a) Except as provided in Section 10-66, a party may amend his or her pleadings or other parts of the record or proceedings at any time subsequent to that stated in the preceding section in the following manner:

(1) By order of judicial authority; or

(2) By written consent of the adverse party; or

(3) By filing a request for leave to file such amendment, with the amendment appended, after service upon each party as provided by Sections 10-12 through 10-17, and with proof of service endorsed thereon. If no objection thereto has been filed by any party within fifteen days from the date of the filing of said request, the amendment shall be deemed to have been filed by consent of the adverse party. If an opposing party shall have objection to any part of such request or the amendment appended thereto, such objection in writing specifying the particular paragraph or paragraphs to which there is objection and the reasons therefor, shall, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, be filed with the clerk within the time specified above and placed upon the next short calendar list.

(b) The judicial authority may restrain such amendments so far as may be necessary to compel the parties to join issue in a reasonable time for trial. If the amendment occasions delay in the trial or inconvenience to the other party, the judicial authority may award costs in its discretion in favor of the other party. For the purposes of this rule, a substituted pleading shall be considered an amendment. (See General Statutes § 52-130 and annotations.)

(P.B. 1978-1997, Sec. 176.)

Sec. 10-61. —Pleading after Amendment

When any pleading is amended the adverse party may plead thereto within the time provided by Section 10-8 or, if the adverse party has already pleaded, alter the pleading, if desired, within ten days after such amendment or such other time as the rules of practice, or the judicial authority, may prescribe, and thereafter pleadings shall advance in the time provided by that section. If the adverse party fails to plead further, pleadings already filed by the adverse party shall be regarded as applicable so far as possible to the amended pleading.

(P.B. 1978-1997, Sec. 177.)

Sec. 10-62. —Variance; Amendment

In all cases of any material variance between allegation and proof, an amendment may be permitted at any stage of the trial. If such allegation was made without reasonable excuse, or if the adverse party was actually misled thereby to his or her prejudice in maintaining the action or defense upon the merits, or if such amendment requires postponement of the trial or additional expense to the adverse party and this is shown to the satisfaction of the judicial authority, such amendment shall be made only upon payment of costs or upon such terms as the judicial authority may deem proper; but in any other case, without costs. Immaterial variances shall be wholly disregarded.

(P.B. 1978-1997, Sec. 178.)

Sec. 10-63. —Amendment; Legal or Equitable Relief

If, on the trial, whether upon an issue of fact or of law, of a cause wherein equitable relief is demanded, it appears that the plaintiff is not entitled to such relief but may be entitled to legal relief, the judicial authority may permit the complaint to be amended so as to present a proper case for the latter relief; and in like manner a complaint demanding legal relief may be so amended as to entitle the plaintiff to equitable relief. (See General Statutes § 52-137 and annotations.)

(P.B. 1978-1997, Sec. 179.)

Sec. 10-64. —Amendment Calling for Legal Relief; Jury Trial

If on the trial any complaint is so amended as to call for legal instead of equitable relief, the judicial authority shall not proceed to judgment until the defendant has had a reasonable opportunity to put the issue or issues, on which the new claim for relief may be based, on the jury docket. (See General Statutes § 52-138 and annotations.)

(P.B. 1978-1997, Sec. 180.)

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Sec. 10-65. —Amending Contract to Tort and Vice Versa

A complaint for breach of contract may be amended so as to set forth a cause of action founded on a tort arising from the same transaction or subject of action; and a complaint founded on a tort may be amended so as to set forth a cause of action for a breach of contract arising out of the same transaction or subject of action. (See General Statutes § 52-136 and annotations.)

(P.B. 1978-1997, Sec. 181.)

Sec. 10-66. —Amendment of Amount in Demand

A party may amend the party's statement concerning the amount in demand by order of the judicial authority upon filing of a motion for leave to file such amendment, with a copy of the amendment appended, after service upon each party as provided by Sections 10-12 through 10-17, and with proof of service endorsed thereon. After obtaining permission of the judicial authority, the moving party shall file the original amendment with the clerk. If the amount, legal interest or property in demand was alleged to be less than $2500 in accordance with the provisions of Section 10-20, or, prior to October 1, 1979, was alleged to be less than $7500, and the party has been given permission by a judicial authority to amend the demand to an amount in excess of either amount, the party shall pay any entry fee prescribed by statute to the clerk when the amendment is filed.

(P.B. 1978-1997, Sec. 182.)

Sec. 10-67. —Amendment of Claim against Insolvent Estate

In any hearing on appeal from the doings of commissioners on the estate of an insolvent debtor or a deceased person, the claimant may amend any defect, mistake or informality in the statement of the claim, not changing the ground of action; such amendment to be upon such terms as to costs as the judicial authority directs. (See General Statutes § 52-131 and annotations.)

(P.B. 1978-1997, Sec. 183.)

Sec. 10-68. Pleading Special Matters; Pleading Notice

Whenever in an action of tort or upon a statute the plaintiff is compelled to allege the giving of a notice required by statute, the plaintiff shall either recite the same in the complaint or annex a copy thereto.

(P.B. 1978-1997, Sec. 185.)

Sec. 10-69. —Foreclosure Complaint; Pleading Encumbrances

The complaint in all actions seeking the foreclosure of a mortgage or other lien upon real estate shall set forth, in addition to the other essentials of such complaint: All encumbrances of record upon the property both prior and subsequent to the encumbrance sought to be foreclosed, the dates of such encumbrances, the amount of each and the date when such encumbrance was recorded; if such encumbrance be a mechanic's lien, the date of commencing to perform services or furnish materials as therein recited; and if such encumbrance be a judgment lien, whether said judgment lien contains a reference to the previous attachment of the same premises in the same action, as provided by General Statutes § 52-380a.

(P.B. 1978-1997, Sec. 186.)

Sec. 10-70. —Foreclosure of Municipal Liens

(a) In any action to foreclose a municipal tax or assessment lien the plaintiff need only allege and prove: (1) the ownership of the liened premises on the date when the same went into the tax list, or when said assessment was made; (2) that thereafter a tax in the amount specified in the list, or such assessment in the amount made, was duly and properly assessed upon the property and became due and payable; (3) (to be used only in cases where the lien has been continued by certificate) that thereafter a certificate of lien for the amount thereof was duly and properly filed and recorded in the land records of the said town on the date stated; (4) that no part of the same has been paid; and (5) other encumbrances as required by the preceding section.

(b) When the lien has been continued by certificate, the production in court of the certificate of lien, or a certified copy thereof, shall be prima facie evidence that all requirements of law for the assessment and collection of the tax or assessment secured by it, and for the making and filing of the certificate, have been duly and properly complied with. Any claimed informality, irregularity or invalidity in the assessment or attempted collection of the tax, or in the lien filed, shall be a matter of affirmative defense to be alleged and proved by the defendant.

(P.B. 1978-1997, Sec. 187.)

Sec. 10-71. —Action on Probate Bond

In any action upon a bond taken in a court of probate, not brought by a representative of the estate in connection with which the bond was given or by some person in that person's own behalf and that of all other persons interested in the estate, the plaintiff shall aver in the complaint or reply for whose special benefit the action is prosecuted, and how such persons are interested in the same, and how the act or neglect of the

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defendant has injured their rights or affected their interests and the judgment rendered in any such case shall not, in any future proceedings, by scire facias or otherwise, bar or conclude the rights of other persons interested in the bond. (See General Statutes § 52-117 and annotations.)

(P.B. 1978-1997, Sec. 189.)

Sec. 10-72. —Action by Assignee of Chose in Action

Where the assignee and equitable and bona fide owner of any chose in action, not negotiable, sues thereon in his or her own name, such party shall in the complaint allege that he or she is the actual bona fide owner thereof, and set forth when and how such party acquired title thereto. (See General Statutes § 52-118 and annotations.)

(P.B. 1978-1997, Sec. 190.)

Sec. 10-73. —Pleading Charters

All acts of incorporation passed by the General Assembly may be declared on or pleaded as public acts. (See General Statutes § 52-115 and annotations.)

(P.B. 1978-1997, Sec. 191.)

Sec. 10-74. —Wrongful Sale; Wrongful Conversion

Where the defendant has wrongfully sold personal property of the plaintiff, the latter may waive the tort, affirm the sale, and sue for the proceeds; but in case of wrongful conversion of property, without a sale, the plaintiff cannot waive the tort and declare as on a contract.

(P.B. 1978-1997, Sec. 192.)

Sec. 10-75. —Goods Sold; Variance

In an action for goods sold at a reasonable price, if the proof is that they were sold at an agreed price, the plaintiff shall not be precluded, on the ground of a variance, from recovering such agreed price; and in an action for goods sold at an agreed price the plaintiff may recover a different or a reasonable price, if the proof fails to establish the price alleged; and the like rule shall prevail in actions for work done, materials furnished, or use and occupation of land.

(P.B. 1978-1997, Sec. 193.)

Sec. 10-76. —Probate Appeals; Reasons of Appeal

(a) Unless otherwise ordered, in all appeals from probate the appellant shall file reasons of appeal, which upon motion shall be made reasonably specific, within ten days after the return day; and pleadings shall thereafter follow in analogy to civil actions.

(b) Appellees opposing the probate of a will shall specifically deny such of the reasons of appeal as they intend to controvert and affirmatively allege any other grounds upon which they propose to rely.

(c) The appellant in appeals involving the probate of a will shall file, with the reasons of appeal, a copy of the will. (See General Statutes §§ 45a-186 to 45a-193.)

(P.B. 1978-1997, Sec. 194.)

Sec. 10-77. —Appeals from Commissioners

In all appeals from the allowance or disallowance of any claim by commissioners appointed by courts of probate, the party presenting the claim shall, within ten days after the return day, unless otherwise ordered, file a statement of the amount and nature of the claim, and of the facts upon which it is based, which statement shall conform, as far as may be, in form and substance, to the requirements of a complaint brought to recover upon said claim in a civil action. To such statement the adverse party, unless otherwise ordered by the judicial authority, shall plead, and thereafter the pleadings shall continue until issues are joined, as in civil actions.

(P.B. 1978-1997, Sec. 195.)

Sec. 10-78. —Pleading Collateral Source Payments

No pleading shall contain any allegations regarding receipt by a party of collateral source payments as described in General Statutes §§ 52-225a and 52-225b.

(P.B. 1978-1997, Sec. 195A.)

Sec. 10-79. —Pleading Issues of Policy Limitations

An insurer should raise issues of monetary policy limits, or credits for payments by or on behalf of third party tortfeasors, by special defense. When a jury determination of the facts raised by special defense is not necessary, the special defense shall not be submitted to the jury but, rather, shall be resolved by the trial court prior to the rendering of judgment.

(P.B. 1978-1997, Sec. 195B.)

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CHAPTER 11

MOTIONS, REQUESTS, ORDERS OF NOTICE, AND SHORT CALENDAR

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing. A motion to extend time to plead, respond to written discovery, object to written discovery, or respond to Requests for Admissions shall state the date through which the moving party is seeking the extension.

(a) For civil matters, with the exception of housing and small claims matters, when any motion, application or objection is filed either electronically or on paper, no order page should be filed unless an order of notice and citation is necessary.

(b) For family, juvenile, housing and small claims matters, when any motion, application or objection is filed in paper format, an order shall be annexed to the filing until such cases are incorporated into the Judicial Branch's electronic filing system. Once these case types are incorporated into such electronic filing system, no order page should be filed unless an order of notice and citation is necessary.

(c) Whether filed under subsection (a) or (b), such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

(P.B. 1978-1997, Sec. 196.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section read: "Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary. Such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon."

COMMENTARY—2012: Motions for extension of time are frequently filed asking "for thirty days." As a result, it is unclear whether the movant is requesting an extension, which ends thirty days after the file date of the motion, or thirty days after the motion is granted. That difference can be a month or more, resulting in confusion for the parties and unnecessary motion practice to sort out the confusion.

The new subsections (a), (b), and (c) are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-2. Definition of "Motion" and "Request"

As used in these rules, the term "motion" means any application to the court for an order, which application is to be acted upon by the court or any judge thereof; and the term "request" means any application to the court which shall be granted by the clerk by operation of these rules unless timely objection is filed.

(P.B. 1978-1997, Sec. 197.)

Sec. 11-3. Motion for Misjoinder of Parties

The exclusive remedy for misjoinder of parties is by motion to strike. As set forth in Section 10-39, the exclusive remedy for nonjoinder of parties is by motion to strike.

(P.B. 1978-1997, Sec. 198.)

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Sec. 11-4. Applications for Orders of Notice

Applications for orders of notice, whether made to a court, a judge, a clerk, or an assistant clerk, shall be made in writing, shall state the residence of the party whom the notice is sought to reach or that all reasonable efforts have been made to ascertain the residence and have failed, and shall further state what notice is considered most likely to come to the attention of such person, with the reasons therefor, unless they are evident; and such applications shall become a part of the file of the case.

(P.B. 1978-1997, Sec. 199.)

Sec. 11-5. Subsequent Orders of Notice; Continuance

Motions made to the court for a second or subsequent order of notice shall be filed with the clerk, who shall call them to the attention of the judicial authority at the earliest convenient time. The judicial authority may thereupon enter its order or direct that the matter be placed on the next short calendar list. If a continuance of the case is desired, it may also be requested in the motion for the order of notice.

(P.B. 1978-1997, Sec. 200.)

Sec. 11-6. Notice by Publication

(a) If an order of notice is by publication and it states the nature of the action and the relief sought sufficiently to inform the party to whom the notice is addressed of the way in which the interests of the party may be affected, the authority issuing the order may direct that only the order be published.

(b) Every notice by publication shall have the words "State of Connecticut" in the caption of the case, and following it, in bold type, the words "Notice to (*the person to whom it is addressed*)."

(P.B. 1978-1997, Sec. 201.)

Sec. 11-7. Attestation; Publication; Proof of Compliance

Orders of notice of legal or judicial proceedings need not be directed to or attested by any officer or person, but all copies of complaints or other papers thereby ordered, served or mailed shall be so attested as true copies of the original. To prove publication of any legal notice, either the return of any officer authorized to serve process or the affidavit of any person showing that such publication was made as directed shall be sufficient. Such order shall not require publication of any recital stating where the designated newspaper is printed or recital of any other details in or pertinent to the application for such order which are not essential parts of the notice to be given. A copy of the prescribed notice, instead of the original order, may be left with the newspaper for publication purposes, and each original order shall be left with or returned to the clerk of the court in which the proceeding is pending or returnable. When proof of compliance with the order is filed with such clerk, he or she shall note such fact upon the docket, and such proof and order shall be preserved as part of the case file. (See General Statutes § 52-52 and annotations.)

(P.B. 1978-1997, Sec. 202.)

Sec. 11-8. Orders of Notice Directed outside of the United States of America

If service of process cannot be made under the applicable international treaty or convention within sixty days from the issuance of the summons, then the judicial authority may issue, upon the application of any party, an order of notice. In determining what manner and form of notice shall be ordered, the judicial authority shall consider the following:

(1) other methods of service specified or allowed in any applicable international treaty or convention, including any reservations;

(2) whether all applicable international treaties and conventions prohibit substituted service;

(3) what method of service provides the greatest likelihood the party being served will receive actual and timely notice of the suit so the party may appear and defend;

(4) whether a particular method of service violates the law, particularly the criminal law, of the foreign country involved;

(5) whether an actual agent of the party being served can be served within the United States.

(P.B. 1978-1997, Sec. 202A.)

Sec. 11-9. Disclosure of Previous Applications

Upon making a motion or application to the court, or to a judge thereof before the return day of the action, (1) for an order appointing a receiver or an injunction, or (2) for a modification or dissolution of any such order or injunction, or (3) for issuance of a prejudgment remedy, or (4) for a reduction or dissolution of an attachment, if a motion or application for the same order or injunction has been previously made to the court or to any judge, such motion or application shall so recite. Nothing in this section shall be so construed as to preclude the making of more than one motion or application for the same or similar order or injunction or affect in any way the right of the applicant to have such motion or application passed upon on its merits.

(P.B. 1978-1997, Sec. 203.)

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

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

(P.B. 1978-1997, Sec. 204.)

Sec. 11-11. Motions Which Delay the Commencement of the Appeal Period or Cause the Appeal Period to Start Again

Any motions which would, pursuant to Section 63-1, delay the commencement of the appeal period, and any motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously insofar as such filing is possible, and shall be considered by the judge who rendered the underlying judgment or decision. The party filing any such motion shall set forth the judgment or decision which is the subject of the motion, the name of the judge who rendered it, the specific grounds upon which the party relies, and shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion. The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal, but shall not apply to motions under Sections 16-35, 16-36 and 11-12.

(P.B. 1978-1997, Sec. 204A.)

Sec. 11-12. Motion to Reargue

(a) A party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue setting forth the decision or order which is the subject of the motion, the name of the judge who rendered it, and the specific grounds for reargument upon which the party relies.

(b) The judge who rendered the decision or order may, upon motion of a party and a showing of good cause, extend the time for filing a motion to reargue. Such motion for extension must be filed before the expiration of the twenty day time period in subsection (a).

(c) The motion to reargue shall be considered by the judge who rendered the decision or order. Such judge shall decide, without a hearing, whether the motion to reargue should be granted. If the judge grants the motion, the judge shall schedule the matter for hearing on the relief requested.

(d) This section shall not apply to motions to reargue decisions which are final judgments for purposes of appeal. Such motions shall be filed pursuant to Section 11-11.

(P.B. 1978-1997, Sec. 204B.)

Sec. 11-13. Short Calendar; Need for List; Case Assigned for Trial; Reclaims

(a) Unless otherwise provided in these rules or ordered by the judicial authority, questions as to the terms or form of a decree or judgment to be rendered on the report of a committee or of auditors, or on an award of arbitrators, foreclosures where the only question is as to the time to be limited for redemption, all motions and objections to requests when practicable, and all issues of law must be placed on the short calendar list. No motions will be heard which are not on said list and ought to have been placed thereon; provided that 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 short calendar list on terms, or otherwise.

(b) Unless it is filed electronically, whenever a short calendar matter or reclaim slip is filed in a case which has been assigned for trial, the filing party shall place the words ''assigned for trial'' on the bottom of the first page of the document and on any short calendar reclaim slip. The moving party at a short calendar hearing shall, when applicable, inform the judicial authority that the case has been assigned for trial.

(c) If a motion has gone off the short calendar without being adjudicated, any party may claim the motion for adjudication. If an objection to a request has gone off the short calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. If a case is on the docket management list, any party may claim any motion or objection for adjudication when the motion or objection must be resolved to close the pleadings.

(P.B. 1978-1997, Sec. 206.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''[u]nless it is filed electronically, whenever'' was substituted for ''[w]henever'' at the beginning of the first sentence in subsection (b).

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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

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

(P.B. 1978-1997, Sec. 207.) (Amended June 29, 2007, to take effect Jan. 1, 2008.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

Sec. 11-15. —Short Calendar; Assignments Automatic

Matters to be placed on the short calendar shall be assigned automatically by the clerk without written claim, except as provided in Section 17-31. No such matters shall be so assigned unless filed at least five days before the opening of court on the short calendar day. Motions to dismiss, motions to strike, and motions for summary judgment shall be assigned in accordance with Sections 10-30, 10-40 and 17-45, respectively.

(P.B. 1978-1997, Sec. 208.)

Sec. 11-16. —Continuances when Counsel's Presence or Oral Argument Required

Matters upon the short calendar list requiring oral argument or counsel's presence shall not be continued except for good cause shown; and no such matter in which adverse parties are interested shall be continued unless the parties shall agree thereto before the day of the short calendar session and notify the clerk, who shall make note thereof on the list of the presiding judge; in the absence of such agreement, unless the judicial authority shall otherwise order, any counsel appearing may argue the matter and submit it for decision, or request that it be denied.

(P.B. 1978-1997, Sec. 209.)

Sec. 11-17. —Transfers on Short Calendar

Matters on the short calendar list may, by written stipulation of the parties and consent of the judge, be heard and disposed of by any judge in any judicial district, who shall certify the decision to the clerk of the court in which the action is pending, who shall thereupon enter the decision as the order or judgment of the court.

(P.B. 1978-1997, Sec. 210.)

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

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

(1) the motion has been marked ready in accordance with the procedure that appears on the short calendar on which the motion appears, or

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

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

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

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

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

(f) For those motions for which oral argument is not a matter of right, oral argument may be requested in accordance with the procedure that is printed on the short calendar on which the motion appears.

(P.B. 1978-1997, Sec. 211.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 29, 2007, to take effect

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Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subdivision (1) of subsection (a) read: "the motion has been marked ready for adjudication in accordance with the procedure indicated in the notice that accompanies the short calendar on which the motion appears, and." Also, in 2012, what was subdivision (2) of subsection (a) was deleted, and what was subdivision (3) of subsection (a) became subdivision (2). What is now subsection (f) was added in 2012.

COMMENTARY—2012: The above amendments are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

The addition of new subsection (f) more clearly reflects updated short calendar procedures.

Sec. 11-19. —Time Limit for Deciding Short Calendar Matters

(a) Any judge of the superior court and any judge trial referee to whom a short calendar matter has been submitted for decision, with or without oral argument, shall issue a decision on such matter not later than 120 days from the date of such submission, unless such time limit is waived by the parties. In the event that the judge or referee conducts a hearing on the matter and/or the parties file briefs concerning it, the date of submission for purposes of this section shall be the date the matter is heard or the date the last brief ordered by the court is filed, whichever occurs later. If a decision is not rendered within this period the matter may be claimed in accordance with subsection (b) for assignment to another judge or referee.

(b) A party seeking to invoke the provisions of this section shall not later than fourteen days after the expiration of the 120 day period file with the clerk a motion for reassignment of the undecided short calendar matter which shall set forth the date of submission of the short calendar matter, the name of the judge or referee to whom it was submitted, that a timely decision on the matter has not been rendered, and whether or not oral argument is requested or testimony is required. The failure of a party to file a timely motion for reassignment shall be deemed a waiver by that party of the 120 day time.

(P.B. 1978-1997, Sec. 211A.)

Sec. 11-20. Closure of Courtroom in Civil Cases

(Amended May 14, 2003, to take effect July 1, 2003.)

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the Judicial Branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the Judicial Branch website. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(f) With the exception of any provision of the General Statutes under which the judicial authority is authorized to close courtroom proceedings,

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whether at a pretrial or trial stage, no order excluding the public from any portion of a courtroom proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

(P.B. 1978-1997, Sec. 211B.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005; June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2003: Prior to July 1, 2003, Sec. 11-20 read: ''Exclusion of the Public; Sealing Files Limiting Disclosure of Documents

''(a) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that the public, which may include the news media, be excluded from any portion of a proceeding and shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

''(b) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a proceeding and may order that files, affidavits, documents or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding or in viewing such materials. Any such order shall be no broader than necessary to protect such overriding interest.

''(c) In connection with any order issued pursuant to subsection (b) of this section, the judicial authority shall, on the record in open court, articulate the overriding interest being protected and shall specify its findings underlying such order. The time and date of any such order shall be entered by the court clerk in the court file together with such order.

''(d) With the exception of orders concerning any session of court conducted pursuant to General Statutes §§ 46b-11, 46b-49, 46b-122 or any other provision of the General Statutes under which the judicial authority is authorized to close proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

''(e) With the exception of orders concerning the confidentiality of records and other papers, issued pursuant to General Statutes § 46b-11 or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

''(f) The provisions of this section shall not apply to settlement agreements which have not been incorporated into a judgment of the court.''

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. *Westmoreland* v. *Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22 (2d Cir. 1984); *Publicker Industries, Inc.* v. *Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984). This right is implicit in the first and fourteenth amendments. *Westmoreland* v. *Columbia Broadcasting System, Inc.*, supra, 21. In civil cases, public access to trials ''enhances the quality and safeguards the integrity of the factfinding process . . . fosters an appearance of fairness . . . and heightens public respect for the judicial process . . . while permitting the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self government . . . .'' (Citations omitted; internal quotation marks omitted.) Id., 23.

For a further discussion of court closure, see the Commentary to Section 42-49.

Because this section no longer deals with the sealing of documents, subsections (e) and (f) have been transferred, with revisions, to Section 11-20A.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: ''The time, date and scope of any such order shall be in writing and shall be signed by the judicial authority and be entered by the court clerk in the court file.''

COMMENTARY—2005: As used in subsection (a) above, the words ''Except as otherwise provided by law'' are intended to exempt from the operation of this rule all established procedures for the closure of courtroom proceedings as required or permitted by statute; e.g., General Statutes §§ 19a-583 (a) (10) (D) (pertaining to court proceedings as to disclosure of confidential HIV-related information), 36a-21 (b) (pertaining to court proceedings at which certain records of the department of banking are disclosed), 46b-11 (pertaining to hearings in family relations matters), 54-86c (b) (pertaining to the disclosure of exculpatory information or material), 54-86f (pertaining to the admissibility of evidence of sexual conduct) and 54-86g (pertaining to the testimony of a victim of child abuse); other rules of practice; e.g., Practice Book Section 40-43; and/or controlling state or federal case law.

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to close the courtroom in civil matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (a) gives any person affected by a court closure order in a civil action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

HISTORY—2012: In 2012, in beginning of the fifth sentence of subsection (e), ''notice of such motion being placed on'' was substituted for ''copy of,'' before ''the short calendar.'' Also, in that same sentence, ''page containing the aforesaid section'' was deleted, after ''short calendar.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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Sec. 11-20A. Sealing Files or Limiting Disclosure of Documents in Civil Cases

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

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

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

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

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

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(h) (1) Pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. The judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by

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the court clerk in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order. An agreement of the parties that pseudonyms be used shall not constitute a sufficient basis for the issuance of such an order. The authorization of pseudonyms pursuant to this section shall be in place of the names of the parties required by Section 7-4A.

(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.

(3) After commencement of the action, a motion for permission to use pseudonyms shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. Leave of the court may be sought to file the motion under seal pending a disposition of the motion by the judicial authority.

(4) Any order allowing the use of a pseudonym in place of the name of a party shall also require the parties to use such pseudonym in all documents filed with the court.

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

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

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. See *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597–608, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). The guarantee of open public proceedings in civil trials applies as well to the sealing of court documents. See *Publicker Industries, Inc.* v. *Cohen*, 733 F.2d 1059, 1070–71 (3d Cir. 1984).

See also the Commentary to Section 42-49A.

Motions to seal or limit the disclosure of affidavits, documents or other materials in cases on the complex litigation docket shall appear on the regular short calendar for the purpose of providing notice to the public.

As regards the use of pseudonyms set out in subsection (h) of this section, it is clear that such use generally runs afoul of the public's right of access to judicial proceedings. *Does I Thru XXIII* v. *Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). "Though not as critical as access to the proceedings, knowing the litigants' identities nevertheless tends to sharpen public scrutiny of the judicial process, to increase confidence in the administration of the law, to enhance the therapeutic value of judicial proceedings, and to serve the structural function of the first amendment by enabling informed discussion of judicial operations." (Internal quotation marks omitted.) *Doe* v. *Burkland*, 808 A.2d 1090, 1097 (R.I. 2002).

"[M]any federal courts . . . have permitted parties to proceed anonymously when special circumstances justify secrecy. . . .In [the Ninth] [C]ircuit, [parties are allowed] to use pseudonyms in the 'unusual case' when nondisclosure of the party's identity 'is necessary . . . to protect a person from harassment, injury, ridicule or personal embarrassment.' *United States* v. *Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981) . . . ." (Citations omitted.) *Does I Thru XXIII* v. *Advanced Textile Corp.*, supra, 1067–68. In *Does I Thru XXIII* v. *Advanced Textile Corp.*, supra, 1062, the plaintiffs filed suit under pseudonyms against their employers alleging multiple violations of the Fair Labor Standards Act. The court concluded that in determining whether to allow the use of pseudonyms, the trial court must consider the severity of the plaintiffs' threatened injury, the reasonableness of their fears and their vulnerability to retaliation. Id., 1068. In *Doe* v. *Frank*, 951 F.2d 320, 322 (11th Cir. 1992), the plaintiff, a government employee challenging government activity, was denied permission to proceed under a pseudonym which he sought due to his alcoholism. The court concluded that a plaintiff should be permitted to proceed anonymously only in "exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough." Id., 324. The need for anonymity must outweigh the presumption of openness.

"The privilege of using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest." See *Buxton* v. *Ullman*, 147 Conn. 48, 60, 156 A.2d 508, appeal dismissed sub nom. *Poe* v. *Ullman*, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1959) (parties who were medical patients of named plaintiff were allowed to use pseudonyms due to intimate and distressing details alleged in complaint regarding prevention of contraception). Connecticut trial courts applying the Buxton holding have concluded that permission to proceed anonymously may be appropriate in situations involving social stigmatization, real danger of physical harm, or risk of an unfair trial. *Doe* v. *Diocese Corp.*, 43 Conn. Sup. 152, 158, 647 A.2d 1067 (1994) (plaintiff was allowed to proceed anonymously in action against defendants for past sexual abuse). Courts have generally concluded that there must be a strong social interest in concealing a party's identity, but the possibility that a litigant may suffer some embarrassment, economic harm, or loss of reputation have been found not to be sufficiently overriding interests to justify anonymity. *ABC, LLC* v. *State Ethics Commission*, Superior Court, judicial district of New Britain, Docket No. CV 000504071S (October 11, 2000).

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In *Doe* v. *Connecticut Bar Examining Committee*, 263 Conn. 39, 818 A.2d 14 (2003), the plaintiff sought to proceed anonymously in an action against the defendant in connection with the defendant's failure to recommend the plaintiff for admission to the bar. The supreme court, in determining that the use of a pseudonym in this case should be left to the discretion of the superior court, stated: "Because lawsuits are public events . . . a plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature. . . . A plaintiff's desire to avoid economic and social harm as well as embarrassment and humiliation in his professional and social community is normally insufficient to permit him to appear without disclosing his identity." (Citation omitted; internal quotation marks omitted.) Id., 70.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: "The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file."

COMMENTARY—2005: As used in subsection (a) above, the words "Except as otherwise provided by law" are intended to exempt from the operation of this rule all established procedures for the sealing or ex parte filing, in camera inspection and/or nondisclosure to the public of documents, records and other materials, as required or permitted by statute; e.g., General Statutes §§ 12-242vv (pertaining to taxpayer information), 52-146c et seq. (pertaining to the disclosure of psychiatric records) and 54-56g (pertaining to the pretrial alcohol education program); other rules of practice; e.g., Practice Book Sections 7-18, 13-5 (6)–(8) and 40-13 (c); and/or controlling state or federal case law; e.g., *Matza* v. *Matza*, 226 Conn. 166, 627 A.2d 414 (1993) (establishing a procedure whereby an attorney seeking to withdraw from a case due to his client's anticipated perjury at trial may support his motion to withdraw by filing a sealed affidavit for the court's review).

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to seal files or limit the disclosure of documents in civil matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (c) gives any person affected by a court order sealing a file or limiting the disclosure of a document in a civil action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

HISTORY—2012: In 2012, at the beginning of the second sentence of subsection (j), "notice of such motion being placed on" was substituted for "copy of," before "the short calendar." Also, in that same sentence, "page containing the aforesaid section" was deleted, after "short calendar."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 11-20B. —Documents Containing Personal Identifying Information

(a) The requirements of Section 11-20A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may request that the document containing the personal identifying information be sealed. In response to such request, or on its own motion, the court shall order that the document be sealed and that the party who filed the document submit a redacted copy of the document within ten days of such order.

(b) If the party who filed the document fails to submit a redacted copy of the document within ten days of the order, the court may enter sanctions, including a nonsuit or default, as appropriate, against said party for such failure upon the expiration of the ten day period. Upon the submission of a redacted copy of such document, the original document containing the personal identifying information shall be retained as a sealed document in the court file, unless otherwise ordered by the court.

(Adopted June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 11-21. Motions for Attorney's Fees

Motions for attorney's fees shall be filed with the trial court within thirty days following the date on which the final judgment of the trial court was rendered. If appellate attorney's fees are sought, motions for such fees shall be filed with the trial court within thirty days following the date on which the appellate court or supreme court rendered its decision disposing of the underlying appeal. Nothing in this section shall be deemed to affect an award of attorney's fees assessed as a component of damages.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

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CHAPTER 12

TRANSFER OF ACTIONS

Sec.
12-1. Procedure for Transfer
12-2. Transfer of Action Filed in Wrong Location of Correct Court
12-3. Transmission of Files and Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 12-1. Procedure for Transfer

Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial district court location or to any geographical area court location, or from a geographical area court location to any other geographical area court location or to any judicial district court location, by order of a judicial authority (1) upon its own motion or upon the granting of a motion of any of the parties, or (2) upon written agreement of the parties filed with the court. (See General Statutes § 51-347b and annotations.)

(P.B. 1978-1997, Sec. 212.)

Sec. 12-2. Transfer of Action Filed in Wrong Location of Correct Court

A clerk of the court of a judicial district or geographical area should not accept a civil cause which is made returnable to a judicial district or geographical area of which such person is not the clerk. A clerk who does accept and enter such a civil cause shall, upon discovery of the error, bring the matter to the attention of the court. The judicial authority shall then order the plaintiff to file a motion to transfer with such notice to the defendant as the judicial authority may direct. If the plaintiff complies, the motion to transfer shall be granted; but if the plaintiff fails to comply with the order of the judicial authority within a reasonable time, the judicial authority shall dismiss the action with costs.

(P.B. 1978-1997, Sec. 213.)

Sec. 12-3. Transmission of Files and Papers

Upon the transfer of any action, the clerk of the court in which such action is pending shall transmit to the clerk of the court to which such cause is transferred the original files and papers in such cause with a certificate of such transfer, who shall enter such cause in the docket of the court to which it is so transferred; and such cause shall thereafter be proceeded with in the same manner as if it were originally brought to such court. When a case which has been claimed for trial is subsequently transferred to another court, a new certificate of closed pleadings shall not be required, and its position on the inventory of pending cases of the transferee court shall be determined by the certificate of closed pleadings date in the original file. Where only the trial of an issue or issues in an action is transferred, the files, after such issues have been disposed of, shall be returned to the clerk of the court where the action originated and judgment may be entered in such court. (See General Statutes § 51-347b; see also Section 14-8.)

(P.B. 1978-1997, Sec. 215.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

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CHAPTER 13

DISCOVERY AND DEPOSITIONS

Sec.	
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 13-1. Definitions

For purposes of this chapter, (1) ''statement'' means (A) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (B) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded; (2) ''party'' means (A) a person named as a party in the action, or (B) an agent, employee, officer, or director of a public or private corporation, partnership, association, or governmental agency, named as a party in the action; (3) ''representative'' includes agent, attorney, consultant, indemnitor, insurer, and surety; (4) ''electronic'' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; (5) ''electronically stored information'' means information that is stored in an electronic medium and is retrievable in perceivable form.

(P.B. 1978-1997, Sec. 216.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, items (4) and (5) were added to this section.

COMMENTARY: The newly added items (4) and (5) that set forth definitions of the terms ''electronic'' and ''electronically stored information,'' respectively, were made in connection with the adoption of electronic discovery rules in Section 13-1 et seq. These definitions are based upon the Uniform Rules Relating to the Discovery of Electronically Stored Information (''Uniform ESI Rules'') and Federal Civil Rule Amendments. The Uniform ESI Rules were drafted by the National Conference of Commissioners on Uniform State Laws and were approved and recommended for enactment in all states at its annual conference in 2007. The definition of ''electronically stored information'' is intended to encompass future developments in computer technology. The definitions are intended to be sufficiently broad to cover all types of computer based information and sufficiently flexible to encompass future technological changes and development.

Sec. 13-2. Scope of Discovery; In General

In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain in accordance with the provisions of this chapter discovery of information or disclosure, production and inspection of papers, books, documents and electronically stored information material to the subject matter involved in the pending action, which are not privileged, whether the discovery or disclosure relates to the claim or

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defense of the party seeking discovery or to the claim or defense of any other party, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed. Discovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. It shall not be ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section.

(P.B. 1978-1997, Sec. 218.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, in the first sentence, a comma was substituted for ''or'' after ''books'' and ''and electronically stored information'' was added after ''documents.''

COMMENTARY—2012: In connection with the adoption of electronic discovery rules in Section 13-1 et seq., the term ''electronically stored information,'' as defined in Section 13-1, has been added to the scope of discovery.

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

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

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

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

(P.B. 1978-1997, Sec. 219.) (Amended June 29, 2007, to take effect Jan. 1, 2008.)

Sec. 13-4. —Experts

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

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

(1) Except as provided in subdivision (2) of this subsection, the field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; and the substance of the grounds for each such expert opinion. Disclosure of the information required under this subsection may be made by making reference in the disclosure to, and contemporaneously producing to all parties, a written report of the expert witness containing such information.

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

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

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

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

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

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

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

(3) Unless otherwise ordered by the judicial authority for good cause shown, or agreed upon by the parties, the fees and expenses of the expert witness for any such deposition, excluding preparation time, shall be paid by the party or parties taking the deposition. Unless otherwise ordered, the fees and expenses hereunder shall include only (A) a reasonable fee for the time of the witness to attend the deposition itself and the witness' travel time to and from the place of

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deposition; and (B) the reasonable expenses actually incurred for travel to and from the place of deposition and lodging, if necessary. If the parties are unable to agree on the fees and expenses due under this subsection, the amount shall be set by the judicial authority, upon motion.

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

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

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

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

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

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

(4) The parties, by agreement, may modify the approved Schedule for Expert Discovery or any other time limitation under this section so long as the modifications do not interfere with an assigned trial date. A party who wishes to modify the approved Schedule for Expert Discovery or other time limitation under this section without agreement of the parties may file a motion for modification with the court stating the reasons therefor. Said motion shall be granted if (i) the requested modification will not cause undue prejudice to any other party; (ii) the requested modification will not cause undue interference with the trial schedule in the case; and (iii) the need for the requested modification was not caused by bad faith delay of disclosure by the party seeking modification.

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

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

(P.B. 1978-1997, Sec. 220.) (Amended June 30, 2008, to take effect Jan. 1, 2009; amended June 22, 2009, to take effect Sept. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 13-5. —Protective Order

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

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(1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judicial authority; (6) that a deposition after being sealed be opened only by order of the judicial authority; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judicial authority; (9) specified terms and conditions relating to the discovery of electronically stored information including the allocation of expense of the discovery of electronically stored information, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(P.B. 1978-1997, Sec. 221.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, item (9) was added to this section.

COMMENTARY—2012: In connection with the adoption of electronic discovery rules in Section 13-1 et seq., the drafters designed item (9) to address the unique issues raised by the difficulties in locating, retrieving and providing discovery of electronically stored information. This new subsection is based on a modified version of the considerations contained in Uniform ESI Rules 8 (c) and (d) (see Commentary to Section 13-1).

Under these new electronic discovery rules, a responding party should permit discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The decision whether to require the responding party to search for and produce information that is from sources that are not reasonably accessible depends not only on the burden and expense of doing so, but also on whether the burden and expense can be justified in the circumstances of one case. Appropriate considerations may include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available from more easily accessed sources; (4) the likelihood of finding relevant responsive information that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of the further information; and (6) a party's willingness to voluntarily bear the cost of discovery. If the court orders discovery after these considerations, the court may allocate, in its discretion, the expense, in whole or in part, of discovery.

Sec. 13-6. Interrogatories; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 written interrogatories, which may be in electronic format, upon any other party to be answered by the party served. Written interrogatories may be served upon any party without leave of the judicial authority at any time after the return day. Except as provided in subsection (c) or where the interrogatories are served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the answers in the transmitted document, the party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert the answer. In the event that an answer requires more space than that provided on interrogatories that were not served electronically and in a format that allows the recipient to electronically insert the answers in the transmitted document, the answer shall be continued on a separate sheet of paper which shall be attached to the completed answers.

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

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

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

(P.B. 1978-1997, Sec. 223.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended Aug. 24, 2001, to take effect Jan. 1, 2002; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 13-7. —Answers to Interrogatories

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

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

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

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

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

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

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

(P.B. 1978-1997, Sec. 224.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (b) read: "The party answering interrogatories shall attach a cover sheet to the answers. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the party has answered all of the interrogatories or shall set forth those interrogatories to which the party objects and the reasons for objection. The cover sheet and the answers shall not be filed with the court unless the responding party objects to one or more interrogatories, in which case only the cover sheet shall be so filed."

COMMENTARY—2012:The rules of practice required a party objecting to interrogatories to file a cover sheet, setting forth the interrogatory to which the filer objects and the reasons for the objection. In practice, the cover sheet was filed together with a document titled "Objection to Request for Interrogatories," which repeated the same information as was already contained in the cover sheet but also included a proposed order and certification. The requirement for filing a separate cover sheet required duplication on the part of the person objecting to an interrogatory. The revision deletes the reference in this section to a cover sheet and provides that objections be filed in accordance with Sec. 13-8.

Sec. 13-8. —Objections to Interrogatories

(a) Objections to interrogatories shall be immediately preceded by the interrogatory objected to, shall set forth reasons for the objection, shall be signed by the attorney or self-represented party making them and shall be filed with the court pursuant to Section 13-7. No objection may be filed with respect to interrogatories which have been set forth in Forms 201, 202 and/or 203 of the rules of practice for use in connection with Section 13-6.

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

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

(P.B. 1978-1997, Sec. 225.) (Amended Aug. 24, 2001, to take effect Jan. 1, 2002; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "be set forth on a cover sheet and" was deleted from the first sentence in subsection (a), before "be immediately preceded." Also, "shall set forth reasons for the objection," was added to that same sentence

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before "shall be signed by the attorney or self-represented party."

COMMENTARY—2012: The revision to this section eliminates the reference to a cover sheet and adds the requirement that the objection set forth the reasons for the objection immediately preceded by the interrogatory to which the objection is made.

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

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

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

(b) Requests for production may be served upon any party without leave of court at any time after the return day. In lieu of serving the requests for production set forth in Forms 204, 205 and/or 206 on a party who is represented by counsel, the moving party may serve on such party a notice of requests for production, which shall not include the actual requests, but shall instead set forth the number of the Practice Book form containing such requests and the name of the party to whom the requests are directed.

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

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

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

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

(P.B. 1978-1997, Sec. 227.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended Aug. 24, 2001, to take effect Jan. 1, 2002; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, in the first sentence of subsection (a), a comma was substituted for "and" after "photographs" and the following was added after "phonograph records": "and electronically stored information as provided in subsection (d)."

Prior to 2012, subsection (d) read: "If data has been electronically stored, the judicial authority may for good cause shown order disclosure of the data in an alternative format provided the data is otherwise discoverable. When the judicial authority considers a request for a particular format, the judicial authority may consider the cost of preparing the disclosure in the requested format and may enter an order that one or more parties shall pay the cost of preparing the disclosure."

COMMENTARY—2012: The former subsection (d) has been virtually eliminated in light of the adoption of electronic discovery rules in Section 13-1 et seq. that now permit the discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The new language of subsection (d) is designed to more clearly address the form of production of electronically stored information. The form of production is more important to the exchange of electronically stored information than it is to the exchange of paper documents. The rule recognizes that electronically stored information may exist in multiple forms and that different forms of production may be appropriate for different types of electronically stored information. The rule allows the requesting party to specify the form, allows the

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responding party to object and creates a default rule for production if no form is specified.

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

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

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

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

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

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

(c) No objection to any such request shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an accord. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein, or, if no conference has been held, the reasons for the failure to hold such a conference. If an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

(P.B. 1978-1997, Sec. 227.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended Aug. 24, 2001, to take effect Jan. 1, 2002; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, the following language was deleted from the first sentence of subsection (b), after ''objected to'': '', in which event the reasons for objection shall be stated on a cover sheet as provided herein.''

Prior to 2012, the fifth, sixth, and seventh sentences of subsection (b) read: ''The responding party shall attach a cover sheet to the response. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the responding party will permit all inspection and related activities as requested or shall set forth those requests to which the party objects and the reasons for objection. The cover sheet and the response shall not be filed with the judicial authority unless the responding party objects to one or more requests, in which case only the cover sheet shall be so filed.''

In 2012, the following sentences were added in place of the sentences that were deleted from subsection (b): ''A party objecting to one or more requests shall file an objection to the request. Objections to requests for production shall be immediately preceded by the request objected to, shall set forth reasons for the objection, shall be signed by the attorney or self-represented party making them and shall be filed with the court.''

COMMENTARY—2012: The revisions to this section eliminate the reference to a cover sheet and add the requirement that the objection set forth the reasons for the objection immediately preceded by the production request to which the objection is made.

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

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Sec. 13-11. —Physical or Mental Examination

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in the party's custody or legal control.

(b) In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve in accordance with Sections 10-12 through 10-17 a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by the plaintiff unless, within ten days from the filing of the request, the plaintiff files in writing an objection thereto specifying to which portions of said request objection is made and the reasons for said objection. The objection shall be placed on the short calendar list upon the filing thereof. The judicial authority may make such order as is just in connection with the request. No plaintiff shall be compelled to undergo a physical or mental examination by any physician to whom he or she objects in writing.

(c) In any other case, such order may be made only on motion for good cause shown to be heard at short calendar. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(d) If requested by the party against whom an order is made under this rule, or who has voluntarily agreed to an examination, the party causing the examination to be made shall deliver to such party a copy of a written report of the examining physician, setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party against whom the order is made, or who has voluntarily agreed to an examination, a like report of any examination, previously or thereafter made, of the same condition. The judicial authority on motion may make an order requiring delivery by a party of a report on such terms as are just, and if a physician fails or refuses to make a report, the judicial authority may exclude the physician's testimony if offered at the trial.

(e) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives, in that action, or in any other action involving the same controversy, any privilege he or she may have regarding the testimony of every other person who has examined or may thereafter examine the party in respect to the same mental or physical condition.

(f) This section does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other section of this chapter.

(P.B. 1978-1997, Sec. 229.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 13-11A. —Motion for Authorization to Obtain Protected Health Information

The judicial authority may, on motion of a party and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, as that act may from time to time be amended, to inspect and make copies of protected health information.

The judicial authority may, on application of a party that is in compliance with the provisions of the Public Health Service Act and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of said act, as that act may from time to time be amended, to inspect and make copies of alcohol and drug records that are protected by that act.

(Adopted June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 13-12. Disclosure of Amount and Provisions of Insurance Liability Policy

In any civil action the existence, contents and policy limits of any insurance policy under which any insurer may be liable to satisfy part or all of a judgment which may be rendered in the action against any party or to indemnify or reimburse any defendant for payments made to satisfy the judgment shall be subject to discovery by any party by interrogatory or request for production under Sections 13-6 through 13-11. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

(P.B. 1978-1997, Sec. 230.)

Sec. 13-13. Disclosure of Assets in Cases in Which Prejudgment Remedy Sought

(a) The judicial authority may, on motion, order any appearing party against whom a prejudgment

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remedy has been granted to disclose property in which the party has an interest or debts owing to the party sufficient to satisfy a prejudgment remedy. The existence, location and extent of a party's interest in such property or debts shall be subject to disclosure after hearing on the motion for disclosure. The form and terms of disclosure shall be determined by the judicial authority.

(b) A motion to disclose pursuant to this section may be made by filing it with the application for a prejudgment remedy or may be made at any time after the filing of the application.

(c) The judicial authority may order disclosure at any time prior to final judgment after it has determined that the party filing the motion for disclosure has, pursuant to either General Statutes §§ 52-278d, 52-278e or 52-278i, probable cause sufficient for the issuance of a prejudgment remedy.

(d) Any party, in lieu of disclosing assets pursuant to subsection (a), may move the judicial authority for substitution either of a bond with surety substantially in compliance with General Statutes §§ 52-307 and 52-308 or of other sufficient security.

(P.B. 1978-1997, Sec. 230A.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''filing'' was substituted for ''attaching'' and ''with'' was substituted for ''to'' in subsection (b), after ''may be made by.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 13-14. Order for Compliance; Failure to Answer or Comply with Order

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require.

(b) Such orders may include the following:

(1) The entry of a nonsuit or default against the party failing to comply;

(2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;

(3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;

(5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

(c) The failure to comply as described in this section may not be excused on the ground that the discovery is objectionable unless written objection as authorized by Sections 13-6 through 13-11 has been filed.

(d) The failure to comply as described in this section shall be excused and the judicial authority may not impose sanctions on a party for failure to provide information, including electronically stored information, lost as the result of the routine, good-faith operation of a system or process in the absence of a showing of intentional actions designed to avoid known preservation obligations.

(P.B. 1978-1997, Sec. 231.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, subsection (d) was added.

COMMENTARY—2012: Subsection (d) responds to a distinctive feature of electronic information systems, the routine modification, overwriting, and deletion of information that attends normal use. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good faith. Good faith may require that a party intervene to modify or suspend features of the routine operation of a computer system to prevent loss of information if that information is subject to a preservation obligation.

Subsection (d) is based on Uniform ESI Rule 5 (see Commentary to Section 13-1) and Fed. R. Civ. P. 37 (f). It restricts the impositions of sanctions. It does not prevent a court from making the kinds of adjustments frequently used in managing discovery if a party is unable to provide relevant responsive information. For example, a court could order the responding party to produce an additional witness for deposition, respond to additional interrogatories, or make similar attempts to provide substitutes or alternatives for some or all of the lost information. The revision to this section is intended to apply to a party's failure to provide any type of information, including electronically stored information. The revision is added at this time due to the increase of electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 et seq., this rule applies to all forms of discovery and is not limited to electronically restored information.

Sec. 13-15. Continuing Duty to Disclose

If, subsequent to compliance with any request or order for discovery and prior to or during trial,

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a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney, and file and serve in accordance with Sections 10-12 through 10-17 a supplemental or corrected compliance.

(P.B. 1978-1997, Sec. 232.)

Sec. 13-16. Orders by Judge

Any order provided in this chapter to be made by the court may be made by a judge thereof when the court is not actually in session.

(P.B. 1978-1997, Sec. 233.)

Sec. 13-17. Disclosure before Court or Committee

Disclosures by garnishees and all other disclosures in civil actions not under Sections 13-2 through 13-16 may be made to the judicial authority or before a committee, as the judicial authority may determine.

(P.B. 1978-1997, Sec. 234.)

Sec. 13-18. Disclosures in Equity

Disclosures made in answer to complaints in the nature of bills of discovery in equity may be made either by sworn answers or before a committee, as the judicial authority may determine. When either party in any action has obtained from the other party a disclosure on oath, respecting the matters alleged in any pleading, the disclosure shall not be deemed conclusive, but may be contradicted as any other testimony. (See General Statutes § 52-200.)

(P.B. 1978-1997, Sec. 235.)

Sec. 13-19. Disclosure of Defense

In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.

(P.B. 1978-1997, Sec. 236.) (Amended June 22, 2009, to take effect Jan. 1, 2010; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "within five days of the filing of such demand, or" was deleted from the second sentence, following "fails to disclose a defense." Also, in the second sentence, "or lien or to quiet title, or in any action upon any written contracted," was added after "action to foreclose a mortgage."

COMMENTARY—2012: The above change provides that the time to disclose a defense shall be ten days from the filing of the demand in all actions within the purview of the rule.

Sec. 13-20. Discovery Sought by Judgment Creditor

(a) A judgment creditor may obtain discovery from the judgment debtor, or from any third person the judgment creditor reasonably believes, in good faith, may have assets of the judgment debtor, or from any financial institution to the extent provided by this section, of any matters relevant to satisfaction of the money judgment. The judgment creditor shall commence any discovery proceeding by serving interrogatories on a form approved by the judges of the superior court, or their designees, on the person from whom discovery is sought. Neither the interrogatories nor a notice thereof shall be filed with the court. The interrogatories shall be in clear and simple language and shall be placed on the page in such manner as to leave space under each interrogatory for the person served to insert the answer. The person to whom interrogatories are directed shall answer them and return them to the judgment creditor within thirty days of the date of service. Answers to interrogatories served on a judgment debtor shall be signed by such debtor under penalty of false statement. With respect to assets, the person served is required to reveal information concerning the amount, nature and location of the judgment debtor's nonexempt assets up to an amount clearly sufficient in value to ensure full satisfaction of the judgment with interest and costs, provided disclosure shall be

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first required as to assets subject to levy or foreclosure within the state. If interrogatories are served on a financial institution, the financial institution shall disclose only whether it holds funds of the judgment debtor on account and the balance of such funds, up to the amount necessary to satisfy the judgment with interest and costs.

(b) On failure of a person served with interrogatories to, within the thirty days, return a sufficient answer or disclose sufficient assets for execution, or on objection by such person to the interrogatories, which objection shall not be filed with the court by such person, the judgment creditor may move the judicial authority for such supplemental discovery orders as may be necessary to ensure disclosure including (1) an order for compliance with the interrogatories or authorizing additional interrogatories and (2) an order for production or for examination of the judgment debtor or third person, provided any such examination shall be conducted before the judicial authority. The judicial authority may order such discovery as justice requires provided the order shall contain a notice that failure to comply therewith may subject the person served to being held in contempt of court.

(c) On motion of a judgment debtor or third person from whom discovery is sought, and for good cause shown, or on its own motion, the judicial authority may make any order which justice requires to protect such debtor or third person from annoyance, embarrassment, oppression or undue burden or expense.

(d) The other provisions of this chapter shall not apply to discovery sought under this section.

(P.B. 1978-1997, Sec. 236A.)

Sec. 13-21. Discovery Outside the United States of America

(a) If an applicable treaty or convention renders discovery inadequate or inequitable but does not prohibit additional discovery, the judicial authority may order, upon application of any party, discovery on such terms and conditions as the judicial authority deems just and equitable after considering the following:

(1) other methods of discovery specified or allowed in any applicable international treaty or convention, including any reservations;

(2) whether all applicable international treaties and conventions prohibit one or more specified methods of discovery;

(3) whether the method of discovery violates the criminal law of the foreign nation involved;

(4) whether the foreign nation's procedure will allow the parties to directly apply to the foreign nation's courts for judicial assistance in obtaining discovery;

(5) the importance of the requested documents or other information to the litigation;

(6) the degree of specificity of the request;

(7) whether the information originated within the United States;

(8) the availability of alternate means of obtaining the information;

(9) the extent noncompliance with the request would undermine important interests of the United States;

(10) the extent compliance with the request would undermine important interests of the foreign nation involved;

(11) whether the discovery sought, or the method sought to be employed, is unreasonably intrusive or burdensome under the circumstances;

(12) whether the request can be modified to make it reasonable under the circumstances;

(13) whether the foreign party is wholly or partially owned by a foreign nation or the instrumentality of a foreign nation;

(14) the cost of compliance;

(15) whether the foreign country requires that discovery be obtained through a judicial officer.

(b) As used in this section, discovery includes the taking of testimony by deposition upon oral examination.

(P.B. 1978-1997, Sec. 236B.)

Sec. 13-22. Admission of Facts and Execution of Writings; Requests for Admission

(a) A party may serve in accordance with Sections 10-12 through 10-17 upon any other party a written request, which may be in electronic format, for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter of the pending action set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. The party serving a request for admission shall separately set forth each matter of which an admission is requested and unless the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the answers in the transmitted document, shall leave sufficient space following each request in which the party to whom the requests are directed can insert an answer or objection. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the judicial authority, be served upon any party at any time after the return day. Unless the judicial

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authority orders otherwise, the frequency of use of requests for admission is not limited.

(b) The party serving such request shall not file it with the court but shall instead file a notice with the court which states that the party has served a request for admission on another party, the name of the party to whom the request has been directed and the date upon which service in accordance with Sections 10-12 through 10-17 was made.

(P.B. 1978-1997, Sec. 238.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 13-23. —Answers and Objections to Requests for Admission

(a) Each matter of which an admission is requested is admitted unless, within thirty days after the filing of the notice required by Section 13-22 (b), or within such shorter or longer time as the judicial authority may allow, the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. Any such answer or objection shall be inserted directly on the original request. In the event that an answer or objection requires more space than that provided on a request for admission that was not served electronically and in a format that allows the recipient to electronically insert the answers in the transmitted document, it shall be continued on a separate sheet of paper which shall be attached to the response. Documents sought to be admitted by the request shall be filed with the response by the responding party only if they are the subject of an answer or objection. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, such party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why he or she cannot admit or deny it. The responding party shall attach a cover sheet to the response which shall comply with Sections 4-1 and 4-2 and shall specify those requests to which answers and objections are addressed.

(b) The party who has requested the admission may move to determine the sufficiency of the answer or objection. No such motion shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the motion and that counsel have been unable to reach an accord. Unless the judicial authority determines that an objection is justified, it shall order that an answer be served. If the judicial authority determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The judicial authority may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial.

(P.B. 1978-1997, Sec. 239.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 13-24. —Effect of Admission

(a) Any matter admitted under this section is conclusively established unless the judicial authority on motion permits withdrawal or amendment of the admission. The judicial authority may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.

(b) The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered.

(P.B. 1978-1997, Sec. 240.)

Sec. 13-25. —Expenses on Failure to Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested herein, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in

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making that proof, including reasonable attorney's fees. The judicial authority shall make the order unless it finds that such failure to admit was reasonable.

(P.B. 1978-1997, Sec. 241.)

Sec. 13-26. Depositions; In General

In addition to other provisions for discovery and subject to the provisions of Sections 13-2 through 13-5, any party who has appeared in a civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, may, at any time after the commencement of the action or proceeding, in accordance with the procedures set forth in this chapter, take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13-28. The attendance of a party deponent or of an officer, director, or managing agent of a party may be compelled by notice to the named person or such person's attorney in accordance with the requirements of Section 13-27 (a). The deposition of a person confined in prison may be taken only by leave of the judicial authority on such terms as the judicial authority prescribes. (See General Statutes § 52-178.)

(P.B. 1978-1997, Sec. 243.)

Sec. 13-27. —Notice of Deposition; General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization

(a) A party who desires to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Such notice shall not be filed with the court but shall be served upon each party or each party's attorney in accordance with Sections 10-12 through 10-17. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which he or she belongs and the manner of recording. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) Leave of a judicial authority, granted with or without notice, must be obtained only if the party seeks to take a deposition prior to the expiration of twenty days after the return day, except that leave is not required (1) if the adverse party has served a notice of the taking of a deposition or has otherwise sought discovery, or (2) if special notice is given as provided herein.

(c) Leave of a judicial authority is not required for the taking of a deposition by a party if the notice (1) states that the person to be examined is about to go out of this state, or is bound on a voyage to sea, and will be unavailable for examination unless such person's deposition is taken before the expiration of twenty days after the return day, and (2) sets forth facts to support the statement. The party's attorney shall sign the notice, and this signature constitutes a certification by such attorney that to the best of his or her knowledge, information and belief the statement and supporting facts are true.

(d) Whenever the whereabouts of any adverse party is unknown, a deposition may be taken pursuant to Section 13-26 after such notice as the court, in which such deposition is to be used, or, when such court is not in session, any judge thereof, may direct.

(e) The judicial authority may for good cause shown increase or decrease the time for taking the deposition.

(f) (1) The judicial authority may upon motion order that the testimony at a deposition be recorded by other than stenographic means such as by videotape, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(2) Notwithstanding this section, a deposition may be recorded by videotape without prior court approval if (i) any party desiring to videotape the deposition provides written notice of the videotaping to all parties in either the notice of deposition or other notice served in the same manner as a notice of deposition and (ii) the deposition is also recorded stenographically.

(g) The notice to a party deponent may be accompanied by a request made in compliance with Sections 13-9 through 13-11 for the production of documents and tangible things at the taking of the deposition. The procedure of Sections 13-9 through 13-11 shall apply to the request.

(h) A party may in the notice and in the subpoena name as the deponent a public or private corporation or a partnership or an association or a governmental agency or a state officer in an action arising out of the officer's performance of employment and designate with reasonable particularity the matters on which examination is

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requested. The organization or state officer so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude the taking of a deposition by any other procedure authorized by the rules of practice.

(P.B. 1978-1997, Sec. 244.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 13-28. —Persons before Whom Deposition Taken; Subpoenas

(a) Within this state, depositions shall be taken before a judge or clerk of any court, notary public or commissioner of the superior court. In any other state or country, depositions for use in a civil action, probate proceeding or administrative appeal within this state shall be taken before a notary public, of such state or country, a commissioner appointed by the governor of this state, any magistrate having power to administer oaths in such state or country, or a person commissioned by the court before which such action or proceeding is pending, or when such court is not in session, by any judge thereof. Any person so commissioned shall have the power by virtue of his or her commission to administer any necessary oaths and to take testimony. Additionally, if a deposition is to be taken out of the United States, it may be taken before any foreign minister, secretary of a legation, consul or vice-consul appointed by the United States or any person by him or her appointed for the purpose and having authority under the laws of the country where the deposition is to be taken; and the official character of any such person may be proved by a certificate from the secretary of state of the United States.

(b) Each judge or clerk of any court, notary public or commissioner of the superior court, in this state, may issue a subpoena, upon request, for the appearance of any witness before an officer authorized to administer oaths within this state to give testimony at a deposition subject to the provisions of Sections 13-2 through 13-5, if the party seeking to take such person's deposition has complied with the provisions of Sections 13-26 and 13-27.

(c) A subpoena issued for the taking of a deposition may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Sections 13-2 through 13-5. Unless otherwise ordered by the court or agreed upon in writing by the parties, any subpoena issued to a person commanding the production of documents or other tangible things at a deposition shall not direct compliance within less than fifteen days from the date of service thereof.

(d) The person to whom a subpoena is directed may, within fifteen days after the service thereof or within such time as otherwise ordered by the court or agreed upon in writing by the parties, serve upon the issuing authority designated in the subpoena written objection to the inspection or copying of any or all of the designated materials. If objection is made, the party at whose request the subpoena was issued shall not be entitled to inspect and copy the disputed materials except pursuant to an order of the court in which the cause is pending. The party who requested the subpoena may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

(e) The court in which the cause is pending, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may, upon motion made promptly and, in any event, at or before the time for compliance specified in a subpoena authorized by subsection (b) of this section, (1) quash or modify the subpoena if it is unreasonable and oppressive or if it seeks the production of materials not subject to production under the provisions of subsection (c) of this section, or (2) condition denial of the motion upon the advancement by the party who requested the subpoena of the reasonable cost of producing the materials being sought.

(f) If any person to whom a lawful subpoena is issued under any provision of this section fails without just excuse to comply with any of its terms, the court before which the cause is pending, or any judge thereof, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may issue a capias and cause the person to be brought before that court or judge, as the case may be, and, if the person subpoenaed refuses to comply with the subpoena, the court or judge may commit the person to jail until he or she signifies a willingness to comply with it.

(g) Deposition of witnesses living in this state may be taken in like manner to be used as evidence in a civil action or probate proceeding pending in any court of the United States or of any other state of the United States or of any foreign country, on application of any party to such civil action or probate proceeding.

(P.B. 1978-1997, Sec. 245.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

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Sec. 13-29. —Place of Deposition

(a) Any party who is a resident of this state may be compelled by notice as provided in Section 13-27 (a) to give a deposition at any place within the county of such party's residence, or within thirty miles of such residence, or at such other place as is fixed by order of the judicial authority. A plaintiff who is a resident of this state may also be compelled by like notice to give a deposition at any place within the county where the action is commenced or is pending.

(b) A plaintiff who is not a resident of this state may be compelled by notice under Section 13-27 (a) to attend at the plaintiff's expense an examination in the county of this state where the action is commenced or is pending or at any place within thirty miles of the plaintiff's residence or within the county of his or her residence or in such other place as is fixed by order of the judicial authority.

(c) A defendant who is not a resident of this state may be compelled:

(1) By subpoena to give a deposition in any county in this state in which the defendant is personally served, or

(2) By notice under Section 13-27 (a) to give a deposition at any place within thirty miles of the defendant's residence or within the county of his or her residence or at such other place as is fixed by order of the judicial authority.

(d) A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place within the county of his or her residence or within thirty miles of the nonparty deponent's residence, or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(e) In this section, the terms ''plaintiff'' and ''defendant'' include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Section 13-27 (h) as appropriate.

(f) If a deponent is an officer, director or managing agent of a corporate party, or other person designated under Section 13-27 (h), the place of examination shall be determined as if the residence of the deponent were the residence of the party.

(P.B. 1978-1997, Sec. 246.)

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 the 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. 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 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

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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 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 bear the cost of the original transcript, and any permanent electronic record including audio or video tape. Any party or the deponent may obtain a copy of the deposition transcript and permanent electronic record including audio or video tape at its own expense.

(P.B. 1978-1997, Sec. 247.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 30, 2003, to take

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effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (j) read: "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—2012: The prior version of the rule provided that 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. The federal courts and the majority of states have rules requiring adverse parties to pay for their own deposition copies. In cases with multiple parties, the cost of providing these copies can be prohibitive. This revision makes Connecticut practice consistent with that of the federal courts and the majority of the states by requiring any other party or deponent to pay for his or her own copy of the deposition or any permanent electronic record.

Sec. 13-31. —Use of Depositions in Court Proceedings

(a) Use of Depositions.

At the trial of a civil action, probate proceeding or administrative appeal, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were there present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of any physician, psychologist, chiropractor, natureopathic physician, osteopathic physician or dentist licensed under the provisions of the General Statutes may be received in evidence in lieu of the appearance of such witness at the trial or hearing whether or not the person is available to testify in person at the trial or hearing.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or managing agent or employee or a person designated under Section 13-27 (h) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness other than a person falling within the scope of subdivision (2) hereof, whether or not a party, may be used by any party for any purpose if the judicial authority finds: (A) that the witness is dead; (B) that the witness is at a greater distance than thirty miles from the place of trial or hearing, or is out of the state and will not return before the termination of the trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) that the parties have agreed that the deposition may be so used; (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) Substitution of parties does not affect the right to use depositions previously taken; and when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility.

Subject to the provisions of subsection (c) of this section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(1) As to notice: All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer: Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition: (A) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

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(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(4) As to completion and return of deposition: Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(P.B. 1978-1997, Sec. 248.)

Sec. 13-32. Stipulations regarding Discovery and Deposition Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used as other depositions, and (2) modify the procedures provided by this chapter for other methods of discovery.

(P.B. 1978-1997, Sec. 249.)

Sec. 13-33. Claim of Privilege or Protection after Production

(a) If papers, books, documents or electronically stored information produced in discovery are subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subsection (a), a party shall immediately sequester the specified information and any copies it has and: (1) return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or (2) present the information to the judicial authority under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(c) If a party that received notice under subsection (b) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: This new rule is based on Uniform ESI Rule 9 (see Commentary to Section 13-1). The risk of privilege waiver and the work necessary to avoid it add to the costs and delay of discovery. When the review is of electronically stored information, the risk of waiver and the time and effort to avoid it can increase substantially because of the volume of electronically stored information and the difficulty of ensuring that all information to be produced has in fact been reviewed. This new rule provides a procedure for a party to assert a claim of privilege or trial preparation material protection after information is produced in discovery and, if the claim is contested, permits any party that received the information to present the matter to the court for resolution. The rule does not address whether the privilege or protection that is asserted after production was waived by the production or ethical implications of use of such data. These issues are left to resolution by other law or authority. This section is intended to apply to all inadvertent disclosures of privileged or protected materials and is added at this time due to the increase of electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 et seq., this rule applies to all forms of discovery and is not limited to electronically stored information.

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CHAPTER 14

DOCKETS, TRIAL LISTS, PRETRIALS AND ASSIGNMENT LISTS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 14-1. Claim for Statutory Exemption or Stay by Reason of Bankruptcy

When a claim for a statutory exemption or stay by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case.

When the stay has been relieved or terminated, the plaintiff, the person filing the petition, or any other interested party shall file with the court a copy of the relief or termination of stay issued by the bankruptcy court.

(P.B. 1978-1997, Sec. 250A.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 14-2. Claim for Exemption from Docket Management Program by Reason of Bankruptcy

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

When a claim for an exemption from the docket management program by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case and shall be sworn to by the party claiming the exemption or that party's attorney. An updated affidavit shall be filed every six months by that claimant.

(P.B. 1978-1997, Sec. 250B.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 14-3. Dismissal for Lack of Diligence

(a) If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks' notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests.

(b) If a case appears on a docket management calendar pursuant to the docket management program administered under the direction of the chief court administrator, and a motion for default for failure to plead is filed pursuant to Section 10-18, only those papers which close the pleadings by joining issues, or raise a special defense, may be filed by any party, unless the judicial authority otherwise orders.

(P.B. 1978-1997, Sec. 251.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''appears'' was substituted for ''is printed'' in the beginning of subsection (b), before ''on a docket management calendar.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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Sec. 14-4. Maintenance of Case Records

The clerk in each judicial district and geographical area shall maintain and have available for inspection during office hours a record concerning each civil case and administrative appeal. Such record shall designate whether the pleadings are closed and shall distinguish those cases in which the amount, legal interest or property in demand, is less than $15,000, exclusive of interest and costs, from cases in which the amount, legal interest or property in demand, is $15,000 or more, exclusive of interest and costs.

(P.B. 1978-1997, Sec. 254.)

Sec. 14-5. Definition of Administrative Appeals

For the purposes of these rules, administrative appeals are those appeals taken pursuant to statute from decisions of officers, boards, commissions or agencies of the state or of any political subdivision of the state, and include specifically appeals taken pursuant to:

(1) chapter 54 of the General Statutes;

(2) chapters 124 through 134 of the General Statutes; or

(3) other enabling legislation.

(P.B. 1978-1997, Sec. 255.)

Sec. 14-6. Administrative Appeals Are Civil Actions

For purposes of these rules, administrative appeals are civil actions. Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that an administrative appeal shall not be deemed an action for purposes of General Statutes §§ 52-591, 52-592 or 52-593.

(P.B. 1978-1997, Sec. 256.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, the second sentence of this section read: "Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that: (a) appeals from judgments of the superior court in administrative appeals shall be by certification only as provided by General Statutes § 51-197b as amended, and by chapter 72 of these rules; and (b) an administrative appeal shall not be deemed an action for purposes of General Statutes §§ 52-591, 52-592 or 52-593."

COMMENTARY—2012: The above change is made because not all appeals to the appellate court from judgments in administrative appeals are by certification.

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

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

(1) An order that the party not in compliance pay the costs of the other parties, including reasonable attorney's fees;

(2) If the party not in compliance is the plaintiff, an order dismissing the appeal;

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

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

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

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

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

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

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

(3) Appeals from the commissioner of revenue services.

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

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

(e) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in Section 14-7B.

(P.B. 1978-1997, Sec. 257.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "as prescribed in Section 14-7B below or as otherwise prescribed by statute" was susbstituted for "within the time prescribed by statute" in the first sentence of subsection (a), after "the record shall be filed."

Also, in 2012, "board or" was added to subdivision (4) of subsection (a) before each instance of the word "agency."

In subsection (e), "Section 14-7B" was substituted for "subsection (f)" after "provided in." Subsection (f) was deleted in 2012.

COMMENTARY—2012: General Statutes § 8-8 (i) requires that "the record" shall be transmitted to the court within thirty days, but new Section 14-7B breaks out the concept of "the record" into different tiers or steps. The revision to this section sets the stage for that by referencing the sections to follow. Subsection (f) repeats the language of General Statutes § 8-8 (m) and, thus, is redundant.

Sec. 14-7A. Withdrawal or Settlement of Zoning and Inland Wetlands Appeals to Superior Court

No appeal under General Statutes §§ 8-8 or 22a-43 shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement. No decision that is appealed under General Statutes §§ 8-8 or 22a-43 shall be modified by settlement or stipulated judgment unless the terms of the settlement or stipulated judgment have been approved at a public meeting of the municipal agency that issued the decision. The proposed settlement shall be identified on the agenda of such meeting, which agenda shall be posted in accordance with the applicable requirements of General Statutes §§ 1-210 et seq., and the reasons for such approval shall be stated on the record during such public meeting of such agency and before the court. The court may inquire about the procedure followed by the agency, inquire of the parties whether settlement was reached by coercion or intimidation, and consider any other factors that the court deems appropriate. No notice of the court proceeding other than normal publication of the calendar and notice to the parties is required unless otherwise ordered by the court.

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

Sec. 14-7B. Record in Administrative Appeals; Exceptions

(a) Except as provided in subsection (b), (c), and (d) of Section 14-7, or appeals taken pursuant to General Statutes § 4-183, for appeals from municipal land use, historic, and resource protection agencies, the board or agency shall transmit and file the record in accordance with this section. For the purposes of this Section 14-7B, the term "papers" shall include any and all documents, transcripts, exhibits, plans, minutes, agendas, correspondence, or other materials, regardless of format, which are part of the return of record described in General Statutes § 8-8 (i), including additions to the record per § 8-8 (k).

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

(c) The first time that the appeal appears on the administrative appeals calendar, the court and the parties will establish, or will set up a conference to establish, which of the contents of the record are to be transmitted, and will set up a scheduling order, which will include dates for the filing of the designated contents of the record, for the submission of briefs and reply briefs, for pretrials or other appropriate conferences, and for the hearing on the administrative appeal. At the conference, the court shall also determine which, if any, of the designated contents of the record shall be transmitted to the parties and/or the court in paper format because such papers are either difficult to reproduce electronically or difficult to review in electronic format. Disputes about the contents of the record or other motions, applications or objections will be heard on the administrative appeals calendar or as otherwise scheduled by the court. Any hearings to consider the taxation of costs in accordance with General Statutes § 8-8 (i) shall be conducted after the court renders its decision on the appeal.

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

(e) If any party seeks to include in such party's brief or appendices papers the party deems material to its claim or position, which were not part of the designated contents of the record determined under subsection (c) but were on the certified list filed in accordance with subsection (b), such party shall file an amendment to the record as of right

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attaching such papers. In the event such an amendment to the record as of right is filed, the scheduling order may be adjusted to provide either party with additional time to file a brief or reply brief.

(f) No party shall include in such party's brief or appendices, papers that were neither part of the designated contents of the record under subsection (c), nor on the certified list filed in accordance with subsection (b), unless the court grants permission to supplement the records with such papers pursuant to General Statutes § 8-8 (k).

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: This rule is limited to appeals from municipal land use and resource protection agencies and specifically excludes appeals under the UAPA or other types of appeals. The intent of the rule is to streamline the contents of the record that must be reproduced for the parties and transmitted to the court, while assuring the parties of access to the full record for inspection. This results in more effective use of the court's time, substantial savings in producing the contents of the record on appeal for the municipalities, and increased electronic filing and viewing of documents. In lieu of transmitting the full record to the court, the board or agency transmits to the court and the parties a certified list of what the record contains together with the contents of the record designated by the parties and the court at a pretrial conference. The rule allows the parties to agree to shorten the record submitted to the court, while retaining the ability to cite to a document that is part of the certified list of papers in the record but was not submitted to the court, per stipulation. As already allowed under General Statutes § 8-8 (k), adding items to the record that were not on the list of record items requires a motion by a party and approval by the court, and no documents may be cited without such approval.

Sec. 14-8. Certifying That Pleadings Are Closed

(a) A case shall not be scheduled for trial until a party accurately certifies on a form to be supplied by the clerk that the pleadings are closed on the issue or issues in the case as to all parties. Upon receiving such a certification, the clerk shall refer the case to the presiding judge to schedule a trial as soon as the court's docket permits. If claimed as privileged, the ground of privilege as defined in Section 14-9 shall be stated. If the privilege claimed arises from some other statute or rule giving a matter precedence for trial, the applicable provisions shall be cited with specificity.

(b) An administrative appeal may be placed on the administrative appeal trial list without the necessity for a claim, pursuant to Section 14-7.

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

(P.B. 1978-1997, Sec. 258.)

Sec. 14-9. Privileged Cases in Assignment for Trial

The following classes of cases shall be privileged in respect to assignment for trial: (1) hearings under the fair employment practices act and the labor relations act; (2) all actions, except actions upon probate bonds, brought by or on behalf of the state, including informations on the relation of a private individual; (3) appeals from the employment security board of review; (4) appeals from probate and from the doings of commissioners appointed by courts of probate; (5) actions brought by receivers of insolvent corporations by order of court; (6) actions by or against any person sixty-five years of age or older or who reaches such age during the pendency of the action; (7) appeals from findings, orders or other actions of the public utilities control authority; (8) equitable actions tried to the court wherein the essential claim asserted is for a permanent injunction and any claim for damages or other relief, legal or equitable, is merely in lieu of, or supplemental to, the claim for injunction; (9) habeas corpus proceedings; (10) motions to dissolve temporary injunctions; (11) motions for temporary injunctions; (12) writs of ne exeat, prohibition and mandamus; (13) applications for appointment of receivers; (14) disclosures by garnishees; (15) actions by or against executors, administrators, or trustees in bankruptcy or insolvency; (16) hearings to the court in damages on default or cases where there is an issue as to damages after the judicial authority has granted a summary judgment on the issue of liability; (17) cases remanded by the supreme and appellate courts for a new trial and cases in which a verdict has been set aside, a new trial granted or a mistrial declared; (18) any other actions given precedence by statute or rule.

(P.B. 1978-1997, Sec. 259.)

Sec. 14-10. Claims for Jury

All claims of cases for the jury shall be made in writing, served on all other parties and filed with the clerk within the time allowed by General Statutes § 52-215. The jury claim fee shall be paid at the time the jury claim is filed.

(P.B. 1978-1997, Sec. 260.)

Sec. 14-11. Pretrial; Assignment for Pretrial

(a) Cases in which the pleadings are closed may be assigned by the caseflow coordinator or clerk in consultation with the presiding judge for pretrial.

(b) If there are reasons why a case scheduled for pretrial cannot be pretried effectively, for example in cases in which the extent of the injuries are unknown or discovery has not been completed, then the judicial authority shall continue the case to a date certain for pretrial and may limit the time for the completion of discovery.

(P.B. 1978-1997, Sec. 263.)

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Sec. 14-12. —When Case Not Disposed of at Pretrial

If the pretrial does not result in the disposition of the case by settlement, judgment by stipulation, or withdrawal, then the judicial authority may (1) continue the matter for a reasonable period if the parties agree to participate in any form of alternative dispute resolution, (2) enter appropriate orders to assure that the case is readied for trial, (3) order the case assigned for trial on a date certain or a week certain in the future or, (4) assign the case to a specific judge for trial on a date certain. The date designated for trial shall, if possible, be agreeable to the parties.

(P.B. 1978-1997, Sec. 264.)

Sec. 14-13. —Pretrial Procedure

The chief court administrator or the presiding judge with the consent of the chief court administrator may designate one or more available judges or judge trial referees to hold pretrial sessions. Parties and their attorneys shall attend the pretrial session; provided, that when a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such pretrial session unless the judge or judge referee, in his or her discretion, requires the attendance of the adjuster at the pretrial. If any person fails to attend or to be available by telephone pursuant to this rule, the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the party failing to comply and an award to the complying party of reasonable attorney's fees. Each party claiming damages or seeking relief of any kind, or such party's attorney, shall obtain from the court clerk a pretrial memo form, shall complete the form before the pretrial session and shall, at the commencement of the pretrial session, distribute copies of the completed form to the judge and to each other party. Such pretrial memoranda shall not be placed in the court file unless otherwise ordered by the judicial authority who conducted the pretrial.

The following matters shall be considered at the pretrial session:

(1) A discussion of the possibility of settlement.

(2) Simplification of the issues.

(3) Amendments to pleadings.

(4) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(5) The limitation of number of expert witnesses.

(6) Inspection of hospital records and x-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into possession of the parties or of counsel since compliance with previous motions for disclosure and production for inspection.

(8) Scheduling of a trial management conference and issuance of a trial management order by the judicial authority with reference thereto.

(9) Consideration of alternative dispute resolution options to trial.

(10) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into possession of counsel subsequent to the pretrial session.

(P.B. 1978-1997, Sec. 265.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 14-14. —Orders at Pretrial

The judicial authority may make any appropriate order at pretrial, including the issuance of a trial management order, and such order shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. If any party fails to abide by any such order the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the offending party and an award to a complying party of reasonable attorney's fees.

(P.B. 1978-1997, Sec. 268.)

Sec. 14-15. Assignments for Trial in General

Each week a sufficient number of cases shall be assigned to provide business for each trial day of that week. Cases may be assigned for different days and different times of the same day. In determining the number of cases to be assigned, the caseflow coordinator or clerk, in consultation with the presiding judge, will schedule only the number of cases that can reasonably be expected to be tried that week. Cases not reached for trial on the day certain or during the week certain to which they were assigned shall be assigned with priority to a new date, which shall, if possible, be agreeable to the parties.

(P.B. 1978-1997, Sec. 270.)

Sec. 14-16. Methods of Assigning Cases for Trial

(a) In each court location the presiding judge, subject to the approval of the chief court administrator, shall assign to trial judges for trial those cases not resolved at pretrial in accordance with Section 14-12.

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(b) The presiding judge may, if circumstances require, assign for trial a case that has not been pretried.

(c) Upon request of a party and for good cause shown, the presiding judge may postpone a case or reassign it to another judge.

(P.B. 1978-1997, Sec. 271.)

Sec. 14-17. Immediate Trial

The judicial authority may, on its own motion or on the motion of a party and upon a showing of extraordinary circumstances, order a case to be assigned for immediate trial.

(P.B. 1978-1997, Sec. 273.)

Sec. 14-18. Cases Reached for Trial

When a case is reached on a day or week certain it shall be tried, defaulted, dismissed pursuant to Section 17-19 or nonsuited, unless for good cause shown the judicial authority may assign it for trial on a future date. Such rescheduling shall not displace cases already assigned for trial.

(P.B. 1978-1997, Sec. 274.)

Sec. 14-19. Cases Marked Settled

Any case that does not proceed to trial because it has been reported to the judicial authority as having been settled shall be withdrawn within thirty days or shall be dismissed thereafter unless the judicial authority, for good cause shown, extends the time for a withdrawal.

(P.B. 1978-1997, Sec. 274A.)

Sec. 14-20. Order of Trial

Parties and counsel shall be present and ready to proceed to trial on the day and time specified by the judicial authority. The day specified shall be during the week certain selected by counsel.

(P.B. 1978-1997, Sec. 276.)

Sec. 14-21. Clerk to Communicate with Counsel in Cases Assigned for Week Certain

The caseflow coordinator or clerk, at the direction of the presiding judge, shall communicate with counsel for the parties in the cases assigned for each week certain for trial to keep the court provided with sufficient business for each day the court is in session. Cases shall not be assigned for trial prior to the week certain that has been assigned unless the parties consent.

(P.B. 1978-1997, Sec. 277.)

Sec. 14-22. Assignment for Trial on Motion of Garnishee

When, in an action commenced by process of foreign attachment, the defendant does not appear, if the plaintiff does not take a default in such action within four months after the day on which the process is returnable to such court, the judicial authority may, at any time thereafter, upon motion of any garnishee in such action, assign the same for trial.

(P.B. 1978-1997, Sec. 278.)

Sec. 14-23. Motions to Continue or Postpone Case Assigned for Trial

Whenever a motion for a postponement or continuance of a case assigned for trial is made by either party and such motion is granted, the court may require the party making the same to pay to the adverse party such sum by way of indemnity as it deems reasonable. (See General Statutes § 52-196.)

(P.B. 1978-1997, Sec. 279.)

Sec. 14-24. Motion to Postpone; Absent Witness; Missing Evidence

(a) Whenever a motion is made for the postponement or continuance of a cause assigned for trial on account of the absence of a material witness, such motion, if the adverse party or the judicial authority requires it, shall be supported by an affidavit stating the name of the absent witness, if known, and the particular facts which, it is believed, may be proved by him or her, with the grounds of such belief. The judicial authority may refuse to continue such cause if there is no good reason why the party making the request did not make proper preparation to have the witness present or if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit, and will agree that the same shall be received as evidence on the trial, in like manner as if the witness were present and had testified thereto. Such agreement shall be made in writing at the foot of the affidavit and signed by the party or attorney.

(b) The same rule shall apply where the motion is grounded on the want of any material document or other evidence that might be used on the trial.

(P.B. 1978-1997, Sec. 280.)

Sec. 14-25. Availability of Counsel for Trial

Whenever an attorney has cases assigned simultaneously before the court and jury, the jury assignment shall take precedence over the court assignment unless the attorney is actually engaged in the court trial.

(P.B. 1978-1997, Sec. 281.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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CHAPTER 15

TRIALS IN GENERAL; ARGUMENT BY COUNSEL

Sec.
15-1. Order of Trial
15-2. Separate Trials
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15-4. Medical Evidence
15-5. Order of Parties Proceeding at Trial
15-6. Opening Argument
15-7. Time Limit on Argument
15-8. Dismissal in Court Cases for Failure to Make Out a Prima Facie Case

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 15-1. Order of Trial

In all cases, whether entered upon the docket as jury cases or court cases, the judicial authority may order that one or more of the issues joined be tried before the others. Where the pleadings in an action present issues both of law and of fact, the issues of law must be tried first, unless the judicial authority otherwise directs. If some, but not all, of the issues in a cause are put to the jury, the remaining issue or issues shall be tried first, unless the judicial authority otherwise directs. (See General Statutes § 52-205 and annotations.)

(P.B. 1978-1997, Sec. 283.)

Sec. 15-2. Separate Trials

The judicial authority may, upon motion, for good cause shown, order a separate trial between any parties.

(P.B. 1978-1997, Sec. 284.)

Sec. 15-3. Motion in Limine

The judicial authority to whom a case has been assigned for trial may in its discretion entertain a motion in limine made by any party regarding the admission or exclusion of anticipated evidence. If a case has not yet been assigned for trial, a judicial authority may, for good cause shown, entertain the motion. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. All interested parties shall be afforded an opportunity to be heard regarding the motion and the relief requested. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

(P.B. 1978-1997, Sec. 284A.)

Sec. 15-4. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. The judge holding the civil jury shall, at the opening session, order that all such records be available for inspection in the clerk's office to any counsel of record under the supervision of the clerk. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end.

(P.B. 1978-1997, Sec. 290.)

Sec. 15-5. Order of Parties Proceeding at Trial

(a) Unless the judicial authority for cause permits otherwise, the parties shall proceed with the trial and argument in the following order:

(1) The plaintiff shall present a case in chief.

(2) The defendant may present a case in chief.

(3) The plaintiff and the defendant may present rebuttal evidence in successive rebuttals, as required. The judicial authority for cause may permit a party to present evidence not of a rebuttal nature, and if the plaintiff is permitted to present further evidence in chief, the defendant may respond with further evidence in chief.

(4) The plaintiff shall be entitled to make the opening and final closing arguments.

(5) The defendant may make a single closing argument following the opening argument of the plaintiff.

(b) If there are two or more plaintiffs or two or more defendants and they do not agree as to their order of proceeding, the judicial authority shall determine their order.

(P.B. 1978-1997, Sec. 295.)

Sec. 15-6. Opening Argument

Instead of reading the pleadings, counsel for any party shall be permitted to make a brief opening statement to the jury in jury cases, or in a court case at the discretion of the presiding judge, to apprise the trier in general terms as to the nature of the case being presented for trial. The

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presiding judge shall have discretion as to the latitude of the statements of counsel.

(P.B. 1978-1997, Sec. 296.)

Sec. 15-7. Time Limit on Argument

The argument on behalf of any party shall not occupy more than one hour, unless the judicial authority, on motion for special cause, before the commencement of such argument, allows a longer time. (See General Statutes § 52-209 and annotations.)

(P.B. 1978-1997, Sec. 297.)

Sec. 15-8. Dismissal in Court Cases for Failure to Make Out a Prima Facie Case

If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial authority may grant such motion if the plaintiff has failed to make out a prima facie case. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

(P.B. 1978-1997, Sec. 302.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

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CHAPTER 16

JURY TRIALS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 16-1. Deaf or Hearing Impaired Jurors

At the request of a deaf or hearing impaired juror or the judicial authority, an interpreter or interpreters provided by the Commission on the Deaf and Hearing Impaired and qualified under General Statutes § 46a-33a shall assist such juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation.

(P.B. 1978-1997, Sec. 303A.)

Sec. 16-2. Challenge to Array

Any party may challenge an array on the ground that there has been a material departure from the requirements of law governing the selection and summoning of an array. Such challenge shall be made within five days after notification of the hearing or trial date, unless the defect claimed has arisen subsequent to the time required to make such motion.

(P.B. 1998.)

Sec. 16-3. Preliminary Proceedings in Jury Selection

The judicial authority shall cause prospective jurors to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall require counsel to make a preliminary statement as to the names of other counsel with whom he or she is affiliated and other relevant facts, and shall require counsel to disclose the names, and if ordered by the judicial authority, the addresses of all witnesses counsel intends to call at trial. The judicial authority may excuse any prospective juror for cause.

(See Sec. 303C, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-4. Disqualification of Jurors and Selection of Panel

(a) A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair this person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or hearing impairment.

(b) The clerks shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct.

(c) The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required of the panel, designate by lot those who shall compose the panel.

(P.B. 1978-1997, Sec. 303, 304.)

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Sec. 16-5. Peremptory Challenges

Each party may challenge peremptorily the number of jurors which each is entitled to challenge by law. Where the judicial authority determines a unity of interests exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the judicial authority may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a ''unity of interest'' means that the interests of the several plaintiffs or the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs.

(P.B. 1998.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 16-6. Voir Dire Examination

Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to the person's interest, if any, in the subject matter of the action, or as to the person's relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The right of such examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the trial.

(P.B. 1978-1997, Sec. 305.)

Sec. 16-7. Juror Questions and Note Taking

The members of the jury may, in the discretion of the judicial authority, take notes and submit questions to be asked of witnesses during the trial of a civil action.

(P.B. 1978-1997, Sec. 305A.)

Sec. 16-8. Oath and Admonitions to Trial Jurors

(a) The judicial authority shall cause the jurors selected for the trial to be sworn or affirmed in accordance with General Statutes, §§ 1-23 and 1-25. The judicial authority shall admonish the jurors not to read, listen to or view news reports of the case or to discuss with each other or with any person not a member of the jury the cause under consideration, except that after the case has been submitted to the jury for deliberation the jurors shall discuss it among themselves in the jury room.

(b) In the presence of the jury, the judicial authority shall instruct any interpreter for a deaf or hearing impaired juror to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or visual, with any member of the jury except for the literal translation of jurors' remarks made during deliberations.

(P.B. 1998.)

Sec. 16-9. Questions of Law and Fact

The judicial authority shall decide all issues of law and all questions of law arising in the trial of any issue of fact, and, in committing the cause to the jury, shall direct it to find accordingly, and shall submit all questions of fact to the jury, with such observations on the evidence, for the jury's information, as it thinks proper, without any direction how the jury shall find the facts. After the cause has been committed to the jury, no pleas, arguments or evidence shall be received before the verdict is returned into court and recorded. (See General Statutes § 52-216 and annotations.)

(P.B. 1978-1997, Sec. 306.)

Sec. 16-10. Order by Judicial Authority for Jury Trial of Factual Issues in Equitable Actions

No issues of fact in an equitable action shall be tried to the jury except upon order of the judicial authority. Upon the application of any party, the judicial authority may order any issue or issues of fact in any action demanding equitable relief to be tried by a jury, and such application shall be deemed to be a request for a jury of six. (See General Statutes § 52-218 and annotations.)

(P.B. 1978-1997, Sec. 307.)

Sec. 16-11. Cases Presenting Both Legal and Equitable Issues

A case presenting issues both in equity and law may be claimed for the jury list, but, unless the judicial authority otherwise orders, only the issues at law shall be assigned for trial by the jury. Whenever such an action has been placed upon the

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docket as a jury case, no determination of the equitable issues raised by the pleadings shall prevent a jury trial of the claim for damages, unless both parties agree in writing to waive a jury, or unless the determination of the equitable issues has necessarily adjudicated all the facts upon which the claim for damages rests. (See General Statutes § 52-219 and annotations.)

(P.B. 1978-1997, Sec. 308.)

Sec. 16-12. View by Jury of Place or Thing Involved in Case

When the judicial authority is of the opinion that a viewing by the jury of the place or thing involved in the case will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place or location of such thing. During the viewing, the jury must be kept together under the supervision of a proper officer appointed by the judicial authority. The judicial authority and a court reporter must be present, and, with the judicial authority's permission, any other person may be present. Counsel and self-represented parties may as a matter of right be present, but the right may be waived. The purpose of viewing shall be solely to permit visual observation by the jury of the place or thing in question and to permit a brief description of the site or thing being viewed by the judicial authority or by any witness or witnesses as allowed by the judicial authority. Any proceedings at the location, including examination of witnesses, shall be at the discretion of the judicial authority. Neither the parties nor counsel nor the jurors while viewing the place or thing may engage in discussion of the significance or the implications of anything under observation or of any issue in the case.

(See Sec. 844, P.B. 1978-1997.)(P.B.1998.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 16-13. Judgment of the Court

(a) Where a complaint embracing matters calling for both legal and equitable relief is by order of the judicial authority tried to the jury, the judicial authority may render judgment, either for legal or equitable relief or both, not inconsistent with the verdict.

(b) When an issue or issues of fact are determined by the verdict, the judge presiding at the trial shall, if possible, upon the evidence produced and after hearing the claims and arguments of counsel, determine the other issues in the case and render final judgment at the session at which the verdict is rendered.

(c) If additional evidence is required, the judge presiding at the trial shall, if possible, hear this and render final judgment at said session.

(P.B. 1978-1997, Sec. 309.)

Sec. 16-14. Communications between Parties and Jurors

No party, and no attorney, employee, representative or agent of any party or attorney, shall contact, communicate with or interview any juror or alternate juror, or any relative, friend or associate of any juror or alternate juror concerning the deliberations or verdict of the jury or of any individual juror or alternate juror in any action during trial until the jury has returned a verdict and/or the jury has been dismissed by the judicial authority, except upon leave of the judicial authority, which shall be granted only upon the showing of good cause. A violation of this section may be treated as a contempt of court, and may be punished accordingly.

(P.B. 1978-1997, Sec. 309A.)

Sec. 16-15. Materials to Be Submitted to Jury

(a) The judicial authority shall submit to the jury all exhibits received in evidence.

(b) The judicial authority may, in its discretion, submit to the jury:

(1) The complaint, counterclaim and cross complaint, and responsive pleadings thereto;

(2) A copy or audio recording of the judicial authority's instructions to the jury;

(3) Upon request by the jury, a copy or audio recording of an appropriate portion of the judicial authority's instructions to the jury.

(P.B. 1978-1997, Sec. 309B.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "audio" was substituted for "tape" in subdivisions (2) and (3) of subsection (b) before "recording."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 16-16. Jury Deliberations

After the case has been submitted to the jury, the jurors shall be in the custody of an officer who shall permit no person to be present with them or to speak to them when assembled for deliberations except a qualified interpreter assisting a deaf or hearing impaired juror. The jurors shall be kept together for deliberations as the judicial authority reasonably directs. If the judicial authority permits the jury to recess its deliberations, the judicial authority shall admonish the jurors not to discuss

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the case until they reconvene in the jury room. The judicial authority shall direct the jurors to select one of their members to preside over the deliberations and to deliver any verdict agreed upon, and the judicial authority shall admonish the jurors that until they are discharged in the case they may communicate upon subjects connected with the trial only while they are convened in the jury room. If written forms of verdict are submitted to the jury, the member of the jury selected to deliver the verdict shall sign any verdict agreed upon.

(See Sec. 856, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-17. Jury Returned for Reconsideration

The judicial authority may, if it determines that the jury has mistaken the evidence in the cause and has brought in a verdict contrary to it, or has brought in a verdict contrary to the direction of the judicial authority in a matter of law, return the jury to a second consideration, and for like reason may return it to a third consideration, and no more. (See General Statutes § 52-223 and annotations.)

(P.B. 1978-1997, Sec. 311.)

Sec. 16-18. Interrogatories to the Jury

The judicial authority may submit to the jury written interrogatories for the purpose of explaining or limiting a general verdict, which shall be answered and delivered to the clerk as a part of the verdict. The clerk will take the verdict and then the answers to the several interrogatories, and thereafter the clerk will take the judicial authority's acceptance of the verdict returned and the questions as answered, and proceed according to the usual practice. The judicial authority will not accept a verdict until the interrogatories which are essential to the verdict have been answered.

(P.B. 1978-1997, Sec. 312.)

Sec. 16-19. Reading of Statement of Amount in Demand or Statement of Claim; Arguing Amount Recoverable

In any action seeking damages for injury to the person, the amount demanded in the complaint shall not be disclosed to the jury. In the event that the jury shall return a verdict which exceeds the amount demanded, the judicial authority shall reduce the award to, and render judgment in, the amount demanded. Counsel for any party to the action may articulate to the jury during closing argument a lump sum or mathematical formula as to damages claimed to be recoverable. The judicial authority shall issue cautionary instructions pursuant to General Statutes § 52-216b.

(P.B. 1978-1997, Sec. 313.)

Sec. 16-20. Requests to Charge and Exceptions; Necessity for

An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of objection. The exception shall be taken out of the hearing of the jury.

(P.B. 1978-1997, Sec. 315.)

Sec. 16-21. —Requests to Charge on Specific Claims

Any party intending to claim the benefit of the doctrines of supervening negligence, superseding cause, intervening cause, assumption of risk, or the provisions of any specific statute shall file a written request to charge on the legal principle involved.

(P.B. 1978-1997, Sec. 316.)

Sec. 16-22. —Filing Requests

Written requests to charge the jury and written requests for jury interrogatories must be filed with the clerk before the beginning of arguments or at such an earlier time as the judicial authority directs, and the clerk shall file them and forthwith hand one copy to the judicial authority and one to opposing counsel. A party's request to charge may be amended in writing as a matter of right at any time prior to the beginning of the charge conference.

(P.B. 1978-1997, Sec. 317.)

Sec. 16-23. —Form and Contents of Requests to Charge

(a) When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, and the evidence to which the proposition would apply. Requests to charge should not exceed fifteen in number unless, for good cause shown, the judicial authority permits the filing of an additional number. If the request is granted, the judicial authority shall apply the proposition of law to the facts of the case.

(b) A principle of law should be stated in but one request and in but one way. Requests attempting to state in different forms the same principle of law as applied to a single issue are improper.

(P.B. 1978-1997, Sec. 318.)

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Sec. 16-24. —Charge Conference

After the close of evidence but before arguments to the jury, the judicial authority shall, if requested, inform counsel out of the presence of the jury of the substance of its proposed instructions.

(P.B. 1978-1997, Sec. 318A.)

Sec. 16-25. Modification of Instructions for Correction or Clarification

The judicial authority, after exceptions to the charge, or upon its own motion, may recall the jury to the courtroom and give it additional instructions in order to:

(1) Correct or withdraw an erroneous instruction;

(2) Clarify an ambiguous instruction; or

(3) Instruct the jury on any matter which should have been covered in the original instructions.

(P.B. 1998; see Sec. 860.)

Sec. 16-26. Other Instructions after Additional Instructions

If the judicial authority gives additional instructions, it also may give or repeat other instructions in order to avoid undue emphasis on the additional instructions. Additional instructions shall be governed by the procedures set forth in Section 16-25 concerning exceptions.

(See Sec. 861, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-27. Jury Request for Review of Testimony

If the jury after retiring for deliberations requests a review of certain testimony, the jury shall be conducted to the courtroom. Whenever the jury's request is reasonable, the judicial authority, after notice to and consultation with counsel, shall have the requested parts of the testimony read to the jury.

(See Sec. 863, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-28. Jury Request for Additional Instructions

If the jury, after retiring for deliberations, requests additional instructions, the judicial authority, after providing notice to the parties and an opportunity for suggestions by counsel, shall recall the jury to the courtroom and give additional instructions necessary to respond properly to the request or to direct the jury's attention to a portion of the original instructions.

(See Sec. 864, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-29. Deadlocked Jury

If it appears to the judicial authority that the jury has been unable to agree, it may require the jury to continue its deliberations. The judicial authority shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals. It may also instruct the jury as to disagreements in accordance with the law.

(See Sec. 865, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-30. Verdict; Return of Verdict

The verdict shall be unanimous and shall be announced by the jury in open court.

(See Sec. 867, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-31. —Acceptance of Verdict

Subject to the provisions of Section 16-17, the judicial authority shall, if the verdict is in order and is technically correct, accept it without comment.

(See Sec. 868, P.B. 1978-1997.)(P.B. 1998; amended June 29, 1998, to take effect Jan.1, 1999.)

Sec. 16-32. —Poll of Jury after Verdict

Subject to the provisions of Section 16-17, after a verdict has been returned and before the jury has been discharged, the jury shall be polled at the request of any party or upon the judicial authority's own motion. The poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror's verdict. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or it may be discharged.

(See Sec. 869, P.B. 1978-1997.)(P.B. 1998; amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 16-33. —Discharge of Jury

Subject to the provisions of Section 16-17, the judicial authority shall discharge the jury after it has rendered its verdict or after a mistrial has been declared.

(See Sec. 870, P.B. 1978-1997.)(P.B. 1998; amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 16-34. —Impeachment of Verdict

Upon an inquiry into the validity of a verdict, no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror nor any evidence concerning mental processes by which the verdict was determined. Subject to these limitations, a juror's testimony or affidavit shall be received when it concerns any misconduct which by law permits a jury to be impeached.

(See Sec. 871, P.B. 1978-1997.)(P.B. 1998.)

Sec. 16-35. Motions after Verdict: Motions in Arrest of Judgment, to Set Aside Verdict, for Additur or Remittitur, for New Trial, or for Collateral Source Reduction

Motions in arrest of judgment, whether for extrinsic causes or causes apparent on the record, motions to set aside a verdict, motions for

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remittitur, motions for additur, motions for new trials, unless brought by petition served on the adverse party or parties, and motions pursuant to General Statutes § 52-225a for reduction of the verdict due to collateral source payments must be filed with the clerk within ten days after the day the verdict is accepted; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing. Such motions shall state the specific grounds upon which counsel relies.

(P.B. 1978-1997, Sec. 320.)

Sec. 16-36. Motions to Reduce Verdict

[Transferred as of Jan. 1, 2012, to Sec. 17-2A.]

HISTORY—2012: At the time of its transfer, this section read: "Motions to reduce the amount of a verdict or award pursuant to General Statutes §§ 52-225a or 52-216a shall be filed within ten days after the day the verdict or award is accepted and shall be heard by the judge who conducted the trial. In matters referred to an arbitrator under the provisions of Section 23-61, motions to reduce the amount of an award shall be filed within ten days after the decision of the arbitrator becomes a judgment of the court pursuant to subsection (a) of Section 23-66.

"(P.B. 1978-1997, Sec. 320A.) (Amended June 28, 1999, on an interim basis pursuant to the provisions of Sec. 1-9 (c) to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)"

COMMENTARY—2012: This rule has been transferred to Chapter 17 as Section 17-2A.

Sec. 16-37. Reservation of Decision on Motion for Directed Verdict

Whenever a motion for a directed verdict made at any time after the close of the plaintiff's case in chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict; or if a verdict was not returned such party may move for judgment in accordance with his or her motion for a directed verdict within the aforesaid time after the jury has been discharged from consideration of the case. If a verdict was returned, the judicial authority may allow the judgment to stand or may set the verdict aside and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the judicial authority may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(P.B. 1978-1997, Sec. 321.)

Sec. 16-38. Memorandum on Setting Verdict Aside

When the judicial authority grants a motion to set a verdict aside, it shall file a memorandum stating the grounds of its decision.

(P.B. 1978-1997, Sec. 322.)

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CHAPTER 17

JUDGMENTS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 17-1. Judgments in General

In all actions, whether the relief sought be legal or equitable in its nature, judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and the judicial authority may grant to a defendant any affirmative relief to which the defendant may be entitled, and may determine the rights of the parties on each side as between themselves insofar as a consideration of the issues between them is necessary to a full adjudication as regards the claim stated in the complaint. (See General Statutes § 52-227.)

(P.B. 1978-1997, Sec. 323.)

Sec. 17-2. Judgment on Verdict and Otherwise

The judicial authority shall render judgment on all verdicts of the jury, according to the jury's finding, subject to statutory adjustments, with costs, unless the verdict is set aside; and in all cases where judgment is rendered otherwise than on a verdict, in favor of the plaintiff, the court shall assess the damages which the plaintiff shall recover. If no motions under Sections 16-35 or 16-36 are filed, upon the expiration of the time provided for the filing of such motions, judgment on the verdict shall be rendered in accordance with the verdict, and the date of the judgment shall be the date the verdict was accepted. If motions

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are filed pursuant to Sections 16-35 or 16-36, judgment shall be rendered at the time of and in accordance with the decision on such motions. Whenever a judgment is rendered in a civil jury case, the clerk shall send notice of such judgment to all attorneys and self-represented parties of record. (See General Statutes § 52-225 and annotations.)

(P.B. 1978-1997, Sec. 324.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 17-2A. Motions to Reduce Verdict

Motions to reduce the amount of a verdict or award pursuant to General Statutes §§ 52-225a or 52-216a shall be filed within ten days after the day the verdict or award is accepted and shall be heard by the judge who conducted the trial. In matters referred to an arbitrator under the provisions of Section 23-61, motions to reduce the amount of an award shall be filed within ten days after the decision of the arbitrator becomes a judgment of the court pursuant to subsection (a) of Section 23-66.

(P.B. 1978-1997, Sec. 320A.) (Amended June 28, 1999, on an interim basis pursuant to the provisions of Sec. 1-9 (c) to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; transferred June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: This rule has been transferred from Section 16-36.

Sec. 17-3. Remittitur where Judgment Too Large

If any judgment is rendered, by mistake or clerical error, for a larger sum than is due, the excess may be remitted by the party recovering the judgment, at any time, reasonable notice being first given to the adverse party or that party's attorney; and the judicial authority may thereupon order the record of such judgment to be corrected, and affirm the same for the amount to which it has been remitted. (See General Statutes § 52-228 and annotations.)

(P.B. 1978-1997, Sec. 325.)

Sec. 17-4. Setting Aside or Opening Judgments

(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.

(c) The expedited procedures set forth in this subsection may be followed with regard to a motion to open a judgment of foreclosure filed by a plaintiff in which the filing fee has been paid, the motion has been filed prior to the vesting of title or the sale date, the plaintiff states in the motion that the committee and appraisal fees have been paid or will be paid within thirty days of court approval, and the motion has been served on each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon.

(1) Parties shall have five days from the filing of the motion to file an objection with the court. Unless otherwise ordered by the judicial authority, the motion shall be heard not less than seven days after the date the motion was filed. If the plaintiff states in the motion that all appearing parties have received actual notice of the motion and are in agreement with it, the judicial authority may grant the motion without a hearing.

(2) When a motion to open judgment is filed pursuant to this subsection, the court will retain jurisdiction over the action to award committee fees and expenses and appraisal fees, if necessary. If judgment is not entered or the case has not been withdrawn within 120 days of the granting of the motion, the judicial authority shall forthwith enter a judgment of dismissal.

(P.B. 1978-1997, Sec. 326.) (Amended June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 17-4A. Motions for New Trial

Motions for new trials in cases tried to the court, unless brought by petition served on the adverse party or parties, must be filed with the clerk within ten days after the day the judgment is rendered; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing. Such motions shall state the specific grounds upon which counsel relies.

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 17-5. Record of Proceeding; Facts Supporting Judgment to Appear on Record

Each judicial authority shall keep a record of its proceedings and cause the facts on which it found its final judgments and decrees to appear on the record; and any such finding if requested by any party shall specially set forth such facts. (See General Statutes § 52-231 and annotations.)

(P.B. 1978-1997, Sec. 327.)

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Sec. 17-6. Form of Finding

When all the material allegations put in issue in any action, whether brought for legal or for equitable relief, are found for either plaintiff or defendant, the finding of the issue or issues for the plaintiff or defendant, as the case may be, will be deemed equivalent to a finding that all material allegations which were put in issue are true, and will be a sufficient compliance with Section 17-5. Where only a part of the material allegations put in issue by the pleadings are found for the prevailing party the judgment must indicate the particular facts that are found.

(P.B. 1978-1997, Sec. 328.)

Sec. 17-7. Special Finding; Request

A request for a special finding of facts under General Statutes § 52-226, shall be by written motion filed within fourteen days after the entry of judgment.

(P.B. 1978-1997, Sec. 332.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "in duplicate" was deleted after "filed."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-8. —Functions of Special Finding

A special finding of facts under Section 17-5 should rarely be requested or made but when made it becomes a part of the record with the same effect as though the facts were included in the judgment and claims of error may be based upon it as appearing of record. If the special finding is insufficient to support the judgment, the error is one upon the record. The purpose of a special finding is to place upon the record the material facts upon which the judgment is based; other matters have no place in it and can only be presented in a finding made for the purpose of an appeal. A special finding is an incident to the judgment, and interlocutory rulings should not be included in it. The rules as to seeking corrections in a finding for an appeal have no application to a special finding.

(P.B. 1978-1997, Sec. 333.)

Sec. 17-9. —Form and Contents of Special Finding

The special findings of fact required by Section 17-5 to be made, if requested, as an incident to the judgment should ordinarily form a part of the judgment file. It should contain only facts material to the issues tried. When any fact upon which final judgment is founded is simply a bare conclusion of law from more detailed and subordinate facts, as, for instance, in cases of constructive fraud, the finding, if a special one be requested, must specially set forth the subordinate facts from which, as such conclusion of law, the judicial authority finds the principal fact. In such cases the finding should be such as distinctly to show any conclusion of law thus drawn. When a material fact is found from more detailed or subordinate facts, not as a conclusion of law but as a conclusion of fact, only the main or resulting fact should be set forth in the finding.

(P.B. 1978-1997, Sec. 334.)

Sec. 17-10. Modifying Judgment after Appeal

If a judgment fixing a set time for the performance of an act is affirmed on appeal by the supreme court and such time has elapsed pending the appeal, the judicial authority which rendered the judgment appealed from may, on motion and after due notice, modify it by extending the time.

(P.B. 1978-1997, Sec. 340.)

Sec. 17-11. Offer of Compromise by Defendant; How Made

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

In any action on contract, or seeking the recovery of money damages, whether or not other relief is sought, the defendant may not later than thirty days before the commencement of jury selection in a jury trial or before the commencement of evidence in a court trial file with the clerk of the court a written offer of compromise signed by the defendant or the defendant's attorney, directed to the plaintiff or the plaintiff's attorney, offering to settle the claim underlying the action for a sum certain. (See General Statutes § 52-193 and annotations.)

(P.B. 1978-1997, Sec. 342.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-12. —Acceptance of Defendant's Offer

The plaintiff may, within sixty days after being notified by the defendant of the filing of an offer of compromise, file with the clerk of the court a written acceptance of the offer signed by the plaintiff or the plaintiff's attorney agreeing to settle the underlying action for the sum certain specified in the defendant's offer of compromise. Upon the filing of the written acceptance and receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk of the court and the clerk shall record the withdrawal of the action against the defendant accordingly. No

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trial shall be postponed because the period within which the plaintiff may accept such offer has not expired, except at the discretion of the judicial authority. (See General Statutes § 52-194 and annotations.)

(P.B. 1978-1997, Sec. 343.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-13. —Defendant's Offer Not Accepted

If the plaintiff does not, within the time allowed for acceptance of the offer of compromise and before any evidence is offered at the trial, file the plaintiff's notice of acceptance, the offer shall be deemed to be withdrawn and shall not be given in evidence; and the plaintiff, unless recovering more than the sum specified in the offer, with interest from its date, shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time. Such costs may include reasonable attorney's fees in an amount not to exceed $350. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action. The provisions of this section shall not apply to cases in which nominal damages have been assessed upon a hearing after a default or after a motion to strike has been denied. (See General Statutes § 52-195 and annotations.)

(P.B. 1978-1997, Sec. 344.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-14. Offer of Compromise by Plaintiff; How Made

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

After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before the commencement of jury selection in a jury trial or the commencement of evidence in a court trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. For the purposes of this section, such plaintiff includes a counterclaim plaintiff under General Statutes § 8-132. The plaintiff shall give notice of such offer of compromise to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant.

(P.B. 1978-1997, Sec. 346.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 17-14A. —Alleged Negligence of Health Care Provider

In the case of any action to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, an offer of compromise pursuant to Section 17-14 shall state with specificity all damages then known to the plaintiff or the plaintiff's attorney upon which the action is based. At least sixty days prior to filing such an offer, the plaintiff or the plaintiff's attorney shall provide the defendant or the defendant's attorney with an authorization to disclose medical records that meets the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) (HIPAA), as amended from time to time, or regulations adopted thereunder, and disclose any and all expert witnesses who will testify as to the prevailing professional standard of care. The plaintiff shall file with the court a certification that the plaintiff has provided each defendant or such defendant's attorney with all documentation supporting such damages.

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

Sec. 17-15. —Acceptance of Plaintiff's Offer

Within thirty days after being notified of the filing of such offer of compromise and prior to the rendering of a verdict by the jury or an award by the judicial authority, the defendant or the defendant's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer. Upon such filing and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action against the defendant accordingly.

(P.B. 1978-1997, Sec. 347.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-16. —Plaintiff's Offer Not Accepted

If such offer of compromise is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the judicial authority, such offer of compromise shall be considered rejected and not subject to acceptance unless refiled.

(P.B. 1978-1997, Sec. 348.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect, Jan. 1, 2007.)

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Sec. 17-17. —Offer of Compromise and Acceptance Included in Record

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

Any such offer of compromise and any acceptance of the offer of compromise shall be included by the clerk in the record of the case.

(P.B. 1978-1997, Sec. 349.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-18. —Judgment where Plaintiff Recovers an Amount Equal to or Greater than Offer

After trial the judicial authority shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the judicial authority ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in that plaintiff's offer of compromise, the judicial authority shall add to the amount so recovered 8 percent annual interest on said amount. In the case of a counterclaim plaintiff under General Statutes § 8-132, the judicial authority shall add to the amount so recovered 8 percent annual interest on the difference between the amount so recovered and the sum certain specified in the counterclaim plaintiff's offer of compromise. Any such interest shall be computed as provided in General Statutes § 52-192a. The judicial authority may award reasonable attorney's fees in an amount not to exceed $350 and shall render judgment accordingly. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.

(P.B. 1978-1997, Sec. 350.) (Amended June 26, 2006, to take effect Jan. 1, 2007; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 17-19. Procedure where Party Fails to Comply with Order of Judicial Authority or to Appear for Trial

If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be nonsuited or defaulted by the judicial authority.

(P.B. 1978-1997, Sec. 351.)

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

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

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

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

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

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

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

(P.B. 1978-1997, Sec. 352.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect

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Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "2012" was substituted for "2010" in the beginning of subsection (b), after "July 1."

Also, in 2012, "placed" was substituted for "printed" in the first sentence of subsection (e) before "on the short calendar."

COMMENTARY—2012: The amendment to subsection (b) reflects the extension of the foreclosure mediation program by Public Acts 2010, No. 10-181.

The amendment to subsection (e) is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-21. Defaults under Servicemembers Civil Relief Act

(a) An affidavit must be filed in every case in which there is a nonappearing defendant, either (1) stating that such defendant is in military service, within the meaning of the Servicemembers Civil Relief Act, or that the plaintiff is unable to determine whether or not such defendant is in such service, or (2) setting forth facts showing that such defendant is not in such service.

(b) If it appears that the defendant is in such service the judicial authority shall, and if it is undetermined whether the defendant is in such service or not the judicial authority may, appoint an attorney to represent such defendant before judgment is rendered. No such attorney shall have the power to waive any right of the person for whom he or she is appointed or to bind such person by his or her acts.

(c) Unless it appears that the defendant is not in such service, the judicial authority may require as a condition before judgment is rendered that the plaintiff file a bond approved by the judicial authority conditioned to indemnify the defendant, if in military service, against any loss or damage that such defendant may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part.

(d) If it appears that the defendant is in military service, the judicial authority shall grant a stay of proceedings for a minimum period of ninety days upon application of counsel or on the judicial authority's own motion, if the judicial authority determines that: (1) there may be a defense to the action which cannot be presented without the defendant's presence, or (2) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) If the defendant is in military service or is within ninety days after termination of or release from such service and has received notice of the proceedings, the following provisions apply. At any stage before final judgment the judicial authority may on its own motion and shall, upon application by the defendant, stay the action for a period of not less than ninety days if the application includes (1) a letter or other communication containing facts stating how current military duty requirements materially affect the defendant's ability to appear and stating a date when the defendant will be able to appear, and (2) a letter or other communication from the defendant's commanding officer stating that current military duty prevents appearance and that military leave is not authorized at the time of the letter.

(f) (1) A defendant who is granted a stay under subsection (e) may apply for an additional stay based on the continuing material effect of military duty on the defendant's ability to appear. The application may be made at the time of the initial application or when it appears that the defendant is unable to appear to defend the action. The application shall include the same information required under subparagraphs (1) and (2) of subsection (e).

(2) If the judicial authority denies the application for an additional stay, the judicial authority shall appoint counsel to represent the defendant.

(g) The findings made under the six preceding subsections shall be recited in the judgment.

(h) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.

(P.B. 1978-1997, Sec. 353.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 17-22. Notice of Judgments of Nonsuit and Default for Failure to Enter an Appearance

A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be sent by mail or electronic delivery within ten days of the entry of judgment by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be filed with the clerk's office. Proof of service shall be in accordance with Section 10-14.

(P.B. 1978-1997, Sec. 354.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, in the first sentence of this section, "sent by mail or electronic delivery" was substituted for "mailed" before "within ten days," and "filed with" was substituted for "sent to" before "the clerk's office."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in

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confusion or redundancy when applied to an electronic environment.

Sec. 17-23. Contract Actions to Pay a Definite Sum where There is a Default for Failure to Appear; Limitations

Sections 17-24 through 17-27 shall not be applicable to: (1) any action wherein any defendant against whom judgment is sought is in the military or naval service of the United States when judgment is rendered; or (2) any action brought under the small claims rules.

(P.B. 1978-1997, Sec. 356.)

Sec. 17-24. —Promise to Pay Liquidated Sum

(a) In any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney's fee and other lawful charges, the procedure set forth in Section 17-20 and in Sections 17-25 through 17-28 shall be followed, if there is a default of appearance. A certificate of closed pleadings shall not be filed in matters which fall within the scope of these rules because such matters shall not proceed on the inventory of pending cases requiring a hearing in damages.

(b) When moving for default and judgment pursuant to Sections 17-25 through 17-28, a party shall move for default and judgment on forms prescribed by the office of the chief court administrator.

(P.B. 1978-1997, Sec. 357.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

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

(a) The plaintiff shall file a motion for default for failure to appear, judgment and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit, a bill of costs and a proposed judgment and notice to all parties.

(b) If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff, and a copy of the executed instrument shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.

(c) If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, the affidavit of debt shall set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel and a copy of the contract shall be attached to the affidavit.

(P.B. 1978-1997, Sec. 358.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, the last sentence of subsection (a) was deleted. Prior to 2012, that sentence read: "The proposed notice of judgment shall be filed in duplicate."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 17-26. —Order for Weekly Payments

If the moving party seeks and is entitled to an order for payments under the General Statutes in excess of a nominal amount, the judicial authority may make, as part of the judgment, an order for weekly payment of such sums as shall appear to the judicial authority to be reasonable. If such order is sought, the proposed notice and form of judgment shall contain substantially the following language: It is further adjudged that the defendant make weekly payments of $ on this judgment to commencing on .

(P.B. 1978-1997, Sec. 359.)

Sec. 17-27. —Entry of Judgment

Not less than seven days from receipt of the motion and affidavits, the clerk shall bring the motion and affidavits to the attention of the judicial authority. If the judicial authority orders judgment entered, the clerk shall complete the proposed judgment and notice to all parties in accordance with the terms of the judgment. The clerk shall immediately mail or electronically deliver one copy of the judgment and notice to all parties to the plaintiff or plaintiff's attorney.

(P.B. 1978-1997, Sec. 360.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "[n]ot less than seven days from" was substituted for "[u]pon" in the beginning of the first sentence. Also, in 2012, "electronically" was added before "deliver" in the third sentence.

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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Sec. 17-28. —Enforcement of Judgment

Execution upon such judgment shall be stayed until twenty days after the clerk receives from the plaintiff, or plaintiff's attorney, one copy of the judgment and notice to all parties, with a certification that one copy thereof was served upon each judgment debtor. Service and proof thereof must be made in accordance with Sections 10-12 through 10-14.

(P.B. 1978-1997, Sec. 361.)

Sec. 17-29. —Default Motion Not on Short Calendar

No motion for default and judgment filed under Sections 17-24 through 17-28 shall be placed on the short calendar, unless the judicial authority shall so order. No short calendar claim shall be filed with this motion. Other than as provided for in those sections and in Section 17-20 no notice of a default or of a judgment after default shall be required in connection with any such motion.

(P.B. 1978-1997, Sec. 362.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "placed" was substituted for "printed" in the first sentence before "on the short calendar."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

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

(P.B. 1978-1997, Sec. 362A.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 17-31. Procedure where Party is in Default

Where either party is in default by reason of failure to comply with Sections 10-8, 10-35, 13-6 through 13-8, 13-9 through 13-11, the adverse party may file a written motion for a nonsuit or default or, where applicable, an order pursuant to Section 13-14. Except as otherwise provided in Sections 17-30 and 17-32, any such motion, after service upon each adverse party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and, unless the pleading in default be filed or the disclosure be made within ten days thereafter, the clerk shall, upon the filing of a short calendar claim by the moving party, place the motion on the next available short calendar list.

(P.B. 1978-1997, Sec. 363.)

Sec. 17-32. Where Defendant is in Default for Failure to Plead

(a) Where a defendant is in default for failure to plead pursuant to Section 10-8, the plaintiff may file a written motion for default which shall be acted on by the clerk not less than seven days from the filing of the motion, without placement on the short calendar.

(b) If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the clerk shall set aside the default. If a claim for a hearing in damages or a motion for judgment has been filed, the default may be set aside only by the judicial authority. A claim for a hearing in damages or motion for judgment shall not be filed before the expiration of fifteen days from the date of notice of issuance of the default under this subsection.

(P.B. 1978-1997, Sec. 363A.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

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

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

(b) Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may

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also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority.

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

(P.B. 1978-1997, Sec. 364.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 17-33A. Motions for Judgment of Foreclosure

In all foreclosure actions, motions for judgment shall not be filed prior to the expiration of 30 days after the return date.

(Adopted June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 17-34. Hearings in Damages; Notice of Defenses

(a) In any hearing in damages upon default, the defendant shall not be permitted to offer evidence to contradict any allegations in the plaintiff's complaint, except such as relate to the amount of damages, unless notice has been given to the plaintiff of the intention to contradict such allegations and of the subject matter which the defendant intends to contradict, nor shall the defendant be permitted to deny the right of the plaintiff to maintain such action, nor shall the defendant be permitted to prove any matter of defense, unless written notice has been given to the plaintiff of the intention to deny such right or to prove such matter of defense.

(b) This notice shall apply to defaults entered on all claims, counterclaims, cross claims, and other claims for affirmative relief. (See General Statutes § 52-221 and annotations.)

(P.B. 1978-1997, Sec. 367.)

Sec. 17-35. —Requirements of Notice; Time

(a) The notices required by Section 17-34 shall be given in the manner provided in Sections 10-12 through 10-14, the original with proof of service being filed with the clerk.

(b) In all actions in which there may be a hearing in damages, notice of defenses must be filed within ten days after notice from the clerk to the defendant that a default has been entered.

(P.B. 1978-1997, Sec. 368.)

Sec. 17-36. —Notice by Clerk

The clerk shall give notice of entry of a default, in the case of a defendant who has filed an appearance, in person to the defendant or the defendant's attorney, by mail, or by electronic notice, and in the case of a nonappearing defendant, by mailing such notice to the defendant at his or her last known address. The clerk shall enter on the docket the date when the clerk gives, mails or sends the notice, and said period of ten days shall run from said date.

(P.B. 1978-1997, Sec. 369.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 17-37. —Notice of Defense to Be Specific

The notice shall not contain a general denial, but shall specify which, if any, of the allegations, or parts thereof, of the complaint will be controverted; and only those allegations should be specified which it is intended to controvert by proof. The denial of the right of the plaintiff to maintain the action must go to the plaintiff's right to maintain it in the capacity in which the plaintiff sues, and not otherwise controvert the right of action. Any new matter by way of confession and avoidance must be specified. The defense of contributory negligence must be specified and the grounds stated. Partial defenses must be specified in the same manner as complete defenses.

(P.B. 1978-1997, Sec. 371.)

Sec. 17-38. —Amending Notice of Defense

The judicial authority may, for cause shown, and upon such terms as it may impose, permit such notice to be filed or amended at any time.

(P.B. 1978-1997, Sec. 372.)

Sec. 17-39. —No Reply Allowed

The plaintiff shall file no pleading to such notice, but may meet the facts set up therein by any proper evidence.

(P.B. 1978-1997, Sec. 373.)

Sec. 17-40. —Evidence to Reduce Damages

The defendant may, without notice, offer evidence to reduce the amount of damages claimed.

(P.B. 1978-1997, Sec. 374.)

Sec. 17-41. Relief Permissible on Default

Upon a default, the plaintiff can have no greater relief than that demanded in the complaint; but in any other case the judicial authority may, upon a proper amendment, grant the plaintiff any other relief consistent with the case made on the trial and embraced within the issues.

(P.B. 1978-1997, Sec. 375.)

Sec. 17-42. Opening Defaults where Judgment Has Not Been Rendered

A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. As part of its order, the

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judicial authority may extend the time for filing pleadings or disclosure in favor of a party who has not been negligent. Certain defaults may be set aside by the clerk pursuant to Sections 17-20 and 17-32.

(P.B. 1978-1997, Sec. 376.)

Sec. 17-43. Opening Judgment upon Default or Nonsuit

(a) Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant 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 or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.

(b) If the judicial authority opens a nonsuit entered pursuant to Section 17-31, the judicial authority as part of its order may extend the time for filing pleadings or disclosure. (See General Statutes § 52-212.)

(P.B. 1978-1997, Sec. 377.)

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

In any action, except administrative appeals which are not enumerated in Section 14-7, any party may move for a summary judgment at any time, except that the party must obtain the judicial authority's permission to file a motion for summary judgment after the case has been assigned for trial. These rules shall be applicable to counterclaims and cross complaints, so that any party may move for summary judgment upon any counterclaim or cross complaint as if it were an independent action. The pendency of a motion for summary judgment shall delay trial only at the discretion of the trial judge.

(P.B. 1978-1997, Sec. 379.)

Sec. 17-45. —Proceedings upon Motion for Summary Judgment; Request for Extension of Time to Respond

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

A motion for summary judgment shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and the like. The motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion and the supporting materials, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant such request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request. Any adverse party shall at least five days before the date the motion is to be considered on the short calendar file opposing affidavits and other available documentary evidence. Affidavits, and other documentary proof not already a part of the file, shall be filed and served as are pleadings.

(P.B. 1978-1997, Sec. 380.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 17-46. —Form of Affidavits

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto.

(P.B. 1978-1997, Sec. 381.)

Sec. 17-47. —When Appropriate Documents Are Unavailable

Should it appear from the affidavits of a party opposing the motion that such party cannot, for reasons stated, present facts essential to justify opposition, the judicial authority may deny the motion for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(P.B. 1978-1997, Sec. 382.)

Sec. 17-48. —Affidavits Made in Bad Faith

Should it appear to the satisfaction of the judicial authority at any time that any affidavit is made or presented in bad faith or solely for the purpose of delay, the judicial authority shall forthwith order the offending party to pay to the other party the reasonable expenses which the filing of the affidavit caused that party to incur, including attorney's

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fees. Any offending party or attorney may be adjudged guilty of contempt, and any offending attorney may also be disciplined by the judicial authority.

(P.B. 1978-1997, Sec. 383.)

Sec. 17-49. —Judgment

The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(P.B. 1978-1997, Sec. 384.)

Sec. 17-50. —Triable Issue as to Damages Only

A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages. In such case the judicial authority shall order an immediate hearing before a judge trial referee, before the court, or before a jury, whichever may be proper, to determine the amount of the damages. If the determination is by a jury, the usual procedure for setting aside the verdict shall be applicable. Upon the conclusion of these proceedings, the judicial authority shall forthwith render the appropriate summary judgment.

(P.B. 1978-1997, Sec. 385.)

Sec. 17-51. —Judgment for Part of Claim

If it appears that the defense applies to only part of the claim, or that any part is admitted, the moving party may have final judgment forthwith for so much of the claim as the defense does not apply to, or as is admitted, on such terms as may be just; and the action may be severed and proceeded with as respects the remainder of the claim.

(P.B. 1978-1997, Sec. 386.)

Sec. 17-52. Executions

Pursuant to the General Statutes, the judgment creditor or the attorney for the judgment creditor may file a written application with the court for an execution to collect an unsatisfied money judgment.

(P.B. 1978-1997, Sec. 387.)

Sec. 17-53. Summary Process Executions

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

(P.B. 1978-1997, Sec. 387A.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 17-54. Declaratory Judgment; Scope

The judicial authority will, in cases not herein excepted, render declaratory judgments as to the existence or nonexistence (1) of any right, power, privilege or immunity; or (2) of any fact upon which the existence or nonexistence of such right, power, privilege or immunity does or may depend, whether such right, power, privilege or immunity now exists or will arise in the future.

(P.B. 1978-1997, Sec. 389.)

Sec. 17-55. —Conditions for Declaratory Judgment

A declaratory judgment action may be maintained if all of the following conditions have been met:

(1) The party seeking the declaratory judgment has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party's rights or other jural relations;

(2) There is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties; and

(3) In the event that there is another form of proceeding that can provide the party seeking the declaratory judgment immediate redress, the court is of the opinion that such party should be allowed to proceed with the claim for declaratory judgment despite the existence of such alternate procedure.

(P.B. 1978-1997, Sec. 390.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 17-56. —Procedure for Declaratory Judgment

(a) Procedure in actions seeking a declaratory judgment shall be as follows:

(1) The form and practice prescribed for civil actions shall be followed.

(2) The prayer for relief shall state with precision the declaratory judgment desired and no claim for consequential relief need be made.

(3) Actions claiming coercive relief may also be accompanied by a claim for a declaratory judgment, either as an alternative remedy or as an independent remedy.

(4) Subject to the provisions of Sections 10-21 through 10-24, causes of action for other relief may be joined in complaints seeking declaratory judgments.

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(5) The defendant in any appropriate action may seek a declaratory judgment by a counterclaim.

(6) Issues of fact necessary to the determination of the cause may be submitted to the jury as in other actions.

(b) All persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of one or more of the plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof. If the proceeding involves the validity of a municipal ordinance, persons interested in the subject matter of the declaratory judgment shall include such municipality, and if the proceeding involves the validity of a state statute, such persons shall include the attorney general.

The party seeking the declaratory judgment shall append to its complaint or counterclaim a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof. If notice was given, the certificate shall list the names, if known, of all such persons, the nature of their interest and the manner of notice.

(c) Except as provided in Sections 10-39 and 10-44, no declaratory judgment action shall be defeated by the nonjoinder of parties or the failure to give notice to interested persons. The exclusive remedy for nonjoinder or failure to give notice to interested persons is by motion to strike as provided in Sections 10-39 and 10-44.

(d) Except as otherwise provided by law, no declaration shall be binding against any persons not joined as parties. If it appears to the court that the rights of nonparties will be prejudiced by its declaration, it shall order entry of judgment in such form as to affect only the parties to the action.

(P.B. 1978-1997, Sec. 391.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 17-57. —Costs in Declaratory Judgment

Costs shall be discretionary and may be granted to or against any party to the action.

(P.B. 1978-1997, Sec. 392.)

Sec. 17-58. —Declaratory Judgment Appealable

The decision of the judicial authority shall be final between the parties to the action as to the question or issue determined, and shall be subject to review by appeal as in other causes.

(P.B. 1978-1997, Sec. 393.)

Sec. 17-59. —Order of Priorities in Declaratory Judgment

In any action in which order of priorities could be determined under scire facias proceedings, such order of priorities may be determined by declaratory judgment proceedings. (See General Statutes § 52-235a.)

(P.B. 1978-1997, Sec. 394.)

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CHAPTER 18

FEES AND COSTS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 18-1. Vouchers for Court Expenses

No costs shall be taxed for court expenses unless each item of payment of over fifty dollars shall be accompanied by a proper voucher. No part of the clerk's bill or fees shall be included for taxation in the state marshal's bill, or in any bill of a community correctional center.

(P.B. 1978-1997, Sec. 407.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 18-2. Costs on Appeal from Commissioners

If an executor, administrator or trustee upon an estate shall appeal from the report of the commissioners in allowing a claim to a creditor and such claim is disallowed upon the appeal, or if a creditor shall appeal from the disallowance of claim in whole or in part and shall recover no more than was allowed by the commissioners, judgment for costs shall be rendered against the creditor. If upon an appeal by an executor, administrator or trustee the creditor shall recover as large a sum as, or a larger sum than, was allowed to the creditor by the commissioners, or if upon the creditor's own appeal from the disallowance of claim in whole or in part, a creditor shall recover a greater sum than was allowed by the commissioners, costs will be taxed in the creditor's favor against the estate. In any other case, costs shall be discretionary with the judicial authority.

(P.B. 1978-1997, Sec. 409.)

Sec. 18-3. Costs on Creditor's Appeal

If any creditor of such an estate shall appeal from the doings or report of the commissioners in allowing the claim of any other creditor, costs, at the discretion of the judicial authority, may be taxed in favor of the prevailing party against the other. No costs shall be allowed against the estate.

(P.B. 1978-1997, Sec. 410.)

Sec. 18-4. Eminent Domain; Clerk's Fees

If, by the provisions of the charter of any railroad company, canal company, bridge company, or the like, it shall be made the duty of the judicial authority to appoint appraisers, assessors, commissioners, etc., the clerk's fees must be paid as in other causes.

(P.B. 1978-1997, Sec. 411.)

Sec. 18-5. Taxation of Costs; Appeal

(a) Except as otherwise provided in this section, costs may be taxed by the clerk in civil cases fourteen days after the filing of a written bill of costs provided that no objection is filed. If a written objection is filed within the fourteen day period, notice shall be given by the clerk to all appearing parties of record of the date and time of the clerk's taxation. The parties may appear at such taxation and have the right to be heard by the clerk.

(b) Either party may move the judicial authority for a review of the taxation by the clerk by filing a motion for review of taxation of costs within twenty days of the issuance of the notice of taxation by the clerk.

(c) Notwithstanding the provisions of subsection (a), the costs paid as an application fee for any execution on a money judgment shall be taxed by the clerk upon the issuance of the execution.

(P.B. 1978-1997, Sec. 412.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 18-6. Costs on Writ of Error

No copy of a record upon which a writ of error shall be pending shall be taxed in the bill of costs

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on such writ, unless such copy shall become necessary by reason of a defense of nul tiel record.
(P.B. 1978-1997, Sec. 413.)

Sec. 18-7. Costs on Interlocutory Proceedings

Costs taxed on any interlocutory proceedings must be paid before any further pleading may be filed or other step taken in the cause by the party against whom they were awarded, unless the judicial authority specially directs otherwise or the written consent of the adverse party is given.
(P.B. 1978-1997, Sec. 414.)

Sec. 18-8. Jury Fee where More than One Trial

If more than one trial to the jury of a case is had, no more than one jury fee shall be required to be paid.
(P.B. 1978-1997, Sec. 415.)

Sec. 18-9. Nonresident Witnesses; Fees

The mileage or travel of witnesses residing out of the state will be computed and taxed from the state line, on the usual course of travel.
(P.B. 1978-1997, Sec. 416.)

Sec. 18-10. Witness Fees in Several Suits

If a witness be in attendance in more cases than one, between the same parties, at the same time, and on behalf of the same party, the fees of the witness for travel and attendance will be taxed for one case only.
(P.B. 1978-1997, Sec. 417.)

Sec. 18-11. Witness Not Called; Fees

If witnesses, having been duly summoned, attend as witnesses, but are not called to testify, their fees shall be taxed in the bill of costs, if it appears to the judicial authority that they were summoned in good faith and with the expectation of using them, and if their testimony would have been admissible.
(P.B. 1978-1997, Sec. 418.)

Sec. 18-12. Costs where Several Issues

(a) Whenever in any action there shall be two or more issues joined on material allegations, and a part of such issues shall be found for the defendant and the remainder for the plaintiff, the defendant shall recover such costs as were incurred upon the issues found in defendant's favor, including fees of witnesses and the expense of summoning them. If several distinct claims shall be made under one count, and the plaintiff shall recover upon some and not upon others, plaintiff shall not recover costs incurred in attempting to support the claims which plaintiff shall fail to establish.

(b) When costs are awarded to both parties, the judicial authority upon motion of either party may order a setoff of the same, and execution will then issue only for the balance.
(P.B. 1978-1997, Sec. 419.)

Sec. 18-13. Several Defendants; Costs

In all cases where there are several defendants, the judicial authority may make such order as it may deem just to prevent any defendant from being embarrassed or put to expense by being required to attend upon any proceedings in the action in which such defendant may have no interest; and no costs shall be taxed against any defendant with which that defendant is not justly chargeable.
(P.B. 1978-1997, Sec. 420.)

Sec. 18-14. Fees and Costs where Plaintiffs Join or Actions Are Consolidated

(a) Where plaintiffs join under Section 9-4, or actions are consolidated, and the case is claimed for the jury, there shall be but one jury fee, except that if separate jury trials are ordered, a jury fee shall be paid for each such trial.

(b) Each party who prevails shall be entitled to recover from the losing party or parties indemnity, trial and witness fees to the same extent as though the plaintiffs who have several rights had brought separate actions.
(P.B. 1978-1997, Sec. 421.)

Sec. 18-15. Costs where Both Legal and Equitable Issues

Where legal and equitable matters or claims for relief arising out of the same transaction or transactions connected with the same subject of action are joined in the same complaint, or where any pleading setting forth a matter which, before January 1, 1980, would have been cognizable only at law is met by setting up some equitable matter, either by itself or in connection with a legal defense, the costs upon the whole case shall be at the discretion of the judicial authority; but where legal and equitable causes of action which are wholly unconnected with each other are joined in the same complaint, the costs upon the judgment on the equitable causes of action only shall be discretionary.
(P.B. 1978-1997, Sec. 422.)

Sec. 18-16. Costs on Complaint and Counterclaim

When judgment shall be for the defendant on the complaint and for the plaintiff on a counterclaim, costs shall be taxed for the defendant as

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the prevailing party under General Statutes § 52-257, unless the judicial authority shall direct otherwise.

(P.B. 1978-1997, Sec. 423.)

Sec. 18-17. Costs on Counterclaim

No costs shall be taxed in favor of a defendant recovering judgment on a counterclaim or setoff, which were incurred before the same was filed.

(P.B. 1978-1997, Sec. 424.)

Sec. 18-18. Costs for Exhibits

The sum to be taxed to the prevailing party under General Statutes § 52-257, for maps, plans, mechanical drawings, and photographs shall be determined by the judicial authority.

(P.B. 1978-1997, Sec. 425.)

Sec. 18-19. Proceedings before Judge; No Costs

In proceedings before a judge no costs shall be taxed in favor of either party unless otherwise provided by statute.

(P.B. 1978-1997, Sec. 427.)

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CHAPTER 19

REFERENCES

Sec.	
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19-2.	Reference to Committee
19-2A.	Reference to Attorney Trial Referee
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19-3A.	Reference to Special Assignment Probate Judge
19-4.	Attorney Trial Referees and Special Assignment Probate Judges; Time to File Report
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19-6.	Effect of Reference
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19-18.	Extensions of Time
19-19.	Reference to Accountant

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 19-1. Application of Chapter

The provisions of this chapter shall govern the procedure in matters, except dissolution of marriage or civil union, legal separation, annulment, and juvenile matters, referred to committees, state referees and senior judges, attorney trial referees, special assignment probate judges, and, so far as applicable, to auditors, appraisers or other persons designated to make reports to the court.

(P.B. 1978-1997, Sec. 428.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "special assignment probate judges," was added after "attorney trial referees."

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-2. Reference to Committee

The court or any judge thereof may send to a committee for a finding of facts any case wherein the parties are not, as a matter of right, entitled to a trial by jury. A committee shall not be appointed without the consent of all parties appearing, unless the court, after a hearing upon motion for appointment of a committee, is of the opinion that the questions involved are such as clearly ought to be sent to a committee.

(P.B. 1978-1997, Sec. 429.)

Sec. 19-2A. Reference to Attorney Trial Referee

The court or judicial authority may refer to an attorney trial referee any civil nonjury case in which the issues have been closed, provided that the appearing parties or their counsel consent to the referral.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-3. Reference to Judge Trial Referee

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

The clerk shall give notice to each referee of a reference and note in the court file the date of the issuance of the notice. In addition to matters required to be referred to a judge trial referee, the judicial authority may refer any civil nonjury case or, with the written consent of the parties or their attorneys, any civil jury case, pending before such court, in which the issues have been closed, to a judge trial referee, who shall have and exercise the powers of the superior court in respect to trial, judgment and appeal in such case, and any proceeding resulting from a demand for a trial de novo pursuant to subsection (e) of General Statutes § 52-549z, may be referred without the consent of the parties to a judge trial referee who has been specifically designated to hear such proceedings pursuant to subsection (b) of General Statutes § 52-434. Any case referred to a judge trial referee shall be deemed to have been referred for all further proceedings and judgment, including matters pertaining to any appeal therefrom, unless otherwise ordered before or after the reference. The court may also refer to a judge trial referee any motion for summary judgment and any other pretrial matter in any civil nonjury or civil jury case.

(P.B. 1978-1997, Sec. 430.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 19-3A. Reference to Special Assignment Probate Judge

The court may refer any appeal filed under General Statutes § 45a-186, except those matters

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described in subdivision (h) (3) of that statute, to a special assignment probate judge appointed in accordance with General Statutes § 45a-79b who is assigned by the Probate Court Administrator for the purposes of such appeal, except that such appeal shall be heard by the court if any party files a demand for such hearing in writing with the court not later than twenty days after service of the appeal.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-4. Attorney Trial Referees and Special Assignment Probate Judges; Time to File Report

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

An attorney trial referee or special assignment probate judge to whom a case has been referred shall file a report with the clerk of the court, with sufficient copies for all counsel, within one hundred and twenty days of the completion of the trial before such referee or special assignment probate judge.

(P.B. 1978-1997, Sec. 430A.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, "Attorney Trial Referees; Time to File Report." In 2012, "or special assignment probate judge" was added after "attorney trial referee" and after "before such referee."

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-5. Appointment of Committee or Referee

It is the function of the court or judge to determine and appoint the person or persons who shall constitute a committee, or the referee to whom a case shall be referred. Recommendations by counsel shall be made only at the request of the court or judge. If more than one person shall constitute the committee, the first person named by the court shall be the chair of the committee.

(P.B. 1978-1997, Sec. 431.)

Sec. 19-6. Effect of Reference

(a) When any case shall be referred, no trial will be had by the court unless the reference be revoked upon stipulation of the parties or order of the court. Any reference shall continue in force until the duties thereunder have been performed or the order revoked.

(b) In making a reference in any eminent domain proceeding, the court shall fix a date not more than sixty days thereafter, unless for good cause shown a longer period is required, on which the parties shall exchange copies of their appraisal reports. Such reports shall set forth the valuation placed upon the property in issue and the details of the items of, or the basis for, such valuation. The court may, in its discretion and under such conditions as it deems proper, and after notice and hearing, grant a further extension of time, beyond that originally fixed, to any party confronted with unusual and special circumstances requiring additional time for the exchange of appraisal reports.

(P.B. 1978-1997, Sec. 432.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-7. Pleadings

No case shall be referred to a committee, attorney trial referee or special assignment probate judge until the issues are closed and a certification to that effect has been filed pursuant to Section 14-8. Thereafter no pleadings may be filed except by agreement of all parties or order of the court or the attorney trial referee or special assignment probate judge. Such pleadings shall be filed with the clerk and a copy filed with the committee, the attorney trial referee or the special assignment probate judge.

(P.B. 1978-1997, Sec. 433.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for "or" in the first sentence, after "committee," and "or special assignment probate judge" was added after "attorney trial referee." In the second sentence "or special assignment probate judge" was added after "attorney trial referee." In the third sentence, a comma was substituted for "or" after "committee," and "or the special assignment probate judge" was added after "attorney trial referee."

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-8. Report

(a) The report of a committee, attorney trial referee or special assignment probate judge shall state, in separate and consecutively numbered paragraphs, the facts found and the conclusions drawn therefrom. It should not contain statements of evidence or excerpts from the evidence. The report should ordinarily state only the ultimate facts found; but if the committee, attorney trial referee or special assignment probate judge has reason to believe that the conclusions as to such facts from subordinate facts will be questioned, it may also state the subordinate facts found proven; and any committee, attorney trial referee

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or special assignment probate judge having reason to believe that the rulings will be questioned may state them with a brief summary of such facts as are necessary to explain them; and the committee, attorney trial referee or special assignment probate judge should state such claims as were made by the parties and which either party requests be stated.

(b) The committee, attorney trial referee or special assignment probate judge may accompany the report with a memorandum of decision including such matters as it may deem helpful in the decision of the case, and, in any case in which appraisal fees may be awarded by the court, shall make a finding and recommendation as to such appraisal fees as it deems reasonable.

(P.B. 1978-1997, Sec. 434.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for ''or'' in the first sentence of subsection (a), after ''committee,'' and ''or special assignment probate judge'' was added after ''attorney trial referee.'' The same changes were made three times in the second sentence of subsection (a), after each instance of ''committee'' and before each instance of ''attorney trial referee.''

Also, in subsection (b), a comma was substituted for ''or,'' after ''committee,'' and ''or special assignment probate judge'' was added after ''attorney trial referee.''

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-9. Request for Finding

Either party may request a committee, attorney trial referee or special assignment probate judge to make a finding of subordinate facts or of its rulings, and of the claims made, and shall include in or annex to such request a statement of the facts, or rulings, or claims, the party desires the committee, attorney trial referee or special assignment probate judge to incorporate in the report.

(P.B. 1978-1997, Sec. 435.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for ''or,'' after ''committee,'' and ''or special assignment probate judge'' was added after ''attorney trial referee.'' This change appears twice in this section: once at the beginning and once at the end.

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-10. Alternative Report

If alternative claims are made before the committee, attorney trial referee or special assignment probate judge, or the committee, attorney trial referee or special assignment probate judge deems it advisable, it may report all the facts bearing upon such claims and make its conclusions in the alternative, so that the judgment rendered will depend upon which of the alternative conclusions the facts are found legally to support.

(P.B. 1978-1997, Sec. 436.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2011.)

HISTORY—2012: In 2012, a comma was substituted for ''or,'' after ''committee,'' and ''or special assignment probate judge'' was added after ''attorney trial referee.'' This change appears twice in this section, before each instance of "committee" and after each instance of ''attorney trial referee.''

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-11. Amending Report

A committee, attorney trial referee or special assignment probate judge may, at any time before a report is accepted, file an amendment to it or an amended report.

(P.B. 1978-1997, Sec. 437.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for ''or,'' after ''committee,'' and ''or special assignment probate judge'' was added after ''attorney trial referee.''

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-12. Motion to Correct

[Repealed as of Jan. 1, 2000.]

Sec. 19-13. Exceptions to Report or Finding

[Repealed as of Jan. 1, 2000.]

Sec. 19-14. Objections to Acceptance of Report

A party may file objections to the acceptance of a report on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the committee, attorney trial referee or special assignment probate judge erred in rulings on evidence or other rulings or that there are other reasons why the report should not be accepted. A party objecting on these grounds must file with the party's objections a transcript of the evidence taken before the committee, except such portions as the parties may stipulate to omit.

(P.B. 1978-1997, Sec. 440.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2000, to take

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effect Jan. 1, 2001; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for "or," after "committee," and "or special assignment probate judge" was added after "attorney trial referee" in the first sentence.

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-15. Time to File Objections

Objections to the acceptance of a report shall be filed within twenty-one days after the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

(P.B. 1978-1997, Sec. 441.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "or electronic delivery" was added to this section after "mailing."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 19-16. Judgment on the Report

After the expiration of twenty-one days from the mailing or electronic delivery of the report, either party may, without written motion, claim the case for the short calendar for judgment on the report of the committee, attorney trial referee or special assignment probate judge, provided, if the parties file a stipulation that no objections will be filed, the case may be so claimed at any time thereafter.

The court may, on its own motion and with notice thereof, schedule the matter for judgment on the report and/or hearing on any objections thereto, anytime after the expiration of twenty-one days from the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

(P.B. 1978-1997, Sec. 442.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect, Jan. 1, 2012.)

HISTORY—2012: In 2012, "or electronic delivery" was added to the first and second paragraphs after "mailing." Also, a comma was substituted for "or," after "committee," and "or special assignment probate judge" was added after "attorney trial referee" in the first paragraph.

COMMENTARY—2012: The above amendments are intended to do the following: (1) to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment; and (2) to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-17. Function of the Court

(a) The court shall render such judgment as the law requires upon the facts in the report. If the court finds that the committee, attorney trial referee or special assignment probate judge has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report and refer the matter to the same or another committee, attorney trial referee or special assignment probate judge, as the case may be, for a new trial or revoke the reference and leave the case to be disposed of in court.

(b) The court may correct a report at any time before judgment upon the written stipulation of the parties or it may upon its own motion add a fact which is admitted or undisputed or strike out a fact improperly found.

(P.B. 1978-1997, Sec. 443.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, a comma was substituted for "or," after "committee," and "or special assignment probate judge" was added after "attorney trial referee" in the second sentence of subsection (a). This change appears twice in subsection (a), before each instance of "committee" and after each instance of "attorney trial referee."

COMMENTARY—2012: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and new Section 19-3A herein are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts, Spec. Sess., Sept. 2009, Nos. 09-114 and 09-01.

Sec. 19-18. Extensions of Time

Any judge of the court in which the report is filed may for good cause shown allow extensions of time for taking any of the steps herein provided.

(P.B. 1978-1997, Sec. 444.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-19. Reference to Accountant

The court or any judge thereof may refer any pending matter to an accountant for an examination of any account or books. The accountant shall have authority to make such examination and shall file a report with comments with the court or judge. The fees and expenses of the accountant, as fixed and allowed by the court or judge, shall be paid by the estate or the parties, as the court or judge may determine. The other provisions of this chapter shall not be applicable to reports by accountants under this section.

(P.B. 1978-1997, Sec. 445.)

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CHAPTER 20

HEARINGS IN CHAMBERS

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20-6. Clerk Designated by Judge to Take Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 20-1. Procedure in Contested Matters

Where any matter in a proceeding which has or might have been made returnable to the court in any judicial district is brought, pursuant to statute before a judge, and is contested, and it may become necessary to take oral testimony, the judge may, at his or her discretion and by agreement of the parties, repair to the courthouse, open a special session of the court, certify such proceedings to said court, and go forward with the hearing as a court.

(P.B. 1978-1997, Sec. 446.)

Sec. 20-2. Certifying Proceedings to Court

Each application or petition made to any judge in connection with any cause then pending in or returnable to any court and the proceedings thereon shall be certified to the said court by said judge. (See General Statutes § 52-504.)

(P.B. 1978-1997, Sec. 447.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 20-3. Transfer of Hearings before Judges

When, upon any application, petition or matter presented to any judge of the court for a hearing by him or her as a judge, notice to the adverse party of the hearing thereon is required, either by statute or in the discretion of the judge, the judge to whom such application, petition or matter has been presented may, in the order of notice issued by the judge, designate any other judge of the court to hear the same, the consent thereto of such other judge having first been obtained, and when any application, petition or matter is pending before any judge of the court, such application, petition or matter may be by the judge transferred to any other judge of the court, upon like consent first obtained; and in either case such other judge shall thereupon proceed with such application, petition or matter with the same authority as though the same had originally been presented to such judge or had theretofore been pending before him or her. (See General Statutes § 51-189.)

(P.B. 1978-1997, Sec. 448.)

Sec. 20-4. Trial before Judge; Lodging File and Papers

In all trials of causes before a judge that might have been brought to the court, the judge, when a decision has been reached, shall lodge the file and papers in such cause, and a memorandum of the judge's decision, with the clerk of the court who would have been the custodian thereof had the cause been tried by the court in such judicial district, and such clerk shall thereupon become their lawful custodian. (See General Statutes § 51-190a.)

(P.B. 1978-1997, Sec. 449.)

Sec. 20-5. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of the judge's decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1978-1997, Sec. 450.)

Sec. 20-6. Clerk Designated by Judge to Take Papers

When a cause other than one mentioned in Sections 20-4 and 20-5 is tried by a judge, and it is not otherwise provided by law where the file and papers shall be lodged, the judge, when a decision has been reached, shall designate a clerk of the superior court with whom the same shall be lodged, and shall thereupon lodge the same with such clerk with a memorandum of the judge's decision, and such clerk shall thereupon become the lawful custodian thereof.

(P.B. 1978-1997, Sec. 451.)

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CHAPTER 21

RECEIVERS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 21-1. Appointment of Temporary Receiver in Chambers

All applications for the appointment of a receiver shall be made in a civil action, and at any time after the writ and complaint has been signed. As ancillary thereto, an application may be made, when the court before which such action is pending is not in actual session, to a judge in chambers for the appointment of a temporary receiver, after notice to the parties in interest, unless the exigencies of the case require otherwise; and said judge may appoint a temporary receiver, and upon such appointment shall fix a time for a hearing upon the confirmation of such temporary receiver and the appointment of appraisers, and cause not less than six days' notice thereof to be given to all parties in interest by mail and otherwise if deemed necessary. Upon such hearing or an adjournment thereof, the judge may appoint two or more appraisers and either confirm the temporary receiver or make a new appointment of a temporary receiver. The appointment of a temporary receiver shall continue until a permanent receiver shall be appointed or until the further order of the court.

(P.B. 1978-1997, Sec. 485.)

Sec. 21-2. Permanent Receiver

The temporary receiver shall cause the case to be duly assigned for trial in the court at the earliest practicable day after the return day of the action, for the appointment of a permanent receiver, and in cases where the day for such hearing has not been fixed before the opening of the session of the court to which said proceeding is returnable, the temporary receiver, on or before such opening, shall make and place upon the short calendar list an application therefor.

(P.B. 1978-1997, Sec. 486.)

Sec. 21-3. Appointments by Court

(a) All appointments of receivers shall be temporary appointments, unless made by the court after the return day of the action, and upon full notice and opportunity to be heard to all concerned. If made after the return day the appointment shall be upon written motion addressed to the court. If made before the return day the party desiring the appointment shall file a written application as is required where the appointment is by a judge in chambers.

(b) In either case the court making a temporary appointment shall forthwith make an order for a hearing upon the confirmation of such temporary appointment and the appointment of two or more appraisers, and direct the temporary receiver to give notice of such hearing and of the time and place thereof to all parties concerned by public advertisement if it seems advisable and by causing a written or printed notice thereof to be mailed, postpaid, to all known creditors and to all stockholders of record of the corporation, if the defendant be a corporation, at least six days before such hearing.

(c) At said hearing, if after the return day, the court may appoint a permanent receiver, who may be either the temporary receiver or a new appointee. If said hearing is before the return day, then such appointment shall be temporary only, and such temporary receiver shall cause the matter of his or her confirmation as permanent receiver

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or the appointment of some other person as permanent receiver to be brought before the court as provided in the case of temporary receivers appointed by a judge in chambers.
(P.B. 1978-1997, Sec. 487.)

Sec. 21-4. Receiver to Give Bond

Every receiver, temporary or permanent, before assuming to act as such, shall file with the clerk of the court by which, or by a judge of which, he or she was appointed, a bond with such surety or sureties, and for such an amount as such court or judge may order and approve, payable to the state and conditioned for the faithful performance of the receiver's official duties. (See General Statutes § 52-506 and annotations.)
(P.B. 1978-1997, Sec. 488.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 21-5. Inventory

Every receiver, upon confirmation or permanent appointment, shall forthwith, and without any order therefor, prepare and file a sworn inventory of the assets of the estate, which shall contain an appraisal of each item therein, made by the appraisers appointed for such purpose. Every temporary receiver, upon original appointment, shall make an inventory, unless otherwise ordered.
(P.B. 1978-1997, Sec. 489.)

Sec. 21-6. Insolvent Estates to Be Liquidated

At the time of the appointment or of the confirmation of a temporary receiver or the appointment of a permanent receiver, such inquiry as is practicable shall be made by the judge or court relative to the solvency of the estate. When, upon such inquiry or thereafter, it appears to the judge or court that the estate is insolvent, the estate shall be promptly liquidated and no further continuance of the business, except for the purpose of liquidation, shall be permitted, unless, because of exceptional circumstances, it shall be otherwise ordered.
(P.B. 1978-1997, Sec. 490.)

Sec. 21-7. Presentation and Allowance of Claims; Presentation

The court shall, in the judgment appointing a permanent receiver, limit a time for the presentation of claims against the estate and direct that the receiver forthwith give notice thereof, and that all claims not exhibited within said time will be barred, to all known creditors, by mailing a written or printed copy of such order. The court may provide for further notice if it deems the same advisable.
(P.B. 1978-1997, Sec. 492.)

Sec. 21-8. —Allowance; Hearing

(a) The receiver shall, within two weeks after the order of notice, make a return of compliance with it, and within a like time after the expiration of the limitation file a list of claims presented, separately stating those in which a preference is claimed, and make application for an order of the court thereon.

(b) The court shall thereupon by its order allow or disallow, in whole or in part, the claims so returned and any preferences claimed and order the receiver forthwith to give written notice to each claimant whose claim has been disallowed in whole or in part that unless the claimant shall within two weeks from the giving of such notice by the receiver bring an application to the court for the allowance of the claim, the same shall be barred; and any such application shall be speedily heard and the decision thereon shall, subject to appeal, be final. Any creditor may intervene in the proceeding.
(P.B. 1978-1997, Sec. 493.)

Sec. 21-9. —Extensions of Time

The court, for good cause shown, may extend the time for presenting a claim or claims to the receiver, and may extend the time for making application for the allowance of a claim or claims disallowed in whole or in part.
(P.B. 1978-1997, Sec. 494.)

Sec. 21-10. —Hearing before Action on Allowance

The court may, upon due notice to a claimant, hear the claimant's claim before allowing or disallowing the same and, subject to appeal, the decision thereon shall be final.
(P.B. 1978-1997, Sec. 495.)

Sec. 21-11. Continuance of Business

No order for the continuance of a business shall be made for a greater period of time than four months, except for special cause shown. For cause shown, such orders may be renewed from time to time, as the exigencies of the case may require.
(P.B. 1978-1997, Sec. 496.)

Sec. 21-12. Reports where Business Continued

When a receiver is continuing business under the order of a judge or the court, the receiver shall, during the first ten days of each month, file a report showing the results of operating the business during the preceding month. The receiver shall furnish supplemental schedules and information if required by the court.
(P.B. 1978-1997, Sec. 497.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

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Sec. 21-13. Semiannual Summary of Orders

Every receiver shall, on the first Tuesdays of April and October of each year, file a summary statement of all orders made in said cause during the six months preceding, and the doings thereunder. The clerk shall refer the statement to the judge holding the term or session then pending, or held next thereafter, who shall, upon examination of the same, make such further orders in said cause as are deemed necessary, and may direct that the cause be placed on the short calendar for an order approving the statement.

(P.B. 1978-1997, Sec. 498.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''refer'' was substituted for ''hand'' in the second sentence, after ''clerk shall.''

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 21-14. Semiannual Accounts

Every receiver upon an estate which has been in process of settlement more than four months (except receivers of state banks and trust companies) shall during the first week of April and October of each year sign, swear to and file with the court a full and detailed account of the condition and prospects of the estate as of the close of the next preceding month, including therein a statement of realization and liquidation. The receiver shall furnish supplemental schedules and information if required by the court. The receiver shall cause a motion for the approval of the report to be placed on the short calendar.

(P.B. 1978-1997, Sec. 499.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 21-15. Orders in Chambers

Whenever any judge shall have appointed a receiver in chambers, all applications for orders in said proceeding made out of court shall, except in the case of such judge's absence from the state, the judge's disability or a request in writing to the contrary, be made to such judge.

(P.B. 1978-1997, Sec. 500.)

Sec. 21-16. Duty of Clerks

The clerks shall see that these rules are enforced and shall promptly report any violations thereof to the court.

(P.B. 1978-1997, Sec. 501.)

Sec. 21-17. Removal of Receivers

Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed the receiver, or, if such court is not in session, a judge thereof, may fill the vacancy. (See General Statutes § 52-513 and annotations.)

(P.B. 1978-1997, Sec. 502.)

Sec. 21-18. Ancillary Receivers

These rules, so far as applicable, shall govern the appointment and duties of ancillary receivers.

(P.B. 1978-1997, Sec. 503.)

Sec. 21-19. Receiver of Rents; Applicability of Previous Sections

Sections 21-1 through 21-15 shall not apply to receivers of rents.

(P.B. 1978-1997, Sec. 505.)

Sec. 21-20. —Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or plaintiff's attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.

(P.B. 1978-1997, Sec. 506.)

Sec. 21-21. —Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by *(court or judge)* been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of _____ and described as *(describe generally, e.g., No. 93 Maple Street):*

Now, therefore, if said A shall well and truly perform his or her duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

(P.B. 1978-1997, Sec. 507.)

Sec. 21-22. —Discharge

Any party in interest may at any time move for the discharge of the receiver.

(P.B. 1978-1997, Sec. 508.)

Sec. 21-23. —Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances

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require. The judge shall certify any order passed by the judge in chambers to the court in which the action may be pending.

(P.B. 1978-1997, Sec. 509.)

Sec. 21-24. —Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1978-1997, Sec. 510.)

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CHAPTER 22

UNEMPLOYMENT COMPENSATION

Sec.
22-1. Appeal
22-2. Assignment for Hearing
22-3. Finding
22-4. Correction of Finding; Motion to Correct Finding
22-5. —Evidence to Be Filed by Appellee
22-6. —Motion to Correct by Appellee
22-7. —Duty of Board on Motion to Correct
22-8. —Claiming Error on Board's Decision on Motion to Correct
22-9. Function of the Court

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 22-1. Appeal

(a) A decision of the employment security board of review may be appealed, within the time limited by statute, to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides. The appeal shall be in the form of a petition which shall state the grounds on which a review is sought. The appellant shall file the original and five copies of the petition in the office of the employment security board of review. The chair of the board shall, within the third business day after such filing, cause the original petition or petitions to be mailed to the clerk of the superior court and, copy or copies thereof to be mailed to the administrator and to each other party to the proceeding in which the appeal was taken. The clerk shall docket the appeal as returned to the next return day after the receipt of the petition or petitions. No appeal bond shall be required.

(b) At the time the petition is mailed to the clerk, or as soon thereafter as practicable, the chair of the board shall cause to be mailed to the clerk a certified copy of the record, which shall consist of the notice of appeal to the referee and the board, the notices of hearing before them, the referee's findings of fact and decision, the findings and decision of the board, all documents admitted into evidence before the referee and the board or both, and all other evidentiary material accepted by them.

(c) The judicial authority may, on request of a party to the action or on its own motion, order the board to prepare and verify to the court a transcript of the hearing before the referee in cases in which the board's decision was rendered on the record of such hearing, or a transcript of the hearing before the board in cases in which the board's decision was rendered on the record of its own evidentiary hearing.

(P.B. 1978-1997, Sec. 511A.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 22-2. Assignment for Hearing

(a) Appeals from decisions of the employment security board of review are privileged with respect to their assignment for trial, but they shall be claimed for the short calendar. The judicial authority, however, may order the appeal placed on the administrative appeal trial list.

(b) In any appeal in which one of the parties is not represented by counsel and in which the party taking the appeal does not claim the case for the short calendar or trial within a reasonable time after the return day, the judicial authority may of its own motion dismiss the appeal, or the party ready to proceed may move for nonsuit or default as appropriate.

(P.B. 1978-1997, Sec. 511B.)

Sec. 22-3. Finding

The finding of the board should contain only the ultimate, relevant and material facts essential to the case in hand and found by it, together with a statement of its conclusions and the claims of law made by the parties. It should not contain excerpts from evidence or merely evidential facts, nor the opinions or beliefs of the board, nor the reasons for its conclusions. The opinions, beliefs, reasons and argument of the board should be expressed in the memorandum of decision, if any be filed, so far as they may be helpful in the decision of the case.

(P.B. 1978-1997, Sec. 514.)

Sec. 22-4. Correction of Finding; Motion to Correct Finding

If the appellant desires to have the finding of the board corrected, he or she must, within two weeks after the record has been filed in the superior court, unless the time is extended for cause by the board, file with the board a motion for the correction of the finding and with it such portions of the evidence as he or she deems relevant and material to the corrections asked for, certified by the stenographer who took it; but if the appellant

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claims that substantially all the evidence is relevant and material to the corrections sought, he or she may file all of it, so certified, indicating in the motion so far as possible the portion applicable to each correction sought. The board shall forthwith upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties.

(P.B. 1978-1997, Sec. 515A.)

Sec. 22-5. —Evidence to Be Filed by Appellee

The appellee should, if he or she deems that additional evidence is relevant and material to the motion to correct, within one week after the appellant has filed the transcript of evidence, so notify the board, and, at the earliest time, he or she can procure it file with the board such additional evidence.

(P.B. 1978-1997, Sec. 516.)

Sec. 22-6. —Motion to Correct by Appellee

If the appellee desires to file a motion to correct, the procedure to be followed shall be the same as that set forth in Sections 22-4 and 22-5 above.

(P.B. 1978-1997, Sec. 516A.)

Sec. 22-7. —Duty of Board on Motion to Correct

The board shall file with the court, within a reasonable time, such motions to correct together with its decision thereon. If the motions are denied in whole or in part and such denial is made a ground of appeal to the court, the board shall, within a reasonable time thereafter, file in the court the transcripts of evidence filed by the appellant and the appellee, together with such additional evidence as may have been taken before the board in the form of testimony, or taken by it in other ways, and deemed by it relevant and material to these corrections.

(P.B. 1978-1997, Sec. 518.)

Sec. 22-8. —Claiming Error on Board's Decision on Motion to Correct

(a) Any party to the appeal may file claims of error concerning the board's decision on a motion to correct the finding. Such claims shall be filed with the court within two weeks from the date the board's decision on the motion to correct was mailed to the party making the claim, and shall contain a certification that a copy thereof has been served on the board and on each other party to the appeal in accordance with Sections 10-12 through 10-17.

(b) The appellant shall include his or her claims of error in the appeal petition unless they are filed subsequent to the filing of that petition, in which case they shall be set forth in an amended petition.

(P.B. 1978-1997, Sec. 518A.)

Sec. 22-9. Function of the Court

(a) Such appeals are heard by the court upon the certified copy of the record filed by the board. The court does not retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether the finding should be corrected, or whether there was any evidence to support in law the conclusions reached. It cannot review the conclusions of the board when these depend upon the weight of the evidence and the credibility of witnesses. In addition to rendering judgment on the appeal, the court may order the board to remand the case to a referee for any further proceedings deemed necessary by the court. The court may remand the case to the board for proceedings de novo, or for further proceedings on the record, or for such limited purposes as the court may prescribe. The court may retain jurisdiction by ordering a return to the court of the proceedings conducted in accordance with the order of the court, or may order final disposition. A party aggrieved by a final disposition made in compliance with an order of the superior court may, by the filing of an appropriate motion, request the court to review the disposition of the case.

(b) Corrections by the court of the board's finding will only be made upon the refusal to find a material fact which was an admitted or undisputed fact, upon the finding of a fact in language of doubtful meaning so that its real significance may not clearly appear, or upon the finding of a material fact without evidence.

(P.B. 1978-1997, Sec. 519.)

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CHAPTER 23

MISCELLANEOUS REMEDIES AND PROCEDURES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 23-1. Arbitration; Confirming, Correcting or Vacating Award

In proceedings brought for confirming, vacating or correcting an arbitration award under General Statutes §§ 52-417, 52-418 or 52-419, the court or judge to whom the application is made shall cause to be issued a citation directing the adverse party or parties in the arbitration proceeding to appear on a day certain and show cause, if any there be, why the application should not be granted.

(P.B. 1978-1997, Sec. 525.)

Sec. 23-2. Expedited Process Cases

Civil actions which come within the purview of General Statutes § 52-195b (b) (2) may be placed on the expedited process track pursuant to Section 23-3. Expedited process track cases shall follow the procedures set forth in Sections 23-3 through 23-12. Such procedures are subject to any stays ordered by the judicial authority for referral of the case to an alternate dispute resolution program.

(P.B. 1978-1997, Sec. 525A.)

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Sec. 23-3. —Placement on the Expedited Process Track

(a) Each plaintiff may file with the complaint a form consenting to placement of the case on the expedited process track, signed by all parties to the action and their attorneys. At the time of filing such consent form and complaint the plaintiff shall file with each other party the responses to discovery required by Section 23-7 (a) (1).

(b) If the case is not brought as an expedited process track case pursuant to subsection (a) at the time the complaint is filed, the parties may at a later time file forms consenting to expedited process track placement.

(c) The consent to expedited process track placement shall be on a form prescribed by the office of the chief court administrator, or on a form substantially in compliance therewith, and shall be signed by the party and his or her attorney. Such form shall contain a statement that the case is one which may be brought as an expedited process case under General Statutes § 52-195b (b) (2), that the party consents to placement of the case on the expedited process track, and that the party waives the right to a trial by jury, the right to a record of the trial proceedings, and the right to appeal. The form to be filed by each plaintiff shall also contain a statement that the plaintiff agrees to limit the amount in demand to a maximum of $75,000, exclusive of interest and costs. A party filing such form shall serve it on all other parties in accordance with Sections 10-12 through 10-17. The waivers and the limit to the amount in demand shall apply only if the case is placed on the expedited process track.

(d) When all parties to the action have filed a consent to expedited track placement, the plaintiff shall file with the clerk a notice for placement on the expedited process track. Once the notice has been filed, the parties will be limited to the procedures set forth in Sections 23-5 through 23-12, even if discovery, pleadings and other filings not allowed in those sections have previously been filed.

(P.B. 1978-1997, Sec. 525B.)

Sec. 23-4. —Pleadings Allowed in Expedited Process Track Cases

Only the following pleadings may be filed in expedited process track cases: answers, special defenses, replies to special defenses, counterclaims and cross complaints. The time periods set forth in Section 10-8 for the filing of pleadings shall apply to these cases.

(P.B. 1978-1997, Sec. 525C.)

Sec. 23-5. —Motions Allowed

Only the following motions may be filed in expedited process track cases: motions for nonsuit or default for failure to appear or for failure to plead; motions to substitute, add or implead parties; motions to consolidate; motions to withdraw appearance; motions to amend the amount in demand; and motions to transfer the case from the expedited process track to the regular docket. Except as otherwise provided in Sections 17-20 and 17-32 concerning motions for default for failure to appear and for failure to plead, these motions shall be placed on short calendar. Motions to substitute, add, or implead parties and motions to consolidate shall be accompanied by a notice that the case has been placed on the expedited process track.

(P.B. 1978-1997, Sec. 525D.)

Sec. 23-6. —Discovery Allowed

Except with regard to discovery required as a result of the management conference to be held pursuant to Section 23-9, discovery in expedited process cases shall be limited to the interrogatories and requests for production set forth in forms 201, 202, 204 and 205 of the rules of practice. These forms are set forth in the Appendix of Forms in this volume. Depositions may be taken, but only of parties to the action. Requests for admission shall not be allowed; admissions of fact will be considered at the management conference.

(P.B. 1978-1997, Sec. 525E.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 23-7. —Discovery Procedure for Expedited Process Cases

(a) The following time periods for discovery shall apply to expedited process cases.

(1) Except in cases under Section 23-3 (a) in which the plaintiff complied with discovery at the time of filing the complaint, the plaintiff shall serve on each defendant in accordance with Sections 10-12 through 10-17 responses to forms 202 and 205 of the rules of practice within ten days of the date the notice for placement on the expedited process track was filed.

(2) The defendant shall serve on the plaintiff in accordance with Sections 10-12 through 10- 17 responses to forms 201 and 204 of the rules of practice within ten days of the defendant's receipt of the plaintiff's discovery.

(b) Any issues concerning discovery shall be considered by the judicial authority at the management conference; they shall not be placed on the short calendar.

(P.B. 1978-1997, Sec. 525F.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

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Sec. 23-8. —Certification That Pleadings Are Closed

Once the pleadings are closed, any party to the action may file a certificate of closed pleadings pursuant to Section 14-8. Such claim shall state that the case is on the expedited process track and that it is privileged with respect to assignment for trial.

(P.B. 1978-1997, Sec. 525G.)

Sec. 23-9. —Case Management Conference for Expedited Process Track Cases

(a) A case management conference shall be scheduled after the filing of the notice of placement on the expedited process track or the certificate of closed pleadings, whichever occurs sooner. All parties and their attorneys shall attend the conference which shall be presided over by a judge or a judge trial referee. The following matters shall be considered at this conference:

(1) A discussion of the possibility of settlement.

(2) Issues concerning the discovery exchange.

(3) Simplification of the issues.

(4) Amendments to the pleadings.

(5) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(6) Inspection of hospital records and X-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into the possession of the parties or of counsel since compliance with discovery.

(8) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into the possession of counsel subsequent to the management conference.

(b) The judicial authority may make appropriate orders at the management conference, including the imposition of discovery sanctions under Section 13-14, and such orders shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. Failure to abide by any such orders may subject the offending party to a nonsuit or a default.

(c) At the management conference the judicial authority shall, at the request of any party, address any party on the record to ensure that the party voluntarily, knowingly and intelligently waived the rights to a jury trial, to a record of the trial proceedings and to appeal and that the party understands the expedited process procedure.

(P.B. 1978-1997, Sec. 525H.)

Sec. 23-10. —Transfer to Regular Docket

(a) On motion of a party or on the judicial authority's own motion, the judicial authority may order a case transferred from the expedited process track to the regular docket if any of the following apply:

(1) the movant is a substitute, added or impleaded party who became a party to the case after it was placed on the expedited process track and objects to such placement;

(2) after a case was placed on the expedited process track it was consolidated for trial with a case not eligible for that track or in which any of the parties decline to consent to having the matter proceed as an expedited process case; or

(3) the judicial authority determines that good cause exists for the transfer.

(b) The judicial authority shall order a case transferred from the expedited process track to the regular docket upon the filing of an affidavit by the plaintiff or the plaintiff's attorney, with supporting documentation, stating that subsequent to the filing of plaintiff's consent to expedited process track placement the affiant has learned that the damages which may be recovered exceed $75,000, exclusive of interests and costs.

(P.B. 1978-1997, Sec. 525I.)

Sec. 23-11. —Offers of Judgment

The rules concerning offers of judgment shall apply to cases on the expedited process track.

(P.B. 1978-1997, Sec. 525J.)

Sec. 23-12. —Trial of Cases on Expedited Process Track

Cases on the expedited process track shall be tried by a judicial authority without a jury. Witnesses shall be sworn. Medical or other expert witnesses will not be allowed, but reports and records of medical providers may be admitted into evidence. The judicial authority shall not be bound by the technical rules of evidence, but shall make inquiry, through oral testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of these rules.

(P.B. 1978-1997, Sec. 525K.)

Sec. 23-13. Granting of Complex Litigation Status and Assignment

The chief court administrator or the chief administrative judge of the civil division may designate a group of cases that have many parties and common questions of law or fact as complex litigation cases and assign the cases to a single judge for pretrial, trial, or both and, if appropriate, may

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assign the cases to another judge or court officer for settlement or mediation discussions.
(P.B. 1998.)

Sec. 23-14. —Powers of Judge Assigned in Complex Litigation Cases

The judge to whom complex litigation cases have been assigned may stay any or all further proceedings in the cases, may transfer any or all further proceedings in the cases to the judicial district where the judge is sitting, may hear all pretrial motions, and may enter any appropriate order which facilitates the management of the complex litigation cases.
(P.B. 1998.)

Sec. 23-15. —Request for Complex Litigation Status

An attorney or judge may request the chief court administrator to make an assignment pursuant to Section 23-13. The request shall be submitted in writing to the chief court administrator and the chief administrative judge of the civil division. When an attorney makes such a request, the attorney shall serve a copy of the request on other parties pursuant to Sections 10-12 through 10-17. Should the chief court administrator deem it appropriate to do so, the chief court administrator may solicit comments on the request by causing a notice to be published in the Connecticut Law Journal.
(P.B. 1998.)

Sec. 23-16. Foreclosure of Mortgages

At the time the plaintiff files a motion for judgment of foreclosure, the plaintiff shall serve on each appearing defendant, in accordance with Sections 10-12 through 10-17, a copy of the appraisal report of the property being foreclosed. The motion for judgment shall contain a certification that such service was made.
(P.B. 1978-1997, Sec. 526.)

Sec. 23-17. —Listing of Law Days

(a) In any action to foreclose a mortgage or lien, any party seeking a judgment of strict foreclosure shall file, with the motion for judgment, a list indicating the order in which law days should be assigned to the parties to the action. The order of the law days so indicated shall reflect the information contained in the plaintiff's complaint, as that information may have been modified by the pleadings. Objections to the order of law days indicated on said list shall only be considered in the context of a motion for determination of priorities, which motion must be filed prior to the entry of judgment.

(b) Unless otherwise ordered by the judicial authority at the time it renders the judgment of strict foreclosure, the following provisions shall be deemed to be part of every such judgment:

(1) That, upon the payment of all of the sums found by the judicial authority to be due the plaintiff, including all costs as allowed by the judicial authority and taxed by the clerk, by any defendant, after all subsequent parties in interest have been foreclosed, the title to the premises shall vest absolutely in the defendant making such payment, subject to such unpaid encumbrances, if any, as precede the interest of the redeeming defendant.

(2) That the defendants, and all persons claiming possession of the premises through any of the defendants under any conveyance or instrument executed or recorded subsequent to the date of the lis pendens or whose interest shall have been thereafter obtained by descent or otherwise, deliver up possession of the premises to the plaintiff or the defendant redeeming in accordance with this decree, with stay of execution of ejectment in favor of the redeeming defendant until one day after the time herein limited to redeem, and if all parties fail to redeem, then until the day following the last assigned law day.
(P.B. 1978-1997, Sec. 526A.)

Sec. 23-18. —Proof of Debt in Foreclosures

(a) In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto.

(b) No less than five days before the hearing on the motion for judgment of foreclosure, the plaintiff shall file with the clerk of the court and serve on each appearing party, in accordance with Sections 10-12 through 10-17, a preliminary statement of the plaintiff's monetary claim.
(P.B. 1978-1997, Sec. 527.)

Sec. 23-19. —Motion for Deficiency Judgment

(a) Whenever a deficiency judgment is claimed in a foreclosure action, the party claiming such judgment shall file with the clerk of the court within the time limited by statute a written motion setting forth the facts relied on as the basis for the judgment, which motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less than fifteen days following the filing of the motion, except as the judicial authority may otherwise order. At such hearing

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the judicial authority shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff's claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment.

(b) Upon the motion of any party and for good cause shown, the court may refer such motion to a judge trial referee for hearing and judgment.

(c) Not less than fifteen days prior to the hearing on the motion for deficiency judgment, the party claiming the deficiency judgment shall file with the clerk of the court and serve on each appearing party, in accordance with Sections 10-12 through 10-17, a preliminary computation of the debt, the name of any expert on whose opinion the party will rely to prove the value of the property on the date of vesting, and a statement of the party's claims as to the value. If any party intends to offer evidence contradicting the debt or the valuation of the property, such party shall file an objection five days before the hearing on the motion and shall disclose the name of any person who will testify as to the value of the property.

(P.B. 1978-1997, Sec. 528.)

Sec. 23-20. Review of Civil Contempt

No person shall continue to be detained in a correctional facility pursuant to an order of civil contempt for longer than thirty days, unless at the expiration of such thirty days such person is presented to the judicial authority. On each such presentment, the contemnor shall be given an opportunity to purge himself or herself of the contempt by compliance with the order of the judicial authority. If the contemnor does not so act, the judicial authority may direct that the contemnor remain in custody under the terms of the order of the judicial authority then in effect, or may modify the order if the interests of justice so dictate.

(P.B. 1978-1997, Sec. 528A.)

Sec. 23-21. Habeas Corpus

Except as otherwise provided herein, the procedures set forth in Sections 23-22 through 23-42 shall apply to any petition for a writ of habeas corpus which sets forth a claim of illegal confinement. Such procedures shall not apply to any petition for a writ of habeas corpus brought to determine the custody and visitation of children or brought by or on behalf of a person confined in a hospital for mental illness.

(P.B. 1978-1997, Sec. 529.)

Sec. 23-22. —The Petition

A petition for a writ of habeas corpus shall be under oath and shall state:

(1) the specific facts upon which each specific claim of illegal confinement is based and the relief requested;

(2) any previous petitions for the writ of habeas corpus challenging the same confinement and the dispositions taken thereon; and

(3) whether the legal grounds upon which the petition is based were previously asserted at the criminal trial, on direct appeal or in any previous petition.

(P.B. 1978-1997, Sec. 529A.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 23-23. —Return of Noncomplying Petition

The court may return any petition not in substantial compliance with the requirements of Section 23-22 with a description of how the petition fails to comply with filing requirements and a statement indicating that a corrected petition may be resubmitted.

(P.B. 1978-1997, Sec. 529B.)

Sec. 23-24. —Preliminary Consideration of Judicial Authority

(a) The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that:

(1) the court lacks jurisdiction;

(2) the petition is wholly frivolous on its face; or

(3) the relief sought is not available.

(b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this rule.

(P.B. 1978-1997, Sec. 529C.)

Sec. 23-25. —Waiver of Filing Fees and Costs of Service

The judicial authority may waive the filing fee and costs of service in accordance with Section 8-2.

(P.B. 1978-1997, Sec. 529D.)

Sec. 23-26. —Appointment of Counsel

In petitions arising from criminal matters, extradition proceedings or delinquency matters, if the petitioner has requested counsel, the judicial authority shall refer the matter to the public defender for an investigation of indigence. If, after such investigation, the judicial authority determines that the petitioner is eligible for public defender services, the judicial authority shall appoint counsel in accordance with the provisions of General Statutes § 51-296.

(P.B. 1978-1997, Sec. 529E.)

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Sec. 23-27. —Venue for Habeas Corpus

The venue for habeas corpus matters shall be in accordance with the general statutes. Transfer or removal of the subject of the petition to another location shall not affect venue, provided that the subject of the petition remains in the custody of the respondent.

(P.B. 1978-1997, Sec. 529F.)

Sec. 23-28. —Transfer of Habeas Corpus

The petition may be transferred to another judicial district for good cause shown.

(P.B. 1978-1997, Sec. 529G.)

Sec. 23-29. —Dismissal

The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that:

(1) the court lacks jurisdiction;

(2) the petition, or a count thereof, fails to state a claim upon which habeas corpus relief can be granted;

(3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or to proffer new evidence not reasonably available at the time of the prior petition;

(4) the claims asserted in the petition are moot or premature;

(5) any other legally sufficient ground for dismissal of the petition exists.

(P.B. 1978-1997, Sec. 529H.)

Sec. 23-30. —The Return

(a) The respondent shall file a return to the petition setting forth the facts claimed to justify the detention and attaching any commitment order upon which custody is based.

(b) The return shall respond to the allegations of the petition and shall allege any facts in support of any claim of procedural default, abuse of the writ, or any other claim that the petitioner is not entitled to relief.

(P.B. 1978-1997, Sec. 529I.)

Sec. 23-31. —Reply to the Return

(a) If the return alleges any defense or claim that the petitioner is not entitled to relief, and such allegations are not put in dispute by the petition, the petitioner shall file a reply.

(b) The reply shall admit or deny any allegations that the petitioner is not entitled to relief.

(c) The reply shall allege any facts and assert any cause and prejudice claimed to permit review of any issue despite any claimed procedural default. The reply shall not restate the claims of the petition.

(P.B. 1978-1997, Sec. 529J.)

Sec. 23-32. —Amendments

The petitioner may amend the petition at any time prior to the filing of the return. Following the return, any pleading may be amended with leave of the judicial authority for good cause shown.

(P.B. 1978-1997, Sec. 529K.)

Sec. 23-33. —Request for a More Specific Statement

Any party may request a more specific statement regarding a preceding pleading to obtain a more complete and particular statement of the facts supporting each legal claim or to obtain any other appropriate correction in the preceding pleading. Such request shall be deemed to have been granted by the judicial authority on the date of the filing and shall be complied with by the party to whom it is directed within thirty days of filing, unless within thirty days of filing the party to whom it is directed objects, setting forth, in concise fashion, the basis for the objection. A request for a more specific statement, and objection, may be ruled upon by the judicial authority without oral argument, unless the judicial authority determines that oral argument is necessary.

(P.B. 1978-1997, Sec. 529L.)

Sec. 23-34. —Summary Procedures for Habeas Corpus Petitions

The judicial authority may establish such additional procedures as it determines will aid in the fair and summary disposition of habeas corpus petitions, including, but not limited to, scheduling orders.

(P.B. 1978-1997, Sec. 529M.)

Sec. 23-35. —Schedule for Filing Pleadings

Unless the judicial authority issues specific scheduling orders, the following schedule shall apply:

(a) Amended Petition.

(1) Transcript Necessary. If a transcript of prior proceedings is necessary to pursue the petition, within thirty days after notice that the writ has issued, or notice of appointment of counsel, whichever is later, the petitioner shall file a statement describing any transcript(s) ordered. Upon receipt of the transcript(s), the petitioner shall file a notice of transcript receipt. Within sixty days of receipt of the transcript(s), the petitioner shall file an amended petition, or notice that the petition will not be amended.

(2) Transcript not Necessary. If a transcript is not necessary to pursue the petition, within thirty days after notice that the writ has issued, or notice of appointment of counsel, whichever is later, the petitioner shall file an amended petition or a notice that the petition will not be amended.

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(b) Return or Responsive Pleading. The return or responsive pleading shall be filed within thirty days of the filing of the amended petition or the notice that the petition will not be amended.

(c) Reply. Any reply to the return shall be filed within thirty days after the filing of the return.

(d) The judicial authority may alter the time for filing any pleading.

(P.B. 1978-1997, Sec. 529N.)

Sec. 23-36. —The Expanded Record

A party may file with the court any portion of the transcript and any portion of the superior court, appellate court or supreme court record or clerk's file as part of the record before the habeas court.

(P.B. 1978-1997, Sec. 529O.)

Sec. 23-37. —Summary Judgment in Habeas Corpus

At any time after the pleadings are closed, any party may move for summary judgment, which shall be rendered if the pleadings, affidavits and any other evidence submitted show that there is no genuine issue of material fact between the parties requiring a trial and the moving party is entitled to judgment as a matter of law.

(P.B. 1978-1997, Sec. 529P.)

Sec. 23-38. —Discovery in Habeas Corpus

(a) Discovery, as of right, is limited to:

(1) A list of witnesses;

(2) A statement of the subject matter upon which any expert witness is expected to testify;

(3) A statement of the opinions the expert is expected to render and the ground for each opinion.

(b) The parties may cooperatively engage in informal discovery. The provisions of chapter 13, Discovery and Depositions of the rules of practice, do not apply to habeas corpus proceedings.

(c) Upon motion, the judicial authority may order such other limited discovery as the judicial authority determines will enhance the fair and summary disposal of the case.

(P.B. 1978-1997, Sec. 529Q.)

Sec. 23-39. —Depositions in Habeas Corpus

(a) Upon leave of the judicial authority, the testimony of any person may be taken by deposition if the testimony will be required at an evidentiary hearing and it appears:

(1) the testimony may not be available at the required evidentiary hearing because of physical or mental illness or infirmity of the witness; or

(2) the witness resides out of this state and cannot be compelled to attend and give testimony; or

(3) the witness may otherwise be unavailable to testify at the required evidentiary hearing.

(b) The admissibility of deposition testimony shall be governed by the rules of evidence.

(P.B. 1978-1997, Sec. 529R.)

Sec. 23-40. —Court Appearance in Habeas Corpus

(a) The petitioner and, if they are not the same, the subject of the petition, shall have the right to be present at any evidentiary hearing and at any hearing or oral argument on a question of law which may be dispositive of the case, unless the petitioner, or the subject of the petition, as the case may be, waives such right or is excused by the judicial authority for good cause shown. If the petitioner is represented by counsel, the judicial authority may, but is not required to, permit the petitioner to be present at any other proceeding.

(b) Notwithstanding any other provision of these rules, in a petition arising from a claim regarding conditions of confinement the physical appearance in court of the petitioner or the subject of the petition may, in the discretion of the judicial authority, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that the petitioner, or the subject of the petition, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the petitioner and his or her attorney can confer in private must be provided.

(P.B. 1978-1997, Sec. 529S.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 23-41. —Motion for Leave to Withdraw Appearance of Appointed Counsel

(a) When counsel has been appointed pursuant to Section 23-26, and counsel, after conscientious investigation and examination of the case, concludes that the case is wholly frivolous, counsel shall so advise the judicial authority by filing a motion for leave to withdraw from the case.

(b) At the time such motion is filed, counsel for the petitioner shall also file all relevant portions of the record of the criminal case, direct appeal and any postconviction proceedings not already filed together with a memorandum of law outlining:

(1) the claims raised by the petitioner and any other potential claims apparent in the case;

(2) the efforts undertaken to investigate the factual basis and legal merit of each claim;

(3) the factual and legal basis for the conclusion that the case is wholly frivolous.

(c) Any motion for leave to withdraw and supporting memorandum of law shall be filed under seal and provided to the petitioner. Counsel shall serve opposing counsel with notice that a motion

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for leave to withdraw has been filed but shall not serve opposing counsel with a copy of the motion or any supporting memorandum of law. The petitioner shall have thirty days from the date the motion and supporting memorandum are filed to file a response with the court.

(P.B. 1978-1997, Sec. 529T.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 23-42. —Judicial Action on Motion for Permission to Withdraw Appearance

(a) The presiding judge shall fully examine the memoranda of law filed by counsel and the petitioner, together with any relevant portions of the records of prior trial court, appellate and postconviction proceedings. If, after such examination, the presiding judge concludes that the submissions establish that the petitioner's case is wholly frivolous, such judge shall grant counsel's motion to withdraw and permit the petitioner to proceed as a self-represented party. A memorandum shall be filed setting forth the basis for granting any motion under Section 23-41.

(b) If, after the examination required in subsection (a), the presiding judge does not conclude that the petitioner's case is wholly frivolous, such judge may deny the motion to withdraw, may appoint substitute counsel for further proceedings under Section 23-41, or may allow the withdrawal on other grounds and appoint new counsel to represent the petitioner.

(P.B. 1978-1997, Sec. 529U.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

Sec. 23-43. Interpleader; Pleadings

The complaint in an interpleader action shall allege only such facts as show that there are adverse claims to the fund or property.

(P.B. 1978-1997, Sec. 538.)

Sec. 23-44. —Procedure in Interpleader

No trial on the merits of an interpleader action shall be had until (1) an interlocutory judgment of interpleader shall have been entered; and (2) all defendants shall have filed statements of claim, been defaulted or filed waivers. Issues shall be closed on the claims as in other cases.

(P.B. 1978-1997, Sec. 539.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 23-45. Mandamus; Parties Plaintiff

An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person, or by any state's attorney in a capacity as such to enforce a public duty.

(P.B. 1978-1997, Sec. 541.)

Sec. 23-46. —Mandamus Complaint

The writ and complaint in an original action shall be in the form used in, and served as are, ordinary civil actions, but with a distinct statement in the prayer for relief that an order in the nature of a mandamus is sought. No affidavit to the truth of the allegations of the complaint is required, and no bond or recognizance is necessary other than that ordinarily used in civil actions; and no bond or recognizance shall be required where the action is brought by a state's attorney.

(P.B. 1978-1997, Sec. 542.)

Sec. 23-47. —Mandamus in Aid of Pending Action

An order in the nature of a mandamus may be made in aid of a pending action upon the application of any party, and any person claimed to be charged with the duty of performing the act in question may be summoned before the court by the service upon that person of a rule to show cause.

(P.B. 1978-1997, Sec. 543.)

Sec. 23-48. —Temporary Order of Mandamus

The plaintiff may attach to the complaint or subsequently file a motion under oath for a temporary order of mandamus to be effective until the final disposition of the cause. Such a motion shall be addressed to the court to which the action is returnable. The judicial authority may, if it appears upon hearing that the plaintiff will otherwise suffer irreparable injury, forthwith issue such an order or it may issue a rule to show cause why it should not be issued; but no such temporary order shall issue in any case, except where the state's attorney is the plaintiff, until the plaintiff has given to the opposing party a bond with surety, approved by the judicial authority, that the plaintiff will answer all damages should the plaintiff fail to prosecute the action to effect, unless the judicial authority shall find that the giving of such bond is unnecessary. Any party may at any time make a motion to the court that any such temporary order be dissolved.

(P.B. 1978-1997, Sec. 544.)

Sec. 23-49. —Pleadings in Mandamus

The defendant may file any proper motion directed to the allegations of the complaint, or, desiring to attack their legal sufficiency in law, a motion to strike, or a return in the form of an answer, and further pleadings shall continue as in civil actions until issues are joined, provided that, where an application for an order is made in a pending action, the extent to which and the time

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in which the respondent may plead shall be as directed by the judicial authority.
(P.B. 1978-1997, Sec. 545.)

Sec. 23-50. Writs of Error

In every writ of error there must be a special assignment of errors, in which the precise matters of error in the proceedings in the superior court relied upon as grounds of relief must be set forth. No others will be heard or considered by the judicial authority.
(P.B. 1978-1997, Sec. 546.)

Sec. 23-51. Petition to Open Parking or Citation Assessment

(a) Any aggrieved person who wishes to appeal a parking or citation assessment issued by a town, city, borough or other municipality shall file with the clerk of the court within the time limited by statute a petition to open assessment with a copy of the notice of assessment annexed thereto. A copy of the petition with the notice of assessment annexed shall be sent by the petitioner by certified mail to the town, city, borough or municipality involved.

(b) Upon receipt of the petition, the clerk of the court, after consultation with the presiding judge, shall set a hearing date on the petition and shall notify the parties thereof. There shall be no pleadings subsequent to the petition.

(c) The hearing on the petition shall be de novo. There shall be no right to a hearing before a jury.
(P.B. 1978-1997, Sec. 546A.)

Sec. 23-52. Fact-Finding; Approval of Fact Finders

(a) Upon publication of notice requesting applications, any commissioner of the superior court admitted to practice in this state for at least five years may submit his or her name to the office of the chief court administrator for approval to be placed on a list of fact finders for one or more judicial districts.

(b) The chief court administrator shall have the power to designate fact finders for such term as the chief court administrator may fix and, in his or her discretion, to revoke such designation at any time.

(c) Applicants and fact finders must satisfactorily complete such training programs as may be required by the chief court administrator.
(P.B. 1978-1997, Sec. 546C.)

Sec. 23-53. —Referral of Cases to Fact Finders

The court, on its own motion, may refer to a fact finder any contract action pending in the superior court, except claims under insurance contracts for uninsured and or underinsured motorist coverage, in which money damages only are claimed, which is based upon an express or implied promise to pay a definite sum, and in which the amount, legal interest or property in controversy is less than $50,000, exclusive of interest and costs. Such cases may be referred to a fact finder only after the pleadings have been closed, a certificate of closed pleadings has been filed, and the time prescribed for filing a jury trial claim has expired.
(P.B. 1978-1997, Sec. 546D.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-54. —Selection of Fact Finders; Disqualification

(a) The fact finder shall be selected by the presiding civil judge for the court location where the case is pending.

(b) A fact finder may disqualify himself or herself upon his or her own application or upon application of a party. Should a party object to a fact finder's refusal to disqualify himself or herself for cause, such party may file an application for disqualification with the presiding civil judge in the court location where the case is pending.

(c) Should a fact finder disqualify himself or herself, the fact finder shall inform in writing the presiding civil judge in the court location where the case is pending.
(P.B. 1978-1997, Sec. 546E.)

Sec. 23-55. —Hearing in Fact-Finding

In matters submitted to fact-finding a record shall be made of the proceedings and the civil rules of evidence shall apply.
(P.B. 1978-1997, Sec. 546F.)

Sec. 23-56. —Finding of Facts

(a) The findings of facts shall be in writing, and in accordance with Section 19-8. The fact finder shall include in the finding of facts the number of days on which hearings concerning that case were held. It shall be signed by the fact finder and should include an award of damages, if applicable.

(b) The fact finder may accompany the finding of facts with a memorandum of decision including such matters as the fact finder may deem helpful in the decision of the case.

(c) Within 120 days of the completion of the fact finder's hearing the fact finder shall file the finding of facts with the clerk of the court with sufficient copies for all counsel.
(P.B. 1978-1997, Sec. 546G.)

Sec. 23-57. —Objections to Acceptance of Finding of Facts

(a) A party may file objections to the acceptance of a finding of facts on the ground that conclusions

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of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the fact finder erred in rulings on evidence or in other rulings, or that there are other reasons why the finding of facts should not be accepted.

(b) Objections must be filed within fourteen days after the filing of the finding of facts.

(P.B. 1978-1997, Sec. 546H.)

Sec. 23-58. —Action by Judicial Authority

(a) After review of the finding of facts and hearing on any objections thereto, the judicial authority may take the following action: (1) render judgment in accordance with the finding of facts; (2) reject the finding of facts and remand the case to the fact finder who originally heard the matter for a rehearing on all or part of the finding of facts; (3) reject the finding of facts and remand the matter to another fact finder for rehearing; (4) reject the finding of facts and revoke the reference; (5) remand the case to the fact finder who originally heard the matter for a finding on an issue raised in an objection which was not addressed in the original finding of facts; or (6) take any other action the judicial authority may deem appropriate.

(b) The judicial authority may correct a finding of facts at any time before accepting it, upon the written stipulation of the parties.

(c) The fact finder shall not be called as a witness, nor shall the decision of the fact finder be admitted into evidence at another proceeding ordered by a judicial authority.

(P.B. 1978-1997, Sec. 546J.)

Sec. 23-59. —Failure to Appear at Hearing

(a) Where a party fails to appear at the hearing, the fact finder shall nonetheless proceed with the hearing and shall make a finding of facts, as may be just and proper under the facts and circumstances of the action, which shall be filed with the clerk of the court pursuant to Section 23-56 for consideration by the judicial authority pursuant to Section 23-58. If, pursuant to Section 23-57, the party who failed to appear files an objection to the acceptance of the finding of facts and the objection is sustained by the judicial authority, the judicial authority may require that party to pay to the court an amount not greater than the total fees then payable to the fact finder for services in the case.

(b) If all parties fail to appear at the hearing, the fact finder shall file a request with the court to dismiss the action. If the judicial authority does not dismiss the action it may be heard by the fact finder upon further order of the judicial authority. Such order may provide for the payment by any party to the court of an amount not greater than $100.

(P.B. 1978-1997, Sec. 546K.)

Sec. 23-60. Arbitration; Approval of Arbitrators

(a) Upon publication of notice requesting applications, any commissioner of the superior court admitted to practice in this state for at least five years, and who possesses civil litigation experience may submit his or her name to the office of the chief court administrator for approval to be placed on a list of arbitrators for one or more judicial districts.

(b) The chief court administrator shall have the power to designate arbitrators for such term as the chief court administrator may fix and, in his or her discretion, to revoke such designation at any time.

(c) Applicants and arbitrators must satisfactorily complete such training programs as may be required by the chief court administrator.

(P.B. 1978-1997, Sec. 546M.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-61. —Referral of Cases to Arbitrators

The court, on its own motion, may refer to an arbitrator any civil action in which, in the discretion of the court, the reasonable expectation of a judgment is less than $50,000, exclusive of interest and costs and in which a claim for a trial by jury and a certificate of closed pleadings have been filed. An award under this section shall not exceed $50,000, exclusive of legal interest and costs. Any party may petition the court to participate in the arbitration process hereunder.

(P.B. 1978-1997, Sec. 546N.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-62. —Selection of Arbitrators; Disqualification

(a) The arbitrator shall be selected by the presiding civil judge for the court location in which the case is pending.

(b) An arbitrator may disqualify himself or herself upon his or her own application or upon application of a party. Should a party object to an arbitrator's refusal to disqualify himself or herself for cause, such party may file an application for disqualification with the presiding civil judge in the court location where the case is pending.

(c) Should an arbitrator disqualify himself or herself, the arbitrator shall inform in writing the presiding civil judge in the court location where the case is pending.

(P.B. 1978-1997, Sec. 546O.)

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Sec. 23-63. —Hearing in Arbitration

In matters submitted to arbitration no record shall be made of the proceedings and the strict adherence to the civil rules of evidence shall not be required.

(P.B. 1978-1997, Sec. 546P.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-64. —Decision of Arbitrator

(a) The arbitrator shall state in writing the decision on the issues in the case and the factual basis of the decision. The arbitrator shall include in the decision the number of days on which hearings concerning that case were held.

(b) Within 120 days of the completion of the arbitration hearing the arbitrator shall file the decision with the clerk of the court together with sufficient copies for all counsel.

(P.B. 1978-1997, Sec. 546Q.)

Sec. 23-65. —Failure to Appear at Hearing before Arbitrator

(a) Where a party fails to appear at the hearing, the arbitrator shall nonetheless proceed with the hearing and shall render a decision, which shall be rendered as a judgment by the court. Such judgment may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. If the judicial authority opens or sets aside the judgment, it may resubmit the action to the arbitrator. Any order opening or setting aside the judgment may be upon condition that the moving party pay to the court an amount not greater than the total fees then payable to the arbitrator for services in the case.

(b) If all parties fail to appear at the hearing, the arbitrator shall file a request with the court to dismiss the action. If the judicial authority does not dismiss the action, it may be heard by the arbitrator upon further order of the judicial authority. Such order may provide for the payment by any party to the court of an amount not greater than one hundred dollars.

(P.B. 1978-1997, Sec. 546R.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-66. —Claim for Trial De Novo in Arbitration; Judgment

(a) A decision of the arbitrator shall become a judgment of the court if no claim for a trial de novo is filed in accordance with subsection (c).

(b) A decision of the arbitrator shall become null and void if a claim for a trial de novo is filed in accordance with subsection (c).

(c) A claim for a trial de novo must be filed with the court clerk within twenty days after the deposit of the arbitrator's decision in the United States mail, as evidenced by the postmark. Thirty days after the filing of a timely claim for a trial de novo the court may, in its discretion, schedule the matter for a trial within thirty days thereafter. Only a party who appeared at the arbitration hearing may file a claim for a trial de novo. The decision of the arbitrator shall not be admissible in any proceeding resulting after a claim for a trial de novo pursuant to this section or from a setting aside of an award pursuant to General Statutes § 52-549aa.

(d) The judicial authority may refer any proceeding resulting from the filing of a demand for a trial de novo under subsection (c) of this section to a judge trial referee without the consent of the parties, and said judge trial referee shall have and exercise the powers of the superior court in respect to trial, judgment and appeal in the case, including a judgment of fifty thousand dollars or more.

(P.B. 1978-1997, Sec. 546S.) (Amended June 29, 1998, to take effect Jan. 1, 1999; subsection (c) was amended June 29, 1998, on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 23-67. Alternative Dispute Resolution

The judicial authority may, upon stipulation of the parties, refer a civil action to a program of alternative dispute resolution agreed to by the parties. The judicial authority shall set a time limit on the duration of the referral, which shall not exceed ninety days. The referral of an action to such a program will stay the time periods within which all further pleadings, motions, requests, discovery and other procedures must be filed or undertaken until such time as the alternative dispute resolution process is completed or the time period set by the judicial authority has elapsed, whichever occurs sooner. Such referred action shall be exempt from the docket management program during the time of the referral.

(P.B. 1978-1997, Sec. 546T.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 23-68. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

(a) The appearance of an incarcerated individual for any proceeding set forth in subsection (b) of this section may, in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that such person and his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which such person and his or her attorney can confer in private must be provided.

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For purposes of this section, judicial authority includes family support magistrates.

(b) Proceedings in which an incarcerated individual may appear by means of an interactive audiovisual device are limited to civil and family (1) proceedings prior to trial including, but not limited to, short calendar, prejudgment remedy, lis pendens, mechanics lien and other discovery and procedural hearings, case evaluation conferences, pretrials, alternative dispute resolutions, status conferences, trial management conferences, (2) hearings on posttrial motions and (3) matters within the jurisdiction of the family support magistrate division.

(c) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(d) Nothing contained in this section shall be construed to establish a right for any incarcerated person to appear by means of an interactive audiovisual device.

(Adopted Dec. 19, 2006, to take effect March 12, 2007.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

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CHAPTER 24

SMALL CLAIMS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 24-1. In General

(a) The general purpose of these rules is to secure the prompt and inexpensive hearing and determination of small claims by simplified procedure designed to allow the public maximum access to and use of the court in connection with such claims. Any comments as to the operation of the small claims court should be directed to the office of the chief court administrator.

(b) All proceedings shall be simple and informal. The services of an attorney at law are permissible but not obligatory. Notice to the representative for a party shall be equivalent to notice to such party.

(P.B. 1978-1997, Sec. 547.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-2. Allowable Actions

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

These rules shall apply to actions claiming money damages only, including actions against a non-resident defendant if he or she owns real or personal property in this state and actions against in-state and out-of-state corporations. Actions of libel and slander are not permitted under these rules. In no case shall the damages claimed exceed the jurisdictional monetary limit fixed by statute, including attorney's fees and other costs of collection, but exclusive of interest and costs.

(P.B. 1978-1997, Sec. 548.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-3. Institution of Actions; Electronic Filing

(Amended June 21, 2010, to take effect Jan. 1, 2011.)

Actions may be instituted at the option of the claimant by the procedure herein provided for, or by writ and complaint returnable to the regular civil docket of the superior court. Actions may also be instituted and papers filed, signed or verified by electronic means in the manner prescribed in Section 4-4.

(P.B. 1978-1997, Sec. 549.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-4. Where Claims Shall Be Filed

Claims shall be filed in the clerk's office serving the small claims area designated by the chief court administrator where venue exists, as set forth in General Statutes §§ 51-345, 51-346 and 51-347, except that claims concerning housing matters, as defined by General Statutes § 47a-68, which are filed in a judicial district in which a housing session has been established, shall be filed with the clerk of the housing session for that judicial district. Claims may be filed electronically pursuant to Section 24-3. The plaintiff shall include in the statement of the claim a statement of facts that provides the basis for venue in accordance with General Statutes §§ 51-345 (d), 51-345 (g) and such other statutes as are applicable.

(P.B. 1978-1997, Sec. 550.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 21, 2010, to take effect Jan. 1, 2011.)

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Sec. 24-5. Venue

The venue for small claims shall be in accordance with the General Statutes.

(P.B. 1978-1997, Sec. 551.)

Sec. 24-6. Definition of ''Plaintiff'' and ''Representative''

(Amended June 21, 2010, to take effect Jan. 1, 2011.)

(a) Except as hereinafter limited, the word ''representative'' as used in this chapter shall mean: an attorney at law; one of a number of partners; one of a number of joint plaintiffs acting for all; an officer, manager or local manager of a corporation; an employee of an unincorporated business which is not a partnership; the commissioner of administrative services or his or her authorized representative while acting in an official capacity; the chief court administrator or his or her authorized representative while acting in an official capacity. The word ''representative'' shall not mean a consumer collection agency as defined in chapter 669 of the General Statutes or an individual acting pursuant to a power of attorney.

(b) The word ''plaintiff'' as used in this chapter shall include ''representative'' as defined in subsection (a), except where otherwise indicated.

(c) It is prohibited for one who is not an attorney at law to receive a fee for the representation of any party.

(P.B. 1978-1997, Sec. 552.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-7. What Constitutes File

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

The file shall consist of the small claims writ and notice of suit, documents relating to the service of the writ, allowable pleadings and motions, and documents relating to postjudgment proceedings. All continuances granted pursuant to Section 24-15 shall be documented.

(P.B. 1978-1997, Sec. 553.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-8. Institution of Small Claims Actions; Beginning of Action

The signature by the plaintiff, or representative, on the small claims writ and notice of suit, and the filing of the writ with the clerk, together with the payment of all required fees, shall be deemed the beginning of the action. Any plaintiff or representative who wishes to obtain a judgment pursuant to the provisions of Section 24-24 shall also file the affidavits required by that section.

(P.B. 1978-1997, Sec. 556.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-9. —Preparation of Writ

The small claims writ and notice of suit shall be on a form prescribed by the office of the chief court administrator. The plaintiff, or representative, shall state the nature and amount of the claim on the writ in concise, untechnical form and, if the claim seeks collection of a consumer debt, shall state the basis upon which the plaintiff claims that the statute of limitations has not expired. The writ is to be signed by either the plaintiff, or representative, under oath. The oath shall provide that the signer has read the claim, and that to the best of the signer's knowledge, information and belief there is good ground to support it. If the claim is more than a convenient length for entry on the writ in full, the plaintiff, or representative, shall attach additional pages as needed. The plaintiff, or representative, shall also state on the writ the plaintiff's and the defendant's place of residence or other address. At the time of filing any writ, the plaintiff, or attorney shall verify the defendant's address. Such verification shall include confirmation by at least one of the following methods made during the six months prior to the filing of the writ: (1) municipal record verification (e.g., from a street list or tax records); (2) verification from the department of motor vehicles; (3) receipt of correspondence from the defendant with that return address; (4) other verification, specifically described by the plaintiff, from the defendant that the address is current; (5) the mailing by first class mail, at least four weeks prior to the filing of the small claims action, of a letter to the defendant at such address, which letter has not been returned by the United States Postal Service. The plaintiff shall state under oath in the writ which method of verification was employed within the last six months, the date of verification, and that the method confirmed the accuracy of the address submitted. No default judgment shall enter in the absence of such verification or if it is apparent that the defendant did not reside at the address at the time of service.

(P.B. 1978-1997, Sec. 557.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

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

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

(a) The plaintiff, or representative, shall cause service of the writ and notice of suit separately on each defendant by priority mail with delivery confirmation, by certified mail return receipt requested, by a nationally recognized courier service providing delivery confirmation, or by a proper officer in the manner in which a writ of summons

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is served in a civil action. The plaintiff, or representative, shall include any information required by the office of the chief court administrator. A statement of how service has been made, together with the delivery confirmation or return receipt and the original writ and notice of suit shall be filed with the clerk. The writ and notice of suit and the statement of service shall be returned to the court not later than one month after the date of service.

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

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

(P.B. 1978-1997, Sec. 559.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-11. —Further Service of Claim

[Repealed as of Jan. 1, 2011.]

Sec. 24-12. —Answer Date

The answer date shall not be less than fifteen nor more than forty-five days after the writ and accompanying documents are filed in the court.

(P.B. 1978-1997, Sec. 562.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-13. —Alternative Method of Commencing Action

[Repealed as of Jan. 1, 2011.]

Sec. 24-14. —Notice of Time and Place of Hearing

Whenever a hearing is scheduled, the clerk shall send to each party or representative a notice of the time and place set for hearing. This shall include the street address of the court, a telephone number for inquiries, and the room number or other information sufficient to describe the place where the hearing will be held.

(P.B. 1978-1997, Sec. 564.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-15. —Scheduling of Hearings; Continuances

(a) A hearing shall be scheduled not less than six and not more than forty-five days after the answer date.

(b) Continuances

(1) In any case where the plaintiff claims prejudice because of an unexpected defense or counterclaim or where either party shows good cause therefor, the judicial authority may postpone the hearing of any claim upon such terms as the judicial authority may order.

(2) A new hearing shall be scheduled within ninety days of the date set for the hearing which was postponed.

(3) Requests for continuances shall be made in writing to the clerk and shall state the reasons therefor. The party requesting the continuance shall first attempt to notify the other party of the request and shall include in the request when such notice was given and whether the other party agreed to the request. Requests for a continuance made prior to the scheduled hearing date shall be decided by the clerk. Requests for a continuance made on the scheduled date shall be decided by the judicial authority. All requests shall be acted on as soon as possible. Oral requests for continuance shall be permitted by the clerk only in extraordinary circumstances.

(4) The clerk shall notify all parties of the decision on any request for continuance and of the new hearing date.

(P.B. 1978-1997, Sec. 565.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-16. Answers; Requests for Time to Pay

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

(a) A defendant, unless the judicial authority shall otherwise order, shall be defaulted and judgment shall enter in accordance with the provisions of Section 24-24, unless such defendant shall, personally or by representative, not later than the answer date, file an answer or file a motion to transfer pursuant to Section 21-21. The answer should state fully and specifically, but in concise and untechnical form, such parts of the claim as are contested, and the grounds thereof, provided that an answer of general denial shall be sufficient for purposes of this section. Each defendant shall send a copy of the answer to each plaintiff and shall certify on the answer form that the defendant has done so, including the address(es) to which a copy has been mailed. Upon the filing of an answer, the clerk shall set the matter down for hearing by the judicial authority.

(b) A defendant who admits the claim but desires time in which to pay may state that fact in the answer, with reasons to support this request, on or before the time set for answering, and may suggest a method of payment which he or she can afford. The request for a proposed method of payment shall be considered by the

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judicial authority in determining whether there shall be a stay of execution to permit deferred payment or an order of payment. The judicial authority in its discretion may require that a hearing be held concerning such request.

(P.B. 1978-1997, Sec. 567.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-17. —Prohibition of Certain Filings

(Amended June 21, 2010, to take effect Jan. 1, 2011.)

No filings other than those provided for in this chapter shall be permitted without permission of the judicial authority.

(P.B. 1978-1997, Sec. 568.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-18. —Plaintiff to Inquire as to Answer Filed

[Repealed as of Jan. 1, 2001.]

Sec. 24-19. —Claim of Setoff or Counterclaim

The defendant, or representative may claim any setoff or counterclaim within the jurisdiction of the small claims court. Such written setoff or counterclaim may be filed at any time on or before the answer date or upon the granting of a motion to open. Upon the making of such claim by the defendant, the clerk shall give notice to the plaintiff by first class mail, of the setoff or counterclaim and shall notify the parties of the new answer date. The defendant's claim shall be answered within the time and in the manner provided by Section 24-16. The original claim, and the claim of setoff or counterclaim, shall be deemed one case.

(P.B. 1978-1997, Sec. 570.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-20. —Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

The judicial authority may at any time allow any claim or answer, setoff or counterclaim to be amended. A party may challenge jurisdiction by way of a motion to dismiss.

(P.B. 1978-1997, Sec. 571.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-20A. —Request for Documents; Depositions

A party may request from the opposing party documents, or copies thereof, that are necessary or desirable for the full presentation of the case. The party requesting such documents, or copies thereof, shall make the request directly to the opposing party or the party's representative. When a party refuses to honor such request, the requesting party may bring the request to the judicial authority's attention, either orally or in writing, for a decision. No deposition shall be taken except by order of the judicial authority.

(Adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-21. Transfer to Regular Docket

(a) A case duly entered on the small claims docket of a small claims area or housing session court location shall be transferred to the regular docket of the superior court or to the regular housing docket, respectively, if the following conditions are met:

(1) The defendant, or the plaintiff if the defendant has filed a counterclaim, shall file a motion to transfer the case to the regular docket. This motion must be filed on or before the answer date with certification of service pursuant to Sections 10-12 et seq. If a motion to open claiming lack of actual notice is granted, the motion to transfer with accompanying documents and fees must be filed within fifteen days after the notice granting the motion to open was sent.

(2) The motion to transfer must be accompanied by (A) a counterclaim in an amount greater than the jurisdiction of the small claims court; or (B) an affidavit stating that a good defense exists to the claim and setting forth with specificity the nature of the defense, or stating that the case has been properly claimed for trial by jury.

(3) The moving party shall pay all necessary statutory fees at the time the motion to transfer is filed, including any jury fees if a claim for trial by jury is filed.

(b) When a defendant or plaintiff on a counterclaim has satisfied one of the conditions of subsection (a) (2) herein, the motion to transfer to the regular docket shall be granted by the judicial authority, without the need for a hearing.

(c) A case which has been properly transferred shall be transferred to the docket of the judicial district which corresponds to the venue of the small claims matter, except that a housing case properly transferred shall remain in or be transferred to the housing session and be placed upon the regular housing docket. A case may be consolidated with a case pending in any other clerk's office of the superior court.

(P.B. 1978-1997, Sec. 572.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-22. Hearings in Small Claims Actions; Subpoenas

Subpoenas, if requested, shall be issued by the clerk without fee, and may be issued upon the

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clerk's own motion or by order of the judicial authority. The party requesting the subpoena shall pay the fees for service and witness fees. An application for issuance of subpoena shall not be required in small claims matters.

(P.B. 1978-1997, Sec. 574.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-23. —Procedure

Witnesses shall be sworn; but the judicial authority shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case in accordance with substantive law.

(P.B. 1978-1997, Sec. 575.)

Sec. 24-24. Judgments in Small Claims; When Presence of the Plaintiff or Representative is Not Required for Entry of Judgment

(a) In any action based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest and reasonable attorney's fees, if the defendant has not filed an answer by the answer date and the judicial authority has not required that a hearing be held concerning any request by the defendant for more time to pay, the judicial authority may render judgment in favor of the plaintiff without requiring the presence of the plaintiff or representative before the court, provided the plaintiff has complied with the provisions of this section and Section 24-8. Nothing contained in this section shall prevent the judicial authority from requiring the presence of the plaintiff or representative before the court prior to rendering any such default and judgment if it appears to the judicial authority that additional information or evidence is required prior to the entry of judgment.

(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a judgment whether by default, stipulation or other method, the following affidavits must have been filed by the plaintiff:

(1) An affidavit of debt signed by the plaintiff or representative who is not the plaintiff's attorney. A small claims writ and notice of suit signed and sworn to by the plaintiff or representative who is not the plaintiff's attorney shall be considered an affidavit of debt for purposes of this section only if it sets forth either the amount due or the principal owed as of the date of the writ and contains an itemization of interest, attorneys fees and other lawful charges. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff and a copy of the executed instrument shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt while also referencing the attached chain of title in the affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt. If applicable, the allegations shall comply with General Statutes § 52-118.

(B) The affidavit shall simply state the basis upon which the plaintiff claims the statute of limitations has not expired.

(C) If the plaintiff has claimed any lawful fees or charges based on a provision of the contract, the plaintiff shall attach to the affidavit of debt a copy of a portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

(D) If a claim for a reasonable fee for an attorney at law is made, the plaintiff shall include in the affidavit the reasons for the specific amount requested. Any claim for reasonable fees for an attorney at law must be referred to the judicial authority for approval prior to its inclusion in any default judgment.

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

(P.B. 1978-1997, Sec. 577.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-25. —Failure of the Defendant to Answer

If the defendant does not file an answer by the answer date, a notice of default shall be sent to all parties or their representatives and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing, and the judicial authority shall require the presence of the plaintiff or representative. Notice of the hearing shall be sent to all parties or their representatives. If a defendant files an answer at any time before a default judgment has been entered, including at the time of a scheduled hearing in damages, the default shall be vacated automatically. If the answer is filed at the time of a hearing in damages,

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the judicial authority shall allow the plaintiff a continuance if requested by the plaintiff, or representative.

(P.B. 1978-1997, Sec. 578.) (Amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-26. —Failure of a Party to Appear before the Court when Required

(a) If the plaintiff or representative fails to appear before the court on the hearing date, the judicial authority may dismiss the claim for want of prosecution, render a finding on the merits for the defendant or make such other disposition as may be proper.

(b) If the defendant fails to appear before the court at any time set for hearing, the judicial authority may render judgment in favor of the plaintiff based on such proofs as it deems necessary to establish the amount due under the claim, or make such other disposition as may be proper, provided that the plaintiff has appeared at the hearing.

(P.B. 1978-1997, Sec. 579.)

Sec. 24-27. —Dismissal for Failure to Obtain Judgment

During the months of January and July of each year, small claims cases which, within one year from the date of the institution of the action, have not gone to judgment may be dismissed upon the order of the chief court administrator.

(P.B. 1978-1997, Sec. 580.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-28. —Finality of Judgments and Decisions

Except as provided in Section 24-31, the judgments and decisions rendered in the small claims session are final and conclusive. (See General Statutes § 51-197a.)

(P.B. 1978-1997, Sec. 581.)

Sec. 24-29. —Decision in Small Claims; Time Limit

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

(a) A written decision stating the reasons for the decision shall be required in matters in which a contested hearing is held, in which a counterclaim is filed or in which a judgment is entered in an amount other than the amount claimed. Nothing in this section precludes the judicial authority from filing a written decision in any matter when such judicial authority deems it appropriate.

(b) Judgments shall be rendered no later than forty-five days from the completion of the proceedings unless such time limit is waived in writing by the parties or their representatives. The judgment of the judicial authority shall be recorded by the clerk and notice of the judgment and written decision shall be sent by mail or electronic delivery to each party or representative, if any.

(P.B. 1978-1997, Sec. 582.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, an ''s'' was added to the end of ''representative'' in the first sentence of subsection (b). Also, in 2012, ''sent by mail or electronic delivery'' was substituted for ''mailed'' in the second sentence of subsection (b). At the end of the second sentence of subsection (b), '', in a sealed envelope'' was deleted after ''if any.''

COMMENTARY—2012: The above change makes this rule consistent with Section 24-14.

Sec. 24-30. —Satisfying Judgment

(a) The judicial authority may order that the judgment shall be paid to the prevailing party at a certain date or by specified installments. Unless otherwise ordered, the issue of execution and other supplementary process shall be stayed during compliance with such order. Such stay may be modified and vacated at any time for good cause. The stay is automatically lifted by a default in postjudgment court-ordered payments by the judgment debtor.

(b) When the judgment is satisfied in a small claims action, the party recovering the judgment shall file a written notice thereof within ninety days with the clerk who shall record the judgment as satisfied, identifying the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

(P.B. 1978-1997, Sec. 583.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-31. —Opening Judgment; Costs

(a) The judicial authority may, upon motion, and after such notice by mail, or otherwise as it may order, open any judgment rendered under this procedure for lack of actual notice to a party, or, within four months from the date thereof, for any other cause that the judicial authority may deem sufficient, and may stay and supersede execution; except that the judicial authority may, for the reasons indicated above, open any judgment rendered by default at any time within four months succeeding the date upon which an execution was levied. The judicial authority may also order the repayment of any sum collected under such judgment and may render judgment and issue execution therefor. Costs in an amount fixed by the

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judicial authority and not exceeding $100 may be awarded, in the discretion of the judicial authority, for or against either party to a motion to open the judgment, and judgment may be rendered and execution may be issued therefor; and any action by the judicial authority may be conditioned upon the payment of such costs or the performance of any proper condition.

(b) When a judgment has been rendered after a contested hearing on the merits, a motion to open shall be scheduled for hearing only upon order of the judicial authority.

(P.B. 1978-1997, Sec. 584.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 24-32. Execution in Small Claims Actions

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

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

(P.B. 1978-1997, Sec. 585.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 24-33. Costs in Small Claims

The actual legal disbursements of the prevailing party for entry fee, witness' fees, fees for copies, officers' fees, and costs for service shall be allowed as costs, including any statutory costs. The recording fee paid for filing a judgment lien shall also be added to the judgment amount. The costs paid as an application fee for any execution on a money judgment shall be taxed by the clerk upon the issuance of an execution. No other costs shall be allowed either party except by special order of the judicial authority. The judicial authority shall have power in its discretion to award costs, in a sum fixed by the judicial authority, not exceeding $100 (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim, defense or counterclaim, or has made an unfair, insufficient or misleading answer, or has negligently failed to be ready for trial, or has otherwise sought to hamper a party or the judicial authority in securing a speedy determination of the claim upon its merits, and it may render judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require. In no case shall costs exceed the amount of the judgment.

(P.B. 1978-1997, Sec. 590.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2010, to take effect Jan. 1, 2011.)

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SUPERIOR COURT—PROCEDURE IN FAMILY MATTERS

CHAPTER 25

GENERAL PROVISIONS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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

The following shall be "family matters" within the scope of these rules: Any actions brought pursuant to General Statutes § 46b-1, including but not limited to dissolution of marriage or civil union, legal separation, dissolution of marriage or civil union after legal separation, annulment of mar-

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riage or civil union, alimony, support, custody, and change of name incident to dissolution of marriage or civil union, habeas corpus and other proceedings to determine the custody and visitation of children except those which are properly filed in the superior court as juvenile matters, the establishing of paternity, enforcement of foreign matrimonial or civil union judgments, actions related to prenuptial or pre-civil union and separation agreements and to matrimonial or civil union decrees of a foreign jurisdiction, actions brought pursuant to General Statutes § 46b-15, custody proceedings brought under the provisions of the Uniform Child Custody Jurisdiction Act and proceedings for enforcement of support brought under the provisions of the Uniform Interstate Family Support Act.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan.1, 2007.)

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

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

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

(b) Every such complaint shall also state whether there are minor children issue of the marriage or minor children of the civil union and whether there are any other minor children born to the wife since the date of marriage of the parties, or born to a party to the civil union since the date of the civil union, the name and date of birth of each, and the name of any individual or agency presently responsible by virtue of judicial award for the custody or support of any child. These requirements shall be met whether a child is issue of the marriage or not, whether a child is born to a party of the civil union or not, and whether custody of children is sought in the action or not. In every case in which the state of Connecticut or any town thereof is contributing or has contributed to the support or maintenance of a party or child of said party, such fact shall be stated in the complaint and a copy thereof served on the attorney general or town clerk in accordance with the provisions of Sections 10-12 through 10-17. Although the attorney general or town clerk shall be a party to such cases, he or she need not be named in the writ of summons or summoned to appear.

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

(P.B. 1978-1997, Sec. 453.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 25-2A. Premarital and Postnuptial Agreements

(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party's claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.

(b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.

(Adopted June 20, 2011, to take effect Aug. 15, 2011.)

COMMENTARY—August, 2011: This rule requires that a party seeking to enforce or to avoid enforcement of a premarital agreement or postnuptial agreement give notice of that intention by filing appropriate claims for relief before the case management date.

Sec. 25-3. Action for Custody of Minor Child

Every application in an action for custody of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. The application shall comply with Section 25-5. Such application shall be commenced by an order to show cause. Upon presentation of the application and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application should not be granted. The application, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2000, to take effect Jan. 1, 2001; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-4. Action for Visitation of Minor Child

Every application in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the

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parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. The application shall comply with Section 25-5. Such application shall be commenced by an order to show cause. Upon presentation of the application and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application should not be granted. The application, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2000, to take effect Jan. 1, 2001; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-5. Automatic Orders upon Service of Complaint or Application

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

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

(a) In all cases involving a child or children, whether or not the parties are married or in a civil union:

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

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

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

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

(5) The parties shall participate in the parenting education program within sixty days of the return day or within sixty days from the filing of the application.

(6) These orders do not change or replace any existing court orders, including criminal protective and civil restraining orders.

(b) In all cases involving a marriage or civil union, whether or not there are children:

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

(2) Neither party shall conceal any property.

(3) Neither party shall encumber (except for the filing of a lis pendens) without the consent of the other party, in writing, or an order of a judicial authority, any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority.

(5) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

(6) Neither party shall cause the other party to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

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

(8) If the parties are living together on the date of service of these orders, neither party may deny the other party use of the current primary residence of the parties, whether it be owned or rented

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property, without order of a judicial authority. This provision shall not apply if there is a prior, contradictory order of a judicial authority.

(c) In all cases:

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

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

The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage or civil union, legal separation, or annulment, or in any application for custody or visitation, and shall set forth the following language in bold letters:

Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable time.

The clerk shall not accept for filing any complaint for dissolution of marriage or civil union, legal separation, or annulment, or any application for custody or visitation, that does not comply with this subsection.

(P.B. 1998.) (Amended June 29, 1998, to take effect Jan. 1, 1999; subdivision (a) (1) was amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended August 22, 2001, to take effect Jan. 1, 2002; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section read: ''(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

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

''(2) Neither party shall incur unreasonable debts hereafter, including, but not limited to, further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards.

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

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

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

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

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

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

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

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

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

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

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for custody or visitation, that does not comply with this subsection.

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

COMMENTARY—2012: The automatic orders have been reorganized and, in some instances, clarified. The reorganization regroups existing orders into cases that involve three circumstances: (1) those that involve a child or children, whether or not the parties are married or in a civil union; (2) those that involve a marriage or civil union, whether or not there are children; and (3) all cases. The purpose of new subdivisions (2), (3) and (4) to subsection (b) is to emphasize and strengthen orders that preserve and protect assets.

TECHNICAL CHANGE: Where capitalization was used as a means for showing emphasis in a rule, it was replaced in 2012 with bold font, and corresponding changes were made to any language that previously indicated the usage of uppercase letters.

Sec. 25-5A. Automatic Orders upon Service of Petition for Child Support

(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a petition for child support. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the petitioner or the applicant upon the signing of the document initiating the action (whether it be complaint, petition or application), and with regard to the respondent, upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

Neither party shall cause the other party or the children who are the subject of the complaint, application or petition to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) shall be set forth immediately following the party's requested relief in any complaint, petition or application, and shall set forth the following language in bold letters: **If you do not follow or obey these orders, you may be punished by contempt of court. If you object to these orders or would like to have them changed or modified while your case is pending, you have the right to a hearing by a judicial authority within a reasonable time.** The clerk shall not accept for filing any complaint, petition or application that does not comply with this subsection.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: This section corresponds to Section 25a-7 and will provide for consistent automatic orders between IV-D and Non-IV-D support petitions.

Sec. 25-6. Parties and Appearances

The provisions of Sections 8-1, 8-2, 9-1, 9-3 through 9-6, inclusive, 9-18, 9-19, 9-22, 9-24 and 10-12 through 10-17 of the rules of practice shall apply to family matters as defined in Section 25-1.

(P.B. 1998.)

Sec. 25-7. Pleadings in General; Amendments to Complaint or Application

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

If Sections 25-2, 25-3 or 25-4 are not complied with, the judicial authority, whenever its attention is called to the matter, shall order that the complaint or the application, as the case may be, be amended upon such terms and conditions as it may direct. Where an amendment is filed concerning support or maintenance contributed by the state of Connecticut, no further action shall be taken by the judicial authority until such amendment shall be served upon the attorney general and opportunity given him or her to be heard upon the matter. Nothing in this section shall be construed to affect the automatic orders in Section 25-5 above.

(P.B. 1978-1997, Sec. 454.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 25-8. —Amendment; New Ground for Dissolution of Marriage or Civil Union

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

(a) In any action for a dissolution of marriage or civil union an amendment to the complaint which states a ground for dissolution of marriage or civil union alleged to have arisen since the commencement of the action may be filed with permission of the judicial authority.

(b) The provisions of Sections 10-59, 10-60 and 10-61 of the rules of practice shall apply to family matters as defined in Section 25-1.

(P.B. 1978-1997, Sec. 455.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-9. —Answer, Cross Complaint, Claims for Relief by Defendant

The defendant in a dissolution of marriage or civil union, legal separation, or annulment matter may file, in addition to the above mentioned pleadings, one of the following pleadings which shall comply with Sections 10-1, 10-3, 10-5, 10-7, 10-8 and 10-12 through 10-17, 10-18 and 10-19 inclusive:

(1) An answer may be filed which denies or admits the allegations of the complaint, or which states that the defendant has insufficient information to form a belief and leaves the pleader to his or her proof, and which may set forth the defendant's claims for relief.

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(2) An answer and cross complaint may be filed which denies or admits the allegations of the complaint, or which states that the defendant has insufficient information to form a belief and leaves the pleader to his or her proof, and which alleges the grounds upon which a dissolution, legal separation or annulment is sought by the defendant and specifies therein the claims for relief.

(P.B. 1978-1997, Sec. 456.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-10. —Answer to Cross Complaint

A plaintiff in a dissolution of marriage or civil union, legal separation, or annulment matter seeking to contest the grounds of a cross complaint shall file an answer admitting or denying the allegations of such cross complaint or leaving the pleader to his or her proof. If a decree is rendered on the cross complaint, the judicial authority may award to the plaintiff such relief as is claimed in the complaint.

(P.B. 1978-1997, Sec. 457.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-11. —Order of Pleadings

The order of pleadings shall be:

(1) the plaintiff's complaint;

(2) the defendant's motion to dismiss the complaint;

(3) the defendant's motion to strike the complaint or claims for relief;

(4) the defendant's answer, cross complaint and claims for relief;

(5) the plaintiff's motion to strike the defendant's answer, cross complaint, or claims for relief;

(6) the plaintiff's answer.

(P.B. 1998.)

Sec. 25-12. Motion to Dismiss

(a) Any defendant, wishing to assert grounds to dismiss the action under Section 25-13 (2), (3), (4) or (5) must do so by filing a motion to dismiss within thirty days of the filing of an appearance.

(b) Any claim based on Section 25-13 (2), (3), (4) or (5) is waived if not raised by a motion to dismiss filed in the sequence provided in Section 25-11, within the time provided in this section.

(P.B. 1998.)

Sec. 25-13. —Grounds on Motion to Dismiss

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

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

(P.B. 1998.)

Sec. 25-14. —Waiver and Subject Matter Jurisdiction

Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action.

(P.B. 1998.)

Sec. 25-15. —Further Pleading by Defendant

If any motion to dismiss is denied with respect to any jurisdictional issue, the defendant may plead further without waiving his or her right to contest jurisdiction further.

(P.B. 1998.)

Sec. 25-16. Motion to Strike; In General

(a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint or cross complaint, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any claim for relief in any such complaint or cross complaint, or (3) the legal sufficiency of any such complaint or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint or cross complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint or cross complaint, or any part of that answer contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.

(b) A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to his or her identity and residence and must state his or her interest in the cause of action.

(P.B. 1998.)

Sec. 25-17. —Date for Hearing

The motion shall be placed on the short calendar to be held not less than fifteen days following

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the filing of the motion, unless the judicial authority otherwise directs.
(P.B. 1998.)

Sec. 25-18. —Reasons

Each motion to strike raising any of the claims of legal insufficiency enumerated in Sections 25-12, 25-13 and 25-16 shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency.
(P.B. 1998.)

Sec. 25-19. —Memorandum of Law

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

(b) If an adverse party objects to this motion such party shall, at least five days before the date the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law.
(P.B. 1998.)

Sec. 25-20. —When Memorandum of Decision Required

Whenever a motion to strike is filed and more than one ground of decision is set up therein, the judicial authority, in rendering the decision thereon, shall specify in writing the grounds upon which that decision is based.
(P.B. 1998.)

Sec. 25-21. —Substitute Pleading; Judgment

Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint or cross complaint has been stricken, and the party whose pleading has been so stricken fails to file a new pleading within that fifteen-day period, the judicial authority may upon motion enter judgment against said party on said stricken complaint or cross complaint.
(P.B. 1998.)

Sec. 25-22. —Stricken Pleading Part of Another Cause or Defense

Whenever the judicial authority grants a motion to strike the whole or any portion of any pleading or count which purports to state an entire cause of action, and such pleading or portion thereof states or constitutes a part of another cause of action, the granting of that motion shall remove from the case only the cause of action which was the subject of the granting of that motion, and it shall not remove such pleading or count or any portion thereof so far as the same is applicable to any other cause of action.
(P.B. 1998.)

Sec. 25-23. Motions, Requests, Orders of Notice, and Short Calendar

The provisions of Sections 11-1, 11-2, 11-4, 11-5, 11-6, 11-8, 11-10, 11-11, 11-12, 11-19, 12-1, 12-2, and 12-3 of the rules of practice shall apply to family matters as defined in Section 25-1.
(P.B. 1998.) (Amended May 14, 2003, to take effect July 1, 2003.)

Sec. 25-24. Motions

(a) Any appropriate party may move for alimony, child support, custody, visitation, appointment of counsel for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other equitable relief.

(b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a postjudgment motion.
(P.B. 1998.)

Sec. 25-25. Motion for Exclusive Possession

Each motion for exclusive possession shall state the nature of the property, whether it is rental property or owned by the parties or one of them, the length of tenancy or ownership of each party, the current family members residing therein and the grounds upon which the moving party seeks exclusive possession.
(P.B. 1998.)

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

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

(b) Either parent or both parents of minor children may be cited or summoned by any party to the action to appear and show cause, if any they have, why orders of custody, visitation, support or alimony should not be entered or modified.

(c) If any applicant is proceeding without the assistance of counsel and citation of any other party is necessary, the applicant shall sign the application and present the application, proposed order and summons to the clerk; the clerk shall

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review the proposed order and summons and, unless it is defective as to form, shall sign the proposed order and summons and shall assign a date for a hearing on the application.

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

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

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

(g) Upon or after entry of judgment of a dissolution of marriage, dissolution of civil union, legal separation or annulment, or upon or after entry of a judgment or final order of custody and/or visitation for a petition or petitions filed pursuant to Section 25-3 and/or Section 25-4, the judicial authority may order that any further motion for modification of a final custody or visitation order shall be appended with a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section. The specific factual and legal basis for the claimed modification shall be sworn to by the moving party or other person having personal knowledge of the facts recited therein. If no objection to the request has been filed by any party within ten days of the date of service of such request on the other party, the request for leave may be determined by the judicial authority with or without hearing. If an objection is filed, the request shall be placed on the next short calendar, unless the judicial authority otherwise directs. At such hearing, the moving party must demonstrate probable cause that grounds exist for the motion to be granted. If the judicial authority grants the request for leave, at any time during the pendency of such a motion to modify, the judicial authority may determine whether discovery or a study or evaluation pursuant to Section 25-60 shall be permitted.

(P.B. 1978-1997, Sec. 464.) (Amended June 20, 2005, to take effect Jan. 1, 2006; amended June 29, 2007, to take effect Oct. 1, 2007.)

Sec. 25-27. Motion for Contempt

(a) Each motion for contempt must state (1) the date and specific language of the order of the judicial authority on which the motion is based; (2) the specific acts alleged to constitute the contempt of that order, including the amount of any arrears claimed due as of the date of the motion or a date specifically identified in the motion; (3) the movant's claims for relief for the contempt.

(b) Each motion for contempt must state clearly in the caption of the motion whether it is a pendente lite or a postjudgment motion, and the subject matter and the type of order alleged to have been violated.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 25-28. Order of Notice

(a) On a complaint for dissolution of marriage or civil union, legal separation, or annulment, or on an application for custody or visitation, when the adverse party resides out of or is absent from the state or the whereabouts of the adverse party are unknown to the plaintiff or the applicant, any judge or clerk of the court may make such order of notice as he or she deems reasonable. If such notice is by publication, it shall not include the automatic orders set forth in Section 25-5, but shall instead include a statement that automatic orders have issued in the case pursuant to Section 25-5 and that such orders are set forth in the complaint or the application on file with the court. Such notice having been given and proved, the judicial authority may hear the complaint or the application if it finds that the adverse party has actually received notice that the complaint or the application is pending. If actual notice is not proved, the judicial authority in its discretion may hear the case or continue it for compliance with such further order of notice as it may direct.

(b) With regard to any postjudgment motion for modification or for contempt or any other motion requiring an order of notice, where the adverse party resides out of or is absent from the state any judge or clerk of the court may make such order of notice as he or she deems reasonable. Such notice having been given and proved, the court may hear the motion if it finds that the adverse party has actually received notice that the motion is pending.

(P.B. 1978-1997, Sec. 461.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-29. Notice of Orders for Support or Alimony

In all dissolution of marriage or civil union, legal separation, annulment, custody or visitation actions, such notice as the judicial authority shall direct shall be given to nonappearing parties of any orders for support or alimony. No such order shall be effective until the order of notice shall have been complied with or the nonappearing party has actually received notice of such orders.

(P.B. 1978-1997, Sec. 462.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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Sec. 25-30. Statements to Be Filed

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

(b) At least ten days before the scheduled family special masters session, alternative dispute resolution session, or judicial pretrial, the parties shall serve on each appearing party, but not file with the court, written proposed orders, and, at least ten days prior to the date of the final limited contested or contested hearing, the parties shall file with the court and serve on each appearing party written proposed orders.

(c) The written proposed orders shall be comprehensive and shall set forth the party's requested relief including, where applicable, the following:

(1) a parenting plan;
(2) alimony;
(3) child support;
(4) property division;
(5) counsel fees;
(6) life insurance;
(7) medical insurance; and
(8) division of liabilities.

(d) The proposed orders shall be neither factual nor argumentative but shall, instead, only set forth the party's claims.

(e) Where there is a minor child who requires support, the parties shall file a completed child support and arrearage guidelines worksheet at the time of any court hearing concerning child support; or at the time of a final hearing in an action for dissolution of marriage or civil union, legal separation, annulment, custody or visitation.

(f) At the time of any hearing, including pendente lite and postjudgment proceedings, in which a moving party seeks a determination, modification, or enforcement of any alimony or child support order, a party shall submit an Advisement of Rights Re: Wage Withholding Form (JD-FM-71).

(P.B. 1978-1997, Sec. 463.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-31. Discovery and Depositions

The provisions of Sections 13-1 through 13-10 inclusive, 13-13 through 13-16 inclusive, and 13-17 through 13-32 of the rules of practice inclusive, shall apply to family matters as defined in Section 25-1.

(P.B. 1998.) (Amended June 20, 2011, to take effect Aug. 1, 2011.)

HISTORY—August, 2011: In August, 2011, "13-10" was substituted for "13-11" after "[t]he provisions of Sections 13-1 through."

COMMENTARY—August, 2011: Section 13-11 no longer applies to family matters.

Sec. 25-32. Mandatory Disclosure and Production

(a) Unless otherwise ordered by the judicial authority for good cause shown, upon request by a party involved in an action for dissolution of marriage or civil union, legal separation, annulment or support, or a postjudgment motion for modification of alimony or support, opposing parties shall exchange the following documents within thirty days of such request:

(1) all federal and state income tax returns filed within the last three years, including personal returns and returns filed on behalf of any partnership or closely-held corporation of which a party is a partner or shareholder;

(2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income tax returns for that year have not been prepared;

(3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;

(4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past 24 months;

(5) the most recent statement showing any interest in any Keogh, IRA, profit sharing plan, deferred compensation plan, pension plan, or retirement account;

(6) the most recent statement regarding any insurance on the life of any party;

(7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;

(8) any written appraisal concerning any asset owned by either party.

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(b) Such duty to disclose shall continue during the pendency of the action should a party appear. This section shall not preclude discovery under any other provisions of these rules.

(P.B. 1998.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-32A. Discovery Noncompliance

If a party fails to comply with a discovery request or a discovery order in any manner set forth in Section 13-14 (a), the party who requested such discovery or in whose favor the discovery order was made may move to compel compliance with the request or order. The moving party shall specify in a memorandum in support of his or her motion, the discovery sought and the remedy sought. The party to whom the discovery request or order was directed shall, in a memorandum, specify why the discovery has not been provided or why such party has not complied with the discovery order. If the party to whom the discovery request or order was directed claims that the discovery has been provided or order has been complied with, he or she shall detail with specificity what discovery was provided and how compliance with the discovery order was made.

(Adopted June 20, 2011, to take effect Aug. 15, 2012.)

COMMENTARY—August, 2011: The purpose of this new rule is to clarify and improve the discovery process in family cases. It is not the intent of this rule to have the actual disclosure documents provided but, rather, a detailed list of the items provided.

Sec. 25-32B. Discovery—Special Master

The judicial authority may appoint a discovery special master to assist in the resolution of discovery disputes. When such an appointment is made, the judicial authority shall specify the duties, authority and compensation of the discovery special master and how that compensation shall be allocated between the parties.

(Adopted June 20, 2011, to take effect Aug. 15, 2011.)

COMMENTARY—August, 2011: This rule provides for the appointment of a discovery special master in family cases by the judicial authority.

Sec. 25-33. Judicial Appointment of Expert Witnesses

Whenever the judicial authority deems it necessary, on its own motion it may appoint any expert witnesses of its own selection. The judicial authority shall give notice of its intention to appoint such expert, and give the parties an opportunity to be heard concerning such appointment. An expert witness shall not be appointed by the judicial authority unless the expert consents to act. An expert witness so appointed shall be informed of his or her duties by the judicial authority in writing, a copy of which shall be filed with the clerk, or the witness shall be informed of his or her duties at a conference in which the parties shall have an opportunity to participate. Such expert witness shall advise the parties of his or her findings, if any, and may thereafter be called to testify by the judicial authority or by any party and shall be subject to cross-examination by each party. The judicial authority may determine the reasonable compensation for such witness and direct payment out of such funds as may be provided by law or by the parties or any of them as the judicial authority may direct. Nothing in this section shall prohibit the parties from retaining their own expert witnesses.

(P.B. 1998.)

Sec. 25-34. Procedure for Short Calendar

(a) With the exception of matters governed by Chapter 13, oral argument on any motion or the presentation of testimony thereon shall be allowed if the appearing parties have followed administrative policies for marking the motion ready and for screening with family services. Oral argument and the presentation of testimony on motions made under Chapter 13 are at the discretion of the judicial authority.

(b) If the judicial authority has determined that oral argument or the presentation of testimony is necessary on a motion made under Chapter 13, the judicial authority shall set the matter for oral argument or testimony on a short calendar date or other date as determined by the judicial authority.

(c) If the judicial authority has determined that oral argument or the presentation of testimony is necessary on a motion made under Chapter 13 and has not set it down on a hearing date, the movant may reclaim the motion within thirty days of the date the motion appeared on the calendar.

(d) If the matter will require more than one hour of court time, it may be specifically assigned for a date certain.

(e) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise. Unless for good cause shown, no motion may be reclaimed after a period of three months from the date of filing. This subsection shall not apply to those motions where counsel appeared on the date set by the judicial authority and entered into a scheduling order for discovery, depositions and a date certain for hearing.

(P.B. 1998.) (Amended June 20, 2011, to take effect Aug. 15, 2011.)

HISTORY—August, 2011: Prior to August, 2011, subsection (a) read: "Oral argument on any motion or the presentation of testimony thereon shall be allowed if the appearing parties

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have followed administrative policies for marking the motion ready and for screening with family services.''

In August, 2011, what are now subsections (b) and (c) were added. What had been subsection (b) became what is now subsection (d), and what had been subsection (c) became what is now subsection (e).

COMMENTARY—August, 2011: These matters are very similar to civil matters and should be nonarguable in most instances. The amendments to this section create a process that will result in a more appropriate use of judicial resources by enabling the judicial authority to have greater control of the short calendar. The amendments are also likely to result in counsel and litigants communicating more fully, thereby narrowing discovery disputes before they are presented to the judicial authority for adjudication.

Sec. 25-35. Disclosure of Conference Recommendation

In the event the parties or their counsel confer with a family relations counselor on finances concerning alimony and child support in connection with either a pendente lite, postjudgment or dissolution hearing, the recommendations of the family relations counselor concerning alimony and child support shall not be reported to the judicial authority by the parties or their counsel or the family relations counselor unless, before such conference, the parties or their counsel have stipulated that the recommendation of the family relations counselor may be made known to the judicial authority.

(P.B. 1978-1997, Sec. 464A.)

Sec. 25-36. Motion for Decree Finally Dissolving Marriage or Civil Union after Decree of Legal Separation

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

Every motion for a decree finally dissolving and terminating the marriage or civil union, after a decree of legal separation, shall state the number of the case in which the separation was granted, the date of the decree of legal separation and whether the parties have resumed relations relating to the marriage or civil union since the entry of the decree, and it shall be accompanied by an application for an order of notice to the adverse party.

(P.B. 1978-1997, Sec. 472.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 25-37. —Notice and Hearing

Upon presentation of such motion to the judicial authority it shall fix a time for hearing the same and make an order of notice, by personal service if the adverse party is within the state and that party's place of residence is known, otherwise in such manner as it shall deem reasonable.

(P.B. 1978-1997, Sec. 473.)

Sec. 25-38. Judgment Files

The provisions of Sections 17-4, 17-9 and 17-43 shall apply to family matters as defined in Section 25-1. The provisions of Section 3-9 concerning withdrawal of appearance of an attorney 180 days after the entry of judgment shall not apply to family matters actions until the provisions of this section concerning the filing of judgment files have been satisfied.

(P.B. 1998.)

Sec. 25-39. Miscellaneous Rules

Except as otherwise provided in Section 25-51, the provisions of Sections 7-19, 17-20, 18-5, 18-9, 20-1, 20-3, 23-67 and 23-68 of the rules of practice shall apply to family matters as defined in Section 25-1.

(P.B. 1998.) (Amended Dec. 19, 2006, to take effect March 12, 2007.)

Sec. 25-40. Habeas Corpus in Family Matters; the Petition

A petition for a writ of habeas corpus shall be under oath and shall state:

(1) the specific facts upon which each claim of custody or visitation is based such that the judicial authority would immediately order the child or children to be brought before the court;

(2) any previous petitions for the writ of habeas corpus, and any existing custody or visitation orders, involving the same child or children and the dispositions taken thereon; and

(3) the specific facts upon which the court has jurisdiction.

(P.B. 1998.)

Sec. 25-41. —Preliminary Consideration

(a) The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ if it appears that:

(1) the court has jurisdiction;

(2) the petition is meritorious; and

(3) another proceeding is not more appropriate.

(b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this section.

(P.B. 1998.)

Sec. 25-42. —Dismissal

The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that:

(1) the court lacks jurisdiction;

(2) the petition, or a count thereof, fails to state a claim upon which habeas corpus relief can be granted;

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(3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or proffer new evidence not reasonably available at the time of the prior petition;

(4) the claims asserted in the petition are moot or premature;

(5) any other legally sufficient ground for dismissal of the petition exists.

(P.B. 1998.)

Sec. 25-43. —The Return

The return shall respond to the allegations of the petition and shall allege any facts in support of any claim of procedural default, abuse of the writ, or any other claim that the petitioner is not entitled to relief.

(P.B. 1998.)

Sec. 25-44. —Reply to the Return

(a) If the return alleges any defense or claim that the petitioner is not entitled to relief, and such allegations are put in dispute by the petition, the petitioner shall file a reply.

(b) The reply shall admit or deny any allegations that the petitioner is not entitled to relief.

(P.B. 1998.)

Sec. 25-45. —Schedule for Filing Pleadings

The return or responsive pleading and any reply to the return shall be filed as the judicial authority may order.

(P.B. 1998.)

Sec. 25-46. —Summary Judgment as to Writ of Habeas Corpus

At any time after the pleadings are closed, any party may move for summary judgment, which shall be rendered if the pleadings, affidavits and any other evidence submitted, show that there is no genuine issue of material fact between the parties requiring a trial and the moving party is entitled to judgment as a matter of law.

(P.B. 1998.)

Sec. 25-47. —Discovery

Discovery shall be as in all other family matters.

(P.B. 1998.)

Sec. 25-48. Dockets, Pretrials and Assignment for Disposition

The provisions of Sections 14-2, 14-3, 14-23, and 14-25 of the rules of practice shall apply to family matters as defined in Section 25-1.

(P.B. 1998.)

Sec. 25-49. Definitions

For purposes of these rules the following definitions shall apply:

(1) ''Uncontested matter'' means a case in which no aspect of the matter is in dispute.

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

(3) ''Contested matter'' means a case in which child custody, visitation rights, paternity or the grounds for the action are in dispute, and matters of monetary awards or the disposition of real or personal property may be in dispute.

(P.B. 1998.)

Sec. 25-50. Case Management

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

(b) If the matter is uncontested, and a form prescribed by the office of the chief court administrator has been filed, the clerk shall assign the matter to a date certain for disposition.

(c) With the approval of the presiding judge, a case management conference may be conducted by the filing of a stipulated scheduling order when only financial issues are outstanding. If there is a dispute with respect to financial issues, the matter may be directed to any alternative dispute resolution mechanism, private or court-annexed, or thereafter have assigned a date certain for family special masters and further judicial pretrial. Thereafter, the matter may be assigned for trial for a date certain if not resolved.

(d) In cases where custody or visitation issues are outstanding, the parties and counsel must appear for a case management conference on the case management date. If custody or visitation issues require judicial intervention, the appointment of counsel or a guardian ad litem for the minor child, or case study or evaluation by family services or by a private provider of services, a target date shall be assigned for completion of such study and the final conjoint thereon and thereafter a date certain shall be assigned for disposition.

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

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

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

(a) Any case claiming a dissolution of marriage or civil union, legal separation, or annulment in

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which the defendant has failed to file an appearance may be assigned a date certain for disposition as an uncontested matter pursuant to Section 25-50. If the defendant has not filed an appearance by the date assigned for disposition, the case may proceed to judgment without further notice to such defendant. Section 17-20 concerning motions for default shall not apply to such cases.

(b) If the defendant files an appearance by the date assigned for disposition, the presiding judge or a designee shall determine which track the case shall take pursuant to Section 25-50.

(P.B. 1998.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-52. Failure to Appear for Scheduled Disposition

If a party fails to appear in person or by counsel for a scheduled disposition, the opposing party may introduce evidence and the case may proceed to judgment without further notice to such party who failed to appear.

(P.B. 1998.)

Sec. 25-53. Reference of Family Matters

In any family matter the court may, upon its own motion or upon motion of a party, refer any contested, limited contested, or uncontested matter for hearing and decision to a judge trial referee who shall have been a judge of the referring court. Such matters shall be deemed to have been referred for all further proceedings and judgment, including matters pertaining to any appeal therefrom, except that the referring court may retain jurisdiction to hear and decide any pendente lite or contempt matters.

(P.B. 1978-1997, Sec. 458.)

Sec. 25-54. Order of Trial; Argument by Counsel

The provisions of Sections 15-5, 15-6 and 15-7, shall apply to family matters as defined in Section 25-1.

(P.B. 1998.)

Sec. 25-55. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. The judge shall order that all such records be available for inspection in the clerk's office to any counsel of record under the supervision of the clerk. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end. Such records shall be submitted in accordance with the provisions of Section 7-18.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 25-56. Production of Documents at Hearing or Trial

(a) At the trial management conference prior to the commencement of an evidentiary hearing or trial, but in no event later than five days before the scheduled hearing date, either party may serve on the other a request for production of documents and tangible things, in a manner consistent with Sections 13-9 through 13-11. Service may be made in the same manner as a subpoena or consistent with Sections 10-12 through 10-14.

(b) If a party fails to produce the requested documents and items, the party filing the request shall be permitted to introduce into evidence such copies as that party might have, without having to authenticate the copies offered.

(c) If a party fails to produce the requested documents and items and the requesting party does not have copies to offer into evidence, the judicial authority may impose such sanctions on the nonproducing party as the judicial authority deems appropriate pursuant to Section 13-14 and as are available to the judicial authority for the enforcement of subpoenas.

(P.B. 1998.)

Sec. 25-57. Affidavit concerning Children

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

(P.B. 1978-1997, Sec. 476.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 25-58. Reports of Dissolution of Marriage or Civil Union and Annulment

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

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Before a hearing is commenced for a dissolution of marriage or civil union or annulment of marriage or civil union, the parties concerned, or their attorneys, shall provide, on forms prescribed by the chief court administrator and furnished by the clerk, such information as is required by the judges of the superior court.

(P.B. 1978-1997, Sec. 477.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 25-59. Closure of Courtroom in Family Matters

(Amended May 14, 2003, to take effect July 1, 2003.)

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the Judicial Branch web site. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(P.B. 1978-1997, Sec. 478.) (Amended May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2003: Prior to 2003, when both the title and text were amended, Section 25-59 read: "**Closed Hearings and Records**

"Subject to the provision of Section 11-20, any family matter may be heard in chambers or in a courtroom from which the public and press have been excluded, and the records and other papers in any family matter may be ordered by the court to be kept confidential and not to be open to inspection except under order of the court or a judge thereof."

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. *Press-Enterprise Co.* v. *Superior Court*, 478 U.S. 1, 10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986); *Globe Newspaper Co.* v. *Superior Court*, 457 U.S. 596, 606, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982); *Westmoreland* v. *Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22 (2d Cir. 1984).

For a further discussion of court closure, see the Commentary to Sections 11-20 and 42-49. It is intended that the above rule also apply to family support magistrates.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: "The time, date and scope of any such order shall be in writing and shall be signed by the judicial authority and be entered by the court clerk in the court file."

COMMENTARY—2005: As used in subsection (a) above, the words "Except as otherwise provided by law" are intended to exempt from the operation of this rule all established procedures for the closure of courtroom proceedings as required or permitted by statute; e.g., General Statutes §§ 19a-583 (a) (10) (D) (pertaining to court proceedings as to disclosure of confidential HIV-related information), 36a-21 (b) (pertaining to court proceedings at which certain records of the department of banking are disclosed), 46b-11 (pertaining to hearings in family relations matters), 54-86c (b) (pertaining to the disclosure of exculpatory information or material), 54-86f (pertaining to the admissibility of evidence of sexual conduct) and 54-86g (pertaining to the testimony of a victim of child abuse); other rules of practice; e.g., Practice Book Section 40-43; and/or controlling state or federal case law.

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to close the courtroom in family matters, will receive timely notice of the court's disposition of such motions.

HISTORY—2012: Prior to 2012, the last sentence of subsection (e) read: "A copy of the short calendar page containing the aforesaid section shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of

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documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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

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

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

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

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

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

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

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

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

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

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

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. See *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 608, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). The guarantee of open public proceedings in civil trials applies as well to the sealing of court documents. See *Publicker Industries, Inc.* v. *Cohen*, 733 F.2d 1059, 1070–71 (3d Cir. 1984).

See also the Commentary to Section 42-49A.

Subsection (h) is intended to minimize the potential for abuse that can result when personal financial information is made available to persons who engage in identity theft or other illegal activities.

It is intended that subsection (h) not apply retroactively to sworn statements that have been filed before the effective date of this rule.

It is intended that the above rule also apply to family support magistrates.

It is intended that the use of pseudonyms in place of the name of a party or parties not be permitted in family cases.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: "The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and entered by the court clerk in the court file." In 2005, in the first sentence of subsection (h), a comma was substituted for "and" between "court personnel" and "to the parties" and the words "and to any guardians ad litem and attorneys appointed for any minor children involved in the matter," were inserted.

COMMENTARY—2005: As used in subsection (a) above, the words "Except as otherwise provided by law" are intended to exempt from the operation of this rule all established procedures for the sealing or ex parte filing, in camera inspection and/or nondisclosure to the public of documents, records and other materials, as required or permitted by statute; e.g., General Statutes §§ 12-242vv (pertaining to taxpayer information), 52-146c et seq. (pertaining to the disclosure of psychiatric records) and 54-56g (pertaining to the pretrial alcohol education program); other rules of practice; e.g., Practice Book Sections 7-18, 13-5 (6)–(8) and 40-13 (c); and/or controlling state or federal case law; e.g., *Matza* v. *Matza*, 226 Conn. 166, 627 A.2d 414 (1993) (establishing a procedure whereby an attorney seeking to withdraw from a case due to his client's anticipated perjury at trial may support his motion to withdraw by filing a sealed affidavit for the court's review).

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to seal files or limit the disclosure of documents in family matters, will receive timely notice of the court's disposition of such motions.

The above change to subsection (h) adds to those categories of individuals to whom financial affidavits filed with the court pursuant to Section 25-30 are disclosable the following: guardians ad litem and attorneys appointed for the minor children.

HISTORY—2012: Prior to 2012, the last sentence of subsection (i) read: "A copy of the short calendar page containing the aforesaid section shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public."

COMMENTARY—2012: The above amendment is intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 25-59B. —Documents Containing Personal Identifying Information

(a) The requirements of Section 25-59A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court, with the exception of financial affidavits that are under seal. When a financial affidavit is unsealed, this section shall apply. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may request that the document containing the personal identifying information be sealed. In response to such request, or on its own motion, the court shall order that the document be sealed and that the party who filed the document submit a redacted copy of the document within ten days of such order.

(b) If the party who filed the document fails to submit a redacted copy of the document within ten days of the order, the court may enter sanctions, as appropriate, against said party for such failure upon the expiration of the ten day period. Upon the submission of a redacted copy of such document, the original document containing the personal identifying information shall be retained as a sealed document in the court file, unless otherwise ordered by the court.

(Adopted June 22, 2009, to take effect Jan. 1, 2010; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 25-60. Evaluations and Studies

(Amended June 20, 2011, to take effect Aug. 15, 2011.)

(a) Whenever, in any family matter, an evaluation or study has been ordered pursuant to Section 25-60A or Section 25-61, the case shall not be disposed of until the report has been filed as hereinafter provided, and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard, unless the judicial authority orders that the case be heard before the report is filed.

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(b) Any report of an evaluation or study pursuant to Section 25-60A or Section 25-61 shall be made in quadruplicate, shall be filed with the clerk, who will impound such reports, and shall be mailed to counsel of record, guardians ad litem and self-represented parties unless otherwise ordered by the judicial authority. Said report shall be available for inspection to counsel of record, guardians ad litem, and the parties to the action, unless otherwise ordered by the judicial authority.

(c) Any report prepared pursuant to Section 25-61 shall be admissible in evidence provided the author of the report is available for cross-examination.

(P.B. 1978-1997, Sec. 479.) (Amended June 20, 2011, to take effect Aug. 15, 2011.)

HISTORY—August, 2011: Prior to August, 2011, this section was entitled, ''Family Division Evaluations and Studies.''

Prior to August, 2011, this section read: ''(a) Whenever, in any family matter, an evaluation or study has been ordered, the case shall not be disposed of until the report has been filed as hereinafter provided, and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard, unless the judicial authority shall order that the case be heard before the report is filed, subject to modification on the filing of the report.

''(b) Any report of an evaluation or study shall be made in quadruplicate, shall be filed with the clerk, who will impound such reports, and shall be mailed to counsel of record. Said report shall be available for inspection only to counsel of record and to the parties to the action, unless otherwise ordered by the judicial authority.

''(c) Said report shall be admissible in evidence provided the author of the report is available for cross-examination.''

COMMENTARY—August, 2011: These revisions clarify that this section applies to evaluations conducted by family relations counselors and state licensed mental health professionals appointed to conduct court-ordered evaluations. The revisions in subsection (b) extend the existing provisions to cover self-represented parties and guardians ad litem, unless otherwise ordered by the judicial authority, not just counsel of record.

Sec. 25-60A. Court-Ordered Evaluations

(a) If the court orders an evaluation of any party or any child in a family proceeding where custody, visitation or parental access is at issue, a state licensed mental health professional shall conduct such evaluation.

(b) Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the guardian ad litem or, where there is no guardian ad litem, by court personnel.

(c) Until a court-ordered evaluation is filed with the clerk pursuant to Section 25-60 (b), counsel for the parties shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority.

(d) The provisions of subsections (a) and (b) of Section 25-60 shall apply to completed court-ordered evaluations.

(Adopted June 20, 2011, to take effect Aug. 15, 2011.)

COMMENTARY—August, 2011: This new section clarifies that the judicial authority oversees the initiation and completion of court-ordered evaluators and further clarifies the evaluation procedure.

Sec. 25-61. Family Division

The family services unit shall, at the request of the judicial authority, provide assistance with regard to issues concerning custody, visitation, finances, mediation, case management and such other matters as the judicial authority may direct.

(P.B. 1998.)

Sec. 25-62. Appointment of Guardian Ad Litem

The judicial authority may appoint a guardian ad litem for a minor involved in any family matter. Unless the judicial authority orders that another person be appointed guardian ad litem, a family relations counselor shall be designated as guardian ad litem. The guardian ad litem is not required to be an attorney. With the exception of family relations counselors, no person may be appointed as guardian ad litem until he or she has completed the comprehensive training program for all family division guardians ad litem sponsored by the judicial branch. The judicial authority may order compensation for services rendered by a court-appointed guardian ad litem.

(P.B. 1978-1997, Sec. 484.) (Amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, the last sentence of this section read: ''If the guardian ad litem is not a family relations counselor, the judicial authority may order compensation for services rendered in accordance with the established judicial branch fee schedule.'' In 2012, that sentence was deleted, and what are now the last two sentences of this section were added.

COMMENTARY—2012: This revision provides notice to guardians ad litem for minors in family matters that they must complete a comprehensive training program before the judicial authority will appoint them.

Sec. 25-62A. Appointment of Attorney for a Minor Child

The judicial authority may appoint an attorney for a minor child in any family matter. No person shall be appointed as an attorney for a minor child until he or she has completed the comprehensive training program for all family division attorneys for minor children sponsored by the judicial branch. The judicial authority may order compensation for services rendered by an attorney for a minor child.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: This rule provides notice to an attorney for a minor child that he or she must complete a

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comprehensive training program before the judicial authority will appoint them.

Sec. 25-63. Right to Counsel in Family Civil Contempt Proceedings

(a) A person who is before the court in a civil contempt proceeding involving the failure to comply with the order of a judicial authority in a family matter and who faces potential incarceration shall be advised of his or her right to be represented by counsel and his or her right to court appointed counsel if he or she is indigent. If the person is unable to obtain counsel by reason of his or her indigency he or she shall have counsel appointed to represent him or her unless:

(1) He or she waives such appointment pursuant to Section 25-64; or

(2) At the time of the application for the appointment of counsel, the judicial authority eliminates incarceration as a possible result of the proceeding and makes a statement to that effect on the record.

(b) The person shall be further advised that no person shall continue to be detained in a correctional facility pursuant to an order of civil contempt for longer than thirty days, unless at the expiration of such thirty days he or she is presented to the judicial authority. On each such presentment, the contemnor shall be given an opportunity to purge himself or herself of the contempt by compliance with the order of the judicial authority. If the contemnor does not so act, the judicial authority may direct that the contemnor remain in custody under the terms of the order of the judicial authority then in effect, or may modify the order if the interests of justice so dictate.

(c) Any attorney appointed to represent the contemnor shall represent such contemnor only on the contempt, and shall not be appointed for any other purpose.

(P.B. 1978-1997, Sec. 484A.)

Sec. 25-64. —Waiver

A person shall be permitted to waive his or her right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the person:

(1) Has been clearly advised of his or her right to the assistance of counsel, including his or her right to the assignment of counsel when he or she is so entitled;

(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent himself or herself;

(3) Comprehends the nature of the proceedings, the range of permissible sanctions and any additional facts essential to a broad understanding of the case; and

(4) Has been made aware of the risks and disadvantages of self-representation.

(P.B. 1978-1997, Sec. 484B.)

Sec. 25-65. Family Support Magistrates; Procedure

[Repealed as of Aug. 1, 2010.]

Sec. 25-66. Appeal from Decision of Family Support Magistrate

[Repealed as of Aug. 1, 2010.]

Sec. 25-67. Support Enforcement Services

[Repealed as of Aug. 1, 2010.]

Sec. 25-68. Right to Counsel in State Initiated Paternity Actions

(a) A putative father named in a state initiated paternity action shall be advised by the judicial authority of his right to be represented by counsel and his right to court appointed counsel if indigent. If he is unable to obtain counsel by reason of his indigency he shall have counsel appointed to represent him unless he waives such appointment pursuant to Section 25-64.

(b) In cases under this section a copy of the paternity petition shall be served on the attorney general in accordance with the provisions of Sections 10-12 through 10-17. The attorney general shall be a party to such cases, but he or she need not be named in the petition or summoned to appear.

(P.B. 1978-1997, Sec. 484C.)

Sec. 25-69. Social Services; Additional Duties

(a) Under the supervision and direction of the judicial authority, a family relations counselor shall, where there is a motion for change of custody of a child, or where his or her knowledge of the family situation causes him or her to believe that the welfare of the child requires a hearing on a change of custody, upon direction of the judicial authority, be permitted to investigate the domestic and financial situation of the parties and report his or her findings. The judicial authority may thereafter, on its own motion if necessary, hold a hearing thereon after such notice to the parties as it deems proper.

(b) Under the supervision and direction of the judicial authority, the family relations counselor shall conduct such investigations or mediation conferences in domestic relations matters as may be directed by the judicial authority.

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(c) Under the supervision and direction of the judicial authority, the family relations counselor may, where necessary, bring an application to the court for a rule requiring a party to appear before the court to show cause why such party should not be held in contempt for failure to comply with an order of the judicial authority for visitation.

(d) Family relations caseworkers, family relations counselors and support enforcement officers shall investigate all criminal matters involving family relations cases referred to them by the prosecuting attorney or by the judicial authority.

(P.B. 1978-1997, Sec. 481A.)

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SUPERIOR COURT—PROCEDURE IN FAMILY SUPPORT MAGISTRATE MATTERS

CHAPTER 25a

FAMILY SUPPORT MAGISTRATE MATTERS

Sec.	
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COMMENTARY—August, 2010: This new chapter is intended to clarify what rules of practice are specifically incorporated in the family support magistrate court rules and what rules are exclusive only to the family support magistrate court. They include rules that mirror, to the extent possible, the language of the superior court rules but are in an exclusive new section based upon the sense that they vary sufficiently such that it was more efficacious to provide them as separate rules.

Sec. 25a-1. Family Support Magistrate Matters; Procedure

(a) In addition to the specific procedures set out in this chapter, the following provisions shall govern the practice and procedure in all family support magistrate matters, whether heard by a family support magistrate or any other judicial authority. The term ''judicial authority'' and the word ''judge'' as used in the rules referenced in this section shall include family support magistrates where applicable, unless specifically otherwise designated. The word ''complaint'' as used in the rules referenced in this section shall include petitions and applications filed in family support magistrate matters.

(1) General Provisions:

(A) Chapters 1, 2, 5 and 6, in their entirety;

(B) Chapter 3, in its entirety except subsection (b) of Section 3-2 and Section 3-9;

(C) Chapter 4, in its entirety except Section 4-2;

(D) Chapter 7, Section 7-19.

(2) Procedures in Civil Matters:

(A) Chapter 8, Sections 8-1 and 8-2;

(B) Chapter 9, Sections 9-1 and 9-18 through 9-20;

(C) Chapter 10, Sections 10-1, 10-3 through 10-5, 10-7, 10-10, 10-12 through 10-14, 10-17, 10-26, 10-28, 10-31 through 10-34, 10-41 through 10-45 and 10-59 through 10-68;

(D) Chapter 11, Sections 11-1 through 11-8, 11-10 through 11-12 and 11-19;

(E) Chapter 12, in its entirety;

(F) Chapter 13, Sections 13-1 through 13-3, 13-5, 13-8, 13-10 except subsection (c), 13-11A, 13-21 except subdivision (13) of subsection (a), subsections (a), (e), (f), (g) and (h) of Sections 13-27, 13-28 and 13-30 through 13-32;

(G) Chapter 14, Sections 14-1 through 14-3, 14-9, 14-15, 14-17, 14-18, 14-24 and 14-25.

(H) Chapter 15, Sections 15-3, 15-5, 15-7 and 15-8;

(I) Chapter 17, Sections 17-1, 17-4, 17-5, 17-19, 17-21, subsection (a) of Sections 17-33 and 17-41;

(J) Chapter 18, Section 18-19;

(K) Chapter 19, Section 19-19;

(L) Chapter 20, Sections 20-1 and 20-3;

(M) Chapter 23, Sections 23-20, 23-67 and 23-68.

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(3) Procedure in Family Matters:

Chapter 25, Sections 25-1, 25-9, 25-12 through 25-22, 25-27, 25-33, 25-48, 25-54, 25-59, 25-59A, 25-61, 25-62 through 25-64 and 25-68.

(b) Any pleading or motion filed in a family support magistrate matter shall indicate, in the lower right hand corner of the first page of the document, that it is a family support magistrate matter.

(c) Family support magistrate matters shall be placed on the family support magistrate matters list for hearing and determination.

(d) Family support magistrate list matters shall be assigned automatically by the clerk without the necessity of a written claim. No such matters shall be so assigned unless filed at least five days before the opening of court on the day the list is to be called.

(e) Family support magistrate list matters shall not be continued except by order of a judicial authority.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.)

Sec. 25a-2. Prompt Filing of Appearance

An appearance in Title IV-D child support matters should be filed promptly but may be filed at any stage of the proceeding.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-2 was temporarily assigned the number 25a-1A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-3. 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 of the chief child protection attorney appointed pursuant to General Statutes § 46b-123c shall continue until a motion to withdraw has been granted.

(f) All appearances entered on behalf of parties for matters involving Title IV-D child support matters shall be deemed to be for those matters only.

(g) All appearances entered on behalf of parties in the family division of the superior court shall not be deemed appearances for any matter involving a Title IV-D child support matter unless specifically so designated.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-3 was temporarily assigned the number 25a-2 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-4. Telephonic Hearings

(a) In any case where mandated by law, the judicial authority shall upon written motion or on its own motion permit an individual to testify by telephone or other audio electronic means.

(b) In any case where permitted by law, the judicial authority may, upon written motion or on its own motion, permit an individual to testify by telephone or other audio electronic means.

(c) Upon an order for a telephonic hearing, the judicial authority shall set the date, time and place for such hearing and shall issue an order in connection therewith.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-4 was temporarily assigned the number 25a-2A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-5. Signing of Pleading

(a) Every pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney, and a support enforcement officer where appropriate, shall sign the pleadings and

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other papers. The name of the attorney, party or support enforcement officer who signs such document shall be legibly typed or printed beneath the signature.

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

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-5 was temporarily assigned the number 25a-2B in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-6. Contents of Petition

All petitions shall contain a concise statement of the facts constituting the cause of action, a demand for relief and the basis on which relief is sought.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-6 was temporarily assigned the number 25a-3 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-7. Automatic Orders upon Service of Petition

(a) The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a petition for child support. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the petitioner or the applicant upon the signing of the document initiating the action (whether it be complaint, petition or application), and with regard to the respondent, upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

(1) Neither party shall cause the other party or the children who are the subject of the complaint, application or petition to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(b) The automatic orders of a judicial authority as enumerated in subsection (a) shall be set forth immediately following the party's requested relief in any complaint, petition or application, and shall set forth the following language in bold letters: **If you do not follow or obey these orders you may be punished by contempt of court. If you object to these orders or would like to have them changed or modified while your case is pending, you have the right to a hearing by a judicial authority within a reasonable time.** The clerk shall not accept for filing any complaint, petition or application that does not comply with this subsection.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-7 was temporarily assigned the number 25a-4 in the Connecticut Law Journal of July 13, 2010.)

TECHNICAL CHANGE: Where capitalization was used as a means for showing emphasis in a rule, it was replaced in 2012 with bold font, and corresponding changes were made to language that previously indicated the usage of uppercase letters.

Sec. 25a-8. Order of Notice

(a) On a petition for support or the establishment of paternity when the adverse party resides out of or is absent from the state or the whereabouts of the adverse party are unknown to the plaintiff or the applicant, any judicial authority or clerk of the court may make such order of notice as he or she deems reasonable. If such notice is by publication, it shall not include the automatic orders set forth in Section 25a-7, but shall, instead, include a statement that automatic orders have issued in the case pursuant to Section 25a-7 and that such orders are set forth in the application or petition on file with the court. Such notice having been given and proved, the judicial authority may hear the application or petition if it finds that the adverse party has actually received notice that the application or petition is pending. If actual notice is not proved, the judicial authority in its discretion may hear the case or continue it for compliance with such further order of notice as it may direct.

(b) With regard to any motion for modification or for contempt or any other motion requiring an order of notice, where the adverse party resides out of or is absent from the state, any judicial authority or clerk of the court may make such order of notice as he or she deems reasonable. Such notice having been given and proved, the court may hear the motion if it finds that the adverse party has actually received notice that the motion is pending.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-8 was temporarily assigned the number 25a-4A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-9. Motions

(a) Any appropriate party may move for child support, appointment of counsel or guardian ad litem for the minor child, counsel fees, or for an order or enforcement of an order with respect to the maintenance of the family or for any other statutorily authorized relief.

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

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-9 was temporarily assigned the number 25a-5 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-10. —Motion to Cite in New Parties

Any motion to cite in or to admit new parties must comply with Section 11-1 and state briefly the grounds upon which it is made. In Title IV-D child support matters, a motion to cite in or to admit new parties is limited to a parent, legal custodian or guardian.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-10 was temporarily assigned the number 25a-5A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-11. Answer to Cross Petition

A plaintiff in a family support magistrate matter seeking to contest the grounds of a cross petition may file an answer admitting or denying the allegations of such cross petition or leaving the pleader to his or her proof. If a decree is rendered on the cross petition, the judicial authority may award to the plaintiff such relief as is claimed in the petition.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-11 was temporarily assigned the number 25a-6 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-12. Order of Pleadings

The order of pleadings shall be:

(1) the petition for establishment of paternity and/or a petition for support;

(2) the defendant's motion to dismiss the petition;

(3) the defendant's motion to strike the petition or claims for relief;

(4) the defendant's answer, cross petition and claims for relief;

(5) the plaintiff's motion to strike the defendant's answer, cross petition, or claims for relief;

(6) the plaintiff's answer.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-12 was temporarily assigned the number 25a-7 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-13. Reclaims

If a motion has gone off the family support magistrate calendar without being adjudicated, any party may claim the motion for adjudication. If an objection to a request has gone off the family support magistrate calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. Any party may claim for adjudication any motion or request initiated by support enforcement services that has gone off without being adjudicated and a support enforcement officer may claim any motion or request initiated by support enforcement services that has gone off without being adjudicated.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-13 was temporarily assigned the number 25a-8 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-14. —Continuances when Counsel's Presence or Oral Argument Required

Matters upon the short calendar list requiring oral argument or counsel's presence shall not be continued except for good cause shown; and no such matter in which adverse parties are interested shall be continued unless the parties shall agree thereto before the day of the short calendar session and notify the clerk, who shall make note thereof on the list of the judicial authority; in the absence of such agreement, unless the judicial authority shall otherwise order, any counsel appearing may argue the matter and submit it for decision or request that it be denied.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-14 was temporarily assigned the number 25a-8A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-15. Statements to Be Filed

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

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

(c) At the time of any hearing, including pendente lite and postjudgment proceedings, in which a moving party seeks a determination, modification, or enforcement of any alimony or child support order, a party shall submit an Advisement of Rights Re: Income Withholding form (JD-FM-71).

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-15 was temporarily assigned the number 25a-9 in the Connecticut Law Journal of July 13, 2010.)

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Sec. 25a-16. Opening Argument

Instead of reading the pleadings, any party shall be permitted to make a brief opening statement at the discretion of the judicial authority, to apprise the trier in general terms as to the nature of the case being presented for trial. The judicial authority shall have discretion as to the latitude of the statements of the parties.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-16 was temporarily assigned the number 25a-10 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-17. Motion to Open Judgment of Paternity by Acknowledgment

(a) Any mother or acknowledged father who wishes to challenge an acknowledgment of paternity pursuant to General Statutes § 46b-172 (a) (2) shall file a motion to open judgment, which shall state the statutory grounds upon which the motion is based and shall append a certified copy of the document containing the acknowledgment of paternity to such motion.

(b) Upon receipt of such motion to open and accompanying document, the clerk shall cause the matter to be docketed.

(c) Any action to challenge an acknowledgment of paternity for which there is no other family court file involving the same parties shall be commenced by an order to show cause accompanied by the motion to open judgment and the document containing the acknowledgment of paternity required by subsection (a) of this section. Upon presentation of the motion to open and the acknowledgment of paternity, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested by the moving party should not be granted. The motion to open, acknowledgment of paternity and order shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the challenge.

(d) Nothing in this section shall preclude an individual from filing a special defense of a challenge to a paternity judgment, or a counterclaim in response to a petition for support.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-17 was temporarily assigned the number 25a-11 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-18. Modification of Alimony or Support

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

(b) In Title IV-D matters, upon any motion to modify support for minor children, where the motion seeks to reduce the amount of support, the judicial authority may, upon hearing, ascertain whether such arrearage has accrued without sufficient excuse so as to constitute a contempt of court and, in its discretion, may determine whether any modification of current alimony and support shall be ordered prior to the payment, in whole or in part as the judicial authority may order, of any arrearage found to exist.

(c) Either parent or both parents of minor children, or any individual receiving Title IV-D services from the state of Connecticut may be cited or summoned by any party to the action, or in Title IV-D matters by support enforcement services of the judicial branch, to appear and show cause why orders of support or alimony should not be entered or modified.

(d) In matters where the parties, or other individuals pursuant to subsection (b) of this section, to a child support order are receiving Title IV-D services from the state of Connecticut, support enforcement services of the judicial branch may initiate a motion to modify an existing child support order pursuant to General Statutes § 46b-231 (s) (4) and, in connection with such motion, may issue an order and summons and assign a date for a hearing on such motion.

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

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

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

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-18 was temporarily assigned the number 25a-12 in the Connecticut Law Journal of July 13, 2010.)

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Sec. 25a-19. Standard Disclosure and Production

(a) Upon request by a party or as ordered by the judicial authority, opposing parties shall exchange the following documents within thirty days of such request or such order:

(1) all federal and state income tax returns filed within the last three years, including personal returns and returns filed on behalf of any partnership or closely held corporation of which a party is a partner or shareholder;

(2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income tax returns for that year have not been prepared;

(3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;

(4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past twenty-four months;

(5) the most recent statement showing any interest in any Keogh, IRA, profit sharing plan, deferred compensation plan, pension plan, or retirement account;

(6) the most recent statement regarding any insurance on the life of any party;

(7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;

(8) any written appraisal concerning any asset owned by either party.

(b) Such duty to disclose shall continue during the pendency of the action should a party appear. This section shall not preclude discovery under any other provisions of these rules.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-19 was temporarily assigned the number 25a-13 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-20. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-20 was temporarily assigned the number 25a-14 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-21. Experts

As soon as is practicable, if a party, including the state of Connecticut, is going to rely on in-court expert testimony, that party shall provide notice to all opposing parties, but said notice shall not be provided less that fourteen days before the hearing. Discovery, facts unknown, and opinions held by experts may be ordered disclosed by the judicial authority on such terms and conditions as the judicial authority deems reasonable.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-21 was temporarily assigned the number 25a-15 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-22. Interrogatories; In General

(a) In any action in the family support magistrate division to establish, enforce or modify a child support order, upon motion of any party and when the judicial authority deems it necessary, any party may be required to answer all or part of the interrogatories set forth in Form 207 of the rules of practice, which is printed in the Appendix of Forms in this volume.

(b) In any paternity action before the family support magistrate division, interrogatories may only be served upon a party where the judicial authority deems it necessary.

(c) For good cause shown, in postjudgment matters, the judicial authority may upon motion authorize further discovery.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-22 was temporarily assigned the number 25a-15A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-23. Answers to Interrogatories

(a) Any such interrogatories shall be answered under oath by the party to whom directed and such answers shall not be filed with the court but shall be served within thirty days after the date of certification of service, in accordance with Sections 10-12, 10-14 and 10-17, of the interrogatories or, if applicable, the notice of interrogatories on the answering party, unless:

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

(2) The party to whom the interrogatories are directed, after service in accordance with Sections 10-12,10-14 and 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the interrogatories or the notice of interrogatories shall file objection thereto. A party shall be entitled to one such request for each set of interrogatories directed to that party; or

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

(b) The party answering interrogatories shall attach a cover sheet to the answers. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the party has answered all of the interrogatories or shall set forth those interrogatories to which the party objects and the reasons for objection. The cover sheet and the answers shall not be filed with the court unless the responding party objects to one or more interrogatories, in which case only the cover sheet shall be so filed.

(c) All answers to interrogatories shall repeat immediately before each answer the interrogatory being answered. Answers are to be signed by the person making them. The party serving the interrogatories or the notice of interrogatories may move for an order under Section 25a-25 with respect to any failure to answer.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-23 was temporarily assigned the number 25a-16 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-24. Requests for Production, Inspection and Examination; In General

(a) Upon motion and by order of the judicial authority, requests for production may be served upon any party at any time after the return day.

(b) If data has been electronically stored, the judicial authority may for good cause shown order disclosure of the data in an alternative format provided the data is otherwise discoverable. When the judicial authority considers a request for a particular format, the judicial authority may consider the cost of preparing the disclosure in the requested format and may enter an order that one or more parties shall pay the cost of preparing the disclosure.

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

(d) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-24 was temporarily assigned the number 25a-17 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-25. Order for Compliance; Failure to Answer or Comply with Order

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or has failed to comply with the provisions of Section 25a-26, or has failed to appear and to testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-8, 13-10 except subsection (c), 25a-22, 25a-23 or 25a-24, the judicial authority may make such order as appropriate.

(b) Such orders may include the following:

(1) The entry of a nonsuit or default against the party failing to comply;

(2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;

(3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;

(5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-25 was temporarily assigned the number 25a-18 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-26. Continuing Duty to Disclose

If, subsequent to compliance with any request or order for discovery at any time the matter is before the court, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney, and file and serve in accordance with Sections 10-12, 10-14 and 10-17 a supplemental or corrected compliance.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-26 was temporarily assigned the number 25a-19 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-27. Depositions; In General

In addition to other provisions for discovery and subject to the provisions of Sections 13-2, 13-3 and 13-5, any party who has appeared in any Title IV-D matter or in any matter under General Statutes §§ 46b-212 through 46b-213w where the judicial authority finds it reasonably probable that evidence outside the record will be required, may,

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at any time after the commencement of the action or proceeding, in accordance with the procedures set forth in this chapter, take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13-28. The attendance of a party deponent or of an officer, director, or managing agent of a party may be compelled by notice to the named person or such person's attorney in accordance with the requirements of Section 13-27 (a). The deposition of a person confined in prison may be taken only by leave of the judicial authority on such terms as the judicial authority prescribes.

Leave of the court for such a deposition is required. Motions for the taking of a deposition shall include the proposed notice of the deposition and the identification of such documents or other tangible evidence as may be sought to be subpoenaed. Only those documents or other tangible evidence approved by the judicial authority shall be permitted to be subpoenaed from the deponent.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-27 was temporarily assigned the number 25a-19A in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-28. —Place of Deposition

(a) Any party who is a resident of this state may be compelled by notice as provided in Section 13-27 (a) to give a deposition at any place within the county of such party's residence, or within thirty miles of such residence, or at such other place as is fixed by order of the judicial authority. A plaintiff who is a resident of this state may also be compelled by like notice to give a deposition at any place within the county where the action is commenced or is pending.

(b) Except as otherwise required by law, a plaintiff who is not a resident of this state may be compelled by notice under Section 13-27 (a) to attend at the plaintiff's expense an examination in the county of this state where the action is commenced or is pending or at any place within thirty miles of the plaintiff's residence or within the county of his or her residence or in such other place as is fixed by order of the judicial authority.

(c) Except as otherwise required by law, a defendant who is not a resident of this state may be compelled:

(1) By subpoena to give a deposition in any county in this state in which the defendant is personally served, or

(2) By notice under Section 13-27 (a) to give a deposition at any place within thirty miles of the defendant's residence or within the county of his or her residence or at such other place as is fixed by order of the judicial authority.

(d) A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place within the county of his or her residence or within thirty miles of the nonparty deponent's residence, or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(e) In this section, the terms ''plaintiff'' and ''defendant'' include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Section 13-27 (h) as appropriate.

(f) If a deponent is an officer, director or managing agent of a corporate party, or other person designated under Section 13-27 (h), the place of examination shall be determined as if the residence of the deponent were the residence of the party.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-28 was temporarily assigned the number 25a-19B in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-29. Appeal from Decision of Family Support Magistrate

Any person who is aggrieved by a final decision of a family support magistrate may appeal such decision in accordance with the provisions of General Statutes § 46b-231. The appeal shall be instituted by the filing of a petition which shall include the reasons for the appeal.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-29 was temporarily assigned the number 25a-20 in the Connecticut Law Journal of July 13, 2010.)

Sec. 25a-30. Support Enforcement Services

In cases where the payment of alimony and/or support has been ordered, a support enforcement officer, where provided by statute, shall:

(a) Whenever there is a default in any payment of alimony or support of children under judgments of dissolution of marriage or civil union or separation, or of support under judgments of support, where necessary, (1) initiate and facilitate, but not advocate on behalf of either party, an application to a family support magistrate and issue an order requiring said party to appear before a family support magistrate to show cause why such party should not be held in contempt, or (2) take such other action as is provided by rule or statute.

(b) Review child support orders (1) in non-TFA Title IV-D cases at the request of either parent or custodial party subject to a support order, or upon receipt of information indicating a substantial change in circumstances of any party to the support order, (2) in TFA cases, at the request of the bureau of child support enforcement, (3) as necessary to comply with federal requirements for

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the child support enforcement program mandated by Title IV-D of the Social Security Act, and initiate and facilitate, but not advocate on behalf of either party, an action before a family support magistrate to modify such support order if it is determined upon such review that the order substantially deviates from the child support guidelines established pursuant to General Statutes § 46b-215a or § 46b-215b. The requesting party shall have the right to such review every three years without proving a substantial change in circumstances; more frequent reviews shall be made only if the requesting party demonstrates a substantial change in circumstances.

(c) In connection with subsections (a) or (b) above, or at any other time upon direction of a family support magistrate, investigate (1) the financial situation of the parties, using all appropriate information and resources available to the Title IV-D child support program, including information obtained through electronic means from state and federal sources in the certified child support system, or (2) information about the status of participation in programs that increase the party's ability to fulfill the duty of support, and report his or her findings thereon to a family support magistrate and to the parties and upon direction of a family support magistrate facilitate agreements between parties.

(Adopted June 21, 2010, to take effect Aug. 1, 2010.) (Sec. 25a-30 was temporarily assigned the number 25a-21 in the Connecticut Law Journal of July 13, 2010.)

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SUPERIOR COURT—PROCEDURE IN JUVENILE MATTERS

CHAPTER 26

DEFINITIONS

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

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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) The definitions of the terms ''child,'' ''youth,'' ''youth in crisis,'' ''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. The definition of ''victim'' shall be as set forth in General Statutes § 46b-122.

(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 delinquency 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.

(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.

(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 appear which is held 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 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 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

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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.

(h) ''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.

(i) ''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 (1) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (2) he has acknowledged in writing to be the father of such child or youth, or (3) he has contributed regularly to the support of such child, or (4) his name appears on the birth certificate, or (5) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (6) he has been named in the petition as the father of the minor child or youth by the mother.

(j) ''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 who is permitted to intervene in accordance with Section 35a-4.

(k) ''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 (c), 46b-129 (k), 46b-141, and 46b-149(j).

(*l*) ''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 filed by any one of the parties authorized to do so by statute.

(m) ''Information'' means a formal pleading filed by a prosecutor alleging that a child or youth in a delinquency matter is within the judicial authority's jurisdiction.

(n) ''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.

(o) ''Respondent'' means a 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.

(p) ''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.

(q) ''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.

(r) ''Supervision'' includes: (1) ''Nonjudicial supervision'': A legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child 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

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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, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) ''Judicial supervision'': A legal status 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.

(s) ''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 superintendent where probable cause has been found that the child has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

(P.B. 1978-1997, Sec. 1023.1.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (a) read: ''(1) 'Child' means any person under sixteen years of age, except that (A) for purposes of delinquency matters and proceedings, 'child' means any person (i) under seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining seventeen years of age, has committed a delinquent act and, subsequent to attaining seventeen years of age, (i) violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; or (ii) willfully fails to appear in response to a summons under General Statutes § 46b-133, with respect to such delinquency proceeding, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age; (2) 'Youth' means any person sixteen or seventeen years of age who has not been legally emancipated; (3) 'Youth in crisis' means any seventeen year old 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.''

Also, in 2012, what is now subsection (h) was added, and what had been subsection (h) became what is now subsection (i). What had been subsections (i) through (r) became subsections (j) through (s), respectively. What had been subsection (s) was deleted in 2012.

COMMENTARY—2012: The revisions in subsection (a) clarify that certain additional definitions are as set forth in General Statutes § 46b-120 and General Statutes (Sup. 2010) § 46b-122, as amended by Public Acts 2010, No. 10-43, § 30. The movement of subsection (h) is to maintain consistency within the section. The revision to subsection (j) (3) is consistent with revisions to Section 35a-4 that conform to General Statutes § 46b-129 (c) and (d), as amended by Public Acts 2009, No. 09-185.

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CHAPTER 27

RECEPTION AND PROCESSING OF DELINQUENCY AND FAMILY WITH SERVICE NEEDS COMPLAINTS OR PETITIONS

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec.
27-1. Complaints; In General [Repealed]
27-1A. Referrals for Nonjudicial Handling of Delinquency Complaints
27-2. —Insufficient Allegations in Complaints [Repealed]
27-3. —Sufficient Allegations in Complaints [Repealed]
27-4. Additional Offenses and Misconduct
27-4A. Ineligibility for Nonjudicial Handling of Delinquency Complaint
27-5. Initial Interview for Delinquency Nonjudicial Handling Eligibility
27-6. Denial of Responsibility
27-7. —Written Statement of Responsibility
27-8. —Scheduling of Judicial Plea/Dispositional Hearing [Repealed]
27-8A. Nonjudicial Supervision—Delinquency
27-9. Family with Service Needs Referrals

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 27-1. Complaints; In General

[Repealed as of Jan. 1, 2003.]

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

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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 assigned, the summons and report shall be referred to the probation department for possible nonjudicial handling.

(b) If the probation officer determines that a delinquency complaint is eligible for nonjudicial handling, the probation officer may cause a notice to be mailed to the child and parent or guardian setting forth with reasonable particularity the 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 mailing.

(c) Delinquency 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 27-2. —Insufficient Allegations in Complaints

[Repealed as of Jan. 1, 2003.]

Sec. 27-3. —Sufficient Allegations in Complaints

[Repealed as of Jan. 1, 2003.]

Sec. 27-4. Additional Offenses and Misconduct

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

Any additional police summons, delinquency complaint, 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.

(P.B. 1978-1997, Sec. 1025.1 (2).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

In the case of a delinquency complaint, 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

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(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 convicted delinquent or adjudged a child from a family with service needs.

(3) The child admitted nonjudicially at least twice previously to having been delinquent.

(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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

(Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

(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.

(P.B. 1978-1997, Sec. 1025.1 (3), (4).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 27-6. Denial of Responsibility

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

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 plea hearing.

(P.B. 1978-1997, Sec. 1025.1 (8), (9).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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 proceed with the nonjudicial handling of the case.

(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.

(P.B. 1978-1997, Sec. 1025.1 (5), (6).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 27-8. —Scheduling of Judicial Plea/ Dispositional Hearing

[Repealed as of Jan. 1, 2003.]

Sec. 27-8A. Nonjudicial Supervision—Delinquency

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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,

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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, 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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 § 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 nonjudicial handling of a delinquency complaint under Section 27-4A.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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CHAPTER 28

DELINQUENCY AND FAMILY WITH SERVICE NEEDS NONJUDICIAL SUPERVISION

[Repealed as of Jan. 1, 2003.]

Sec.
28-1. Nonjudicial Supervision [Repealed] (Transferred to Section 27-8A.)

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 28-1. Nonjudicial Supervision

[Repealed as of Jan. 1, 2003.]

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CHAPTER 29

RECEPTION AND PROCESSING OF DELINQUENCY, CHILD FROM FAMILY WITH SERVICE NEEDS AND YOUTH IN CRISIS PETITIONS AND DELINQUENCY INFORMATIONS

Sec.
29-1. Contents of Delinquency, Family with Service Needs, and Youth In Crisis Petitions or Delinquency Informations
29-1A. Processing of Delinquency Petitions and Informations
29-1B. Processing of Family with Service Needs and Youth In Crisis Petitions
29-2. Service of Petitions

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 29-1. Contents of Delinquency, Family with Service Needs, and Youth In Crisis Petitions or Delinquency Informations

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

(a) A delinquency petition or information shall set forth in plain, concise and definite language the offense which the petitioner contends the child has committed. The petition or information shall further state the citation of any provision of law which is the basis of the petition or information, together with a statement that the offense occurred on or about a particular date or period of time at a particular location.

(b) A family with service needs or youth in crisis petition shall set forth in plain, concise and definite language the specific misconduct which the petitioner contends the child or youth has committed. The petition shall further state the citation of any provision of law which is the basis of the petition, together with a statement that the misconduct occurred on or about a particular date or period of time at a particular location.

(P.B. 1978-1997, Sec. 1027.1(1), (2).) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 29-1A. Processing of Delinquency Petitions and Informations

The procedures promulgated in General Statutes §§ 46b-128 or 46b-133 (a), (b) and (c) shall apply. Any police summons and report which requires judicial processing should be returned to the clerk for preparation of a formal information based on the police summons or report. The information, summons and report shall be submitted to the juvenile prosecutor for review and verified signature. The juvenile prosecutor may thereafter file an amendment or a substituted information.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 29-1B. Processing of Family with Service Needs and Youth In Crisis Petitions

The procedures promulgated in General Statutes §§ 46b-149 and 46b-150f shall apply. Court process shall be initiated by a petition filed by a probation officer and signed and verified by the juvenile prosecutor.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 29-2. Service of Petitions

(a) Notice of summons, together with a copy of the verified delinquency, family with service needs or youth in crisis petition, may be made to the child or youth and parent, guardian or other person having control of the child or youth by service in accordance with any one of the methods set out in General Statutes § 46b-128. Any notice sent by first class mail shall include a provision informing the party that appearance in court as a result of the notice may subject the appearing party to the jurisdiction of the court. If the child or youth does not appear on the plea date, service shall be made in accordance with General Statutes § 46b-128 or § 46b-149 (d), as appropriate.

(b) Petitions alleging delinquency, family with service needs or youth in crisis misconduct shall be served or delivered not less than seven days before the date of the hearing which shall be held not more than thirty days from the date of filing of the petition.

(P.B. 1978-1997, Sec. 1027.1 (3), (4).) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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CHAPTER 30

DETENTION

Sec.
30-1. Notice and Statement by Person Bringing Child to Detention [Repealed]
30-1A. Admission to Detention
30-2. Release [Repealed]
30-2A. Family with Service Needs and Detention
30-3. Advisement of Rights
30-4. Notice to Parents by Detention Personnel
30-5. Detention Time Limitations
30-6. Basis for Detention
30-7. Place of Detention Hearings
30-8. Initial Order for Detention; Waiver of Hearing
30-9. Information Allowed at Detention Hearing
30-10. Orders of a Judicial Authority after Initial Detention Hearing
30-11. Detention after Dispositional Hearing

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 30-1. Notice and Statement by Person Bringing Child to Detention

[Repealed as of Jan. 1, 2003.]

Sec. 30-1A. Admission to Detention

Whenever an officer or other person intends to admit a child into detention, the provisions of General Statutes § 46b-133 shall apply.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 30-2. Release

[Repealed as of Jan. 1, 2003.]

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 nondelinquent juvenile runaway from another state may be held in a juvenile detention center in accordance with the provisions of General Statutes § 46b-151h.

(Adopted June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''46b-151h'' was substituted for ''46b-151 to 46b-151g inclusive'' in subsection (b).

COMMENTARY—2012: The above change is made to update the statutory citations in subsection (b).

Sec. 30-3. Advisement of Rights

Upon admission to detention, the child shall be advised of the right to remain silent and the right to counsel and be further advised of the right to a detention hearing in accordance with Sections 30-5 through 30-8, which hearing may be waived only with the written consent of the child and the child's attorney.

(P.B. 1978-1997, Sec. 1030.1 (3).) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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

Upon admission, the detention 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.

(P.B. 1978-1997, Sec. 1030.1 (4).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in detention for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless (1) a delinquency petition or information alleging delinquent conduct has been filed or an affidavit is filed by a police officer, probation officer or prosecutor setting forth the facts upon which they believe that a child in detention is a delinquent or nondelinquent child whose return is sought by another jurisdiction in accordance with the Interstate Compact on Juveniles, and (2) an order for such continued detention has been signed by the judicial authority.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest. However, a judicial finding of probable cause must be made within forty-eight hours of arrest, including Saturdays, Sundays and holidays. If there is

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no such finding of said probable cause within forty-eight hours of the arrest, the child shall be released from detention subject to an information and subsequent arrest by warrant or take into custody order.

(c) If a nondelinquent child is being held for another jurisdiction in accordance with the Interstate Compact on Juveniles, that child shall be held not more than ninety days and shall be held in a secure facility, as defined by rules promulgated in accordance with the Compact, other than a locked, state operated detention facility.

(P.B. 1978-1997, Sec. 1031.1 (1).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (a) read: "No child shall be held in detention for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless a delinquency petition or information alleging delinquent conduct has been filed and an order for such continued detention has been signed by the judicial authority."

In 2012, what is now subsection (c) was added.

COMMENTARY—2012: The above revisions are made to comply with the provisions of the Interstate Compact on Juveniles and General Statutes § 46b-149 (f). Regulations promulgated pursuant to the Compact at times require that the judicial authority hold a nondelinquent child whose custody is being sought by another state in a secure setting. Compact Rule 1-101 defines a secure facility as a facility approved for the holding of juveniles which is either staff-secured or locked and prohibits a juvenile in custody from leaving. General Statutes § 46b-149 (f) prohibits the use of detention as a means by which to hold a nondelinquent child in accordance with the Compact.

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, that there is no less restrictive alternative available and that there is (1) a strong probability that the child will run away prior to the 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 the community prior to the court disposition, or (3) probable cause to believe that the child's continued residence in the child's home pending disposition poses a risk to the child or the community because of the serious and dangerous nature of the act or acts the child is alleged to have committed, (4) a need to hold the child for another jurisdiction, (5) a need to hold the child to assure the child's appearance before the court, in view of the child's previous failure to respond to the court process, or (6) the child has violated one or more of the conditions of a suspended detention order. 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.

(P.B. 1978-1997, Sec. 1031.1 (2).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ", that there is no less restrictive alternative available" was added to the first sentence, after "acts alleged." Also, in the first sentence, in item (1) "the" was added before "court." In item (2), "prior to the" was substituted for "before," after "injurious to the child or to the community." In item (3), "child's" was added before "home," "poses a risk" was substituted for "will not safeguard the best interests of," and "the child is alleged to have committed," was substituted for "set forth in the attached delinquency petition or information." Before items (4) and (5), "or" was deleted. In item (5), "the child's" was substituted for "a" after "in view of," and the period was deleted after "court process." Also, in 2012, item (6) was added, as was ", or" that appears directly before item (6).

COMMENTARY—2012: The revisions to this section are made to conform to amendments made by Public Acts, Spec. Sess., Sept. 2009, No. 09-7, § 72 (d).

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 of appropriate venue.

(P.B. 1978-1997, Sec. 1031.1 (3).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

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 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.

(P.B. 1978-1997, Sec. 1031.1 (4).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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Sec. 30-9. Information Allowed at Detention Hearing

At the detention hearing the judicial authority may consider any information which is material and relevant to the issue of detention. Probable cause may be proven by sworn affidavit in lieu of testimony. The probation department may ascertain such factors as might pertain to any need for detention. Any written reports or social records made available to the judicial authority shall be made available to counsel of record and, in the absence of counsel, to the parties unless the judicial authority finds that the availability of such materials would be psychologically destructive to the relationship between members of the family. Either through direct access or by quotation or summation by the judicial authority, the parties should be made aware of such findings in the reports or social records as directly enter into the judicial authority's decision.

(P.B. 1978-1997, Sec. 1032.1 (1).) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

(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.

(P.B. 1978-1997, Sec. 1032.1 (2), (3).) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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.

(P.B. 1978-1997, Sec. 1032.1 (4).) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

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CHAPTER 30a

DELINQUENCY, FAMILY WITH SERVICE NEEDS AND YOUTH IN CRISIS HEARINGS

Sec.
30a-1. Initial Plea Hearing
30a-1A. Family with Services Needs Preadjudication Continuance
30a-2. Pretrial Conference
30a-3. —Standards of Proof; Burden of Going Forward
30a-4. Plea Canvass
30a-5. Dispositional Hearing
30a-6. —Statement on Behalf of Victim
30a-6A. —Persons in Attendance at Hearings
30a-7. Recording of Hearings
30a-8. Records

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 30a-1. Initial Plea Hearing

(a) The judicial authority shall begin the hearing by determining whether all necessary parties are present and that the rules governing service or notice for nonappearing parties have been complied with, and shall note these facts for the record. The judicial authority shall then inform the parties of the substance of the petition or information.

(b) In age appropriate language, the judicial authority prior to any plea shall advise the child or youth and parent or guardian of the following rights:

(1) That the child or youth is not obligated to say anything and that anything that is said may be used against the child or youth.

(2) That the child or youth is entitled to the services of an attorney and that if the child or youth and the parent or parents, or guardian are unable to afford an attorney for the child or youth, an application for a public defender or an attorney appointed by the chief public defender should be completed and filed with the office of the public defender or the clerk of the court to request an attorney without cost.

(3) That the child or youth will not be questioned unless he or she consents, that the child or youth can consult with an attorney before being questioned and may have an attorney present during questioning, and that the child or youth can stop answering questions at any time.

(4) That the child or youth has the right to a trial and the rights of confrontation and cross-examination of witnesses.

(c) Notwithstanding any prior statement acknowledging responsibility for the acts alleged, the judicial authority shall inquire of the child or youth whether the child or youth presently admits or denies the allegations of the petition or information.

(d) If the judicial authority determines that a child or youth, or the parent, parents or guardian of a child or youth are unable to afford counsel for the child or youth, the judicial authority shall, in a delinquency proceeding, appoint the office of the public defender to represent the child or youth, or in a family with service needs or youth in crisis proceeding, notify the chief public defender, who shall assign an attorney to represent the child or youth.

(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, youth or the child's or youth's parent or parents, guardian or other person having control of the child or youth, in any delinquency, family with service needs or youth in crisis proceeding, the judicial authority may appoint an attorney to represent any such party and shall notify the chief public defender who shall assign an attorney to represent any such party. Where, under the provisions of this section, the court so appoints counsel for any such party who is found able to pay, in whole or in part, the cost thereof, the judicial authority shall assess as costs on the appropriate form against such parent or parents, guardian or other person having control of the child or youth, including any agency vested with the legal custody of the child or youth, the expense so incurred and paid by the Public Defender Services Commission in providing such counsel, to the extent of their financial ability to do so in accordance with the rates established by the Public Defender Services Commission for compensation of counsel.

(f) If the parent, parents or guardian of the child or youth fails to comply with a court order entered in the best interests of the child or youth and is facing potential imprisonment for contempt of court, such parent or guardian, if unable to afford counsel, shall be entitled to have counsel provided

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for such parent or guardian of the child or youth in accordance with subsection (e) of this section.

(g) For purposes of determining eligibility for appointment of counsel, the judicial authority shall cause the parent or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the child's or youth's, or parent's, parents' or guardian's or other person's liabilities and assets, income and sources thereof, and such other information as the office of the public defender or the Public Defender Services Commission shall designate and require on forms adopted by said office of the public defender or Public Defender Services Commission.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 22, 2009, to take effect Jan. 1, 2010.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

Sec. 30a-1A. Family with Service Needs Pre-adjudication Continuance

If a family with service needs petition is filed and it appears that the interest of the child or the family may be best served, prior to adjudication, by referral to community-based or other services, the judicial authority may permit the matter to be continued for a reasonable period of time not to exceed six months, which time period may be extended by an additional three months for cause. If it appears at the conclusion of the continuance that the matter has been satisfactorily resolved, the judicial authority may dismiss the petition.

(Adopted June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-2. Pretrial Conference

(a) When counsel is requested, or responsibility is denied, the case may be continued for a pretrial conference. At the pretrial, the parties may agree that a substitute information will be filed, or that certain charges will be nolled or dismissed. If the child or youth and parent or guardian subsequently execute a written statement of responsibility at the pretrial conference, or the attorney for the child or youth conveys to the prosecutor an agreement on the adjudicatory grounds, a predispositional study shall be compiled by the probation department and the case shall be assigned for a plea and dispositional hearing.

(b) If a plea agreement has been reached by the parties which contemplates the entry of an admission in a family with service needs or youth in crisis case, or a plea of guilty or nolo contendere in a delinquency case, and the recommendation of a particular disposition, the agreement shall be disclosed in open court at the time the plea is offered. Thereupon the judicial authority may accept or reject any agreement, or may defer the decision on acceptance or rejection of the agreement until it has had an opportunity to review the predispositional study.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 30a-3. —Standards of Proof; Burden of Going Forward

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

(a) The standard of proof for a delinquency conviction is evidence beyond a reasonable doubt and for a family with service needs adjudication is clear and convincing evidence.

(b) The burden of going forward with evidence shall rest with the juvenile prosecutor.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-4. Plea Canvass

To assure that any plea or admission is voluntary and knowingly made, the judicial authority shall address the child or youth in age appropriate language to determine that the child or youth substantially understands:

(1) The nature of the charges;

(2) The factual basis of the charges;

(3) The possible penalty, including any extensions or modifications;

(4) That the plea or admission must be voluntary and not the result of force, threats, or promises, apart from the plea agreement;

(5) That the child or youth has (i) the right to deny responsibility or plead not guilty or to persist if that denial or plea has already been made, (ii) the right to be tried by a judicial authority and (iii) at trial, the right to the assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-5. Dispositional Hearing

(a) The dispositional hearing may follow immediately upon a conviction or an adjudication.

(b) The judicial authority may admit into evidence any testimony that is considered relevant to the issue of the disposition, in any form the judicial authority finds of probative value, but no disposition shall be made by the judicial authority until the predispositional study, unless waived, has been submitted. A written predispositional study may be waived by the judicial authority for good cause shown upon the request of the parties, provided that the basis for the waiver and the probation officer's oral summary of any investigation are both placed on the record. The predispositional study shall be presented to the judicial

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authority and copies thereof shall be provided to all counsel in sufficient time for them to prepare adequately for the dispositional hearing, and, in any event, no less than forty-eight hours prior to the date of the disposition.

(c) The prosecutor and the child or youth and parent or guardian shall have the right to produce witnesses on behalf of any dispositional plan they may wish to offer.

(d) Prior to any disposition, the child or youth shall be allowed a reasonable opportunity to make a personal statement to the judicial authority in mitigation of any disposition.

(e) The judicial authority shall determine an appropriate disposition upon conviction of a child as delinquent in accordance with General Statutes §§ 46b-140 and 46b-141.

(f) The judicial authority shall determine an appropriate disposition upon adjudication of a child from a family with service needs in accordance with General Statutes § 46b-149 (h).

(g) The judicial authority shall determine an appropriate disposition upon adjudication of a youth as a youth in crisis in accordance with General Statutes § 46b-150f.

(h) The judicial authority shall determine the appropriate disposition upon a finding that a child adjudicated as a child from a family with service needs has violated a valid court order.

(i) The judicial authority shall determine the appropriate disposition upon a finding that a youth adjudicated as a youth in crisis has violated a valid court order.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-6. —Statement on Behalf of Victim

Whenever a victim of a delinquent act, the parent or guardian of such victim, a General Statutes § 54-221 advocate or such victim's counsel exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case, no statement shall be received unless the delinquent has signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-6A. —Persons in Attendance at Hearings

Any judge hearing a juvenile matter, may during such hearing, exclude from the courtroom in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise.

(Adopted June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 30a-7. Recording of Hearings

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

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 30a-8. Records

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

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

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

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 22, 2009, to take effect Jan. 1, 2010.)

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CHAPTER 31

DELINQUENCY AND FAMILY WITH SERVICE NEEDS HEARING

[Repealed as of Jan. 1, 2003.]

Sec.
31-1. Adjudicatory Hearing; Actions by Judicial Authority [Repealed]
31-2. —Continuance for Pretrial Conference [Repealed]
31-3. —Burden of Going Forward [Repealed]
31-4. —Physical Presence of Child [Repealed]
31-5. Dispositional Hearing; Factors to Be Considered by Judicial Authority [Repealed]
31-6. —When Held; Evidence and Predispositional Study [Repealed]
31-7. —Availability of Predispositional Study to Counsel and Parties [Repealed]
31-8. —Dispositional Plan Offered by Child or Parent [Repealed]
31-9. —Statement on Behalf of Victim [Repealed]
31-10. Modification of Probation and Supervision [Repealed]
31-11. Take into Custody [Repealed]
31-12. Physical and Mental Examinations [Repealed]
31-13. Mentally Ill Children [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 31-1. Adjudicatory Hearing; Actions by Judicial Authority

[Repealed as of Jan. 1, 2003.]

Sec. 31-2. —Continuance for Pretrial Conference

[Repealed as of Jan. 1, 2003.]

Sec. 31-3. —Burden of Going Forward

[Repealed as of Jan. 1, 2003.]

Sec. 31-4. —Physical Presence of Child

[Repealed as of Jan. 1, 2003.]

Sec. 31-5. Dispositional Hearing; Factors to Be Considered by Judicial Authority

[Repealed as of Jan. 1, 2003.]

Sec. 31-6. —When Held; Evidence and Predispositional Study

[Repealed as of Jan. 1, 2003.]

Sec. 31-7. —Availability of Predispositional Study to Counsel and Parties

[Repealed as of Jan. 1, 2003.]

Sec. 31-8. —Dispositional Plan Offered by Child or Parent

[Repealed as of Jan. 1, 2003.]

Sec. 31-9. —Statement on Behalf of Victim

[Repealed as of Jan. 1, 2003.]

Sec. 31-10. Modification of Probation and Supervision

[Repealed as of Jan. 1, 2003.]

Sec. 31-11. Take into Custody

[Repealed as of Jan. 1, 2003.]

Sec. 31-12. Physical and Mental Examinations

[Repealed as of Jan. 1, 2003.]

Sec. 31-13. Mentally Ill Children

[Repealed as of Jan. 1, 2003.]

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CHAPTER 31a

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

Sec.	
31a-1.	Motions and Amendments
31a-1A.	Continuances and Advancements
31a-2.	Motion for Bill of Particulars
31a-3.	Motion to Dismiss
31a-4.	Motion to Suppress
31a-5.	Motion for Judgment of Acquittal
31a-6.	Motion for Transfer of Venue
31a-7.	Motion in Limine
31a-8.	Motion for Sequestration
31a-9.	Severance of Offenses
31a-10.	Trial Together on Petitions or Informations
31a-11.	Motion for New Trial
31a-12.	Motion to Transfer to Adult Criminal Docket
31a-13.	Take into Custody Order
31a-13A.	Temporary Custody Order—Family with Service Needs Petition
31a-14.	Physical and Mental Examinations
31a-15.	Mentally Ill Children
31a-16.	Discovery
31a-17.	Disclosure of Defenses in Delinquency Proceedings
31a-18.	Modification of Probation and Supervision
31a-19.	Motion for Extension of Delinquency Commitment; Motion for Review of Permanency Plan
31a-19A.	Motion for Extension or Revocation of Family with Service Needs Commitment; Motion for Review of Permanency Plan
31a-20.	Petition for Violation of Family with Service Needs Post-Adjudicatory Orders
31a-21.	Petition for Child from a Family with Service Needs at Imminent Risk

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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 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 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 to be scheduled for hearing.

(c) If the moving party determines and reports that all counsel and self-represented 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 31a-2. Motion for Bill of Particulars

The child or youth may file a motion, or the judicial authority may order at any time, that the

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prosecuting authority file a bill of particulars. The judicial authority shall order that a bill of particulars disclose information sufficient to enable the child or youth to prepare the defense, including but not being limited to reasonable notice of the offense charged and the date, time and place of its commission. When any bill of particulars is ordered, an amended or substitute information, if necessary, shall be filed incorporating its provisions.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-3. Motion to Dismiss

The child or youth may file a motion to dismiss if the motion is capable of determination without a trial of the general issue on grounds (1) to (9) of Section 41-8 of the rules of procedure in criminal matters, subject to the conditions of Section 41-10 and 41-11.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-4. Motion to Suppress

The child or youth may file a motion to suppress potential testimony or other evidence if required under the constitution or laws of the United States or the state of Connecticut in accordance with the provisions of Sections 41-13 through 41-17 of the rules of procedure in criminal matters.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 respondent's case in chief. If the motion is not granted, the respondent may offer evidence without having reserved the right to do so.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 31a-6. Motion for Transfer of Venue

The child or youth or juvenile prosecutor may file a motion, or the judicial authority may order at any time, that a juvenile matter be transferred to a different venue in accordance with Sections 41-23 and 41-25 of the rules of procedure in criminal matters.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-7. Motion in Limine

The judicial authority to whom a matter has been referred for trial may in its discretion entertain a motion in limine made by the child or youth or juvenile prosecutor regarding the admission or exclusion of anticipated evidence. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-8. Motion for Sequestration

A child or youth or juvenile prosecutor may file a motion for sequestration. The judicial authority upon such motion shall cause any witness to be sequestered during the hearing on any issue or motion or during any part of the trial in which such witness is not testifying.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-9. Severance of Offenses

If it appears that a child or youth is prejudiced by a joinder of offenses, the judicial authority may, upon its own motion or the motion of the child or youth, order separate trials of the counts or provide whatever other relief justice may require.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-10. Trial Together on Petitions or Informations

The judicial authority may, upon its own motion or the motion of the child or youth or juvenile prosecutor, order that two or more petitions or informations against the same child or youth be tried together. Petitions or informations against different children or youths may not be tried together unless all parties agree to waive the confidentiality rules.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-11. Motion for New Trial

(a) Upon motion of the child or youth, the judicial authority may grant a new trial if it is required in the interest of justice in accordance with Section 42-53 of the rules of criminal procedure.

(b) Unless otherwise permitted by the judicial authority in the interests of justice, a motion for a new trial shall be made within five days after an adjudication or finding of guilty or within any further time the judicial authority allows during the five-day period.

(c) A request for a new trial on the ground of newly discovered evidence shall require a petition

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for a new trial and shall be brought in accordance with General Statutes § 52-270. The judicial authority may grant the petition even though an appeal is pending.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 31a-12. Motion to Transfer to Adult Criminal Docket

The juvenile prosecutor may file a motion to transfer prosecution to the adult criminal docket in accordance with General Statutes § 46b-127.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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.

(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 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 31a-15. Mentally Ill Children

No child shall be committed by a judicial authority as mentally ill pursuant to General Statutes § 46b-140 until such a study has been made and

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a sworn report filed with the judicial authority or in lieu thereof without the sworn certificate of at least two impartial physicians, one of whom shall be a physician specializing in psychiatry, selected by the judicial authority who have personally examined the child within ten days of the hearing, stating that in their opinion the child's mental condition necessitates placement in a designated hospital for mental illness. If, after such hearing, the judicial authority finds by clear and convincing evidence that the child suffers from a mental disorder, as defined in General Statutes § 17a-75, is in need of hospitalization for treatment and such treatment is available as the least restrictive alternative, the judicial authority shall make an order for commitment for a definite period not to exceed six months to a designated hospital for mental illness of children. No child or youth shall be committed as mentally deficient pursuant to General Statutes § 46b-140 except in accordance with procedures of General Statutes § 17a-274 (b), (g), and (h).

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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 not later than ten days after the matter is scheduled for trial except with the permission of the judicial authority.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

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) The child, attorney, juvenile prosecutor or parent may, in the event of disagreement, in writing request the judicial authority 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

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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 shall give notice to the child, the child's parent or guardian, counsel of record for the parent or guardian and child 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 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.

(Adopted June 24, 2002, to take effect, Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 22, 2009, to take effect Jan. 1, 2010.)

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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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

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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 a 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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 31a-21. Petition for Child from a Family with Service Needs at Imminent Risk

(a) When a child who has been adjudicated as a child from a family with service needs is under an order of supervision or an order of commitment to the commissioner of the department of children and families and is believed to be in imminent risk of physical harm from the child's surroundings or other circumstances, a probation officer, on receipt of a complaint setting forth facts alleging such risk, or on the probation officer's own motion on the basis of his or her knowledge of such risk, may file a petition alleging that the child is in imminent risk of physical harm and setting forth facts claimed to constitute such risk. Service shall be made in accordance with subsection (d) of General Statutes § 46b-149.

(b) If it appears from the specific allegations of the petition and other verified affirmations of fact accompanying the petition, or made subsequent thereto, that there is probable cause to believe that (1) the child is in imminent risk of physical harm from the child's surroundings, (2) as a result of such condition, the child's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's safety, and (3) there is no less restrictive alternative available, the judicial authority shall 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, subject to subsection (e) of this section, with review by the judicial authority every fifteen days to consider whether continued placement is appropriate.

(c) 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 pursuant to Section 30a-1 of these rules or that counsel of record is notified of the filing of the imminent risk petition.

(d) Not later than the end of such forty-five day period, the child shall either be (1) returned to the community for appropriate services subject to the supervision of a probation officer or an existing commitment to the commissioner of the department of children and families; or (2) committed to the commissioner of the department of children and families for a period not to exceed eighteen months if a hearing has been held and the judicial authority has found, based on clear and convincing evidence, that (i) the child is in imminent risk of physical harm from the child's surroundings, (ii) as a result of such condition, the child's safety is endangered and removal from such surroundings is necessary to ensure the child's safety, and (iii) there is no less restrictive alternative available. Any such child shall be entitled to the same procedural protections as are afforded to a delinquent child.

(e) No child shall be held prior to a hearing on a petition under this section for more than twenty-four hours, excluding Saturdays, Sundays and holidays.

(Adopted June 22, 2009, to take effect Jan. 1, 2010.)

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CHAPTER 32

NEGLECTED, UNCARED FOR AND DEPENDENT CHILDREN AND TERMINATION OF PARENTAL RIGHTS

[Repealed as of Jan. 1, 2003.]

Sec.
32-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of Facts [Repealed]
32-2. —Summons Accompanying Petitions [Repealed]
32-3. —Venue [Repealed]
32-4. —Identity or Location of Parent Unknown [Repealed]
32-5. —Address of Person Entitled to Personal Service Unknown [Repealed]
32-6. Order of Temporary Custody; Application and Sworn Statement [Repealed]
32-7. —Statement in Temporary Custody Order of Respondent's Rights and of Subsequent Hearing [Repealed]
32-8. —Authority of Temporary Custodian [Repealed]
32-9. —Emergency, Life-Threatening Medical Situations—Procedures [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 32-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of Facts

[Repealed as of Jan. 1, 2003.]

Sec. 32-2. —Summons Accompanying Petitions

[Repealed as of Jan. 1, 2003.]

Sec. 32-3. —Venue

[Repealed as of Jan. 1, 2003.]

Sec. 32-4. —Identity or Location of Parent Unknown

[Repealed as of Jan. 1, 2003.]

Sec. 32-5. —Address of Person Entitled to Personal Service Unknown

[Repealed as of Jan. 1, 2003.]

Sec. 32-6. Order of Temporary Custody; Application and Sworn Statement

[Repealed as of Jan. 1, 2003.]

Sec. 32-7. —Statement in Temporary Custody Order of Respondent's Rights and of Subsequent Hearing

[Repealed as of Jan. 1, 2003.]

Sec. 32-8. —Authority of Temporary Custodian

[Repealed as of Jan. 1, 2003.]

Sec. 32-9. —Emergency, Life-Threatening Medical Situations—Procedures

[Repealed as of Jan. 1, 2003.]

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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
32a-2. Hearing Procedure; Subpoenas
32a-3. Standards of Proof
32a-4. Child or Youth Witness
32a-5. Consultation with Child or Youth
32a-6. Interpreter
32a-7. Records
32a-8. Use of Confidential Alcohol or Drug Abuse Treatment Records as Evidence
32a-9. Competency of Parent

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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

(a) At the first hearing in which the parents or guardian appear, the judicial authority shall advise and explain to the parents or guardian of a child or youth their right to silence and to counsel.

(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 public defender 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 guardian ad litem 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 public defender of such finding, and the chief public defender 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 public defender, 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 Public Defender Services Commission shall designate and require on forms adopted by said commission.

(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, 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 chief public defender in providing such counsel, to the extent of their financial ability to do so, in accordance with the rates established by the Public Defender Services Commission for compensation of counsel. Reimbursement to the appointed attorney of unrecovered costs shall be made to that attorney by the chief public defender upon the attorney's certification of his or her unrecovered expenses to the chief public defender.

(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.

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(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 the right to retain counsel, and that if such person is unable to afford counsel, counsel will be assigned to provide representation, that such person has a right to refuse to make any statement and that any statements such person makes may be introduced in evidence against such person.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

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 self-represented party may request the clerk of the court to issue subpoenas for persons to testify before the judicial authority. Self-represented parties shall obtain prior approval from the judicial authority to issue subpoenas and, if indigent, may seek reimbursement for the costs thereof.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 32a-4. Child or Youth Witness

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 32a-5. Consultation with Child or Youth

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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

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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 a hearing may be excluded from the courtroom.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 32a-6. Interpreter

The judicial authority shall provide an official interpreter to the parties as necessary to ensure their understanding of, and participation in, the proceedings.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 32a-7. Records

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

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

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

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 32a-8. Use of Confidential Alcohol or Drug Abuse Treatment Records as Evidence

(a) Upon a determination by the judicial authority that good cause exists pursuant to federal law and regulations, the judicial authority may admit evidence of any party's alcohol or drug treatment by a facility subject to said regulations.

(b) A party seeking to introduce substance abuse treatment records shall submit a motion to the judicial authority requesting permission to subpoena such records and explaining the need for them, and shall also file a motion to disclose such confidential records and permit testimony regarding them. The motion for permission to subpoena such records may be signed ex parte by the judicial authority. If the judicial authority approves the motion, such records may be subpoenaed and submitted to the court under seal, and the judicial authority shall set a date for the parties and service providers to be heard on the motion to disclose confidential alcohol or drug abuse treatment records.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 subsection (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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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CHAPTER 33

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

[Repealed as of Jan. 1, 2003.]

Sec.
33-1. Adjudicatory Hearing; Actions by Judicial Authority [Repealed]
33-2. —Continuance for Case Status Conference [Repealed]
33-3. —Evidence [Repealed]
33-4. —Burden of Proceeding [Repealed]
33-5. Dispositional Hearing; Evidence and Social Study [Repealed]
33-6. —Availability of Social Study to Counsel and Parties [Repealed]
33-7. —Dispositional Plan Offered by Respondents [Repealed]
33-8. Protective Supervision—Conditions and Modification [Repealed]
33-9. Extension Petitions [Repealed]
33-10. Revocation of Commitments [Repealed]
33-11. Modifications [Repealed]
33-12. Coterminous Petitions [Repealed]
33-13. Transfer from Probate Court of Petitions for Removal of Parent as Guardian [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 33-1. Adjudicatory Hearing; Actions by Judicial Authority

[Repealed as of Jan. 1, 2003.]

Sec. 33-2. —Continuance for Case Status Conference

[Repealed as of Jan. 1, 2003.]

Sec. 33-3. —Evidence

[Repealed as of Jan. 1, 2003.]

Sec. 33-4. —Burden of Proceeding

[Repealed as of Jan. 1, 2003.]

Sec. 33-5. Dispositional Hearing; Evidence and Social Study

[Repealed as of Jan. 1, 2003.]

Sec. 33-6. —Availability of Social Study to Counsel and Parties

[Repealed as of Jan. 1, 2003.]

Sec. 33-7. —Dispositional Plan Offered by Respondents

[Repealed as of Jan. 1, 2003.]

Sec. 33-8. Protective Supervision—Conditions and Modification

[Repealed as of Jan. 1, 2003.]

Sec. 33-9. Extension Petitions

[Repealed as of Jan. 1, 2003.]

Sec. 33-10. Revocation of Commitments

[Repealed as of Jan. 1, 2003.]

Sec. 33-11. Modifications

[Repealed as of Jan. 1, 2003.]

Sec. 33-12. Coterminous Petitions

[Repealed as of Jan. 1, 2003.]

Sec. 33-13. Transfer from Probate Court of Petitions for Removal of Parent as Guardian

[Repealed as of Jan. 1, 2003.]

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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-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of Facts
33a-2. Service of Summons, Petitions and Ex Parte Orders
33a-3. Venue
33a-4. Identity or Location of Respondent Unknown
33a-5. Address of Person Entitled to Personal Service Unknown
33a-6. Order of Temporary Custody; Ex Parte Orders and Orders to Appear
33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority
33a-8. Emergency, Life-Threatening Medical Situations—Procedures

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 33a-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of Facts

(a) The petitioner shall set forth with reasonable particularity, including statutory references, the specific conditions which have resulted in the situation which is the subject of the petition.

(b) A summary of the facts substantiating the allegations of the petition shall be attached thereto and shall be incorporated by reference.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 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 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.

(e) Whenever the commissioner of the department of children and families obtains an ex parte order of temporary custody or an order to appear and show cause from the judicial authority, he or she shall provide the clerk with a sealed envelope marked "Attention: Counsel for Child(ren)" containing the following information: the name, phone number and e-mail of the investigation social worker; the name, phone number and e-mail of the treatment supervisor or social worker, if known; and the child(ren)'s placement or home address and phone number, and name of a placement contact person. The clerk shall ensure that counsel assigned to the child is provided with said envelope at the time his or her appearance is filed. In the event the placement information changes prior to the preliminary hearing, the commissioner of the department of children and families shall notify counsel for the child immediately.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 22, 2009, to take effect Jan. 1, 2010.)

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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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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. 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, the judicial authority may notify the chief public defender 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

Sec. 33a-5. Address of Person Entitled to Personal Service Unknown

If the address of any person entitled to personal service is unknown, service may be by publication as ordered by the judicial authority.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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 or her 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 not later than ten days 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 respondents' position concerning the alleged facts; (iv) that the respondent has the right to remain silent; (v) that an attorney will be appointed for respondents who cannot afford an attorney by the chief public defender; (vi) that such respondents may apply for 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; (vii) if such respondents have any questions concerning the case or appointment of counsel, any such respondent is advised to go to the court, or contact the clerk's office, or contact the chief public defender as soon as possible, and (viii) that such parents, or a person having responsibility for the care and custody of the child or youth, may request the

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commissioner of children and families to investigate placing the child or youth with a person related to the child or youth by blood or marriage who might serve as a licensed foster parent or temporary custodian for such child or youth.

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

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, ''and'' was deleted before (e) (vii) and what is now (e) (viii) was added after ''as soon as possible.'' The comma and ''and'' were also added in 2012, before (e) (viii).

COMMENTARY—2012: The above revisions are made to conform to amendments to General Statutes § 46b-129 promulgated in Public Acts 2009, No. 09-185, § 3, regarding the assessment of relatives to serve as possible placements or temporary custodians.

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, ''Commission on Child Protection'' was replaced with ''Public Defender Services Commission,'' and ''chief child protection attorney'' was replaced with ''chief public defender.''

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

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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 the necessary parties are present and that the rules governing service on or notice to nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents, as applicable, have been complied with, and should note these facts for the record, and may proceed with respect to the parties who (i) are present and have been properly served; (ii) are present and waive any defects in service; and (iii) are not present, but have been properly served. As to any party who has not been properly served, the judicial authority may continue the proceedings with respect to such party for a reasonable period of time for service to be made and confirmed;

(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 assigned to represent the child or youth by the chief public defender, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), 46b-136 and Section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the chief public defender to 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 not later than ten days 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, if necessary, inquiring of the mother of the child or youth, under oath, as to the identity and address of any person who might be the father of the child or youth and 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 General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters;

(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

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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; and

(12) identify any person or persons related to the child or youth by blood or marriage residing in this state or out of state who might serve as licensed foster parents or temporary custodians, and order the commissioner of the department of children and families to investigate and determine the appropriateness of placement of the child or youth with such relative or relatives pursuant to General Statutes § 46b-129 (c) and provide a written report to the court no later than thirty days from the date of the preliminary hearing and notify all counsel of record or set a reasonable date for such a report if a relative lives outside the state.

(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 appear to be held as soon as practicable but not later than ten days 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) Subject to the requirements of Section 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subdivision (9) of subsection (a) read: "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."

Also, in 2012, "and" was deleted from the end of subdivision (10) of subsection (a) and "; and" was substituted for the period at the end of subdivision (11). Subdivision (12) of subsection (a) was added in 2012.

COMMENTARY—2012: The above revisions are made to conform to amendments promulgated by Public Acts 2009, Nos. 09-185 and 10-43, which require the judicial authority to examine the mother of the child/youth under oath to ascertain the father's identity and location and require the judicial authority to inquire as to the existence of relatives who could serve as placements for the child or youth at the preliminary order of temporary custody hearing. Subsection (a) (1) is amended to conform to current practice.

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

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, 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 public defender 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

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custody order together with a neglect or uncared for petition on the next business day following the granting of such order.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, ''Commission on Child Protection'' was replaced with ''Public Defender Services Commission,'' and ''chief child protection attorney'' was replaced with ''chief public defender.''

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CHAPTER 34

RIGHTS OF PARTIES

[Repealed as of Jan. 1, 2003.]

Sec.		Sec.	
34-1.	Right to Counsel and to Remain Silent [Repealed]	34-3.	Standards of Proof [Repealed]
34-2.	Hearing Procedure; Subpoenas [Repealed]	34-4.	Child Witness [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 34-1. Right to Counsel and to Remain Silent

[Repealed as of Jan. 1, 2003.]

Sec. 34-2. Hearing Procedure; Subpoenas

[Repealed as of Jan. 1, 2003.]

Sec. 34-3. Standards of Proof

[Repealed as of Jan. 1, 2003.]

Sec. 34-4. Child Witness

[Repealed as of Jan. 1, 2003.]

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CHAPTER 34a

PLEADINGS, MOTIONS AND DISCOVERY NEGLECTED, UNCARED FOR AND DEPENDENT CHILDREN AND TERMINATION OF PARENTAL RIGHTS

Sec.
34a-1. Motions, Requests and Amendments
34a-2. Short Calendar—Frequency
34a-3. Short Calendar—Assignments Automatic
34a-4. Short Calendar—Continuances When Counsel's Presence or Oral Argument Required
34a-5. Continuances and Advancements
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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) and (c), 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, 12-3, 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive, subject to Section 34a-20, 15-3, 15-8, 17-4, and 17-21 of the rules of practice shall apply to juvenile matters in the civil session 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 self-represented 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, in subsection (b), ''15-3, 15-8,'' was added before ''17-4,'' and ''in the civil session'' was added after ''juvenile matters.''

COMMENTARY—2012: The reference to Section 15-3 is added to subsection (b) because motions in limine are now common practice in juvenile matters in the civil session. The other change in subsection (b) clarifies that the civil motions referred to in this section are applicable only to juvenile matters in the civil session as defined by General Statutes § 46b-121,

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and not to juvenile matters in the criminal session, such as delinquency cases.

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

Sec. 34a-2. Short Calendar—Frequency

Short calendar sessions shall be held in each juvenile matters court location at least once every two weeks, the date, hour and place to be fixed by the presiding judge upon due notice to the clerk.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-3. Short Calendar—Assignments Automatic

Matters to be placed on the short calendar shall be assigned automatically by the clerk. No such matters shall be so assigned unless filed at least five days before the opening of court on the short calendar day, unless for good cause shown.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-4. Short Calendar—Continuances When Counsel's Presence or Oral Argument Required

Matters on the short calendar docket requiring oral argument or counsel's presence shall not be continued except for good cause shown; and no such matter in which adverse parties are interested shall be continued unless the parties shall agree thereto before the day of the short calendar session and notify the clerk, subject to the approval of the judicial authority. In the absence of such an agreement, unless the judicial authority shall otherwise order, any counsel appearing may argue the matter and submit it for decision, or request that it be denied.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-5. Continuances and Advancements

(a) Motions for continuances or changes in scheduled court dates must be submitted in writing in compliance with Section 34a-1 (c) and filed no later than seven days prior to the scheduled date. Such motions must state the precise reason for the request, the name of the judge scheduled to hear the case, and whether or not all other parties consent to the request. After consulting with the presiding judge, a court services officer or 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-6. Pleadings Allowed and Their Order

The order of pleadings shall be as follows:

(1) The petition.

(2) The respondent's or child's motion to dismiss.

(3) The respondent's or child's motion to strike.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-7. Waiving Right to Plead

In all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-8. Time to Plead

Commencing on the plea date stated on the petition, pleadings shall first advance within fifteen days from the plea date stated on the petition, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of fifteen days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required.

If the respondent enters a pro forma denial before the plea date stated on the petition, the respondent is not precluded from filing any pleadings within the time frame specified.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-9. Motion to Dismiss

Any respondent or child, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within fifteen days of the plea date stated on the petition.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-10. Grounds of Motion to Dismiss

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

(b) Any adverse party who objects to a motion to dismiss shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12

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(a) and (c), 10-13, 10-14 and 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-11. Waiver Based on Certain Grounds

Any claim of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Sections 34a-3 and 34a-4 and within the time provided by Section 34a-6.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-12. Waiver and Subject Matter Jurisdiction

Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the judicial authority lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-13. Further Pleading by Respondent or Child

If a motion to dismiss is denied with respect to any jurisdictional issue, the respondent or child may plead further without waiving the right to contest jurisdiction further.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-14. Response to Summary of Facts

In addition to the entry of a pro forma plea of denial, a parent, legal guardian or child may, within thirty days of the plea date, file a written response to the summary of facts attached to the petition specifying that certain allegations in said summary of facts are irrelevant, immaterial, false or otherwise improper.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-15. Motion to Strike

(a) Whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any petition, or of any one or more counts thereof, to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such petition; or (3) the legal sufficiency of any such petition, or any count thereof, because of the absence of any necessary party; or (4) the joining of two or more causes of action which cannot properly be united in one petition whether the same be stated in one or more counts, that party may do so by filing a motion to strike the contested petition or part thereof.

(b) A motion to strike on the ground of the nonjoinder of a necessary party must give the name and residence of the missing party or such information as the moving party has as to the identity and residence of the missing party and must state the missing party's interest in the cause of action
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-16. Reasons in Motion to Strike

Each motion to strike raising any of the claims of legal insufficiency enumerated in the preceding sections shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-17. Memorandum of Law—Motion and Objection

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

(b) Any adverse party who objects to this motion shall, at least five days before the date the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 (a) and (c), 10-13, 10-14 and 10-17 a memorandum of law.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-18. When Memorandum of Decision Required on Motion to Strike

Whenever a motion to strike is filed and more than one ground of decision is set forth therein, the judicial authority, in rendering the decision thereon, shall specify in writing the grounds upon which that decision is based.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-19. Substitute Pleading; Judgment

Within fifteen days after the granting of any motion to strike, the petitioner may file a new petition; provided that in those instances where an entire petition has been stricken, and the petitioner fails to file a new petition within that fifteen-day period, the judicial authority may, upon motion, enter judgment against said party on said stricken petition.
(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-20. Discovery

(a) Access to the records of the department of children and families shall be permitted in accordance with General Statutes § 17a-28 and other applicable provisions of the law.

(b) Pretrial discovery by interrogatory, production, inspection or deposition of a person may be allowed with the permission of the judicial authority only if the information or material sought is not otherwise obtainable and upon a finding that proceedings will not be unduly delayed.

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(c) Upon its own motion or upon the request of a party, the judicial authority may limit discovery methods, and specify overall timing and sequence, provided that the parties shall be allowed a reasonable opportunity to obtain information needed for the preparation of their case. The judicial authority may grant the requested discovery, order reciprocal discovery, order appropriate sanctions permitted under Section 13-14 for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request, and deny, limit, or set conditions on the requested discovery, including any protective orders under Section 13-5.

(d) If the judicial authority permits discovery, the provisions of Sections 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive may be incorporated in the discovery order in the discretion of the judicial authority. Motions for discovery or disclosure of confidential records should not be filed unless the moving party has attempted unsuccessfully to obtain an appropriate release or agreement to disclose from the party or person whose records are being sought.

(e) If, subsequent to compliance with any filed request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection, or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney and file and serve in accordance with Section 10-12 through 10-17 a supplemental or corrected compliance.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-21. Court-Ordered Evaluations

(a) The judicial authority, after hearing on a motion for a court-ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

(c) At the time of appointment of any court appointed evaluator, counsel and the court services officer shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

(d) Any party who wishes to alter, to update, to amend or to modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the evaluation.

(e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the proposed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation

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report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 21, 2010, to take effect Jan. 1, 2011.)

Sec. 34a-22. Motion for Contempt

All motions for contempt must state: (1) the date and specific language of the order of the judicial authority on which the motion is based; (2) the specific acts alleged to constitute the contempt of that order, including the amount of any arrears claimed due as of the date of the motion or a date specifically identified in the motion; (3) the movant's claims for relief for the contempt.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 34a-23. Motion for Emergency Relief

(a) Notwithstanding the above provisions, any party may file a motion for emergency relief, seeking an order directed to the parents, including any person who acknowledged before a judicial authority paternity of a child born out of wedlock, guardians, custodians or other adult persons owing some legal duty to the child, as deemed necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child or youth before this court for the protection of the child. Such orders include, but are not limited to, an order for access to the family home, an order seeking medical exam or mental health exam or treatment of the child, an order to remedy a dangerous condition in the family or foster home, an order to provide or to accept and cooperate with certain services, or an order prohibiting the removal of the child from the state or the home. Such motions may be heard at the next short calendar; however, if the exigencies of the situation demand, the judicial authority may order immediate ex parte relief, pending an expeditious hearing.

(b) No motion for emergency relief shall be granted without notice to each party unless the applicant certifies one of the following to the court in writing:

(1) facts showing that within a reasonable time prior to presenting the motion the moving party gave notice to all other parties of the time when and the place where the motion would be presented and provided a copy of the motion; or

(2) the moving party in good faith attempted but was unable to give notice to the other parties, specifying the efforts made to contact such parties; or

(3) facts establishing good cause why the moving party should not be required to give notice to other parties.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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CHAPTER 35

GENERAL PROVISIONS

[Repealed as of Jan. 1, 2003.]

Sec.
35-1. Petitions, Motions and Amendments [Repealed]
35-2. Continuances and Advancements [Repealed]
35-3. Discovery [Repealed]
35-4. Appeal [Repealed]
35-5. Recording of Testimony; Records [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 35-1. Petitions, Motions and Amendments

[Repealed as of Jan. 1, 2003.]

Sec. 35-2. Continuances and Advancements

[Repealed as of Jan. 1, 2003.]

Sec. 35-3. Discovery

[Repealed as of Jan. 1, 2003.]

Sec. 35-4. Appeal

[Repealed as of Jan. 1, 2003.]

Sec. 35-5. Recording of Testimony; Records

[Repealed as of Jan. 1, 2003.]

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CHAPTER 35a

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

Sec.
35a-1. Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere
35a-1A. Record of the Case
35a-1B. Exclusion of Unnecessary Persons from Courtroom
35a-2. Case Status Conference or Judicial Pretrial
35a-3. Coterminous Petitions
35a-4. Motions to Intervene
35a-5. Notice and Right to Be Heard
35a-6. Post-Disposition Role of Former Guardian
35a-6A. Consolidation
35a-7. Evidence
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35a-17. Motions to Review Plan for Child Whose Parents' Rights Have Been Terminated [Repealed]
35a-18. Opening Default
35a-19. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights
35a-20. Motions for Reinstatement of Parent or Former Legal Guardian as Guardian or Modification of Guardianship Post-Disposition
35a-21. Appeals
35a-22. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 35a-1. Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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 parent(s) or guardian in neglect, uncared for or dependent matters; and of the parents in termination matters.

(b) 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 trial 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "trial" was substituted for "counsel" after "right to" in the second sentence of subsection (b).

COMMENTARY—2012: The revision reflects the fact that it is the right to trial that is being waived, not the right to counsel.

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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

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

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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 self-represented parties will be prepared to discuss the following matters:

(1) Settlement;

(2) Simplification and narrowing of the issues;

(3) Amendments to the pleadings;

(4) The setting of firm trial dates;

(5) Preliminary witness lists;

(6) Identification of necessary arrangements for trial including, but not limited to, application for a 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

TECHNICAL CHANGE: In 2012, references to "pro se" have been replaced with "self-represented."

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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-4. Motions to Intervene

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

(a) Interventions by any person related to the child or youth by blood or marriage for temporary custody or guardianship shall be governed by General Statutes § 46b-129 (c) or (d). All motions for intervention shall state with specificity the movant's interest and relief requested.

(b) Upon motion of any sibling of any child committed to the commissioner of the department of children and families pursuant to General Statutes § 46b-129, such sibling shall have the right to be heard concerning visitation with, and placement of, any such child. In awarding any visitation or modifying any placement, the judicial authority shall be guided by the best interests of all siblings affected by such determination.

(c) Other persons unrelated to the child or youth by blood or marriage, or persons related to the child or youth by blood or marriage who are not seeking to serve as a placement, temporary custodian or guardian of the child may move to intervene in the dispositional phase of the 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.

(d) In making a determination upon a motion to intervene, the judicial authority may consider: the timeliness of the motion as judged by the circumstances of the case; whether the movant has a direct and immediate interest in the case; whether the movant's interest is not adequately represented by existing parties; whether the intervention may cause delay in the proceedings or other prejudice to the existing parties; the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority; and the best interests of the child.

(e) Any intervenor shall appear in person, with or without counsel, and shall not be entitled to court-appointed counsel or the assignment of counsel by the chief public defender except as provided in General Statutes § 46b-136.

(f) The judicial authority, may, on motion of any party or on its own motion, after notice and a hearing, terminate any person's intervenor status if such person's participation in the case is no longer warranted or necessary. The judicial authority may determine if good cause exists to permit the intervenor to continue to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, "Intervening Parties."

Prior to 2012, this section read: "(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 movant has a direct and immediate interest in the case.

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"(b) Other persons including, but not limited to, siblings may move to intervene in the dispositional phase of the 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 person, the judicial authority shall consider:

"(1) the timeliness of the motion as judged by all the circumstances of the case;

"(2) whether the movant has a direct and immediate interest in the case;

"(3) whether the 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 person may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to state paid representation by 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—2012: The above revisions make the Practice Book provisions on intervenors conform to General Statutes § 46b-129 (c) and (d), as amended by Public Acts 2009, No. 09-185.

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, "Commission on Child Protection" was replaced with "Public Defender Services Commission," and "chief child protection attorney" was replaced with "chief public defender."

Sec. 35a-5. Notice and Right to Be Heard

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) Any foster parent, prospective adoptive parent or relative caregiver shall be notified of and have a right to be heard in any proceeding held concerning a 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-6A. 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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-7. 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 nonbifurcated hearing, provided disposition may not be considered until the adjudicatory phase has concluded.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 35a-7A. 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.

(Adopted June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-8. Burden of Proceeding

(a) The petitioner shall be prepared to substantiate the allegations of the petition. 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

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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.

(b) If a parent fails to appear at the initial hearing and no military affidavit has been filed, the judicial authority shall continue the proceedings prior to entering a default for failure to appear until such time as the military affidavit is filed, provided if the identity of the parent, after reasonable search, cannot be determined, then default may enter and no military affidavit is required.

(c) 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 the date that such notice is given or mailed.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

The mandated social study, update or any other written report or evaluation made available to the judicial authority shall be made available for inspection to all counsel of record and, in the absence of counsel, to the parties themselves before the scheduled case status conference, pretrial or hearing date. The mandated social study, updates, reports and records and any copies thereof made available in the discretion of the judicial authority, together with any notes, copies or abstractions thereof, shall be returned to the clerk immediately following the disposition unless they may be required for subsequent proceedings. All persons who have access to such materials shall be responsible for preserving the confidentiality thereof.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 35a-11. Dispositional Plan Offered by Respondents

The respondents shall have the right to produce witnesses on behalf of any dispositional plan they may wish to offer.

(Adopted June 24, 2002, to take effect Jan. 1, 2003.)

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.

(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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-12A. Motions for Transfer of Guardianship

(a) Motions to transfer guardianship are dispositional in nature, based on the prior adjudication.

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(b) In cases in which a motion for transfer of guardianship seeks to vest guardianship of a child or youth in any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interests of the child. In such cases, there shall be a rebuttable presumption that the award of legal guardianship to that relative shall be in the best interests of the child or youth and that such relative is a suitable and worthy person to assume legal guardianship. The presumption may be rebutted by a preponderance of the evidence that an award of legal guardianship to such relative would not be in the child's or youth's best interests and such relative is not a suitable and worthy person.

(c) In cases in which a motion for transfer of guardianship, if granted, would require the removal of a child or youth from any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the initial burden of proof that an award of legal guardianship to, or an adoption by, such relative would not be in the child's or youth's best interest and that such relative is not a suitable and worthy person. If this burden is met, the moving party then has the burden of proof that the movant's proposed guardian is suitable and worthy and that transfer of guardianship to that proposed guardian is in the best interests of the child.

(d) In all other cases, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interests of the child.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: The requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129 (j). For the requirement that transfers of guardianship must be in a child's best interests, see *In re Haley B.*, 81 Conn. App. 62, 65, 838 A.2d 1006 (2004). The requirements regarding the presumptions incorporated in subsections (b) and (c) accord with General Statutes § 46b-129 (j), as amended by Public Acts 2009, No. 09-185.

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 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 35a-14. Motions for Review of Permanency Plan

(Amended June 30, 2008, to take effect Jan. 1, 2009.)

(a) Motions for review of the permanency plan 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 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. 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 pursuant to General Statutes § 46b-129 (m) and subject to Section 35a-14A.

(b) At the time of the filing of a motion for review of permanency plan pursuant to subsection (a), the commissioner of the department of children and families shall also request a finding that it has made reasonable efforts to achieve the goal of the existing plan. The social study filed pursuant to subsection (a) shall include information indicating what efforts the commissioner has taken to achieve the goal of the existing plan.

(c) Once a motion for review of the permanency plan and requested findings regarding efforts to achieve the goal of the existing plan have been filed, the clerk of the court shall set a hearing not later than ninety days thereafter. The judicial authority 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 any such motion shall file a written objection and state with specificity the reasons therefor within thirty days after the filing of the commissioner of the department of children and families' motion for review of permanency plan and the objection

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shall be considered at the hearing. The judicial authority 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 may be granted by the judicial authority at the date of said hearing.

(d) Whether to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made are dispositional questions, based on the prior adjudication, and the judicial authority shall determine whether it is in the best interests of the child or youth to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made upon a fair preponderance of the evidence. 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 and that it has made reasonable efforts to achieve the goal of the existing plan.

(e) At each hearing on a motion for review of permanency plan, the judicial authority shall 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 goal of the existing 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.

(f) 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 for a finding regarding reasonable efforts to achieve the goal of the existing plan nine months after the prior permanency plan hearing. No later than twelve months after the prior permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with this section.

(g) 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 shall not be precluded from initiating a proceeding in the best interests of the child or youth considering the needs for safety and permanency.

(h) 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, subsection (b) read: ''Once a motion for review of the permanency plan has been filed, the clerk of the court shall set a hearing 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 any such motion shall file a written objection and state the reasons therefor within thirty days after the filing of the commissioner of the department of children and families' motion for review of permanency plan 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 may be granted by the judicial authority at the date of said hearing.''

In 2012, what was subsection (b) became subsection (c). In that subsection ''and requested findings regarding efforts to achieve the goal of the existing plan'' was added to the first sentence, after ''permanency plan,'' and ''have'' was substituted for ''has'' before ''been filed.'' In the second sentence of what is now subsection (c), ''judicial authority'' was substituted for ''court'' in the beginning of the second sentence, before ''shall provide notice.'' In the third sentence of what is

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now subsection (c), ''with specificity'' was added after ''state.'' In the fourth sentence of what is now subsection (c) ''judicial authority'' was substituted for ''court,'' before ''shall hold an evidentiary hearing.''

Also, in 2012, what was subsection (c) became subsection (d). Prior to 2012, that subsection read: ''Whether to approve the permanency plan 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 approve the permanency plan upon a fair preponderance of the evidence. 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.''

In 2012, what was subsection (d) became subsection (e). At the end of the first sentence of what is now subsection (e), ''goal of the existing'' was added before ''permanency plan.''

What was subsection (e) became subsection (f) in 2012. In the first sentence of what is now subsection (f), ''and for a finding regarding reasonable efforts to achieve the goal of the existing plan'' was added before ''nine months.'' At the end of the second sentence of what is now subsection (f) ''this section'' was substituted for ''subsection (d).'' Also, what was subsection (g) became subsection (h).

COMMENTARY—2012: The above revisions concerning the filing and hearing of motions for approval of permanency plans and findings to achieve permanency plans implement 42 U.S.C. § 675 (5) (C) (i) and 45 C.F.R. § 1356.21.

Sec. 35a-14A. Revocation of Commitment

(Amended June 20, 2011, to take effect Jan. 1, 2012.)

Where a child or youth is committed to the custody of the commissioner of the department of children and families, the commissioner, a parent or the child's attorney 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 have elapsed from the date of the filing of the prior motion unless waived by the judicial authority.

(Adopted June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Revocation.'' Prior to 2012, the first sentence of this section read: ''A party may file a motion seeking revocation of commitment.''

COMMENTARY—2012: The above revisions are made to conform the above rule to the statute authorizing motions for revocation, General Statutes § 46b-129 (m).

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

Whenever 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 movant shall, file a motion requesting such finding and the judicial authority shall proceed in accordance with General Statutes § 17a-111b (b).

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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 a child or youth to the custody of the parent without protective supervision shall be treated as a motion for revocation of commitment.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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

[Repealed as of Jan. 1, 2009.]

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, unless otherwise agreed to by the parties and sanctioned by the judicial

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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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

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) Any appearance filed for any party in the court of probate shall continue in the superior court until a motion to withdraw is filed by counsel and granted by the court of probate or the superior court or another counsel files an ''in lieu of'' appearance on behalf of the party. Counsel previously appointed by the court of probate for indigent parties or for the minor child(ren) and paid by probate court administration who remain on the case in superior court shall be paid by the Public Defender Services Commission at the rate of pay established by the commission. If a motion to withdraw is filed and granted and the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned and paid by the Public Defender Services Commission.

(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 nonappearing 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 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.

(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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, ''Commission on Child Protection'' was replaced with ''Public Defender Services Commission,'' and ''chief child protection attorney'' was replaced with ''chief public defender.''

Sec. 35a-20. Motions for Reinstatement of Parent or Former Legal Guardian as Guardian or Modification of Guardianship Post-Disposition

(Amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

(a) Whenever a parent or former legal guardian whose guardianship rights to a child or youth were removed and transferred to another person or an agency other than the department of children and families by the superior court for juvenile matters seeks reinstatement as that child's or youth's guardian, the parent or former legal guardian may file a motion for reinstatement of guardianship with the court that ordered the transfer of guardianship. In other post-dispositional cases concerning a child or youth whose legal guardianship was transferred to a person other than a parent or former legal guardian, or to an agency other than the department of children and families, any

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person permitted to intervene may move the court to modify the award of guardianship.

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

(c) Before acting on such 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 a home study that sets forth written findings and recommendations before rendering a decision.

(d) The hearing on a motion for reinstatement of guardianship is dispositional in nature. The party seeking reinstatement of guardianship has the burden of proof to establish that cause for transfer of guardianship to another person or agency no longer exists. The judicial authority shall then determine if reinstatement of guardianship is in the child's or youth's best interest.

(e) The hearing on a motion for post-dispositional modification of a guardianship order is dispositional in nature. The party seeking to modify the existing guardianship order has the burden of proof to establish that the movant's proposed guardian is suitable and worthy. The judicial authority shall then determine if transfer of guardianship to that proposed guardian is in the child's or youth's best interest.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled, ''Motions for Reinstatement of Parent as Guardian or Modification of Guardianship Post-Disposition.''

Prior to 2012, this section read: ''(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 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 shall assign such motion a hearing date and issue a summons to the current guardian and the nonmoving parent or parents. The moving party shall cause a copy of such 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 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—2012: For the requirements regarding elements and burden of proof in reinstatement of guardianship actions, see *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648, 420 A.2d 875 (1979). For other postdispositional motions to transfer guardianship, the requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129 (j). For the requirement that transfers of guardianship must be in a child's best interests, see *In re Haley B.*, 81 Conn. App. 62, 65, 838 A.2d 1006 (2004).

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, child or youth wishes to appeal a final decision, trial counsel shall immediately request an expedited transcript from the court reporter, the cost of which shall be billed to the Public Defender Services Commission. Trial counsel shall either file the appeal within twenty days or file a timely motion to extend time in which to take an appeal and request the appointment of counsel to review the matter for purposes of appeal. If the reviewing attorney determines there is a nonfrivolous ground for appeal, such attorney shall file an ''in addition to'' appearance for purposes of the appeal with the appellate court. The trial attorney shall remain in the underlying juvenile matters case in order to handle ongoing procedures before the local or regional juvenile court. Counsel who filed the appeal or filed an appearance in the appellate court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. If the reviewing attorney determines that there is no merit to an appeal, such attorney shall make this known to the judicial authority as soon as practicable, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to 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.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 21, 2010, to take effect Jan. 1, 2011.)

TECHNICAL CHANGE: In 2012, consistent with Public Acts 2011, No. 11-51, § 19, ''Commission on Child Protection'' was replaced with ''Public Defender Services Commission,'' and ''chief child protection attorney'' was replaced with ''chief public defender.''

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Sec. 35a-22. Where Presence of Person May Be by Means of an Interactive Audiovisual Device

(a) The appearance of a person for any proceeding set forth in subsection (b) of this section may, in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that such person and his or her attorney, if any, and the judicial authority if the proceeding is in court, can see and communicate with each other simultaneously. In addition, a procedure by which such person and his or her attorney can confer in private must be provided. Nothing contained in this section shall be construed to establish a right for any person to be heard or to appear by means of an interactive audiovisual device or to require the judicial branch to pay for such person's appearance by means of an interactive audiovisual device.

(b) A person may appear by means of an interactive audiovisual device in juvenile matters in the civil session, as defined by General Statutes § 46b-121 (a), in the following proceedings or under the following circumstances:

(1) A party or a party's representative in case status and case management conferences;

(2) If a parent or guardian is incarcerated in this state, he or she may participate in plea hearings, judicial pretrials, order of temporary custody and termination of parental rights (TPR) case management conferences, reviews of protective supervision, permanency plan hearings, case status conferences, preliminary order of temporary custody hearings, neglect plea and disposition by agreement, neglect trials, TPR plea hearings, canvass of consents to TPR, contested transfer of guardianship hearings, motions to revoke commitment, emancipation petitions, and motions to reinstate guardian;

(3) If a parent or guardian is incarcerated in a federal correctional facility or another state's correctional facility, he or she may participate in all matters set forth in subdivision (2) above and in contested hearings including, but not limited to, temporary custody hearings, neglect or uncared for proceedings or TPR trials;

(4) A foster parent, prospective adoptive parent or relative caregiver may appear and be heard on the best interests of the child or youth pursuant to General Statutes § 46b-129 (o);

(5) A sibling of any child committed to the department of children and families, upon motion, may appear and be heard concerning visitation with, and placement of, any such child pursuant to General Statutes § 46b-129 (p);

(6) A witness may testify in any proceeding in the discretion of the judicial authority.

(c) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(Adopted June 20, 2011, to take effect Jan. 1, 2012.)

COMMENTARY—2012: Section 23-68 currently permits the use of an interactive audiovisual device in civil and family matters. The above new rule will expand the use of such technology to certain juvenile matters, consistent with recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.

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SUPERIOR COURT—PROCEDURE IN CRIMINAL MATTERS

CHAPTER 36

PROCEDURE PRIOR TO APPEARANCE

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 36-1. Arrest by Warrant; Issuance

Upon the submission of an application for an arrest warrant by a prosecuting authority, a judicial authority may issue a warrant for the arrest of an accused person if the judicial authority determines that the affidavit accompanying the application shows that there is probable cause to believe that an offense has been committed and that the accused committed it.

(P.B. 1978-1997, Sec. 593.)

Sec. 36-2. —Affidavit in Support of Application, Filing, Disclosure

(a) All affidavits submitted to the judicial authority in support of the application for an arrest warrant and from which a determination of probable cause for the issuance of an arrest warrant has been made shall be filed with the clerk of the court together with the return of the arrest warrant pursuant to Section 44-11 and thereafter remain a part of the court file.

(b) At the time the arrest warrant is issued, upon written request of the prosecuting authority and for good cause shown, the judicial authority may order that the supporting affidavits be sealed from public inspection or that disclosure be limited under such terms and conditions as it finds reasonable, subject to the further order of any judicial authority thereafter having jurisdiction of the matter. No such order shall limit their disclosure to the attorney for the accused, but the judicial authority may place reasonable restrictions on the attorney's further disclosure of the contents of the affidavits.

(c) Any order sealing such affidavits from public inspection or limiting their disclosure shall be for a specific period of time, not to exceed two weeks from the date of arrest, and within that time period the prosecuting authority may by written motion seek an extension of the period. The original order of the court sealing the affidavit or limiting its disclosure shall remain in effect until the court issues an order on the motion. The motion to extend the period and the court's order thereon shall be made in accordance with the provisions of Section 42-49A. Affidavits which are the subject of such an order shall remain in the custody of the clerk's office but shall be kept in a secure location apart from the remainder of the court file as long as the order is in effect.

(d) Unless the judicial authority issuing an arrest warrant has, upon written request of the prosecuting authority, entered an order limiting disclosure of the supporting affidavits, all affidavits filed pursuant to this section shall be open to public inspection and copying and the clerk shall provide copies to any person upon receipt of any applicable fee.

(P.B. 1978-1997, Sec. 593A.) (Amended May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 36-3. —Contents of Warrant

The warrant shall be signed by the judicial authority and shall contain the name of the accused person, or if such name is unknown, any name or description by which the accused can

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be identified with reasonable certainty, and the conditions of release fixed, if any. It shall state the offense charged and direct any officer authorized to execute it to arrest the accused person and to bring him or her before a judicial authority without undue delay.

(P.B. 1978-1997, Sec. 594.)

Sec. 36-4. —Direction by Judicial Authority for Use of Summons

(a) Instead of issuing an arrest warrant, even where probable cause has been found, the judicial authority may direct that a summons and complaint be issued to an accused person pursuant to Sections 36-7 through 36-10, unless the judicial authority determines that it is necessary to take the accused into custody for any of the following reasons:

(1) The criminal offense involved is a felony;

(2) There are facts indicating a substantial likelihood that such person will not appear in court at the specified time and place unless taken into custody;

(3) Such person is likely to cause injury to himself or herself or to others, or is likely to cause serious damage to property;

(4) The offense is likely to continue if such person is not taken into custody;

(5) Custody is necessary for the protection of such person or to provide that person with needed medical or other aid;

(6) The person fails satisfactorily to identify himself or herself; or

(7) The person has previously failed to appear in court when required to do so.

(b) The failure to comply with this section shall not be a ground for dismissal of an information, but shall entitle the accused to be released upon a written promise to appear where none of the foregoing reasons shall be found to exist.

(P.B. 1978-1997, Sec. 595.)

Sec. 36-5. —Execution and Return of Warrant

The officer executing an arrest warrant may do so anywhere within the state upon apprehension of the accused. The officer shall take the accused into custody, serve a copy of the warrant upon him or her and follow the procedure specified in Sections 38-1 or 38-2, whichever is applicable.

(P.B. 1978-1997, Sec. 596.)

Sec. 36-6. —Cancellation of Warrant

At the request of the prosecuting authority, any unserved arrest warrant shall be returned to a judicial authority for cancellation. A judicial authority also may direct that any unserved arrest warrant be returned for cancellation.

(P.B. 1978-1997, Sec. 597.)

Sec. 36-7. Summons; Form of Summons and Complaint

A summons and complaint issued by a prosecuting authority or law enforcement officer shall:

(1) Be in writing;

(2) Be signed by the person issuing it with the title of such person's office;

(3) State the date of issuance and the municipality where issued;

(4) Specify the name of the accused person;

(5) Designate a time for appearance not more than fourteen days after issuance;

(6) State the offense charged against the accused person;

(7) State that if the accused does not appear at a specified time and place, an application may be made for the issuance of a warrant for arrest;

(8) Inform the accused that he or she is entitled to be represented by an attorney;

(9) Inform any accused charged with an offense punishable by incarceration who is unable to afford an attorney that he or she may be entitled to the services of a public defender.

(P.B. 1978-1997, Sec. 599.)

Sec. 36-8. —Issuance of Summons by Prosecuting Authority in Lieu of Arrest Warrant

When a prosecuting authority receives a complaint that a misdemeanor has been committed, in lieu of applying for an arrest warrant, the prosecuting authority may summon the person or persons against whom the complaint is made to appear before the court at the date and time specified in the summons. The prosecuting authority also may issue a summons when directed to do so by the judicial authority pursuant to Section 36-4.

(P.B. 1978-1997, Sec. 601.)

Sec. 36-9. —Service of Summons

The summons and complaint shall be served upon the accused by any law enforcement officer by delivering a copy to the accused personally, or by leaving it at the accused's usual place of abode with a person of suitable age and discretion then residing therein, or by mailing it by registered or certified mail to the last known address of the accused.

(P.B. 1978-1997, Sec. 602.)

Sec. 36-10. —Failure to Respond to Summons

Upon the failure of the officer to make due return of a summons within two weeks of its issuance,

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or upon the failure of the accused to respond to the summons, the prosecuting authority may apply for the arrest of the accused.

(P.B. 1978-1997, Sec. 603.)

Sec. 36-11. Information and Complaint; Use

All felonies shall be prosecuted by information. All misdemeanors, violations, and infractions shall be prosecuted by information or complaint. In all jury cases, and in all other cases on written request of the defendant, the prosecuting authority as of course shall issue an information in place of the uniform summons and complaint.

(P.B. 1978-1997, Sec. 616.)

Sec. 36-12. —Issuance of Information

An information shall be signed by the prosecuting authority. When any person is arrested without a warrant or is issued a summons, the prosecuting authority shall, without unnecessary delay, review the acts complained of and determine whether it appears that there is reasonable cause to believe that an offense has been committed within the jurisdiction of the court and that the person arrested or the person to whom the summons was issued committed the offense. If the prosecuting authority determines that reasonable cause exists, it shall, in cases where an information is required, present an information to the court, pursuant to Section 36-11. If the prosecuting authority determines that reasonable cause does not exist, it shall not present the matter to the court, but an entry shall be made on the case papers indicating that prosecution was declined upon authority of this section, and a brief statement shall be made in open court. For purposes of erasure pursuant to the General Statutes, that action shall be deemed a dismissal.

(P.B. 1978-1997, Sec. 617.)

Sec. 36-13. —Form of Information

The information shall be a plain, concise and definite written statement of the offense charged. The information need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed the offense by one or more specified means. The information shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law which the defendant is alleged to have violated. The information shall also contain:

(1) The name of the court in which it is filed;

(2) The title of the action;

(3) The name of the defendant;

(4) A statement that such crime was committed in a particular judicial district or geographical area, or at a particular place within such judicial district or geographical area; and

(5) A statement that such crime was committed on, or on or about, a particular date or period of time.

(P.B. 1978-1997, Sec. 618.)

Sec. 36-14. —Former Conviction in Information

Where the information alleges, in addition to the principal offense charged, a former conviction or convictions, such information shall be in two separate parts, each signed by the prosecuting authority. In the first part, the particular offense with which the accused is charged shall be set out, and in the other part the former conviction or convictions shall be alleged. In alleging the former conviction, it is sufficient that the information allege the date when, the town or city where, and the court wherein such conviction was obtained and the crime of which the defendant was convicted, all of which may be stated in accordance with the provisions of Section 36-13.

(P.B. 1978-1997, Sec. 619.)

Sec. 36-15. —Filing and Availability of Information

The information or complaint shall be filed with the clerk and be available for inspection by the defendant or counsel for the defendant. Upon written request, a copy thereof shall be furnished without charge to the defendant or counsel for the defendant.

(P.B. 1978-1997, Sec. 620.)

Sec. 36-16. Amendments; Minor Defects

The judicial authority may order at any time such relief as is required to remedy any defect, imperfection or omission in the information or complaint, including the following:

(1) Any matter of form;

(2) Any miswriting, misspelling, or improper English;

(3) Any misuse of a sign, symbol, figure, or abbreviation; or

(4) Any omission of the true name or any misspelling of the name of the defendant.

(P.B. 1978-1997, Sec. 622.)

Sec. 36-17. —Substantive Amendment before Trial

If the trial has not commenced, the prosecuting authority may amend the information, or add additional counts, or file a substitute information. Upon motion of the defendant, the judicial authority, in

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its discretion, may strike the amendment or added counts or substitute information, if the trial or the cause would be unduly delayed or the substantive rights of the defendant would be prejudiced.
(P.B. 1978-1997, Sec. 623.)

Sec. 36-18. —Substantive Amendment after Commencement of Trial

After commencement of the trial for good cause shown, the judicial authority may permit the prosecuting authority to amend the information at any time before a verdict or finding if no additional or different offense is charged and no substantive rights of the defendant would be prejudiced. An amendment may charge an additional or different offense with the express consent of the defendant.
(P.B. 1978-1997, Sec. 624.)

Sec. 36-19. —Request by Defendant for Essential Facts

Whenever the information charges the offense only by referring to the statute which is alleged to have been violated, the prosecuting authority, upon written request of the defendant, shall as of course amend the information by adding or annexing thereto a statement of the essential facts claimed to constitute the offense charged. Such request shall be made not later than ten days after the first pretrial conference unless otherwise directed by the judicial authority for good cause shown.
(P.B. 1978-1997, Sec. 625.)

Sec. 36-20. —Continuance Necessitated by Amendment

Within the judicial authority's discretion, an extension of time, an adjournment, or a continuance reasonably necessitated by an amendment may be granted.
(P.B. 1978-1997, Sec. 626.)

Sec. 36-21. Joinder of Offenses in Information

Two or more offenses may be charged in the same information in a separate count for each offense for any defendant.
(P.B. 1978-1997, Sec. 627.)

Sec. 36-22. Joinder of Defendants

Each defendant shall be charged in a separate information.
(P.B. 1978-1997, Sec. 628.)

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CHAPTER 37

ARRAIGNMENT

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

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 37-1. Arraignment; Timing

A defendant who is not released from custody sooner shall be brought before a judicial authority no later than the first court day following arrest. Any defendant who is hospitalized, has escaped, or is otherwise incapacitated shall be presented no later than the next court day following such defendant's medical discharge or return to police custody. A defendant not in custody shall appear for arraignment in person at the time and place specified in the summons or the terms of release, or at such other date or place fixed by the judicial authority.

(P.B. 1978-1997, Sec. 635.)

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 affidavit or 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.

(P.B. 1978-1997, Sec. 635A.)

Sec. 37-3. —Advisement of Constitutional Rights

The judicial authority shall personally, at the opening of the court session, in open court, advise the defendant, or the defendants, unless previously so advised by a clerk pursuant to General Statutes § 54-64b or by a judicial authority pursuant to General Statutes § 54-1b, either individually or collectively of the following:

(1) That the defendant is not obligated to say anything and that anything the defendant says may be used against him or her;

(2) That the defendant is entitled to the services of an attorney;

(3) If the defendant is unable to pay for one, what the procedures are through which the services of an attorney will be provided for him or her; and

(4) That the defendant will not be questioned unless he or she consents, that the defendant may consult with an attorney before being questioned and that the defendant may have an attorney present during any questioning.

(P.B. 1978-1997, Sec. 637.)

Sec. 37-4. —Collective Statement Advising of Constitutional Rights

If the judicial authority shall have collectively informed all defendants of their rights at the opening of court, it shall preface the individual arraignment of each by asking whether he or she heard and understood the collective statement.

(P.B. 1978-1997, Sec. 638.)

Sec. 37-5. —Reference to Public Defender; Investigation of Indigency

The judicial authority shall refer the defendant to the public defender for an investigation of indigency unless the judicial authority:

(1) Accepts the defendant's waiver of counsel in accordance with Section 44-3;

(2) Is informed by the defendant, and concludes, that the defendant has retained or will retain private counsel within a reasonable time;

(3) Decides to dispose of the case in accordance with Section 44-1 (2); or

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(4) Learns that the public defender has already conferred with the defendant at some time following arrest and that the investigation of indigency has been made.

(P.B. 1978-1997, Sec. 640.)

Sec. 37-6. —Appointment of Public Defender

(a) If the judicial authority determines after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a special public defender to represent the defendant unless, in a misdemeanor case, at the time of the application for appointment of counsel, the judicial authority decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, and makes a statement to that effect on the record. If the public defender or his or her office determines that a defendant is not eligible to receive the services of a public defender, the defendant may appeal the public defender's decision to the judicial authority in accordance with General Statutes § 51-297 (g). The judicial authority may not appoint the public defender unless the judicial authority finds the defendant indigent following such appeal. If a conflict of interest or other circumstance exists which prevents the public defender from representing the defendant, the judicial authority, upon recommendation of the public defender or upon its own motion, may appoint a special public defender to represent the defendant.

(b) The fact that the judicial authority, in a misdemeanor case, decides or believes that disposition of the pending case will not result in a sentence involving incarceration or a suspended sentence of incarceration with a period of probation or conditional discharge, shall not preclude the judicial authority from appointing, in its discretion, a public defender or a special public defender to represent an indigent defendant.

(P.B. 1978-1997, Sec. 641.)

Sec. 37-7. Pleas; In General

Upon being read the charges against him or her contained in the information or complaint, the defendant shall enter a plea of not guilty, guilty, or nolo contendere.

(P.B. 1978-1997, Sec. 643.)

Sec. 37-8. —Plea of Guilty or Nolo Contendere

A plea of guilty or nolo contendere shall be entered in accordance with Sections 39-1 and 39-18. If the case is to be continued for sentencing, the judicial authority shall set a date for the sentencing hearing and, if necessary, order a presentence investigation.

(P.B. 1978-1997, Sec. 644.)

Sec. 37-9. —Plea of Not Guilty

Any defendant who pleads not guilty shall be asked whether he or she desires a trial either by the court or by a jury. Pursuant to these rules, including Sections 44-11 through 44-17, the case shall be placed on the trial list and, where possible or necessary, assigned dates for a disposition conference, a probable cause hearing, and/or a trial.

(P.B. 1978-1997, Sec. 645.)

Sec. 37-10. —Taking of Plea when Information in Two Parts

Where the information is in two parts pursuant to Section 36-14 and alleges, in addition to the principal offense charged, a former conviction or convictions, the plea and the election of a method of trial shall first be taken only on the first part of the information.

(P.B. 1978-1997, Sec. 647.)

Sec. 37-11. —Role of Clerk when Information in Two Parts

Prior to the time the defendant enters a guilty plea or, if the defendant pleads not guilty, prior to the commencement of trial, the clerk shall notify the defendant, in the absence of the judicial authority, of the contents of the second part of the information. The clerk shall enter on the docket the time and place of the giving of such notification and, where necessary, shall include entry thereof in the judgment file.

(P.B. 1978-1997, Sec. 648.)

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

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

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

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

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

(P.B. 1978-1997, Sec. 650.) (Amended June 29, 2007, to take effect Jan. 1, 2008; amended June 22, 2009, to take effect Jan. 1, 2010.)

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CHAPTER 38

PRETRIAL RELEASE

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 38-1. Release from Custody; Superior Court Arrest Warrant where Appearance before Clerk Required

When any person is arrested on a warrant pursuant to General Statutes § 54-2a in which the judicial authority issuing such warrant has indicated that bail should be denied, or has ordered that the arrested person be brought before a clerk or assistant clerk of the superior court, the arresting officer shall, without undue delay, bring such person before the clerk or assistant clerk of the superior court for the geographical area where such offense is alleged to have been committed, during the office hours of such clerk, and if such clerk's office is not open, the arresting officer shall, without undue delay, bring such person to a holding facility within the geographical area where such offense is alleged to have been committed or, if there is no such facility available within such geographical area, to the nearest available facility. Such clerk or assistant clerk or such person designated by the commissioner of correction shall advise the defendant of the warnings contained in Section 37-3 and shall release the defendant upon his or her meeting the conditions of release fixed in the warrant. If the defendant was brought to such a facility he or she shall be given the opportunity to contact private counsel or the public defender. If the defendant is not released because of his or her failure to enter into the conditions of release fixed by the judicial authority the defendant shall be presented before a judicial authority pursuant to Sections 37-1 and 37-4. If the defendant is not released because he or she has been arrested for an offense which is not bailable, the defendant shall be presented before a judicial authority pursuant to Section 37-1.

(P.B. 1978-1997, Sec. 654.)

Sec. 38-2. Release Following Any Other Arrest; Release by Law Enforcement Officers

Except in cases of arrest pursuant to a warrant in which the judicial authority has indicated that bail should be denied or has ordered that the arrested person be brought before a clerk or assistant clerk of the superior court, when any person is taken into custody for a bailable offense that person shall be brought promptly to a police station or other lawful place of detention, where, as quickly as possible under the circumstances, he or she shall be informed or warned in writing of his or her rights under Section 37-3 and of his or her right to be interviewed concerning the terms and conditions of release. Unless the defendant waives or refuses such interview, a law enforcement officer shall promptly interview that person to obtain information relevant to the terms and conditions of his or her release from custody and shall seek independent verification of such information where necessary. At the request of the defendant, his or her counsel may be present during such interview. After such a waiver, refusal or interview, the law enforcement officer shall promptly order release of the defendant upon his or her execution of a written promise to appear or his or her posting of a bond with or without surety in such amount as may be set by such officer, except that no condition of release set by

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the court or a judge thereof may be modified by such officer. If the defendant has not posted bail, the officer shall immediately notify a bail commissioner. The officer may administer such oaths as are necessary in the taking of promises or bonds.

(P.B. 1978-1997, Sec. 656.)

Sec. 38-3. —Release by Bail Commissioner

(a) Upon notification by a law enforcement officer that a defendant has not posted bail, a bail commissioner shall promptly conduct an interview and investigation and, based upon release criteria established by the chief bail commissioner, shall promptly order the release of the defendant upon the first of the following conditions of release found sufficient to assure his appearance in court:

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

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

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

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

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

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

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

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

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

(5) Satisfy any other condition that is reasonably necessary to assure the appearance of the person in court.

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

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

(P.B. 1978-1997, Sec. 657.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 38-4. —Release by Judicial Authority

(a) When any defendant is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient reasonably to assure the person's appearance in court and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered:

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

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

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

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to 10 percent of the amount of the surety bond set, pursuant to Section 38-8;

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

(6) The defendant's execution of a cash bond and his or her deposit with the clerk of the court of cash in the amount of the bond set by the judicial authority in no greater amount than necessary.

In addition to or in conjunction with any of the conditions of release enumerated in this subsection, the judicial authority may impose one or more nonfinancial conditions of release pursuant to subsection (d).

(b) The judicial authority may, in determining what conditions of release will reasonably assure the appearance of the defendant in court, consider factors (1) through (7) below, and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, the judicial authority may also consider factors (8) through (10) below:

(1) The nature and circumstances of the offense, including the weight of the evidence against the defendant;

(2) The defendant's record of previous convictions;

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(3) The defendant's past record of appearance in court after being admitted to bail;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties;

(8) The defendant's history of violence;

(9) Whether the defendant has previously been convicted of similar offenses while released on bond; and

(10) The likelihood based upon the expressed intention of the defendant that he will commit another crime while released.

(c) In addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (6) of subsection (a), the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.

(d) If the judicial authority determines that a nonfinancial condition of release should be imposed in addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (6) of subsection (a) of this section, the judicial authority shall order the pretrial release of the defendant subject to the least restrictive condition or combination of conditions that the judicial authority determines will reasonably assure the appearance of the defendant in court and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered, which conditions may include an order that he or she do one or more of the following:

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

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

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

(4) Participate in the zero-tolerance drug supervision program established under General Statutes § 53a-39d;

(5) Provide sureties of the peace pursuant to General Statutes § 54-56f under supervision of a designated bail commissioner;

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

(7) Maintain employment or, if unemployed, actively seek employment;

(8) Maintain or commence an educational program;

(9) Be subject to electronic monitoring; or

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

(e) The judicial authority shall state on the record its reasons for imposing any such nonfinancial condition.

(f) The judicial authority may require that the defendant subject to electronic monitoring pursuant to subsection (d) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the judicial authority finds that the defendant subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, it shall waive such costs.

(P.B. 1978-1997, Sec. 658.) (Amended June 20, 2005, to take effect Jan. 1, 2006; amended June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 38-5. —Release by Correctional Officials

Any person who has not made bail shall be detained in a correctional facility and shall be released from such institution upon entering into a recognizance, with sufficient surety, or upon posting cash bail as provided in Sections 38-7 and 38-9 for his or her appearance before the court having cognizance of the offense, which are to be taken by any person designated by the commissioner of correction at such institution where such person is detained. Such person so designated shall deliver the recognizance or cash bail to the clerk of the appropriate court before the opening of such court on the first court day thereafter.

(P.B. 1978-1997, Sec. 659.)

Sec. 38-6. Appearance after Release

The person taking any promise or bond shall give the defendant released thereunder a copy of such promise or bond, which shall notify the defendant of the time when and the place where he or she is next to appear and of the penalty for failure to appear. The initial appearance date shall not be more than fourteen days after the date of arrest, unless the defendant has been arrested for a crime of family violence, in which case the defendant shall be promptly presented before the

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superior court sitting next regularly for the geographical area where the offense is alleged to have been committed.

(P.B. 1978-1997, Sec. 661.)

Sec. 38-7. Cash Bail

In any criminal case in which a bond is allowed or required and the amount thereof has been determined, the defendant, or any person in his or her behalf, may deposit with the clerk of the court having jurisdiction of the offense with which the defendant stands charged, or any assistant clerk of such court who is bonded in the same manner as the clerk, or any person or officer authorized to accept bail, a sum of money equal to the amount called for by such bond, and such defendant shall thereupon be admitted to bail. When cash bail is offered, such bond shall be executed and the money shall be received in lieu of a surety or sureties upon such bond. Such cash bail shall be retained by the clerk of such court until a final order of the judicial authority disposing of the case is entered, provided that if such bond is forfeited, the clerk of such court shall pay the money to the obligee named therein, according to the terms and conditions of the bond. Upon discharge of the bond the cash deposit made with the clerk shall be returned to the person depositing the same.

(P.B. 1978-1997, Sec. 663.)

Sec. 38-8. Ten Percent Cash Bail

When 10 percent cash bail is granted, upon the depositing in cash, by the defendant or any person in his or her behalf other than a paid surety, of 10 percent of the surety bond set, the defendant shall thereupon be admitted to bail in the same manner as a defendant who has executed a bond for the full amount. If such bond is forfeited, the defendant shall be liable for the full amount of the bond. Upon discharge of the bond, the 10 percent cash deposit made with the clerk shall be returned to the person depositing the same, less any fee that may be required by statute.

(P.B. 1978-1997, Sec. 664.)

Sec. 38-9. Real Estate Bond

(a) In lieu of a cash bond, the defendant, or any person in the defendant's behalf, may pledge equity in real property located within the state of Connecticut as bond.

(b) Unless otherwise ordered by the judicial authority, the pledge shall be accepted and the defendant shall be admitted to bail upon receipt of the following: (1) proof that a notice of lien containing the terms of the bond has been properly filed, pursuant to the provisions of General Statutes § 54-66, on a form prescribed by the office of the chief court administrator in the office of the town clerk of the town in which the property is located; (2) a current certificate of title from an attorney containing a listing of all encumbrances of record including the notice of lien; (3) one independent appraisal by a licensed real estate appraiser prepared within ninety days of application as to present fair market value; and (4) an affidavit by each owner of the property setting forth (A) the location of the property, (B) the affiant's ownership interest therein, (C) the amount of the affiant's equity in the property, (D) the present fair market value as shown on the appraisal, (E) the present amount of each encumbrance of record filed prior to the notice of lien required by this subsection, and the present amount of any tax liabilities, and (F) whether the same property is pledged as security for any other bonds under this section or for any other purpose.

(c) All record owners of the property as well as the accused shall enter into a bond for the appearance of the accused.

(d) The value of the owner's equity as calculated and verified pursuant to this section shall be not less than the amount of bail set by the judicial authority, but shall not be required to be in any greater amount unless the equity is pledged as security for other bonds under this section, in which case the value of the equity shall be not less than the total amount of all bonds for which it is pledged.

(e) Upon order of forfeiture of the bond, the procedures set forth in General Statutes § 54-66 shall be followed.

(P.B. 1978-1997, Sec. 665.) (Amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 38-10. Factors to Be Considered by the Judicial Authority in Release Decision

[Repealed as of Jan. 1, 2006.]

Sec. 38-11. Request for Judicial Determination of Release

Upon written motion of the defendant or the prosecuting authority, the judicial authority shall state on the record its reasons for imposing the particular conditions of release which were established.

(P.B. 1978-1997, Sec. 668.)

Sec. 38-12. Attorneys Not Allowed to Give Bonds

No attorney shall give any bond or recognizance in any criminal action or proceeding in which he or she is interested as an attorney.

(P.B. 1978-1997, Sec. 669.)

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Sec. 38-13. Bail Modification; In General

The judicial authority shall have the power to modify or revoke at any time the terms and conditions of release as provided for in these rules.

(P.B. 1978-1997, Sec. 673.)

Sec. 38-14. —Motion of Parties for Bail Modification

Whenever the prosecuting authority or the defendant alleges that any bond with or without surety is excessive or insufficient in amount or security or that the written promise of the defendant to appear is inadequate, that person may make a motion to a judicial authority to modify or set terms and conditions of release. Such motion shall be served prior to the hearing date upon the opposing party, the sureties upon any bond and the appropriate bail commissioner, unless otherwise ordered by the judicial authority.

(P.B. 1978-1997, Sec. 674.)

Sec. 38-15. —Application of Bail Commissioner

A bail commissioner who has reason to believe that a person released under any of the provisions of these rules or of the General Statutes intends not to appear in court as required by the conditions of release may apply to a judicial authority for the court before whom such person is required to appear, and verify by oath the reason for this belief, and request that such person be brought before the judicial authority in order that the conditions of release be reviewed. Upon finding reasonable grounds to believe that the released person intends not to appear, such judicial authority shall forthwith issue a capias directed to a proper officer or indifferent person, commanding him or her forthwith to arrest and bring such person to the court for a hearing to review the conditions of his or her release. Copies of the bail commissioner's application shall be served upon the defendant, the prosecuting authority and any sureties upon any bond.

(P.B. 1978-1997, Sec. 675.)

Sec. 38-16. —Application of Surety

(a) A surety upon a bail bond who believes that his or her principal intends not to appear in court as required by the conditions of release shall file with a judicial authority an application, with a summons and citation, setting forth the reasons for his or her belief, verified by oath and requesting that the judicial authority issue either a summons and citation or a capias to compel the appearance of the released person before the judicial authority for a hearing to review the conditions of such person's release.

(b) Except as provided below, in lieu of issuing a capias the judicial authority may order a copy of the surety's application and a summons and citation, signed by the judicial authority or the clerk or assistant clerk of the court, to be served on the principal by a proper officer or indifferent person summoning him or her to appear in court at a time and place named for a hearing upon such application.

(c) If the judicial authority determines that it is necessary to take the accused into custody because there are facts indicating a substantial likelihood that such person will not appear in court as required by the conditions of his or her release unless he or she is taken into custody, it shall issue a capias directed to a proper officer or indifferent person commanding that person forthwith to arrest and bring the released person to the court for a hearing to review the conditions of his or her release. However, a capias shall not issue unless the application sets forth the particular facts in narrative form which lead the surety to believe there is a substantial likelihood that such person will not appear in court.

(d) All expenses incurred pursuant to the issuance and service of the capias or summons shall be paid by the surety.

(P.B. 1978-1997, Sec. 675A.)

Sec. 38-17. —Hearing on Motion or Application for Modification of Bail

(a) Upon the filing and service of such motion or application, the judicial authority shall, with reasonable promptness, conduct a hearing to determine whether the terms and conditions of release should be continued, modified or set. The judicial authority shall release the defendant subject to and in accordance with the provisions of Section 38-4 upon the first of the following conditions of release found sufficient to provide reasonable assurance of the appearance of the defendant in court:

(1) The defendant's execution of a written promise to appear;

(2) The defendant's execution of a bond without surety in no greater amount than necessary;

(3) The defendant's deposit with the clerk of the court of an amount equal to 10 percent of the surety bond set, pursuant to Section 38-8;

(4) The defendant's execution of a bond with surety in no greater amount than necessary.

(b) If, after such hearing, the judicial authority relieves a surety of his or her undertaking on a bond, it may enter such order contingent upon the return of such portion of the bond fee as it deems equitable.

(P.B. 1978-1997, Sec. 676.)

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Sec. 38-18. —Review of Detention Prior to Arraignment, Trial or Sentencing

(a) No person shall be detained in a correctional facility for arraignment, sentencing or trial for an offense not punishable by death for longer than forty-five days, unless at the expiration of such forty-five days such person is presented to the judicial authority having cognizance of the offense. On each such presentment, the judicial authority may reduce, modify or discharge such bail. On the expiration of each successive forty-five day period, such person may again by motion be presented to the judicial authority for such purpose.

(b) If the offense is classified as a class D felony or as a misdemeanor, the time period under this section shall be thirty days, except with regard to a person charged with a crime in another state and detained pursuant to chapter 964 of the General Statutes or a person detained for violation of his parole pending a parole revocation hearing.

(P.B. 1978-1997, Sec. 677.)

Sec. 38-19. Violation of Conditions of Bail; Order to Appear

Upon application by the prosecuting authority alleging that a defendant has violated the conditions of release, a judicial authority may, if probable cause is found, order that the defendant appear in court for a hearing upon such allegations. Said order shall be served upon the defendant (1) by delivering a copy to the defendant personally, (2) by leaving it at his or her usual place of abode with a person of suitable age and discretion then residing therein, (3) by mailing it by registered or certified mail to the defendant's last known address, or (4) by serving the order upon the defendant's counsel who shall notify the defendant of the order and the hearing date. If service is made pursuant to (4) above and such service proves insufficient to give the defendant notice, then service shall be made as otherwise provided in this section.

(P.B. 1978-1997, Sec. 682.)

Sec. 38-20. —Sanctions for Violation of Conditions of Release

After a hearing and upon a finding that the defendant has violated reasonable conditions imposed on release, the judicial authority may impose different or additional conditions upon the defendant's release or revoke the release.

(P.B. 1978-1997, Sec. 683.)

Sec. 38-21. —Forfeiture of Bail and Rearrest Warrant

(a) If the defendant fails to appear at the time and place promised in any bond or written promise to appear, or in response to an order issued pursuant to Sections 38-19 and 38-20 unless otherwise ordered by the judicial authority, the bond may be forfeited in accordance with its terms and the judicial authority may issue a warrant to cause the arrest of the defendant and his or her appearance in court or may issue a capias.

(b) If the bond which has been forfeited was in an amount of $500 or more, the court shall order a stay of execution upon the forfeiture for six months. When the arrested person whose bond has been forfeited is returned to custody within six months of the date such bond was ordered forfeited, the bond shall be reinstated and the surety released. Such stay of execution shall not prevent the issuance of a rearrest warrant or a capias.

(c) Upon issuance of a rearrest warrant or a capias the judicial authority shall, pursuant to Section 38-4, set a condition of release sufficient to assure the defendant's appearance in court.

(P.B. 1978-1997, Sec. 684.)

Sec. 38-22. Rebate of Forfeited Bonds

Whenever an arrested person, whose bond has been forfeited, is returned to the jurisdiction of the court within one year of the date such bond was ordered forfeited, the surety on such bond shall be entitled to a rebate in the following amount:

(1) 46 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within 210 days of the date such bond was ordered forfeited;

(2) 38 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within 240 days of the date such bond was ordered forfeited;

(3) 30 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within 270 days of the date such bond was ordered forfeited;

(4) 23 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within 300 days of the date such bond was ordered forfeited;

(5) 15 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within 330 days of the date such bond was ordered forfeited;

(6) 7 percent of the amount of the bond ordered forfeited if the arrested person is returned to the jurisdiction of the court within one year of the date such bond was ordered forfeited.

(P.B. 1998.)

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Sec. 38-23. Discharge of Surety's Obligation

Where bail has been posted by a bondsman or other surety, such bondsman or surety shall not be relieved of any obligation upon the bond except with the permission of the judicial authority and for good cause shown.

(P.B. 1978-1997, Sec. 685.)

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CHAPTER 39

DISPOSITION WITHOUT TRIAL

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 39-1. Procedure for Plea Discussions; In General

The prosecuting authority and counsel for the defendant, or the defendant when not represented by counsel, may engage in discussions at any time with a view towards disposition. Negotiations may occur either prior to or after the arraignment. The prosecuting authority shall be in his or her office at reasonable times for the purpose of giving to counsel for the defendant, and to all others in interest, a reasonable opportunity for consultation.

(P.B. 1978-1997, Sec. 687.)

Sec. 39-2. —Discussions with Defendant

The prosecuting authority shall not engage in plea discussions at the disposition conference, or at other times, directly with a defendant who is represented by counsel, except with such counsel's approval. If the defendant refuses to be represented by counsel or waives this right under Section 44-3, the prosecuting authority may properly discuss disposition of the charges directly with the defendant.

(P.B. 1978-1997, Sec. 688.)

Sec. 39-3. —Role of Defense Counsel

Defense counsel shall conclude plea agreements only with the consent of the defendant and shall insure that the decision to dispose of the case or to proceed to trial is ultimately made by the defendant.

(P.B. 1978-1997, Sec. 689.)

Sec. 39-4. —Subject Matter of Discussion

Discussion need not be limited to the entry of a plea of guilty or nolo contendere, and may include any disposition without trial permitted under these rules or the General Statutes. The parties may also discuss pretrial motions filed or yet to be filed which would lead to a disposition of the case without trial.

(P.B. 1978-1997, Sec. 690.)

Sec. 39-5. Plea Agreements; Upon Plea of Guilty or Nolo Contendere

The parties may agree that the defendant will plead guilty or nolo contendere on one or more of the following conditions:

(1) That the prosecuting authority will amend the information to charge a particular offense;

(2) That the prosecuting authority will nolle, recommend dismissal of, or not bring certain other charges against the defendant; or

(3) That the sentence or other disposition will not exceed specified terms or that the prosecuting authority will recommend a specific sentence, not oppose a particular sentence, or make no specific recommendation.

(P.B. 1978-1997, Sec. 692.)

Sec. 39-6. —Alternate Agreements

The prosecuting authority may also recommend an alternative disposition under Section 39-33.

(P.B. 1978-1997, Sec. 693.)

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Sec. 39-7. —Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere, the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept or reject the agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons.

(P.B. 1978-1997, Sec. 694.)

Sec. 39-8. —Sentencing after Acceptance of Plea Agreement

If the judicial authority accepts the plea agreement, it shall embody in the judgment and the sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

(P.B. 1978-1997, Sec. 696.)

Sec. 39-9. —Continuance for Sentencing

If the case is continued for sentencing, the judicial authority shall inform the defendant that a different sentence from that embodied in the plea agreement may be imposed on the receipt of new information or on sentencing by another judicial authority, but that if such a sentence is imposed, the defendant will be allowed to withdraw his or her plea in accordance with Sections 39-26 through 39-28.

(P.B. 1978-1997, Sec. 697.)

Sec. 39-10. —Rejection of Plea Agreement

If the judicial authority rejects the plea agreement, it shall inform the parties of this fact; advise the defendant personally in open court or, on a showing of good cause, in camera that the judicial authority is not bound by the plea agreement; afford the defendant the opportunity then to withdraw the plea, if given; and advise the defendant that if he or she persists in a guilty plea or plea of nolo contendere, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(P.B. 1978-1997, Sec. 698.)

Sec. 39-11. Disposition Conference; Assignment of Jury Cases

After conferring with the clerk, the presiding judge shall assign for disposition conferences so much of the jury trial list as he or she shall deem necessary for the proper conduct of the court and he or she shall direct the clerk to print and distribute a list of the cases so assigned to the appearing parties. The clerk shall schedule the conferences at times which will not interfere with the orderly calling of the court docket. Cases may also be assigned for a disposition conference at the time of the entry of a plea pursuant to Section 44-15.

(P.B. 1978-1997, Sec. 700.)

Sec. 39-12. —Effect of Previous Plea Discussions on Disposition Conference

Unless an agreement has been reached in a previous plea discussion, a case will be assigned for a disposition conference. It shall be the duty of the prosecuting authority to notify the clerk if an agreement has been reached or if the case has been disposed of.

(P.B. 1978-1997, Sec. 701.)

Sec. 39-13. —Attendance at Disposition Conference

The prosecuting authority, the defense counsel, and, in cases claimed for jury trial, the defendant shall appear at the time set for the disposition conference unless excused by the judicial authority. Requests for postponements shall be made only to the presiding judge and shall be granted upon good cause shown.

(P.B. 1978-1997, Sec. 702.)

Sec. 39-14. —Nature of Disposition Conference; In General

The prosecuting authority and counsel for the defendant should attempt to reach a plea agreement pursuant to the procedures of Sections 39-1 through 39-10.

(P.B. 1978-1997, Sec. 704.)

Sec. 39-15. —Inability to Reach Agreement

Should the parties be unable to reach an agreement as to disposition, they shall report to the presiding judge or to another judge assigned by him or her.

(P.B. 1978-1997, Sec. 705.)

Sec. 39-16. —Notice of Agreement to Judicial Authority

If the parties reach an agreement which contemplates the entry of a plea of guilty or nolo contendere, they may advise the judicial authority in advance of the plea. The judicial authority may indicate whether it will concur in or reject the proposed disposition.

(P.B. 1978-1997, Sec. 706.)

Sec. 39-17. —Effect of Disposition Conference

If a case is not resolved at the disposition conference or if the judicial authority rejects the plea agreement, the case shall be assigned to a trial list. If an agreement is reached, a judicial authority

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shall be available to accept guilty pleas and other dispositions.
(P.B. 1978-1997, Sec. 707.)

Sec. 39-18. Plea of Guilty or Nolo Contendere; Entering

In the discretion of the judicial authority, the defendant may enter a plea of guilty or nolo contendere to the information or complaint at arraignment. At any later time the defendant also may enter any such plea. A plea of nolo contendere shall be in writing, shall be signed by the defendant, and, when accepted by the judicial authority, shall be followed by a finding of guilty.
(P.B. 1978-1997, Sec. 709.)

Sec. 39-19. —Acceptance of Plea; Advice to Defendant

The judicial authority shall not accept the plea without first addressing the defendant personally and determining that he or she fully understands:

(1) The nature of the charge to which the plea is offered;

(2) The mandatory minimum sentence, if any;

(3) The fact that the statute for the particular offense does not permit the sentence to be suspended;

(4) The maximum possible sentence on the charge, including, if there are several charges, the maximum sentence possible from consecutive sentences and including, when applicable, the fact that a different or additional punishment may be authorized by reason of a previous conviction; and

(5) The fact that he or she has the right to plead not guilty or to persist in that plea if it has already been made, and the fact that he or she has the right to be tried by a jury or a judge and that at that trial the defendant has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.
(P.B. 1978-1997, Sec. 711.)

Sec. 39-20. —Ensuring That the Plea is Voluntary

The judicial authority shall not accept a plea of guilty or nolo contendere without first determining, by addressing the defendant personally in open court, that the plea is voluntary and is not the result of force or threats or of promises apart from a plea agreement. The judicial authority shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecuting authority and the defendant or his or her counsel.
(P.B. 1978-1997, Sec. 712.)

Sec. 39-21. —Factual Basis for Plea

The judicial authority shall not accept a plea of guilty unless it is satisfied that there is a factual basis for the plea.
(P.B. 1978-1997, Sec. 713.)

Sec. 39-22. Pleading to Other Offenses after Guilty Finding

Upon entry of a finding of guilty after acceptance of a plea of guilty or nolo contendere or after a trial, a defendant may request permission to plead guilty or nolo contendere to any other offense for which the court wherein the finding of guilty was entered has jurisdiction to impose the maximum authorized penalty. Upon the written approval of the prosecuting authority who is authorized to request imposition of the maximum authorized penalty in the judicial district or geographical area wherein the offense has been or could be charged, and upon the written approval of the prosecuting authority who is authorized to request imposition of the maximum authorized penalty in the judicial district or geographical area wherein the court, in which the finding of guilty was entered, is located, a defendant may enter a plea of guilty or nolo contendere in conformity with Section 39-18. Such a plea shall operate as a waiver of venue and as a consent to the filing of an appropriate information.
(P.B. 1978-1997, Sec. 715.)

Sec. 39-23. Previous Offender; Plea to Second Part

Where the defendant has been charged in the second part of an information with a former conviction or convictions, he or she may enter a plea of guilty to the second part upon a finding of guilty of the particular offense he or she was charged with in the first part.
(P.B. 1978-1997, Sec. 716.)

Sec. 39-24. Record of Proceedings regarding Guilty Pleas

A verbatim record shall be made of the proceedings at which the defendant enters a plea of guilty or nolo contendere. This record shall include the judicial authority's advice to the defendant, the inquiry into the voluntariness of the plea, including any plea agreement, and the inquiry into the factual basis for the plea.
(P.B. 1978-1997, Sec. 717.)

Sec. 39-25. Inadmissibility of Rejected Guilty Pleas

No evidence of the court proceedings at which a plea of guilty or nolo contendere was entered, where such plea is not accepted by the judicial

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authority or is later withdrawn pursuant to Sections 39-26 through 39-28, shall be received at the trial of the case.
(P.B. 1978-1997, Sec. 718.)

Sec. 39-26. Withdrawal of Plea; When Allowed

A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right until the plea has been accepted. After acceptance, the judicial authority shall allow the defendant to withdraw his or her plea upon proof of one of the grounds in Section 39-27. A defendant may not withdraw his or her plea after the conclusion of the proceeding at which the sentence was imposed.
(P.B. 1978-1997, Sec. 720.)

Sec. 39-27. —Grounds for Allowing Plea Withdrawal

The grounds for allowing the defendant to withdraw his or her plea of guilty after acceptance are as follows:

(1) The plea was accepted without substantial compliance with Section 39-19;

(2) The plea was involuntary, or it was entered without knowledge of the nature of the charge or without knowledge that the sentence actually imposed could be imposed;

(3) The sentence exceeds that specified in a plea agreement which had been previously accepted, or in a plea agreement on which the judicial authority had deferred its decision to accept or reject the agreement at the time the plea of guilty was entered;

(4) The plea resulted from the denial of effective assistance of counsel;

(5) There was no factual basis for the plea; or

(6) The plea either was not entered by a person authorized to act for a corporate defendant or was not subsequently ratified by a corporate defendant.
(P.B. 1978-1997, Sec. 721.)

Sec. 39-28. —Effect of Plea Withdrawal

If the defendant is permitted to withdraw his or her plea, the original finding of guilty shall be set aside, a plea of not guilty shall be entered, and further proceedings shall be scheduled in accordance with these rules. The judicial authority permitting the vacating of the guilty plea shall not sit on the trial of the matter, unless this is waived by the defendant in writing.
(P.B. 1978-1997, Sec. 722.)

Sec. 39-29. Nolle Prosequi

A prosecuting authority shall have the power to enter a nolle prosequi in a case. It shall be entered upon the record after a brief statement by the prosecuting authority in open court of the reasons therefor.
(P.B. 1978-1997, Sec. 725.)

Sec. 39-30. —Objection by Defendant to Nolle Prosequi

Where a prosecution is initiated by complaint or information, the defendant may object to the entering of a nolle prosequi at the time it is offered by the prosecuting authority and may demand either a trial or a dismissal, except when a nolle prosequi is entered upon a representation to the judicial authority by the prosecuting authority that a material witness has died, disappeared or become disabled or that material evidence has disappeared or has been destroyed and that a further investigation is therefore necessary.
(P.B. 1978-1997, Sec. 726.)

Sec. 39-31. —Effect of Nolle Prosequi

The entry of a nolle prosequi terminates the prosecution and the defendant shall be released from custody. If subsequently the prosecuting authority decides to proceed against the defendant, a new prosecution must be initiated.
(P.B. 1978-1997, Sec. 727.)

Sec. 39-32. —Dismissal

The judicial authority may dismiss the information or complaint and discharge the defendant, at any time, in accordance with Sections 41-8 through 41-11.
(P.B. 1978-1997, Sec. 728.)

Sec. 39-33. Miscellaneous Dispositions

Upon motion by the defendant, counsel for the defendant, or the prosecuting authority, the judicial authority may make any order permitted by statute or rule that may result in the disposition of the case without trial, including, but not limited to, the following:

(1) Adjudication and treatment as a youthful offender;

(2) Accelerated pretrial rehabilitation;

(3) Pretrial alcohol education and treatment;

(4) Reference to the family relations division and a hearing thereon;

(5) Commitment to the commissioner of mental health following examination and hearing;

(6) Suspension of prosecution for drug-dependent defendants after examination and release to the commission on adult probation;

(7) Reference to a community service labor program; or

(8) Reference to an alternative incarceration program under the auspices of the office of adult probation.
(P.B. 1978-1997, Sec. 730.)

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CHAPTER 40

DISCOVERY AND DEPOSITIONS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 40-1. Discovery in General; Regulating Discovery

Except as otherwise provided in these rules, the judicial authority before whom the defendant appears 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.

(P.B. 1978-1997, Sec. 732.)

Sec. 40-2. —Good Faith Efforts and Subpoenas

When documents or objects are the subject of discovery orders, good faith efforts shall be made by the party to whom any such order is directed to secure their possession. If the efforts of such party are unsuccessful the judicial authority shall, upon written request, issue a subpoena or order directing that such documents or objects be delivered to the clerk of the court within a specified time. The clerk shall give a receipt for them and

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be responsible for their safekeeping. Such documents and tangible objects shall be sealed and shall be open to inspection only upon an order of the judicial authority.
(P.B. 1978-1997, Sec. 733.)

Sec. 40-3. —Continuing Obligation to Disclose

If prior to or during trial a party discovers additional material previously ordered to be disclosed or which the party is otherwise obligated to disclose, such party shall promptly notify the other party and the judicial authority of its existence.
(P.B. 1978-1997, Sec. 734.)

Sec. 40-4. —Limitations on Requests or Motions

A party shall file all requests or motions under this chapter within the time specified and shall include in the initial request or motion all information or materials sought. The judicial authority may for good cause shown allow the filing of supplemental requests or motions.
(P.B. 1978-1997, Sec. 735.)

Sec. 40-5. —Failure to Comply with Disclosure

If a party fails to comply with disclosure as required under these rules, the opposing party may move the judicial authority for an appropriate order. The judicial authority hearing such a motion may enter such orders and time limitations as it deems appropriate, including, without limitation, one or more of the following:

(1) Requiring the noncomplying party to comply;

(2) Granting the moving party additional time or a continuance;

(3) Relieving the moving party from making a disclosure required by these rules;

(4) Prohibiting the noncomplying party from introducing specified evidence;

(5) Declaring a mistrial;

(6) Dismissing the charges;

(7) Imposing appropriate sanctions on the counsel or party, or both, responsible for the noncompliance; or

(8) Entering such other order as it deems proper.
(P.B. 1978-1997, Sec. 735A.)

Sec. 40-6. —Discovery Performance

Unless otherwise specified by agreement of the parties or judicial order, the parties shall perform their obligations under Sections 40-1 through 40-10 by making available at reasonable times specified information and materials for inspecting, testing, copying and photographing.
(P.B. 1978-1997, Sec. 737.)

Sec. 40-7. —Procedures for Disclosure

(a) All requests for disclosure by any party shall be filed in accordance with Section 41-5 and shall be served in accordance with Sections 10-12 through 10-17 but need not be filed with the court, subject, however, to the provisions of Section 40-40 et seq. The party requesting disclosure or the party responding shall file with the court a notice of service certifying that a request or response was served and the date and manner of service. The party responsible for service of a document shall retain custody of the original.

(b) Except as otherwise provided in Section 40-13, any party may make disclosure by notifying the opposing party that all pertinent material and information may be inspected and, if practicable, copied at specific times and locations and the parties may schedule agreed dates and times to photograph and have reasonable tests made upon any disclosed material.
(P.B. 1978-1997, Sec. 737A.)

Sec. 40-8. —Objection to Disclosure

Notwithstanding the provisions of Sections 40-11 and 40-26, the prosecuting authority or the defendant may object to disclosure of any information or items which are directed to be provided by those sections but which the objecting party believes for good cause should not be disclosed or for which it is reasonably believed that a protective order provided by Section 40-40 et seq. would be warranted. Such objection shall be made in writing and shall set forth the grounds of such belief as fully as possible. The objection shall be served in accordance with Sections 10-12 through 10-17 and a copy shall be filed with the court within twenty days of the request unless the judicial authority, for good cause shown, allows a later filing. After hearing the judicial authority shall determine whether such information or items shall be disclosed.
(P.B. 1978-1997, Sec. 737B.)

Sec. 40-9. —Presence during Tests and Experiments

If a scientific test or experiment to be performed upon any object which has been the subject of a disclosure order may preclude or impair any further tests or experiments, the opposing party and any other person known to have or believed to have an interest in the matter shall be given reasonable notice and opportunity to be present and to have an expert observe or participate in the test or experiment, unless the judicial authority for good cause shall order otherwise.
(P.B. 1978-1997, Sec. 738.)

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Sec. 40-10. —Custody of Materials

(a) Any materials furnished to counsel pursuant to this chapter, including statements, reports and affidavits disclosed pursuant to Section 40-13A, shall be used only for the purposes of conducting such counsel's side of the case or for the performance of his or her official duties, and shall be subject to such other terms and conditions as the judicial authority may provide. Without the prior approval of the prosecuting authority or the court, defense counsel and his or her agents shall not provide copies of materials disclosed pursuant to Section 40-13A to any person except to persons employed by defense counsel in connection with the investigation or defense of the case.

(b) The prosecuting authority is not required to disclose to an unrepresented defendant the names and addresses required by Section 40-13 unless the court orders disclosure upon a finding of need which cannot reasonably be met by other means. Before other materials are disclosed or provided to an unrepresented defendant pursuant to this chapter, the prosecuting authority may request and the court may order that the materials remain in the defendant's exclusive custody to be used only for the purpose of conducting the case, subject to such terms, conditions and restrictions that the court, in its discretion, may impose. The court shall also inform the unrepresented defendant that violation of an order issued under this subsection is punishable as a contempt of court.

(P.B. 1978-1997, Sec. 739.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 40-11. Disclosure by the Prosecuting Authority

(Amended June 22, 2009, to take effect Jan. 1, 2010.)

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose in writing the existence of, provide photocopies of, and allow the defendant in accordance with Section 40-7, to inspect, copy, photograph and have reasonable tests made on any of the following items:

(1) Exculpatory information or materials;

(2) Any books, tangible objects, papers, photographs, or documents within the possession, custody or control of any governmental agency, which the prosecuting authority intends to offer in evidence in chief at trial or which are material to the preparation of the defense or which were obtained from or purportedly belong to the defendant;

(3) Copies of the defendant's prior criminal record, if any, which are within the possession, custody, or control of the prosecuting authority, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting authority;

(4) Any reports or statements of experts made in connection with the offense charged including results of physical and mental examinations and of scientific tests, experiments or comparisons which are material to the preparation of the defense or are intended for use by the prosecuting authority as evidence in chief at the trial;

(5) Any warrant executed for the arrest of the defendant for the offense charged, and any search and seizure warrants issued in connection with the investigation of the offense charged;

(6) (i) Any written, recorded or oral statements made by the defendant or a codefendant, before or after arrest to any law enforcement officer or to a person acting under the direction of or in cooperation with a law enforcement officer concerning the offense charged; or

(ii) Any relevant statements of coconspirators which the prosecuting authority intends to offer in evidence at any trial or hearing.

(b) In addition to the foregoing, the defendant shall be entitled to disclosure of exculpatory materials in accordance with any applicable constitutional and statutory provisions.

(P.B. 1978-1997, Sec. 741.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 40-12. Discretionary Disclosure Directed to Prosecuting Authority

Upon written request by a defendant filed in accordance with Section 40-7 the judicial authority may direct the prosecuting authority to disclose in writing to the defendant and make available for inspection, photographing, copying and reasonable testing any other relevant material and information not covered by Section 40-11 which the judicial authority determines on good cause shown should be made available.

(P.B. 1978-1997, Sec. 742.)

Sec. 40-13. Names of Witnesses; Prior Record of Witnesses; Statements of Witnesses

(Amended June 22, 2009, to take effect Jan. 1, 2010.)

(a) Upon written request by a defendant filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the prosecuting authority, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the defendant the

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names and, subject to the provisions of subsections (f) and (g) of this section, the addresses of all witnesses that the prosecuting authority intends to call in his or her case-in-chief and shall additionally disclose to the defendant any record of felony convictions of the witnesses known to the prosecuting authority and any record of felony or misdemeanor charges pending against the witnesses known to the prosecuting authority.

(b) Upon written request by the prosecuting authority, filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the defendant, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose to the prosecuting authority the names and, subject to the provisions of subsection (g) of this section, the addresses of all witnesses whom the defendant intends to call in the defendant's case-in-chief and shall additionally disclose to the prosecuting authority any statements of the witnesses other than the defendant in the possession of the defendant or his or her agents, which statements relate to the subject matter about which each witness will testify.

(c) No witness shall be precluded from testifying for any party because his or her name or statement or criminal history was not disclosed pursuant to this rule if the party calling such witness did not in good faith intend to call the witness at the time that he or she provided the material required by this rule. In the interests of justice the judicial authority may in its discretion permit any undisclosed individual to testify.

(d) The provisions of this section shall apply to any additional testimony presented by any party as rebuttal evidence pursuant to Section 42-35 (3) and the statements and criminal histories of such witnesses shall be provided to the opposing party before the commencement of any such rebuttal testimony.

(e) The fact that a witness' name or statement is provided under this section shall not be a ground for comment upon a failure to call a witness.

(f) Notwithstanding any provision of this section, the personal residence address of a police officer or correction officer shall not be required to be disclosed except pursuant to an order of the judicial authority after a hearing and a showing that good cause exists for the disclosure of the information.

(g) Upon written request of a party and for good cause shown, the judicial authority may order that the address of any witness whose name was disclosed pursuant to subsections (a) or (b) of this section not be disclosed to the opposing party.

(P.B. 1978-1997, Sec. 743.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 40-13A. Law Enforcement Reports, Affidavits and Statements

Upon written request by a defendant and without requiring any order of the judicial authority, the prosecuting authority shall, no later than forty-five days from receiving the request, provide photocopies of all statements, law enforcement reports and affidavits within the possession of the prosecuting authority and his or her agents, including state and local law enforcement officers, which statements, reports and affidavits were prepared concerning the offense charged, subject to the provisions of Sections 40-10 and 40-40 et seq.

(Adopted June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 40-14. Information Not Subject to Disclosure by Prosecuting Authority

Subject to Sections 40-13 and 40-13A and except for the substance of any exculpatory material contained herein, Sections 40-11 through 40-14 do not authorize or require disclosure or inspection of:

(1) Reports, memoranda or other internal documents made by a prosecuting authority or by law enforcement officers in connection with the investigation or prosecution of the case;

(2) Legal research;

(3) Records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of a prosecuting authority.

(P.B. 1978-1997, Sec. 746.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 40-15. Disclosure of Statements; Definition of Statement

The term ''statement'' as used in Sections 40-11, 40-13 and 40-26 means:

(1) A written statement made by a person and signed or otherwise adopted or approved by such person; or

(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by a person and recorded contemporaneously with the making of such oral statement.

(P.B. 1978-1997, Sec. 749.)

Sec. 40-16. Request for Recess by Defendant upon Receipt of Statement

Whenever any statement is delivered to a defendant pursuant to Section 40-13, the judicial authority in its discretion, upon application of the defendant, may recess the proceedings for such

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time as it may determine to be reasonably required for the examination of such statement by the defendant and his or her preparation for its use in the trial.

(P.B. 1978-1997, Sec. 754.)

Sec. 40-17. Defense of Mental Disease or Defect or Extreme Emotional Disturbance; Notice by Defendant

If a defendant intends to rely upon the affirmative defense of mental disease or defect or of extreme emotional disturbance at the time of the alleged crime, the defendant shall, not later than forty-five days after the first pretrial conference in the court where the case will be tried or at such later time as the judicial authority may direct, notify the prosecuting authority in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this rule, such affirmative defenses may not be raised. The judicial authority may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(P.B. 1978-1997, Sec. 758.)

Sec. 40-18. —Notice by Defendant of Intention to Use Expert Testimony regarding Mental State; Filing Reports of Exam

If a defendant intends to introduce expert testimony relating to the affirmative defenses of mental disease or defect, or of extreme emotional disturbance or another condition bearing upon the issue of whether he or she had the mental state required for the offense charged, the defendant shall, not later than forty-five days after the first pretrial conference in the court where the case will be tried or at such later time as the judicial authority may direct, notify the prosecuting authority in writing of such intention and file a copy of such notice with the clerk. The defendant shall also furnish the prosecuting authority with copies of reports of physical or mental examinations of the defendant prepared by an expert whom the defendant intends to call as a witness in connection with the offense charged, within five days after receipt thereof. The judicial authority may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(P.B. 1978-1997, Sec. 759.)

Sec. 40-19. —Prosecutorial Motion for Psychiatric Examination

In an appropriate case the judicial authority may, upon motion of the prosecuting authority, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose by the prosecuting authority. No statement made by the defendant in the course of any examination provided for by Sections 40-17 through 40-19, whether the examination shall be with or without the consent of the defendant, shall be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding. A copy of the report of the psychiatric examination shall be furnished to the defendant within five days after the receipt thereof by the prosecuting authority.

(P.B. 1978-1997, Sec. 760.)

Sec. 40-20. —Failure of Expert to Submit Report

If any expert fails to submit any written report of the result of any physical or mental examination conducted pursuant to Sections 40-17 through 40-19 the judicial authority, upon request of the party who engaged the expert, may issue an appropriate subpoena or order pursuant to Section 40-2 or may direct that the expert's deposition be taken pursuant to Sections 40-44 through 40-58.

(P.B. 1978-1997, Sec. 760A.)

Sec. 40-21. Defense of Alibi; Notice by Defendant

Upon written demand filed by the prosecuting authority stating the time, date, and place at which the alleged offense was committed, the defendant shall file within twenty days, or at such other time as the judicial authority may direct, a written notice of the defendant's intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi.

(P.B. 1978-1997, Sec. 763.)

Sec. 40-22. —Notice by Prosecuting Authority concerning Alibi Defense

If the written notice has been filed pursuant to Section 40-21, the prosecuting authority, within twenty days after filing of the notice, but in no event less than ten days before the trial unless the judicial authority otherwise directs, shall file a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied upon to rebut testimony of any of the defendant's alibi witnesses.

(P.B. 1978-1997, Sec. 764.)

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Sec. 40-23. —Continuing Duty of Parties to Disclose regarding Alibi Defense

If prior to or during the trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under Sections 40-21 or 40-22, the party shall promptly notify the other party or his or her counsel of the existence and identity of such additional witness.

(P.B. 1978-1997, Sec. 765.)

Sec. 40-24. —Exceptions

For good cause shown, the judicial authority may grant an exception to any of the requirements of Sections 40-21 through 40-23.

(P.B. 1978-1997, Sec. 767.)

Sec. 40-25. —Inadmissibility of Withdrawn Alibi

Evidence of an intention to rely upon an alibi defense which intention is later withdrawn, or evidence of statements made in connection with such intention, is not admissible in any criminal proceeding against the person who gave notice of the intention.

(P.B. 1978-1997, Sec. 768.)

Sec. 40-26. Disclosure by the Defendant; Information and Materials Discoverable by the Prosecuting Authority as of Right

Upon written request by the prosecuting authority filed in accordance with Section 41-5 and without requiring any order of the judicial authority, the defendant, subject to Section 40-40 et seq., shall promptly, but no later than forty-five days from the filing of the request, unless such time is extended by the judicial authority for good cause shown, disclose in writing to the prosecuting authority the existence of and make available for examination and copying in accordance with the procedures of Section 40-7 the following items:

(1) Any books, papers, documents, photographs or tangible objects which the defendant intends to offer in evidence at trial except to the extent that it contains any communication of the defendant; and

(2) Any reports or statements of experts made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which the defendant intends to offer in evidence at trial or relating to the anticipated testimony of a person whom the defendant intends to call as a witness.

(P.B. 1978-1997, Sec. 769.)

Sec. 40-27. Discretionary Disclosure Directed to Defendant

Upon written request by a prosecuting authority filed in accordance with Section 40-7 the judicial authority may direct the defendant to disclose in writing to the prosecuting authority and make available for inspection, photographing, copying and reasonable testing any other relevant material and information not covered by Section 40-26 which the judicial authority determines on good cause shown should be made available.

(P.B. 1978-1997, Sec. 769A.)

Sec. 40-28. Derivative Evidence

The defendant shall be supplied with copies of any reports of experts derived from or based upon the examination of materials produced pursuant to Section 40-26.

(P.B. 1978-1997, Sec. 770.)

Sec. 40-29. Protective Orders Requested by Defendant

The defendant may, to the same extent as the prosecuting authority, move for a protective order under the provisions of Sections 40-40 through 40-43.

(P.B. 1978-1997, Sec. 771.)

Sec. 40-30. Admissibility at Time of Trial

The fact that the defendant has indicated an intent to offer a matter in evidence or to call a person as a witness pursuant to Sections 40-17 through 40-31 is not admissible in evidence at the defendant's trial. Information obtained by the prosecuting authority pursuant to Sections 40-17 through 40-31 shall be used only for the cross-examination or rebuttal of defense testimony except with permission of the judicial authority for good cause shown.

(P.B. 1978-1997, Sec. 772.)

Sec. 40-31. Information Not Subject to Disclosure by Defendant

Subject to Section 40-13 and except as to scientific or medical reports, Sections 40-17 through 40-31 do not authorize or require disclosure or inspection of:

(1) Reports, memoranda or other internal defense documents made by the defendant, or counsel for the defendant or any person employed by the defendant in connection with the investigation or defense of the case;

(2) Legal research; or

(3) Records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the defendant, counsel for the defendant, or any other person employed by the defendant in connection with the investigation or defense of the case.

(P.B. 1978-1997, Sec. 773.)

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Sec. 40-32. Obtaining Nontestimonial Evidence from Defendant

Upon motion of the prosecuting authority, the judicial authority by order may direct a defendant to participate in a reasonably conducted procedure to obtain nontestimonial evidence, if the judicial authority finds probable cause to believe that:

(1) The evidence sought may be of material aid in determining whether the defendant committed the offense charged; and

(2) The evidence sought cannot practicably be obtained from other sources.

(P.B. 1978-1997, Sec. 776.)

Sec. 40-33. —Emergency Procedure regarding Nontestimonial Evidence

Upon application of the prosecuting authority, the judicial authority by order may direct a law enforcement officer to bring the defendant forthwith before the judicial authority for an immediate hearing on a motion made under Sections 40-32 through 40-39, if an affidavit or testimony shows that there is probable cause to believe that the evidence sought will be altered, dissipated, or lost if not promptly obtained. Upon presentation of the defendant, the judicial authority shall inform the defendant of his or her rights as specified in Sections 37-3 through 37-6 and shall afford the defendant reasonable opportunity to consult with an attorney before hearing the motion.

(P.B. 1978-1997, Sec. 777.)

Sec. 40-34. —Scope of Order for Nontestimonial Evidence

An order under Sections 40-32 through 40-39 may direct the defendant to participate in one or more of the following procedures:

(1) Appearing, moving, or speaking for identification in a lineup, but if a lineup is not practicable, then in some other reasonable procedure;

(2) Wearing clothing or other articles of personal use or adornment;

(3) Providing handwriting and voice exemplars;

(4) Submitting to the taking of photographs;

(5) Submitting to the taking of fingerprints, palm prints, footprints, and other body impressions;

(6) Submitting to the taking of specimens of saliva, breath, hair, and nails;

(7) Submitting to body measurements or other reasonable body surface examinations;

(8) Submitting to the removal of foreign substances or objects from the surface of the body, if the removal does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual;

(9) Submitting to the taking of specimens of blood and urine, if the taking does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual;

(10) Submitting to physical examinations, including X-rays under medical supervision; or

(11) Submitting to chemical or physical tests of the surface of the body which do not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual or a significant risk of injury.

(P.B. 1978-1997, Sec. 778.)

Sec. 40-35. —Contents of Order

An order under Sections 40-32 through 40-39 shall specify with particularity the authorized procedure, the scope of the defendant's participation, the time, duration, place, and other conditions of the procedure, and the person or persons who may conduct it. It shall inform the defendant that he or she may not be subjected to investigative interrogation while participating in or being present for the procedure, and that he or she may be held in contempt of court by failing to appear and participate in the procedure as directed. It may also direct the defendant not to alter substantially any identifying physical characteristics to be examined or to destroy any evidence sought.

(P.B. 1978-1997, Sec. 779.)

Sec. 40-36. —Service of Order

An order under Sections 40-32 through 40-39 shall be served by delivering a copy of the order to the defendant personally and to his or her counsel, if represented by counsel.

(P.B. 1978-1997, Sec. 780.)

Sec. 40-37. —Implementation of Order

An order directing the defendant to participate shall be implemented in the following manner:

(1) While participating in or being present for an authorized procedure, the defendant may be accompanied by counsel and by an observer of choice. The presence of other persons at the procedure may be limited as the judicial authority deems appropriate under the circumstances.

(2) The procedure shall be conducted with dispatch. If the taking of a specimen or the removal of a foreign substance involves an intrusion of the body, medical or other qualified supervision is required. Upon timely request of the defendant and approval by the judicial authority, the defendant may have a qualified physician designated by the defendant in attendance.

(3) The defendant may not be subjected to investigative interrogation while participating in or being present for the procedure.

(4) Any evidence obtained from the defendant may be used only with respect to the offense charged or any related offense.

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(5) The defendant shall be furnished with a report of the results of the procedure within fifteen days of its completion.

(P.B. 1978-1997, Sec. 781.)

Sec. 40-38. —Obtaining Nontestimonial Evidence from Defendant upon Motion of Defendant

Upon motion of a defendant who has been arrested, summoned, or charged in a complaint or information, the judicial authority by order may direct the prosecuting authority to arrange for the defendant's participation in one or more of the procedures specified in Sections 40-32 through 40-39, if the judicial authority finds that the evidence sought could contribute to an adequate defense. The order shall specify with particularity the authorized procedure, the scope of the defendant's permitted participation, the designation of representatives of the prosecution who may be present, the time, duration, place and other conditions of the procedure, and the person or persons who may conduct the procedure. Sections 40-32 through 40-37 apply to procedures ordered under this section.

(P.B. 1978-1997, Sec. 782.)

Sec. 40-39. —Comparing Nontestimonial Evidence

Upon motion of the defendant, the judicial authority by order may direct a prosecuting authority to have a scientific comparison made between a specified sample or specimen of nontestimonial evidence in the prosecuting authority's possession or control and other nontestimonial evidence of a similar character in the prosecuting authority's possession or control, if the judicial authority finds that the results of the comparison could contribute to an adequate defense. The order shall specify the comparison authorized, the person or persons who may make it, and the appropriate conditions under which it is to be made.

(P.B. 1978-1997, Sec. 783.)

Sec. 40-40. Protective Orders; Relief

Upon the filing of a motion for a protective order by either party and after a hearing thereon, the judicial authority may at any time order that disclosure or inspection be denied, restricted or deferred, or that reasonable conditions be imposed as to the manner of inspection, photographing, copying or testing, to the extent necessary to protect the evidentiary values of any information or material.

(P.B. 1978-1997, Sec. 785.)

Sec. 40-41. —Grounds for Protective Order

In deciding the motion for a protective order the judicial authority may consider the following:

(1) The timeliness of the motion;

(2) The protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation;

(3) The maintenance of secrecy regarding informants as required for effective investigation of criminal activity;

(4) The protection of confidential relationships, privileges and communications recognized by law; and

(5) Any other relevant considerations.

(P.B. 1978-1997, Sec. 786.)

Sec. 40-42. —In Camera Proceedings

Upon the hearing of any motion under Sections 40-40 through 40-43, the judicial authority may permit all or part of any showing of cause for denial or deferral of access to be made in camera and out of the presence of the opposing party. Any in camera proceedings shall be recorded verbatim. If the judicial authority allows any access to be denied or deferred, the entire record of the in camera proceedings shall be sealed and preserved in the court's records, to be made available to the appellate court in the event of an appeal.

(P.B. 1978-1997, Sec. 787.)

Sec. 40-43. —Excision as Protective Order

If the moving party claims in a motion for a protective order that a portion of any information or materials requested or required to be disclosed is not subject to disclosure or inspection or contains irrelevant material, that party shall deliver such information or materials to the judicial authority for inspection in camera out of the presence of the other party. If the judicial authority excises any portion of such information or materials, a record of the in camera proceedings shall be made and sealed and preserved in the court's records, to be made available to the appellate court in the event of an appeal. That portion of the information or materials made available to the other party shall show that an excision has been made.

(P.B. 1978-1997, Sec. 788.)

Sec. 40-44. Depositions; Grounds

In any case involving an offense for which the punishment may be imprisonment for more than one year the judicial authority, upon request of any party, may issue a subpoena for the appearance of any person at a designated time and place to give his or her deposition if such person's testimony may be required at trial and it appears to the judicial authority that such person:

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(1) Will, because of physical or mental illness or infirmity, be unable to be present to testify at any trial or hearing; or

(2) Resides outside of this state, and his or her presence cannot be compelled under the provisions of General Statutes § 54-82i; or

(3) Will otherwise be unable to be present to testify at any trial or hearing; or

(4) Is an expert who has examined a defendant pursuant to Sections 40-17 through 40-19 and has failed to file a written report as provided by such sections.

(P.B. 1978-1997, Sec. 791.)

Sec. 40-45. —Failure to Appear for Deposition

If, after proper service within this state of a subpoena, the person subpoenaed fails to appear at the designated place and time, the judicial authority may issue a capias directed to a proper officer to arrest and bring such person before the judicial authority.

(P.B. 1978-1997, Sec. 792.)

Sec. 40-46. —Use of Deposition

So far as otherwise admissible under the rules of evidence, a deposition may be used as evidence at the trial or at any hearing if the deponent is unavailable, as defined in Section 40-56. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require such party to offer, or may himself or herself offer, all of it which is relevant to the part offered.

(P.B. 1978-1997, Sec. 793.)

Sec. 40-47. —Notice and Person Taking Deposition

The party at whose request the deposition is to be taken shall give the other parties reasonable written notice of the name and address of each person to be examined, the time and place for the deposition, and the manner of recording. The deposition may be taken before any officer authorized to administer oaths and agreed to by the parties or, absent such agreement, designated by the judicial authority. Such notice shall be served upon each party or each party's attorney by personal or abode service or by registered or certified mail.

(P.B. 1978-1997, Sec. 794.)

Sec. 40-48. —Protective Order Prior to Deposition

After a deposition is ordered, upon written motion seasonably made and served on all affected persons by a party or by the deponent, the judicial authority may for good cause shown change the time, place, or manner of recording the deposition, or order that it shall not be taken or that the scope of the examination shall be limited to certain matters, or make any other order which justice requires. Upon written demand of the objecting party or the deponent, the taking of the deposition shall be suspended for the time required to act upon the motion. In no event shall the deposition of the defendant be taken without the defendant's consent.

(P.B. 1978-1997, Sec. 795.)

Sec. 40-49. —Manner of Taking Deposition

The witness shall be put on oath and a verbatim record of his or her testimony shall be made. The testimony shall be taken stenographically and transcribed, unless the judicial authority orders otherwise. In the event that the judicial authority orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, (such as by videotape) preserving, and filing the deposition, and it may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, a party may nevertheless arrange to have a stenographic transcription made at his or her own expense.

(P.B. 1978-1997, Sec. 796.)

Sec. 40-50. —Scope of Examination at Deposition

The scope and manner of examination and cross-examination shall be the same as that allowed at trial. Each party having possession of a statement of the deponent shall make the statement available to the other party for examination and use at the taking of a deposition if such other party would be entitled to the statement at trial.

(P.B. 1978-1997, Sec. 797.)

Sec. 40-51. —Objections at Depositions

All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the questions or evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken.

(P.B. 1978-1997, Sec. 798.)

Sec. 40-52. —Protective Order during Deposition

(a) At any time during the taking of the deposition, upon motion of a party or of the deponent, and upon a showing that the examination is being

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conducted in bad faith, or in such manner as to annoy, embarrass, or oppress the deponent or a party, or to elicit privileged testimony, the judicial authority who ordered the deposition taken may order the person conducting the examination immediately to cease taking the deposition, or it may limit the scope and manner of taking the deposition by ordering:

(1) That certain matters not be inquired into, or that the scope of the examination be limited to certain matters; or

(2) That the examination be conducted with no one present except those persons designated by the judicial authority.

(b) Upon demand of the objecting party or the deponent, the taking of the deposition shall be suspended for the time necessary to act upon the motion.

(P.B. 1978-1997, Sec. 799.)

Sec. 40-53. —Return of Deposition

Except as otherwise provided in these rules, or as ordered by the judicial authority, depositions shall be sealed by the authority taking them and returned to the clerk of the court in which the prosecution is pending, who shall file such depositions. Any deposition returned unsealed or with the seal broken may be rejected by the judicial authority who ordered its taking.

(P.B. 1978-1997, Sec. 800.)

Sec. 40-54. —Right of Defendant to Be Present and Represented at Deposition

A defendant shall have the right to be present in person at any deposition subject to such terms and conditions as may be established by the judicial authority. Upon the application for the taking of a deposition, the judicial authority shall advise any defendant who is without counsel of the right thereto and assign counsel to represent such defendant unless he or she elects to proceed without counsel or is able to obtain counsel.

(P.B. 1978-1997, Sec. 801.)

Sec. 40-55. —Waiver of Presence and Failure to Appear at Deposition

A defendant may waive, in writing, the right to be present in person. Failure of a defendant not in custody, absent good cause shown, to appear after notice, shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right. The deposition shall not be admissible in evidence if the defendant has not appeared in person and has not validly waived his or her right to appear. When a deposition is taken in the absence of the defendant, the prosecuting authority shall file a copy of the deposition within thirty days for inspection by the defendant, unless before that time he or she has delivered the deposition or a copy thereof to the defendant. If this section is not complied with, such deposition shall not be admissible in evidence.

(P.B. 1978-1997, Sec. 802.)

Sec. 40-56. —Definition of Unavailable

(a) ''Unavailable'' as used in Section 40-46 includes situations in which the deponent:

(1) Is exempted by a ruling of the judicial authority on the ground of privilege from testifying concerning the subject matter of his or her deposition;

(2) Persists in refusing to testify concerning the subject matter of his or her deposition despite an order of the judicial authority to do so;

(3) Testifies to a lack of memory of the subject matter of his or her deposition;

(4) Is unable to be present or to testify at a trial or hearing because of his or her death or physical or mental illness or infirmity; or

(5) Is absent from the trial or hearing and the proponent of his or her deposition has been unable to procure his or her attendance by subpoena or by other reasonable means.

(b) A deponent is not unavailable as a witness if his or her exemption, refusal, claim of lack of memory, inability, or absence is the result of the procurement or wrongdoing by the proponent of his or her deposition for the purpose of preventing the witness from attending or testifying.

(P.B. 1978-1997, Sec. 803.)

Sec. 40-57. —Taking and Use in Court of Deposition by Agreement

Nothing in Sections 40-44 through 40-58 precludes the taking of a deposition, orally or upon written interrogatories, or the use of a deposition by agreement of the parties with the consent of the judicial authority.

(P.B. 1978-1997, Sec. 804.)

Sec. 40-58. —Expenses of Deposition and Copies

All expenses incurred in the taking of a deposition, including a copy for each adverse party, but excluding counsel's fees, shall be paid by the party taking the deposition.

(P.B. 1978-1997, Sec. 805.)

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CHAPTER 41

PRETRIAL MOTIONS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 41-1. Pretrial Motion Practice; Exclusive Procedures

Except as otherwise provided in these rules, all motions to strike, motions to quash, motions to dismiss, and other dilatory pleas are abolished, and defenses and objections which heretofore could have been raised by one or more of them may be raised only by motions made in conformity with this chapter.

(P.B. 1978-1997, Sec. 807.)

Sec. 41-2. —Matters to Be Raised by Motion

Any defense, objection or request capable of determination without a trial of the general issue may be raised only by a pretrial motion made in conformity with this chapter.

(P.B. 1978-1997, Sec. 808.)

Sec. 41-3. —Pretrial Motions and Requests

Unless otherwise provided by statute or rule, or permitted by the judicial authority for good cause shown, pretrial motions and requests shall consist only of one or more of the following:

(1) Motions to dismiss under Sections 41-8 through 41-11;

(2) Motions and requests for discovery and depositions under chapter 40;

(3) Motions to suppress evidence under Sections 41-12 through 41-17;

(4) Motions for joinder or severance under Sections 41-18 and 41-19;

(5) Motions for a bill of particulars under Sections 41-20 through 41-22;

(6) Motions for transfer of prosecution under Sections 41-23 through 41-25.

(P.B. 1978-1997, Sec. 809.)

Sec. 41-4. —Failure to Raise Defense, Objection or Request

Failure by a party, at or within the time provided by these rules, to raise defenses or objections or to make requests that must be made prior to trial shall constitute a waiver thereof, but a judicial authority, for good cause shown, may grant relief from such waiver, provided, however, that lack of jurisdiction over the offense charged or failure of the information to charge an offense may be raised by the defendant or noticed by the judicial authority at any time during the pendency of the proceedings.

(P.B. 1978-1997, Sec. 810.)

Sec. 41-5. —Time for Making Pretrial Motions or Requests

Unless otherwise provided by these rules or statute, all pretrial motions or requests shall be made not later than ten days after the first pretrial conference in the court where the case will be tried, or, with permission of the judicial authority, at such later time as the judicial authority may fix. However, defenses and objections alleging lack of jurisdiction over the offense charged or failure of the information to charge an offense may be raised by the defendant or noticed by the judicial authority at any time during the pendency of the proceedings.

(P.B. 1978-1997, Sec. 811.)

Sec. 41-6. —Form and Manner of Making Pretrial Motions

Pretrial motions shall be written and served in accordance with Sections 10-12 through 10-17

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unless, for good cause shown, the judicial authority shall grant permission to make an oral pretrial motion. Every written motion shall include a statement of the factual and legal or other basis therefor, shall state whether the same or a similar motion was previously filed and ruled upon, and shall have annexed to it a proper order. All defenses and objections that must be raised by motion prior to trial shall, to the extent possible, be raised at the same time.

(P.B. 1978-1997, Sec. 812.)

Sec. 41-7. —Hearing and Ruling on Pretrial Motions

A motion made before trial shall be determined prior to trial, unless the judicial authority orders that the ruling be deferred until during the trial of the general issue or until after the verdict. Unless the judicial authority otherwise permits, all pretrial motions pending at the time for the hearing of any pretrial motion shall be heard at the same time. The judicial authority may order the filing of briefs prior to, at, or following such hearing. Where factual issues are involved in determining a motion, the judicial authority shall state its essential findings on the record. A verbatim record shall be made of all proceedings at a hearing on a pretrial motion, including such findings of fact and conclusions of law as are made orally. All motions which require an evidentiary hearing shall be heard by the judicial authority to whom the case has been assigned for trial, unless otherwise provided by rule or statute, or otherwise ordered by the presiding judge.

(P.B. 1978-1997, Sec. 813.)

Sec. 41-8. Motion to Dismiss

The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information:

(1) Defects in the institution of the prosecution including any grand jury proceedings;

(2) Defects in the information including failure to charge an offense;

(3) Statute of limitations;

(4) Absence of jurisdiction of the court over the defendant or the subject matter;

(5) Insufficiency of evidence or cause to justify the bringing or continuing of such information or the placing of the defendant on trial;

(6) Previous prosecution barring the present prosecution;

(7) Claim that the defendant has been denied a speedy trial;

(8) Claim that the law defining the offense charged is unconstitutional or otherwise invalid; or

(9) Any other grounds.

(P.B. 1978-1997, Sec. 815.)

Sec. 41-9. —Restriction on Motion to Dismiss

No defendant who is charged with a crime punishable by death or life imprisonment for which probable cause has been found at a preliminary hearing pursuant to General Statutes § 54-46a or who has been arrested pursuant to a warrant may make a motion under subdivisions (5) or (9) of Section 41-8.

(P.B. 1978-1997, Sec. 816.)

Sec. 41-10. —Defects Not Requiring Dismissal

No information shall be dismissed because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling or improper English, or because of any use of a sign, symbol, figure or abbreviation or, because of any similar defect, imperfection or omission. No information shall be dismissed merely for misjoinder of parties accused, misjoinder of offenses charged, multiplicity, duplicity or uncertainty, provided an offense is charged.

(P.B. 1978-1997, Sec. 817.)

Sec. 41-11. —Remedies for Minor Defects Not Requiring Dismissal

If the judicial authority determines that any of the defects stated in Section 41-10 exist in any information, it shall order such relief as is required to remedy such defect, including the severance of such information into separate counts or the filing of a bill of particulars. No appeal, or motion made after verdict, based on any of the defects enumerated in Section 41-10 shall be sustained unless it is affirmatively shown that the defendant was, in fact, prejudiced in his or her defense upon the merits and that substantial injustice was done to the defendant because of such defect.

(P.B. 1978-1997, Sec. 818.)

Sec. 41-12. Motion to Suppress

Upon motion, the judicial authority shall suppress potential testimony or other evidence if it finds that suppression is required under the constitution or laws of the United States or the state of Connecticut.

(P.B. 1978-1997, Sec. 821.)

Sec. 41-13. —Return and Suppression of Seized Property

A person aggrieved by a search and seizure may make a motion to the judicial authority who has jurisdiction of the case, or if such jurisdiction has not yet been invoked, then to the judicial authority who issued the warrant or to the court in which the case is pending, for the return of

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specific items of property and to suppress their use as evidence on the grounds that:

(1) The property was illegally seized without a warrant under circumstances requiring a warrant;

(2) The warrant is insufficient on its face;

(3) The property seized is not that described in the warrant;

(4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(5) The warrant was illegally executed.

(P.B. 1978-1997, Sec. 822.)

Sec. 41-14. —Suppression of Intercepted Communications

Any aggrieved person in any trial, hearing or proceeding in or before any court may move to suppress the contents of any intercepted wire communication, or any evidence derived therefrom, on the grounds that:

(1) The communication was unlawfully intercepted under the provisions of chapter 959a of the General Statutes;

(2) The order of authorization or approval under which it was intercepted is insufficient on its face;

(3) The interception was not made in conformity with the order of authorization or approval; or

(4) The interception was otherwise illegal.

(P.B. 1978-1997, Sec. 823.)

Sec. 41-15. —Time for Filing Motion to Suppress

A motion under Sections 41-12 through 41-17 shall be made before trial or hearing in accordance with Section 41-5 unless opportunity therefor did not exist or the defendant or other moving party was not aware of the grounds of the motion, in which case such motion may be made at any time during the trial or the pendency of any proceeding. The judicial authority in its discretion may entertain such a motion at any time.

(P.B. 1978-1997, Sec. 824.)

Sec. 41-16. —Effect on Seized Property of Granting Motion

If the judicial authority grants a motion made under Sections 41-12 through 41-17, the property seized shall be returned unless the judicial authority finds that the property is subject to lawful detention or destruction.

(P.B. 1978-1997, Sec. 825.)

Sec. 41-17. —Particular Judicial Authority May Not Hear Motion

A judicial authority who signed any warrant or order for the seizure of property, testimony or evidence or for the interception of any communications shall not preside at any hearing on a motion made pertaining to such warrant or order.

(P.B. 1978-1997, Sec. 826.)

Sec. 41-18. Severance of Offenses

If it appears that a defendant is prejudiced by a joinder of offenses, the judicial authority may, upon its own motion or the motion of the defendant, order separate trials of the counts or provide whatever other relief justice may require.

(P.B. 1978-1997, Sec. 828.)

Sec. 41-19. Trial Together of Informations

The judicial authority may, upon its own motion or the motion of any party, order that two or more informations, whether against the same defendant or different defendants, be tried together.

(P.B. 1978-1997, Sec. 829.)

Sec. 41-20. Bill of Particulars; Time for Filing

Pursuant to Section 41-5, the defendant may make a motion, or the judicial authority may order at any time, that the prosecuting authority file a bill of particulars.

(P.B. 1978-1997, Sec. 831.)

Sec. 41-21. —Content of Bill

The judicial authority shall order that a bill of particulars disclose information sufficient to enable the defendant to prepare the defense, including but not being limited to reasonable notice of the crime charged and the date, time, and place of its commission.

(P.B. 1978-1997, Sec. 832.)

Sec. 41-22. —Furnishing of Bill

When any bill of particulars is ordered, an amended or substitute information shall be filed incorporating its provisions.

(P.B. 1978-1997, Sec. 833.)

Sec. 41-23. Transfer of Prosecution; Grounds

Upon motion of the prosecuting authority or the defendant, or upon its own motion, the judicial authority may order that any pending criminal matter be transferred to any other court location:

(1) If the judicial authority is satisfied that a fair and impartial trial cannot be had where the case is pending;

(2) If the defendant and the prosecuting authority consent; or

(3) Where the joint trial of informations is ordered pursuant to Section 41-19 and the cases are pending in different judicial districts or geographical areas.

(P.B. 1978-1997, Sec. 835.)

Sec. 41-24. —Time for Motion to Transfer

A motion for transfer of prosecution shall be made within the time prescribed by Section 41-5 for making pretrial motions.

(P.B. 1978-1997, Sec. 836.)

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Sec. 41-25. —Proceedings on Transfer

The clerk of the court in which such case is pending shall transmit the original files and papers therein, with a certificate of such transfer, to the clerk of the court to which such case is transferred, who shall at once enter it on the docket of such court. Such case may be heard at a session of such court then being held, or thereafter to be held, for the transaction of criminal business and may be there proceeded with and in the same manner as if it were originally brought to such court.

(P.B. 1978-1997, Sec. 837.)

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CHAPTER 42

TRIAL PROCEDURE

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 42-1. Jury Trials; Right to Jury Trial and Waiver

The defendant in a criminal action may demand a trial by jury of issues which are triable of right by jury. If at the time the defendant is put to plea, he or she elects a trial by the court, the judicial authority shall advise the defendant of his or her right to a trial by jury and that a failure to elect a jury trial at that time may constitute a waiver of that right. If the defendant does not then elect a jury trial, the defendant's right thereto may be deemed to have been waived.

(P.B. 1978-1997, Sec. 839.)

Sec. 42-2. —Two Part Information

When an information is divided into two parts under Section 36-14, on a finding of guilty on the first part of the information, a plea shall be taken and, if necessary, election made on the second part and the trial thereon proceeded with. If the defendant elects a jury trial on the second part of the information, such trial may be had to the same or to another jury as the judicial authority may direct.

(P.B. 1978-1997, Sec. 840.)

Sec. 42-3. —Size of Jury

The parties, after submission of the matter to the jury and prior to the verdict, may, by stipulation in writing and with the approval of the judicial authority, elect to have the verdict rendered by a number of jurors fewer than that prescribed by law. The judicial authority shall not permit such an election or stipulation unless the defendant, after being advised by the judicial authority of his or her right to a trial by a full jury, personally waives such right either in writing or in open court on the record.

(P.B. 1978-1997, Sec. 841.)

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Sec. 42-4. —Challenge to Array

Any party may challenge an array on the ground that there has been a material departure from the requirements of law governing the selection and summoning of an array. Such challenge shall be made within five days after notification of the hearing or trial date, unless the defect claimed has arisen subsequent to the time required to make such motion.

(P.B. 1978-1997, Sec. 842.)

Sec. 42-5. —Disqualification of Jurors and Selection of Panel

A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair that person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or hearing impairment. The clerk shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct. The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required for the panel, designate by lot those who shall compose the panel.

(P.B. 1978-1997, Sec. 843.)

Sec. 42-6. —View by Jury of Place or Thing Involved in Case

When the judicial authority is of the opinion that a viewing by the jury of the place where the offense being tried was committed, or of any other place or thing involved in the case, will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place or location of such thing. During the viewing the jury must be kept together under the supervision of a proper officer appointed by the judicial authority. The judicial authority and a court reporter must be present, and, with the judicial authority's permission, any other person may be present. The prosecuting authority, the defendant and defense counsel may as a matter of right be present, but the right may be waived. The purpose of viewing shall be solely to permit visual observation by the jury of the place or thing in question and to permit a brief description of the site or thing being viewed by the judicial authority or by any witness or witnesses as allowed by the judicial authority. Any proceedings at the location, including examination of witnesses, shall be at the discretion of the judicial authority. Neither the parties nor counsel nor the jurors while viewing the place or thing may engage in discussion of the significance or the implications of anything under observation or of any issue in the case.

(P.B. 1978-1997, Sec. 844.)

Sec. 42-7. —Communications between Judicial Authority and Jury

All communications from the jury to the judicial authority shall be in writing. The judicial authority shall require that a record be kept of all communications received by it from a juror or the jury after the jury has been sworn, and it shall not communicate with a juror or the jury on any aspect of the case itself, as distinguished from matters relating to physical comforts and the like, except after notice to all parties and reasonable opportunity for them to be present.

(P.B. 1978-1997, Sec. 845.)

Sec. 42-8. —Communications between Parties and Jurors

No party, and no attorney, employee, representative or agent of any party or attorney, shall contact, communicate with or interview any juror or alternate juror, or any relative, friend or associate of any juror or alternate juror concerning the deliberations or verdict of the jury or of any individual juror or alternate juror in any action during trial until the jury has returned a verdict and/or the jury has been dismissed by the judicial authority, except upon leave of the judicial authority, which shall be granted only upon the showing of good cause. A violation of this section may be treated as a contempt of court, and may be punished accordingly.

(P.B. 1978-1997, Sec. 845A.)

Sec. 42-9. —Juror Questions and Note Taking

The members of the jury may, in the discretion of the judicial authority, take notes and submit questions to be asked of witnesses during the trial of a criminal action.

(P.B. 1978-1997, Sec. 845B.)

Sec. 42-10. Selection of Jury; Deaf or Hearing Impaired Jurors

At the request of a deaf or hearing impaired juror or the judicial authority, an interpreter or interpreters provided by the commission on the deaf and hearing impaired and qualified under General Statutes § 46a-33a shall assist such juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation.

(P.B. 1978-1997, Sec. 846A.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

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Sec. 42-11. —Preliminary Proceedings in Jury Selection

The judicial authority shall cause prospective jurors to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall require counsel to make a preliminary statement as to the names of other counsel with whom he or she is affiliated and other relevant facts, and shall require counsel to disclose the names, and if ordered by the judicial authority, the addresses of all witnesses counsel intends to call at trial. The judicial authority may excuse any prospective juror for cause.

(P.B. 1978-1997, Sec. 847.)

Sec. 42-12. —Voir Dire Examination

Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to interest, if any, in the subject matter of the action, or as to relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The judicial authority shall not abridge the right of such examination by requiring counsel or the defendant to put questions to any juror in writing and to submit them in advance of the commencement of the trial.

(P.B. 1978-1997, Sec. 848.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 42-13. —Peremptory Challenges

The prosecuting authority and the defendant may challenge peremptorily the number of jurors which each is entitled to challenge by law.

(P.B. 1978-1997, Sec. 849.)

Sec. 42-14. —Oath and Admonitions to Trial Jurors

(a) The judicial authority shall cause the jurors selected for the trial to be sworn or affirmed in accordance with General Statutes §§ 1-23 and 1-25. The judicial authority shall admonish the jurors not to read, listen to or view news reports of the case or to discuss with each other or with any person not a member of the jury the cause under consideration, except that after the case has been submitted to the jury for deliberation the jurors shall discuss it among themselves in the jury room.

(b) In the presence of the jury, the judicial authority shall instruct any interpreter for a deaf or hearing impaired juror to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or visual, with any member of the jury except for the literal translation of jurors' remarks made during deliberations.

(P.B. 1978-1997, Sec. 850.)

Sec. 42-15. Motion in Limine

The judicial authority to whom a matter has been referred for trial may in its discretion entertain a motion in limine made by either party regarding the admission or exclusion of anticipated evidence. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

(P.B. 1978-1997, Sec. 850B.)

Sec. 42-16. Requests to Charge and Exceptions; Necessity for

An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of exception. The exception shall be taken out of the hearing of the jury.

(P.B. 1978-1997, Sec. 852.)

Sec. 42-17. —Filing Requests

Written requests to charge the jury must be filed in triplicate with the clerk before the beginning of the arguments or at such earlier time during the trial as the judicial authority directs, and the clerk shall file them and forthwith hand one copy to the judicial authority and one to opposing counsel. A party's requests to charge may be amended in writing as a matter of right at any time prior to the beginning of the charge conference.

(P.B. 1978-1997, Sec. 853.)

Sec. 42-18. —Form and Contents of Requests to Charge

(a) When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, and the evidence to which the proposition would apply. Requests to charge should not exceed fifteen in number unless, for good cause shown, the judicial authority permits

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the filing of an additional number. If the request is granted, the judicial authority shall apply the proposition of law to the facts of the case.

(b) A principle of law should be stated in but one request and in but one way. Requests attempting to state in different forms the same principle of law as applied to a single issue are improper.

(P.B. 1978-1997, Sec. 854.)

Sec. 42-19. —Charge Conference

After the close of evidence but before arguments to the jury, the judicial authority shall, if requested, inform counsel out of the presence of the jury of the substance of its proposed instructions.

The charge conference shall be on the record or summarized on the record.

(P.B. 1978-1997, Sec. 854A.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 42-20. Submission for Verdict; Role of Judicial Authority in Trial

The judicial authority shall decide all issues of law and all questions of law arising in the trial of criminal cases. In committing the case to the jury, if in the opinion of the judicial authority the evidence is not sufficient to justify the finding of guilt beyond a reasonable doubt, it may direct the jury to find a verdict of not guilty; otherwise, subject to the provisions of Section 42-40, the judicial authority shall submit the facts to the jury without directing how it is to find the facts or how it is to render the verdict.

(P.B. 1978-1997, Sec. 855.)

Sec. 42-21. Jury Deliberations

After the case has been submitted to the jury, the jurors shall be in the custody of an officer who shall permit no person to be present with them or to speak to them when assembled for deliberations except a qualified interpreter assisting a deaf or hearing impaired juror. The jurors shall be kept together for deliberations as the judicial authority reasonably directs. If the judicial authority permits the jury to recess its deliberations, the judicial authority shall admonish the jurors not to discuss the case until they reconvene in the jury room. The judicial authority shall direct the jurors to select one of their members to preside over the deliberations and to deliver any verdict agreed upon, and the judicial authority shall admonish the jurors that until they are discharged in the case they may communicate upon subjects connected with the trial only while they are convened in the jury room. If written forms of verdict are submitted to the jury pursuant to Section 42-23, the member of the jury selected to deliver the verdict shall sign any verdict agreed upon.

(P.B. 1978-1997, Sec. 856.)

Sec. 42-22. Sequestration of Jury

If a case involves the penalty of capital punishment or imprisonment for life or is of such notoriety or its issues are of such a nature that, absent sequestration, highly prejudicial matters are likely to come to the jury's attention, the judicial authority, upon its own motion or the motion of either party, may order that the jurors remain together in the custody of an officer during the trial and until they are discharged from further consideration of the case. Such order shall include an interpreter or interpreters assisting a deaf or hearing impaired juror. A motion to sequester may be made at any time. The jury shall not be informed which party requested sequestration.

(P.B. 1978-1997, Sec. 857.)

Sec. 42-23. Materials to Be Submitted to Jury

(a) The judicial authority shall submit to the jury:

(1) The information upon which the defendant was tried; and

(2) All exhibits received in evidence.

(b) The judicial authority may, in its discretion, submit to the jury:

(1) Appropriate written forms of verdict;

(2) A copy or tape recording of the judicial authority's instructions to the jury; and

(3) Upon request by the jury, a copy or tape recording of an appropriate portion of the judicial authority's instructions to the jury.

(P.B. 1978-1997, Sec. 858.)

Sec. 42-24. Modification of Instructions for Correction or Clarification

The judicial authority, after exceptions to the charge, or upon its own motion, may recall the jury to the courtroom and give it additional instructions in order to:

(1) Correct or withdraw an erroneous instruction;

(2) Clarify an ambiguous instruction; or

(3) Instruct the jury on any matter which should have been covered in the original instructions.

(P.B. 1978-1997, Sec. 860.)

Sec. 42-25. —Other Instructions after Additional Instructions

If the judicial authority gives additional instructions, it also may give or repeat other instructions in order to avoid undue emphasis on the additional instructions. Additional instructions shall be governed by the procedures set forth in Section 42-16 concerning exceptions.

(P.B. 1978-1997, Sec. 861.)

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Sec. 42-26. Jury Requests for Review of Testimony

If the jury after retiring for deliberations requests a review of certain testimony, the jury shall be conducted to the courtroom. Whenever the jury's request is reasonable, the judicial authority, after notice to and consultation with the prosecuting authority and counsel for the defense, shall have the requested parts of the testimony read to the jury.

(P.B. 1978-1997, Sec. 863.)

Sec. 42-27. Jury Requests for Additional Instructions

If the jury, after retiring for deliberations, requests additional instructions, the judicial authority, after providing notice to the parties and an opportunity for suggestions by counsel, shall recall the jury to the courtroom and give additional instructions necessary to respond properly to the request or to direct the jury's attention to a portion of the original instructions.

(P.B. 1978-1997, Sec. 864.)

Sec. 42-28. Deadlocked Jury

If it appears to the judicial authority that the jury has been unable to agree, it may require the jury to continue its deliberations. The judicial authority shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals. It may also instruct the jury as to disagreements in accordance with the law.

(P.B. 1978-1997, Sec. 865.)

Sec. 42-29. Verdict; Return of Verdict

The verdict shall be general unless otherwise directed by the judicial authority, but if the judicial authority instructs the jury regarding the defense of mental disease or defect, the jury, if it so finds, shall declare the finding in its verdict. The verdict shall be unanimous and shall be announced by the jury in open court. If there are two or more defendants, the jury may return a verdict with respect to any defendant as to whom it agrees. The defendant, if found not guilty of the offense charged, may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein, if the attempt is an offense.

(P.B. 1978-1997, Sec. 867.)

Sec. 42-30. —Acceptance of Verdict

The judicial authority shall, if the verdict is in order and is technically correct, accept it without comment.

(P.B. 1978-1997, Sec. 868.)

Sec. 42-31. —Poll of Jury after Verdict

After a verdict has been returned and before the jury has been discharged, the jury shall be polled at the request of any party or upon the judicial authority's own motion. The poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror's verdict. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or it may be discharged.

(P.B. 1978-1997, Sec. 869.)

Sec. 42-32. —Discharge of Jury

The judicial authority shall discharge the jury after it has rendered its verdict or after a mistrial has been declared.

(P.B. 1978-1997, Sec. 870.)

Sec. 42-33. —Impeachment of Verdict

Upon an inquiry into the validity of a verdict, no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror nor any evidence concerning mental processes by which the verdict was determined. Subject to these limitations, a juror's testimony or affidavit shall be received when it concerns any misconduct which by law permits a jury to be impeached.

(P.B. 1978-1997, Sec. 871.)

Sec. 42-34. Trial without Jury

In a case tried without a jury the judicial authority shall, in accordance with Section 6-1, render a finding of guilty, not guilty, or not guilty by reason of mental disease or defect where appropriate.

(P.B. 1978-1997, Sec. 872.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 42-35. Order of Parties Proceeding at Trial

Unless the judicial authority for cause permits otherwise, the parties shall proceed with the trial in the following order:

(1) The prosecuting authority shall present the case in chief.

(2) The defendant may present a case in chief.

(3) The prosecuting authority and the defendant may present rebuttal evidence in successive rebuttals, as required. The judicial authority for cause may permit a party to present evidence not of a rebuttal nature, and if the prosecuting authority is permitted to present further evidence in chief, the defendant may respond with further evidence in chief.

(4) The prosecuting authority shall be entitled to make the opening and final closing arguments.

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(5) The defendant may make a single closing argument following the opening argument of the prosecuting authority.
(P.B. 1978-1997, Sec. 874.)

Sec. 42-36. Sequestration of Witnesses

The judicial authority upon motion of the prosecuting authority or of the defendant shall cause any witness to be sequestered during the hearing on any issue or motion or during any part of the trial in which such witness is not testifying.
(P.B. 1978-1997, Sec. 876.)

Sec. 42-37. Time Limits in Argument

Counsel shall not occupy more than one hour in argument in any trial, unless the judicial authority, on motion for special cause before the commencement of such argument, allows counsel a longer time.
(P.B. 1978-1997, Sec. 879.)

Sec. 42-38. Order of Proceeding of Defendants

If there are two or more defendants and they do not agree as to their order of proceeding, the judicial authority shall determine their order.
(P.B. 1978-1997, Sec. 880.)

Sec. 42-39. Judicial Appointment of Expert Witnesses

Whenever the judicial authority deems it necessary, on its own motion it may appoint any expert witnesses of its own selection. An expert witness shall not be appointed by the judicial authority unless the expert consents to act. A witness so appointed shall be informed of his or her duties by the judicial authority in writing, a copy of which shall be filed with the clerk, or the witness shall be informed of his or her duties at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of his or her findings, if any, and may thereafter be called to testify by the judicial authority or by any party. A witness so appointed shall be subject to cross-examination by each party. The judicial authority may determine the reasonable compensation for such a witness and direct payment out of such funds as may be provided by law. This section shall not apply to appointments made pursuant to General Statutes § 54-56d.
(P.B. 1978-1997, Sec. 881.)

Sec. 42-40. Motions for Judgment of Acquittal; In General

Motions for a directed verdict of acquittal and for dismissal when used during the course of a trial are abolished. Motions for a judgment of acquittal shall be used in their place. After the close of the prosecution's case in chief or at the close of all the evidence, upon motion of the defendant 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 a 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.
(P.B. 1978-1997, Sec. 883.)

Sec. 42-41. —At Close of Prosecution's Case

If the motion is made after the close of the prosecution's case in chief, the judicial authority shall either grant or deny the motion before calling upon the defendant to present the defendant's case in chief. If the motion is not granted, the defendant may offer evidence without having reserved the right to do so.
(P.B. 1978-1997, Sec. 884.)

Sec. 42-42. —At Close of Evidence

If the motion is made at the close of all the evidence in a jury case, the judicial authority may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or after it is discharged without having returned a verdict.
(P.B. 1978-1997, Sec. 885.)

Sec. 42-43. Motion for Mistrial; For Prejudice to Defendant

Upon motion of a defendant, the judicial authority may declare a mistrial at any time during the trial if there occurs during the trial an error or legal defect in the proceedings, or any conduct inside or outside the courtroom which results in substantial and irreparable prejudice to the defendant's case. If there are two or more defendants, the mistrial shall not be declared as to a defendant who does not make or join in the motion.
(P.B. 1978-1997, Sec. 887.)

Sec. 42-44. —For Prejudice to State

Upon motion of the prosecuting authority, the judicial authority may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by the defendant, counsel for the defendant, or someone acting at the request of the defendant or such counsel, which results in substantial and irreparable prejudice to the prosecuting authority's case. If there are two or more defendants, the mistrial shall not be declared as to a defendant if neither that defendant, nor counsel for that defendant, nor a person acting at the request of that defendant or counsel

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for that defendant participated in the misconduct, or if the prosecuting authority's case is not substantially and irreparably prejudiced as to that defendant.

(P.B. 1978-1997, Sec. 888.)

Sec. 42-45. Jury's Inability to Reach Verdict

The judicial authority shall declare a mistrial in any case in which the jury is unable to reach a verdict.

(P.B. 1978-1997, Sec. 889.)

Sec. 42-46. Control of Judicial Proceedings; Restraint of Disruptive Defendant

(a) Reasonable means of restraint may be employed if the judicial authority finds such restraint reasonably necessary to maintain order. If restraints appear potentially necessary and the circumstances permit, the judicial authority may conduct an evidentiary hearing outside the presence of the jury before ordering such restraints. The judicial authority may rely on information other than that formally admitted into evidence. Such information shall be placed on the record outside the presence of the jury and the defendant given an opportunity to respond to it.

(b) In ordering the use of restraints or denying a request to remove them, the judicial authority shall detail its reasons on the record outside the presence of the jury. The nature and duration of the restraints employed shall be those reasonably necessary under the circumstances. All reasonable efforts shall be employed to conceal such restraints from the view of the jurors. Upon request, the judicial authority shall instruct the jurors that restraint is not to be considered in assessing the evidence or in the determination of the case.

(P.B. 1978-1997, Sec. 892.)

Sec. 42-47. —Removal of Disruptive Defendant

Upon the direction of the judicial authority, a defendant may be removed from the courtroom during trial or hearing when the defendant's conduct has become so disruptive that the trial or hearing cannot proceed in an orderly manner. The judicial authority shall advise the defendant that the trial or hearing will continue in the defendant's absence. A defendant who has been removed shall remain present in the court building while the trial or hearing is in progress. At the time of the defendant's removal, the judicial authority shall advise the defendant that the defendant may request to be returned to the courtroom if, at the time of making such request, the defendant assures the judicial authority that the defendant shall not engage in disruptive conduct. Whenever the defendant is removed, the judicial authority shall instruct the jurors that such removal is not to be considered in assessing the evidence or in the determination of the case.

(P.B. 1978-1997, Sec. 893.)

Sec. 42-48. —Cautioning Parties and Witnesses

Whenever appropriate in the light of the issues in the case or its notoriety, the judicial authority may direct the parties, their counsel and the witnesses not to make extrajudicial statements relating to the case or the issues in the case for dissemination by any means of public communication.

(P.B. 1978-1997, Sec. 894.)

Sec. 42-49. Closure of Courtroom in Criminal Cases

(Amended May 14, 2003, to take effect July 1, 2003.)

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of the prosecuting authority or of the defendant, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a

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memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The notice of the time, date and place of the hearing on the motion shall be posted on a bulletin board adjacent to the clerk's office and accessible to the public. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority.

(f) With the exception of orders concerning any session of court conducted pursuant to General Statutes § 54-76h or any other provision of the General Statutes under which the court is authorized to close courtroom proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a courtroom proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

(P.B. 1978-1997, Sec. 895.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

HISTORY—2003: Prior to 2003, when both the title and text were amended, Section 42-49 read: "**—Exclusion of the Public; Sealing or Limiting Disclosure of Documents**

"(a) Except as provided in this section and except as otherwise provided by law, including Sections 36-2, 40-29 and 40-40 through 40-43 and General Statutes § 54-33c, the judicial authority shall not order that the public, which may include the news media, be excluded from any portion of a court proceeding and shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

"(b) Upon motion of the prosecuting authority or of the defendant, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a court proceeding and may order that files, affidavits, documents or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding or in viewing such materials. Any such order shall be no broader than necessary to protect such overriding interest.

"(c) In connection with any order issued pursuant to subsection (b) of this section, the judicial authority shall, on the record in open court, articulate the overriding interest being protected and shall specify its findings underlying such order. The time and date of any such order shall be entered by the court clerk in the court file together with such order.

"(d) With the exception of orders concerning any session of court conducted pursuant to General Statutes § 54-76h or any other provision of the General Statutes under which the court is authorized to close proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order. (See General Statutes § 51-164x.)

"(e) With the exception of orders concerning the disclosure of any documents pursuant to General Statutes § 54-33c or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or materials, whether at a pretrial or trial stage, and any order issued pursuant to a court rule that seals or limits the disclosure of any affidavit in support of an arrest warrant, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order."

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in criminal cases. *Press-Enterprise Co.* v. *Superior Court,* 478 U.S. 1, 10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (*Press-Enterprise II*); *Globe Newspaper Co.* v. *Superior Court*, 457 U.S. 596, 606, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982). This right is well settled in the common law and has been held to be implicit in the first amendment rights protecting the freedom of speech, of the press, of peaceable assembly and to petition the government for a redress of grievances. *Globe Newspaper Co.* v. *Superior Court*, supra, 603; *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 575, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980); see generally *Press-Enterprise II*, supra, 6–13; see also *In re Matter of the New York Times Co.*, 828 F.2d 110, 113 (2d Cir. 1987). In *Richmond Newspapers, Inc.* v. *Virginia*, supra, 564, the court explained that "throughout its evolution, the trial has been open to all who care to observe."

The guarantee of open public proceedings in criminal trials applies as well to voir dire and pretrial proceedings. *Press-Enterprise Co.* v. *Superior Court*, 464 U.S. 501, 505, 104 S. Ct. 819, 78 L. Ed. 2d 248 (1984) (*Press-Enterprise I*); *United States* v. *Cojab*, 996 F.2d 1404, 1407 (2d Cir. 1993); *United States* v. *Haller*, 837 F.2d 84, 86 (2d Cir. 1988); *United States* v. *Gerena,* 703 F. Sup. 211, 213 (D. Conn. 1988). The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was entered properly. *Press-Enterprise I*, supra, 510; *United States* v. *Haller*, supra, 87; *Doe* v. *Meachum*, 126 F.R.D. 452, 455 (D. Conn. 1989); *State* v. *Kelly,* 208 Conn. 365, 372, 545 A.2d 1048 (1988). Such findings may be made under seal when necessary. *United States* v. *Haller*, supra, 87; see *In re Application of the Herald Co.*, 734 F.2d 93, 100 (2d Cir. 1984) (closure of suppression hearing should be allowed only upon showing of significant risk of prejudice to defendant's right to fair trial, if there is danger to persons or property, or in connection with significant activities entitled to confidentiality, such as undercover investigations); see also *United States* v. *Brooklier*, 685 F.2d 1162, 1168–69 (9th Cir.

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1982) (since purpose of articulated findings is to enable appellate court to determine whether order was properly entered, findings must be sufficiently specific to show that public proceedings would result in irreparable damage to defendant's right to fair trial, that no alternative to closure would adequately protect defendant's right to fair trial, and that closure would protect that right).

Since the circumstances of a particular case may affect the significance of the interest sought to be protected, the requirement that specific findings justifying closure be articulated mandates a case-by-case analysis of the interest involved. *Globe Newspaper Co.* v. *Superior Court*, supra, 457 U.S. 607–608 (where welfare of minor child is at issue, factors to be weighed in determining whether closure is warranted include minor victim's age, psychological maturity and understanding, nature of crime, desires of victim, and interests of parents and relatives). A case-by-case analysis of the interests involved ensures that the constitutional right of access to trials will not be restricted except where absolutely necessary. Id., 609. "For a case-by-case approach to be meaningful, representatives of the press and general public 'must be given an opportunity to be heard on the question of their exclusion.'" Id., 609 n.25, quoting *Gannett Co.* v. *DePasquale*, 443 U.S. 368, 401, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979) (Powell, J., concurring). Except in extraordinary circumstances, the press and public must have a means of learning of the closure or sealing order. See *United States* v. *Haller*, supra, 837 F.2d 87. "[A] motion for courtroom closure should be docketed in the public docket files maintained in the court clerk's office. . . . The motion itself may be filed under seal, when appropriate, by leave of court . . . ." (Citation omitted.) *In re Application of the Herald Co.*, supra, 734 F.2d 102; see also *In re Knight Publishing Co.,* 743 F.2d 231, 235 (4th Cir. 1984); *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 474–76 (6th Cir. 1983).

Because this section no longer deals with the sealing of documents, subsection (e) has been transferred to Section 42-49A.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: "The time, date and scope of any such order shall be in writing and shall be signed by the judicial authority and be entered by the court clerk in the court file."

COMMENTARY—2005: As used in subsection (a) above, the words "Except as otherwise provided by law" are intended to exempt from the operation of this rule all established procedures for the closure of courtroom proceedings as required or permitted by statute; e.g., General Statutes §§ 19a-583 (a) (10) (D) (pertaining to court proceedings as to disclosure of confidential HIV-related information), 36a-21 (b) (pertaining to court proceedings at which certain records of the department of banking are disclosed), 46b-11 (pertaining to hearings in family relations matters), 54-86c (b) (pertaining to the disclosure of exculpatory information or material), 54-86f (pertaining to the admissibility of evidence of sexual conduct) and 54-86g (pertaining to the testimony of a victim of child abuse); other rules of practice; e.g., Practice Book Section 40-43; and/or controlling state or federal case law.

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to close the courtroom in criminal matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (a) gives any person affected by a court closure order in a criminal action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

Sec. 42-49A. Sealing or Limiting Disclosure of Documents in Criminal Cases

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Sections 36-2, 40-29 and 40-40 through 40-43 and General Statutes § 54-33c, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of the prosecuting authority or of the defendant, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any finding would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The notice of the time, date

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and place of the hearing on the motion shall be posted on a bulletin board adjacent to the clerk's office and accessible to the public. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on a calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The notice of the time, date and place of the hearing on the motion shall be posted on a bulletin board adjacent to the clerk's office and accessible to the public. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) With the exception of orders concerning the disclosure of any documents pursuant to General Statutes § 54-33c or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or materials, whether at a pretrial or trial stage, and any order issued pursuant to a court rule that seals or limits the disclosure of any affidavit in support of an arrest warrant, any person affected by a court order that seals or limits the disclosure of any files, documents, or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(h) The provisions of this section shall not apply to pretrial settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations.

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in criminal cases and to access documents filed in connection with such cases. *Press-Enterprise Co.* v. *Superior Court,* 478 U.S. 1, 10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (*Press-Enterprise II*); *Globe Newspaper Co.* v. *Superior Court*, 457 U.S. 596, 606, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982); *Associated Press* v. *United States District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983); *United States* v. *Gerena*, 703 F. Sup. 211, 213 (D. Conn. 1988), citing *In re Matter of the New York Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987). This right is well settled in the common law and has been held to be implicit in the first amendment rights protecting the freedom of speech, of the press, of peaceable assembly and to petition the government for a redress of grievances. *Globe Newspaper Co.* v. *Superior Court*, supra, 604–605; *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 575, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980); see generally *Press-Enterprise II*, supra, 6–13; see also *In re Matter of the New York Times Co.*, supra, 113; *United States* v. *Gerena*, supra, 213.

The right of access to documents is not absolute. *United States* v. *Gerena*, supra, 703 F. Sup. 213. The presumption of openness may be overcome only by an overriding interest based on findings that denying access is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was entered properly. Id., citing *Press-Enterprise II*, supra, 478 U.S. 9–10; see also *United States* v. *Haller*, 837 F.2d 84, 87 (2d Cir. 1988); *Doe* v. *Meachum*, 126 F.R.D. 452, 455 (D. Conn. 1989); *State* v. *Kelly,* 208 Conn. 365, 372, 545 A.2d 1048 (1988). Such findings may be made under seal when necessary. *United States* v. *Haller,* supra, 87.

Since the circumstances of a particular case may affect the significance of the interest sought to be protected, the requirement that specific findings justifying closure or sealing be articulated mandates a case-by-case analysis of the interest involved. *Globe Newspaper Co.* v. *Superior Court*, supra, 457 U.S. 607–608; *In re Knight Publishing Co.,* 743 F.2d 231, 235 (4th Cir. 1984); see *Publicker Industries, Inc.* v. *Cohen,* 733 F.2d 1059, 1070–71 (3d Cir. 1984). "For a case-by-case approach to be meaningful, representatives of the press and general public 'must be given an opportunity to be heard on the question of their exclusion.' " *Globe Newspaper Co.* v. *Superior Court,* supra, 609 n.25, quoting *Gannett Co.* v. *DePasquale*, 443 U.S. 368, 401, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979) (Powell, J., concurring). Except in extraordinary circumstances, the press and public must have a means of learning of the closure or sealing order. See *United States* v. *Haller*, supra, 837 F.2d 87; *In re Knight Publishing Co.*, supra, 235. In *In re the Application of the Herald Co.*, 734 F.2d 93, 102 (2d Cir. 1984), the court stated that "a motion for courtroom closure should be docketed in the public docket files maintained in the court clerk's office. . . . The motion itself may be filed under seal, when appropriate, by leave of the court . . . ." (Citation omitted.) See also *In re Knight Publishing Co.*, supra, 235; *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 474–76 (6th Cir. 1983).

It is intended that the use of pseudonyms in place of the name of a party or parties not be permitted in criminal matters.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: "The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file."

COMMENTARY—2005: As used in subsection (a) above, the words "Except as otherwise provided by law" are intended to exempt from the operation of this rule all established procedures for the sealing or ex parte filing, in camera inspection and/or nondisclosure to the public of documents, records and

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other materials, as required or permitted by statute; e.g., General Statutes §§ 12-242vv (pertaining to taxpayer information), 52-146c et seq. (pertaining to the disclosure of psychiatric records) and 54-56g (pertaining to the pretrial alcohol education program); other rules of practice; e.g., Practice Book Sections 7-18, 13-5 (6)–(8) and 40-13 (c); and/or controlling state or federal case law; e.g., *Matza* v. *Matza*, 226 Conn. 166, 627 A.2d 414 (1993) (establishing a procedure whereby an attorney seeking to withdraw from a case due to his client's anticipated perjury at trial may support his motion to withdraw by filing a sealed affidavit for the court's review).

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to seal files or limit the disclosure of documents in criminal matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (c) gives any person affected by a court order sealing a file or limiting the disclosure of a document in a criminal action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

The above section shall not apply to motions and orders made pursuant to General Statutes § 54-33c concerning the limitation of the disclosure of affidavits in support of search warrant applications.

Sec. 42-50. Motion for Judgment of Acquittal; After Mistrial

Upon the declaration of a mistrial pursuant to Sections 42-43 through 42-45, at any time after the close of the state's case in chief, the judicial authority, upon motion of the defendant or upon its own motion, may order the entry of a judgment of acquittal as to any offense charged, or any lesser included offense, for which the evidence would not reasonably permit a finding of guilty beyond a reasonable doubt. The acquittal does not bar prosecution for any offense as to which the judicial authority does not direct an acquittal.

(P.B. 1978-1997, Sec. 898.)

Sec. 42-51. —Upon Verdict of Guilty

If the jury returns a verdict of guilty, the judicial authority, upon motion of the defendant or upon its own motion, shall order the entry of a judgment of acquittal as to any offense specified in the verdict, or any lesser included offense, for which the evidence does not reasonably permit a finding of guilty beyond a reasonable doubt. If the judicial authority directs an acquittal for the offense specified in the verdict, but not for a lesser included offense, it may either:

(1) Modify the verdict accordingly; or

(2) Grant the defendant a new trial as to the lesser included offense.

(P.B. 1978-1997, Sec. 899.)

TECHNICAL CHANGE: References to jury in the plural form have been changed to the singular form, and corresponding grammatical changes have been made for number agreement.

Sec. 42-52. —Time for Filing Motion for Judgment of Acquittal

Unless the judicial authority, in the interests of justice, permits otherwise, a motion for a judgment of acquittal shall be made within five days after a mistrial or a verdict or within any further time the judicial authority allows during the five-day period.

(P.B. 1978-1997, Sec. 900.)

Sec. 42-53. Motion for New Trial; In General

(a) Upon motion of the defendant, the judicial authority may grant a new trial if it is required in the interests of justice. Unless the defendant's noncompliance with these rules or with other requirements of law bars his or her asserting the error, the judicial authority shall grant the motion:

(1) For an error by reason of which the defendant is constitutionally entitled to a new trial; or

(2) For any other error which the defendant can establish was materially injurious to him or her.

(b) If the trial was by the court and without a jury, the judicial authority, with the defendant's consent and instead of granting a new trial, may vacate any judgment entered, receive additional evidence, and direct the entry of a new judgment.

(P.B. 1978-1997, Sec. 902.)

Sec. 42-54. —Time for Filing Motion for New Trial

Unless otherwise permitted by the judicial authority in the interests of justice, a motion for a new trial shall be made within five days after a verdict or finding of guilty or within any further time the judicial authority allows during the five-day period.

(P.B. 1978-1997, Sec. 903.)

Sec. 42-55. —Time for Filing Motion for New Trial Based on Newly Discovered Evidence

A request for a new trial on the ground of newly discovered evidence shall be called a petition for a new trial and shall be brought in accordance with General Statutes § 52-270. The judicial authority may grant the petition even though an appeal is pending.

(P.B. 1978-1997, Sec. 904.)

Sec. 42-56. Motion in Arrest of Judgment

On motion of the defendant, the judicial authority shall arrest judgment if the indictment or information does not charge an offense or if the judicial authority was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made prior to the imposition of sentence.

(P.B. 1978-1997, Sec. 905.)

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CHAPTER 43

SENTENCING, JUDGMENT, AND APPEAL

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 43-1. Posttrial Release Following Appeal by Prosecuting Authority

The defendant shall not be denied liberty pending determination of an appeal by the state from any judgment of acquittal or from any judgment not resulting in a sentence, the effect of which is to terminate prosecution.

(P.B. 1978-1997, Sec. 907.)

Sec. 43-2. Posttrial Release Following Conviction

(a) A person who has been convicted of any offense and who either is awaiting sentence or has given oral or written notice of his or her intention to appeal or file a petition for certification or a writ of certiorari may be released, subject to General Statutes § 54-95, pending final disposition of his or her case upon sentence or appeal, unless the judicial authority finds custody to be necessary to provide reasonable assurance of the person's appearance in court, upon the first of the following conditions of release found sufficient by the judicial authority to provide such assurance:

(1) His or her execution of a written promise to appear;

(2) His or her execution of a bond without surety in no greater amount than necessary;

(3) His or her execution of a bond with surety in no greater amount than necessary;

(4) His or her deposit of a sum of money equal to the amount called for by the bond required by the judicial authority;

(5) His or her pledge of real property, the equity of which shall be calculated, and be in such an amount, as set forth in Section 38-9.

(b) The judicial authority may order that the bond in effect at that time continue until the imposition of sentence, and it may order an increase in the amount of such bond. It shall also have authority to modify or revoke at any time the terms and conditions of release.

(c) The provisions of Section 38-7 shall apply to condition (4) herein, except that the cash bail

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shall be deposited with the clerk of the court having jurisdiction of the offense with which such person stands convicted or any assistant clerk of such court who is bonded in the same manner as the clerk or any person or officer authorized to accept bail.

(P.B. 1978-1997, Sec. 908.)

Sec. 43-3. Presentence Investigation and Report; Waiver; Alternative Incarceration and Plan

(a) If the defendant is convicted of a crime other than a capital felony, the punishment for which may include imprisonment for more than one year, the judicial authority shall order a presentence investigation, or the supplementation of any existing presentence investigation report. The judicial authority may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense.

(b) A defendant who is convicted of a crime and is not eligible for sentence review pursuant to General Statutes § 51-195 may, with the consent of the sentencing judge and the prosecuting authority, waive the presentence investigation.

(c) Pursuant to General Statutes § 53a-39a, the judicial authority may, in its discretion, order an assessment for placement in an alternate incarceration program to be conducted by the office of adult probation.

(P.B. 1978-1997, Sec. 910.)

Sec. 43-4. —Scope of Investigation or Assessment

(a) Whenever an investigation is required or an assessment is ordered or both, the probation officer shall promptly inquire into the attitude of the complainant or the victim, or of the immediate family where possible in cases of homicide, and the criminal record, social history and present condition of the defendant. Such investigation shall include an inquiry into the circumstances of the offense and any damages suffered by the victim, including medical expenses, loss of earnings and property loss. Such assessment shall include an inquiry into the defendant's prior participation in any release programs and the defendant's attitude about participation in an alternate incarceration program. When it is desirable in the opinion of the judicial authority or the investigating authority, such investigation or assessment shall include a physical and mental examination of the defendant.

(b) If an assessment includes a recommendation for placement in an alternate incarceration program, it shall include, as an attachment, a proposed alternate incarceration plan. A current or updated presentence investigation report may be used in lieu of an alternate incarceration assessment report provided attached thereto is a statement by the investigating authority recommending whether or not the defendant should participate in an alternate incarceration program and any recommendation that the defendant participate includes a proposed alternate incarceration plan.

(P.B. 1978-1997, Sec. 911.)

Sec. 43-5. —Participation of Defense Counsel in Report Preparation

Defense counsel, on a prompt request, shall be notified of the time when the defendant shall be interviewed by probation officers regarding a presentence or alternate incarceration assessment report or both for the judicial authority and may be present:

(1) To assist in answering inquiries of the probation officer;

(2) To assist in resolving factual issues and questions;

(3) To protect the defendant against incrimination regarding other pending indictments or investigations; and

(4) To protect the defendant's rights with respect to an appeal of conviction.

(P.B. 1978-1997, Sec. 912.)

Sec. 43-6. —Period of Continuance to Complete Report

When it is necessary to continue a case for sentencing, the judicial authority may consider the period of time necessary to complete the investigation or assessment or both and report, and any reasonable request, and shall set a date for sentencing accordingly.

(P.B. 1978-1997, Sec. 913.)

Sec. 43-7. —Persons Receiving Report

The presentence investigation or alternate incarceration assessment report or both shall be provided to the judicial authority, and copies thereof shall be provided to the prosecuting authority and to the defendant or his or her counsel in sufficient time for them to prepare adequately for the sentencing hearing, and in any event, no less than forty-eight hours prior to the date of the sentencing. Upon request of the defendant, the sentencing hearing shall be continued for a reasonable time if the judicial authority finds that the defendant or his or her counsel did not receive the presentence investigation or alternate incarceration assessment report or both within such time.

(P.B. 1978-1997, Sec. 915.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

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Sec. 43-8. —Prohibition against Making Copies

No person shall, without the permission of the judicial authority, make or cause to be made any copy of any presentence investigation or alternate incarceration assessment report except as authorized by Sections 43-7 and 43-9.

(P.B. 1978-1997, Sec. 916.)

Sec. 43-9. —Use and Disclosure of Reports

The presentence investigation and alternate incarceration assessment reports shall not be public records and shall not be accessible to the public. They shall be available initially to the parties designated in Section 43-7 for use in the sentencing hearing and in any subsequent proceedings wherein the same conviction may be involved, and they shall be available at all times to the following:

(1) The office of adult probation;

(2) The correctional or mental health institution to which the defendant is committed or may be committed;

(3) The board of pardons and paroles;

(4) The sentence review division of the superior court;

(5) The judicial review council;

(6) Any court of proper jurisdiction where it is relevant to any proceeding before such court. Such court may also order that the report be made available to counsel for the parties for the purpose of such proceeding;

(7) Counsel for the defendant and the prosecuting authority during negotiations relating to other offenses pending against the defendant or subsequently charged against the defendant;

(8) Counsel for the defendant in a sentence review hearing or habeas corpus proceeding upon counsel's request to the department of adult probation;

(9) Counsel for the defendant and the prosecuting authority in connection with extradition proceedings; and

(10) Any other person or agency specified by statute. The prosecuting authority and counsel for the defendant shall retain a copy of the presentence investigation and alternate incarceration reports and may use the same in connection with any matter pertaining to actions by the entities defined in paragraphs (1) through (9) of this section, or for any other purpose for which permission is first obtained from any judicial authority. In all other respects, both the prosecuting authority and counsel for the defendant shall maintain the confidentiality of the information contained in the records. A defendant may obtain a copy of the presentence and alternate incarceration reports under proper application to a judicial authority in the judicial district in which sentence was imposed.

(P.B. 1978-1997, Sec. 917.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 43-10. Sentencing Hearing; Procedures to Be Followed

Before imposing a sentence or making any other disposition after the acceptance of a plea of guilty or nolo contendere or upon a verdict or finding of guilty, the judicial authority shall, upon the date previously determined for sentencing, conduct a sentencing hearing as follows:

(1) The judicial authority shall afford the parties an opportunity to be heard and, in its discretion, to present evidence on any matter relevant to the disposition, and to explain or controvert the presentence investigation report, the alternate incarceration assessment report or any other document relied upon by the judicial authority in imposing sentence. When the judicial authority finds that any significant information contained in the presentence report or alternate incarceration assessment report is inaccurate, it shall order the office of adult probation to amend all copies of any such report in its possession and in the clerk's file, and to provide both parties with an amendment containing the corrected information.

(2) The judicial authority shall allow the victim and any other person directly harmed by the commission of the crime a reasonable opportunity to make, orally or in writing, a statement with regard to the sentence to be imposed.

(3) The judicial authority shall allow the defendant a reasonable opportunity to make a personal statement in his or her own behalf and to present any information in mitigation of the sentence.

(4) In cases where guilt was determined by a plea, the judicial authority shall, pursuant to Section 39-7, be informed by the parties whether there is a plea agreement, and if so, the substance thereof.

(5) The judicial authority shall impose the sentence in the presence and hearing of the defendant, unless the defendant shall have waived his or her right to be present.

(6) In cases where sentence review is available, the judicial authority shall state on the record, in the presence of the defendant, the reasons for the sentence imposed.

(7) In cases where sentence review is available and where the defendant files an application for such review, the clerk shall promptly notify the

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court reporter of such application pursuant to Section 43-24 and the court reporter shall file a copy of the transcript of the sentencing hearing with the review division within sixty days from the date the application for review is filed with the clerk.
(P.B. 1978-1997, Sec. 919.)

Sec. 43-11. —Role at Sentencing of Prosecuting Authority

The prosecuting authority shall inform the judicial authority of the offenses for which the defendant is to be sentenced, shall give a brief summation of the facts relevant to each offense, shall disclose to the judicial authority any information in the files of the prosecuting authority that is favorable to the defendant and relevant to sentencing and shall state the basis for any recommendation which it chooses to make as to the appropriate sentence.
(P.B. 1978-1997, Sec. 921.)

Sec. 43-12. —Role of Prosecuting Authority at Sentencing when There Was a Plea Agreement

Where, as part of a plea agreement, the prosecuting authority has agreed to make representations or recommendations to the judicial authority regarding a defendant, or has made other agreements relating to the disposition of the charges against the defendant, it shall disclose to the judicial authority such representations or recommendations or any other terms of the plea agreement relevant to sentencing.
(P.B. 1978-1997, Sec. 922.)

Sec. 43-13. —Familiarization with Report by Defense Counsel

Defense counsel shall familiarize himself or herself with the contents of the presentence or alternate incarceration assessment report or both, including any evaluative summary, and any special medical or psychiatric reports pertaining to the client.
(P.B. 1978-1997, Sec. 924.)

Sec. 43-14. —Correction of Report Indicated by Defense Counsel

Defense counsel shall bring to the attention of the judicial authority any inaccuracy in the presentence or alternate incarceration assessment report of which he or she is aware or which the defendant claims to exist.
(P.B. 1978-1997, Sec. 925.)

Sec. 43-15. —Undisclosed Plea Agreement

Defense counsel shall disclose to the judicial authority any plea agreement that has not already been disclosed.
(P.B. 1978-1997, Sec. 926.)

Sec. 43-16. —Submission of Supplementary Documents by Defense Counsel

Defense counsel may submit such supplementary documents as such counsel thinks appropriate.
(P.B. 1978-1997, Sec. 927.)

Sec. 43-17. Payment of Fines; Inquiry concerning Ability

No person shall be incarcerated as a result of failure to pay a fine unless the judicial authority first inquires as to the person's ability to pay the fine.
(P.B. 1978-1997, Sec. 929.)

Sec. 43-18. —Incarceration for Failure to Pay

The judicial authority may, upon a finding that the defendant is able to pay the fine and that the nonpayment is wilful, order the defendant incarcerated for nonpayment of the fine.
(P.B. 1978-1997, Sec. 931.)

Sec. 43-19. —Payment and Satisfaction

A defendant incarcerated under Section 43-18, for wilful nonpayment of a fine, shall be released upon payment of the fine or when such defendant is otherwise discharged according to law.
(P.B. 1978-1997, Sec. 932.)

Sec. 43-20. —Mittimus

When a defendant has been sentenced to a term of imprisonment and ordered to pay a fine, the mittimus shall state that if the fine has not been paid by the time the sentence has been served the defendant may not continue to be incarcerated unless the judicial authority has found that the defendant is able to pay the fine and that the defendant's nonpayment is wilful.
(P.B. 1978-1997, Sec. 932A.)

Sec. 43-21. Reduction of Definite Sentence

At any time during the period of a definite sentence of three years or less, the judicial authority may, after a hearing and for good cause shown, reduce the sentence or order the defendant discharged or released on probation or on a conditional discharge for a period not to exceed that to which the defendant could have been sentenced originally.
(P.B. 1978-1997, Sec. 934.)

Sec. 43-22. Correction of Illegal Sentence

The judicial authority may at any time correct an illegal sentence or other illegal disposition, or

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it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner.
(P.B. 1978-1997, Sec. 935.)

Sec. 43-23. Sentence Review; Appearance of Counsel

It is the responsibility of the counsel of record at the time of sentencing to represent the defendant at the hearing before the sentence review division of the superior court, unless, for exceptional reasons, such counsel is excused by the division.
(P.B. 1978-1997, Sec. 937.)

Sec. 43-24. —Time for Filing Application for Sentence Review

In cases where sentence review is available pursuant to General Statutes § 51-195, the defendant may file, within thirty days from the date that sentence is imposed or from the date defendant's suspended sentence is revoked, with the clerk of the court for the judicial district or geographical area in which the judgment was rendered, an application for review of sentence by the review division. The clerk shall notify the review division, the judge who imposed the sentence, the court reporter, and all counsel of record upon the filing of the application for review. The court reporter shall prepare a transcript of the sentencing hearing in accordance with the provisions of Section 43-10.
(P.B. 1978-1997, Sec. 938.)

Sec. 43-25. —Preparation of Documents by Clerk

The clerk of the court in which the application is filed shall forward the necessary documents to the review division.
(P.B. 1978-1997, Sec. 939.)

Sec. 43-26. —Additional Material for Sentence Review

The defendant, at the time the application for review is filed, may request the clerk to forward to the review division any documents in the possession of the clerk previously presented to the judicial authority at the time of the imposition of sentence.
(P.B. 1978-1997, Sec. 940.)

Sec. 43-27. —Hearing on Sentence Review Application

A hearing upon an application filed under Section 43-24 shall be conducted expeditiously upon receipt by the review division of the materials submitted by the clerk under Sections 43-23 through 43-28. The parties may file such briefs or memoranda as are appropriate to assist the division in the discharge of its duties. Counsel for the defendant and the defendant shall address the panel of judges in support of the application. Upon request of the defendant the review division shall hear his or her application while an appeal or collateral review is pending.
(P.B. 1978-1997, Sec. 941.)

Sec. 43-28. —Scope of Review

The review division shall review the sentence imposed and determine whether the sentence should be modified because it is inappropriate or disproportionate in the light of the nature of the offense, the character of the offender, the protection of the public interest, and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended.
(P.B. 1978-1997, Sec. 942.)

Sec. 43-29. Revocation of Probation

In cases where the revocation of probation is based upon a conviction for a new offense and the defendant is before the court or is being held in custody pursuant to that conviction, the revocation proceeding may be initiated by a motion to the court by a probation officer and a copy thereof shall be delivered personally to the defendant. All other proceedings for revocation of probation shall be initiated by an arrest warrant supported by an affidavit or by testimony under oath showing probable cause to believe that the defendant has violated any of the conditions of the defendant's probation or his or her conditional discharge or by a written notice to appear to answer to the charge of such violation, which notice, signed by a judge of the superior court, shall be personally served upon the defendant by a probation officer and contain a statement of the alleged violation. All proceedings thereafter shall be in accordance with the provisions of Sections 3-6, 3-9 and 37-1 through 38-23. At the revocation hearing, the prosecuting authority and the defendant may offer evidence and cross-examine witnesses. If the defendant admits the violation or the judicial authority finds from the evidence that the defendant committed the violation, the judicial authority may make any disposition authorized by law. The filing of a motion to revoke probation under this section shall interrupt the period of the sentence as of the date of filing until a final determination as to revocation has been made by the judicial authority.
(P.B. 1978-1997, Sec. 943.)

Sec. 43-29A. Notice of Motions to Modify or Enlarge Conditions of Probation or Conditional Discharge or Terminate Conditions of Probation or Conditional Discharge

Whenever a motion to modify or enlarge the conditions of probation or conditional discharge

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is filed, and whenever a motion for termination of a sentence of probation or conditional discharge is filed, such motion shall be served prior to the hearing date upon the opposing party and, if the movant is not a probation officer, the appropriate probation officer, unless otherwise ordered by the judicial authority. Service of said motions shall be made on the defendant by delivering a copy to the defendant personally or by leaving it at his or her usual place of abode. Service of said motions may be made by any probation officer. Service of said motions shall be made on all other parties, and on the appropriate probation officer, in accordance with the provisions of Section 10-12 et seq.

(Adopted June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 43-30. Notification of Right to Appeal

Where there has been a conviction after a trial, or where there has been an adverse decision upon an application for a writ of habeas corpus brought by or on behalf of one who has been convicted of a crime, it shall be the duty of the clerk of the court, immediately after the pronouncement of the sentence or the notice of a decision on the application for a writ of habeas corpus, to advise the defendant in writing of such rights as such defendant may have to an appeal, of the time limitations involved, and of the right of an indigent person who is unable to pay the cost of an appeal to apply for a waiver of fees, costs, and expenses and for the appointment of counsel to prosecute the appeal.

(P.B. 1978-1997, Sec. 945.)

Sec. 43-31. Stay of Imprisonment upon Appeal

A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pursuant to Sections 43-1 and 43-2 pending disposition of the appeal, unless the judicial authority shall order otherwise.

(P.B. 1978-1997, Sec. 947.)

Sec. 43-32. Stay of Probation upon Appeal

Upon written motion of the defendant, an order placing the defendant on probation may be stayed if an appeal is taken. If it is not stayed, the judicial authority shall specify when the term of probation shall commence.

(P.B. 1978-1997, Sec. 948.)

Sec. 43-33. Appointment of Initial Counsel for Appeal by Indigent Defendant

(a) An indigent defendant who wishes to prosecute his or her appeal may apply to the court from which the appeal is taken for the appointment of counsel to prosecute the defendant's appeal and for a waiver of fees and costs, pursuant to Sections 63-7 and 44-1 through 44-5.

(b) The application for a waiver of costs and fees must be sent for investigation of the applicant's indigence to the public defender's office in the court from which the appeal is taken. The judicial authority shall assign the application for hearing within twenty days after filing unless otherwise ordered by the judicial authority for good cause shown. At least ten days before the hearing, the clerk's office shall notify in writing trial counsel, the state's attorney, the trial public defender's office to which the application had been sent for investigation and the chief of legal services of the public defender's office, of the date of such hearing. The lack of timely notification to any of the above parties shall result in a continuance of the hearing until proper and timely notification has been completed.

(c) The application for the appointment of counsel to prosecute the defendant's appeal shall be assigned to the same date and hearing as the application for waiver of fees, costs and expenses, and the judicial authority shall decide both applications at the same time. If trial counsel is not to be the assigned appellate counsel, the judicial authority shall inform and order trial counsel to cooperate fully with appellate counsel. If the chief of legal services of the public defender's office is to be assigned as appellate counsel, trial counsel shall be deemed to have ''cooperated fully'' if counsel has delivered to the chief of legal services: a complete appellate worksheet, which shall be provided by the chief of legal services; and trial counsel's file or a copy thereof. Failure to fully cooperate with appellate counsel will result in a short continuance of the applications for appellate counsel and for the waiver of fees, costs and expenses until cooperation is completed, or, if full cooperation is not completed within a reasonable time, sanctions against trial counsel may be imposed.

(d) The judicial authority shall act promptly on the applications following the hearing. Upon determination by the judicial authority that a defendant in a criminal case is indigent, the court to which the fees required by statute or rule are to be paid may (1) waive payment by the defendant of fees specified by statute and of taxable costs, and waive the requirement of Sec. 61-6 concerning the furnishing of security for costs upon appeal, (2) order that the necessary expenses of prosecuting the appeal be paid by the state, and (3)

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appoint appellate counsel and permit the withdrawal of the trial attorney's appearance provided the judicial authority is satisfied that that attorney has cooperated fully with appellate counsel in the preparation of the defendant's appeal.

(P.B. 1978-1997, Sec. 950.)

Sec. 43-34. Attorney's Finding That Appeal is Wholly Frivolous; Request by Initial Counsel to Withdraw

When the defendant is represented at trial by the public defender or has counsel appointed to prosecute the appeal under the provisions of Section 43-33 and such public defender or counsel, after a conscientious examination of the case, finds that such an appeal would be wholly frivolous, he or she shall advise the presiding judge and request permission to withdraw from the case.

(P.B. 1978-1997, Sec. 952.)

Sec. 43-35. —Submission of Brief

At the time such request is made, counsel shall submit to the presiding judge a brief which refers to anything in the record that might arguably support the appeal. A copy of such brief shall be provided to the defendant, and the defendant shall be further allowed a reasonable time to raise, in writing, additional points in support of the appeal.

(P.B. 1978-1997, Sec. 953.)

Sec. 43-36. —Finding That Appeal is Frivolous

The presiding judge shall fully examine the briefs of counsel and of the defendant, and shall review the transcript of the trial. If, after such examination, the presiding judge concludes that the defendant's appeal is wholly frivolous, such judge may grant counsel's motion to withdraw and refuse to appoint new counsel. Before refusing to appoint new counsel, the presiding judge shall make a finding that the appeal is wholly frivolous and shall file a memorandum, setting forth the basis for this finding.

(P.B. 1978-1997, Sec. 954.)

Sec. 43-37. —Finding That Appeal is Not Frivolous

If after a full examination pursuant to Section 43-36 the presiding judge concludes that the defendant's appeal is not wholly frivolous, such judge may allow counsel to withdraw and appoint new counsel to represent the defendant, or may order counsel of record to proceed with the appeal.

(P.B. 1978-1997, Sec. 955.)

Sec. 43-38. —Disqualification of Presiding Judge

Any presiding judge who was also the trial judge shall refer the matter to the administrative judge in the judicial district for assignment to another judicial authority. If such presiding judge is also the administrative judge, then the matter shall be referred by the presiding judge to the chief administrative judge for criminal matters for assignment to another judicial authority.

(P.B. 1978-1997, Sec. 956.) (Amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 43-39. Speedy Trial; Time Limitations

(a) Except as otherwise provided herein and in Section 43-40, the trial of a defendant charged with a criminal offense during the period from July 1, 1983, through June 30, 1985, inclusive, shall commence within eighteen months from the filing of the information or from the date of the arrest, whichever is later.

(b) The trial of such defendant shall commence within twelve months from the filing of the information or from the date of the arrest, whichever is later, if the following conditions are met:

(1) the defendant has been continuously incarcerated in a correctional institution of this state pending trial for such offense; and

(2) the defendant is not subject to the provisions of General Statutes § 54-82c.

(c) Except as otherwise provided herein and in Section 43-40, the trial of a defendant charged with a criminal offense on or after July 1, 1985, shall commence within twelve months from the filing of the information or from the date of the arrest, whichever is later.

(d) The trial of such defendant shall commence within eight months from the filing of the information or from the date of the arrest, whichever is later, if the following conditions are met:

(1) the defendant has been continuously incarcerated in a correctional institution of this state pending trial for such offense; and

(2) the defendant is not subject to the provisions of General Statutes § 54-82c.

(e) If an information which was dismissed by the trial court is reinstated following an appeal, the time for trial set forth in subsections (a), (b) and (c) shall commence running from the date of release of the final appellate decision thereon.

(f) If the defendant is to be tried following a mistrial, an order for a new trial, an appeal or collateral attack, the time for trial set forth in subsections (a), (b) and (c) shall commence running from the date the order occasioning the retrial becomes final.

(P.B. 1978-1997, Sec. 956B.)

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Sec. 43-40. —Excluded Time Periods in Determining Speedy Trial

The following periods of time shall be excluded in computing the time within which the trial of a defendant charged by information with a criminal offense must commence pursuant to Section 43-39:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to:

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) the time between the commencement of the hearing on any pretrial motion and the issuance of a ruling on such motion;

(E) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the judicial authority;

(F) delay resulting from any proceeding under General Statutes §§ 17a-685, 54-56e, 54-56g, 54-56m or any other pretrial diversion program authorized by statute.

(2) Any period of delay resulting from the absence or unavailability of the defendant, counsel for the defendant, or any essential witness for the prosecution or defense. For purposes of this subdivision, a defendant or any essential witness shall be considered absent when such person's whereabouts are unknown and cannot be determined by due diligence. For purposes of this subdivision, a defendant or any essential witness shall be considered unavailable whenever such person's whereabouts are known but his or her presence for trial cannot be obtained by due diligence or he or she resists appearing at or being returned for trial.

(3) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(4) A reasonable period of delay when the defendant has been joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(5) Any period of time between the date on which a defendant or counsel for the defendant and the prosecuting authority agree that the defendant will plead guilty or nolo contendere to the charge and the date the judicial authority accepts or rejects the plea agreement.

(6) Any period of time between the date on which the defendant enters a plea of guilty or nolo contendere and the date an order of the judicial authority permitting the withdrawal of the plea becomes final.

(7) The period of delay resulting from a continuance granted by the judicial authority at the personal request of the defendant.

(8) The period of delay resulting from a continuance granted by the judicial authority at the request of the prosecuting authority, if:

(A) the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting authority has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(B) the continuance is granted to allow the prosecuting authority additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case.

(9) With respect to a defendant incarcerated in another jurisdiction, the period of time until the defendant's presence for trial has been obtained, provided the prosecuting authority has exercised reasonable diligence (A) in seeking to obtain the defendant's presence for trial upon receipt of a demand from the defendant for trial, and (B) if the defendant has not theretofore demanded trial, in filing a detainer with the official having custody of the defendant requesting that official to advise the defendant of the defendant's right to demand trial.

(10) Other periods of delay occasioned by exceptional circumstances.

(P.B. 1978-1997, Sec. 956C.)

Sec. 43-41. —Motion for Speedy Trial; Dismissal

If the defendant is not brought to trial within the applicable time limit set forth in Sections 43-39 and 43-40, and, absent good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice, on motion of the defendant filed after the expiration of such thirty day period. For the purpose of this section, good cause consists of any one of the reasons for delay set forth in Section 43-40. When good cause for delay exists, the trial shall commence as soon as is reasonably possible. Failure of the defendant to file a motion to dismiss prior

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to the commencement of trial shall constitute a waiver of the right to dismissal under these rules.
(P.B. 1978-1997, Sec. 956D.)

Sec. 43-42. —Definition of Commencement of Trial

For purposes of Sections 43-39 through 43-41, ''commencement of trial'' means the commencement of the voir dire examination in jury cases and the swearing-in of the first witness in non-jury cases.
(P.B. 1978-1997, Sec. 956E.)

Sec. 43-43. —Waiver of Speedy Trial Provisions

The provisions of Sections 43-39 through 43-42 may be waived by any defendant in writing or on the record in open court.
(P.B. 1978-1997, Sec. 956F.)

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CHAPTER 44

GENERAL PROVISIONS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 44-1. Right to Counsel; Appointment in Specific Instances

A person who is charged with an offense punishable by imprisonment, or who is charged with violation of probation, or who is a petitioner in any habeas corpus proceeding arising from a criminal matter, or who is accused in any extradition proceeding, and who is unable to obtain counsel by reason of indigency shall be entitled to have counsel represent him or her unless:

(1) The person waives such appointment pursuant to Section 44-3; or

(2) In a misdemeanor case, at the time of the application for the appointment of counsel, the judicial authority decides to dispose of the charge without subjecting the defendant to a sentence involving immediate incarceration or a suspended sentence of incarceration with a period of probation, or it believes that the disposition of the charge at a later date will not result in such a sentence and it makes a statement to that effect on the record. If it appears to the judicial authority at a later date that if convicted the defendant will be subjected to such a sentence, counsel shall be appointed prior to trial or the entry of a plea of guilty or nolo contendere.

(P.B. 1978-1997, Sec. 959.)

Sec. 44-2. —Appointment in Other Instances

In any other situation in which a defendant is unable to obtain counsel by reason of indigency, and is constitutionally or statutorily entitled to the assistance of counsel, such defendant may request the judicial authority to appoint a public defender in accordance with Section 44-1.

(P.B. 1978-1997, Sec. 960.)

Sec. 44-3. —Waiver of Right to Counsel

A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the defendant:

(1) Has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled;

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(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself;

(3) Comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and

(4) Has been made aware of the dangers and disadvantages of self-representation.

(P.B. 1978-1997, Sec. 961.)

Sec. 44-4. —Standby Counsel for Defendant Self-Represented

When a defendant has been permitted to proceed without the assistance of counsel, the judicial authority may appoint standby counsel, especially in cases expected to be long or complicated or in which there are multiple defendants. A public defender or special public defender may be appointed as standby counsel only if the defendant is indigent and qualifies for appointment of counsel under General Statutes § 51-296, except that in extraordinary circumstances the judicial authority, in its discretion, may appoint a special public defender for a defendant who is not indigent.

(P.B. 1978-1997, Sec. 963.)

Sec. 44-5. —Role of Standby Counsel

If requested to do so by the defendant, the standby counsel shall advise the defendant as to legal and procedural matters. If there is no objection by the defendant, such counsel may also call the judicial authority's attention to matters favorable to the defendant. Such counsel shall not interfere with the defendant's presentation of the case and may give advice only upon request.

(P.B. 1978-1997, Sec. 964.)

Sec. 44-6. —Standby Counsel for Disruptive Defendant

Upon direction of the judicial authority in situations involving a disruptive defendant or one who has been removed under Section 42-46, standby counsel shall enter the case and represent the defendant notwithstanding a previous waiver under Section 44-3. If standby counsel is ordered to represent the defendant, counsel shall be granted reasonable time before proceeding with the trial.

(P.B. 1978-1997, Sec. 965.)

Sec. 44-7. Presence of Defendant; Attire of Incarcerated Defendant or Witness

The defendant has the right to be present at the arraignment, at the time of the plea, at evidentiary hearings, at the trial, and at the sentencing hearing, except as provided in Sections 44-7 through 44-10. Whenever present, the defendant shall be seated where he or she can effectively consult with counsel and can see and hear the proceedings. An incarcerated defendant or an incarcerated witness shall not be required during the course of a trial to appear in court in the distinctive attire of a prisoner or convict.

(P.B. 1978-1997, Sec. 967.)

Sec. 44-8. —When Presence of Defendant is and is Not Required at Trial and Sentencing

The defendant must be present at the trial and at the sentencing hearing, but, if the defendant will be represented by counsel at the trial or sentencing hearing, the judicial authority may:

(1) Excuse the defendant from being present at the trial or a part thereof or the sentencing hearing if the defendant waives the right to be present;

(2) Direct that the trial or a part thereof or the sentencing hearing be conducted in the defendant's absence if the judicial authority determines that the defendant waived the right to be present; or

(3) Direct that the trial or a part thereof be conducted in the absence of the defendant if the judicial authority has justifiably excluded the defendant from the courtroom because of his or her disruptive conduct, pursuant to Section 42-46.

(P.B. 1978-1997, Sec. 968.)

Sec. 44-9. —Obtaining Presence of Unexcused Defendant at Trial or Sentencing

If the defendant is not present at the trial or a part thereof or the sentencing hearing and defendant's absence has not been excused, the judicial authority may issue a capias in accordance with the provisions of Section 38-21.

(P.B. 1978-1997, Sec. 969.)

Sec. 44-10. —Where Presence of Defendant Not Required

(a) Unless otherwise ordered by the judicial authority, a defendant need not be present in the following situations:

(1) In proceedings involving a corporation, a corporation being able to appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by a fine in which the defendant pleads guilty or nolo contendere and pays the fine by mail;

(3) At any argument on a question of law or at any conference, except a disposition conference pursuant to Section 39-13;

(4) In proceedings involving a reduction of a sentence under Sections 43-21 and 43-22; and

(5) In proceedings in which the defendant otherwise waives his or her right to be present.

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(b) If ordered to be present by the judicial authority or if required to be present for a disposition conference pursuant to subsection (a) (3) of this section, the presence of the defendant may, in the discretion of the judicial authority and, in the case of such a disposition conference, with the consent of the defendant, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided.

(P.B. 1978-1997, Sec. 970.) (Amended December 19, 2006, to take effect March 12, 2007.)

Sec. 44-10A. —Where Presence of Defendant May Be by Means of an Interactive Audiovisual Device

(a) Unless otherwise ordered by the judicial authority, and in the discretion of the judicial authority, a defendant may be present by means of an interactive audiovisual device for the following proceedings:

(1) Hearings concerning indigency pursuant to General Statutes § 52-259b;

(2) Hearings concerning asset forfeiture, unless the testimony of witnesses is required;

(3) Hearings regarding seized property, unless the testimony of witnesses is required;

(4) With the defendant's consent, bail modification hearings pursuant to Section 38-14;

(5) Sentence review hearings pursuant to General Statutes § 51-195;

(6) With the consent of counsel, proceedings under General Statutes § 54-56d (k) if the evaluation under General Statutes § 54-56d (j) concludes that the defendant is not competent but is restorable and neither the state nor the defendant intends to contest that conclusion;

(7) A disposition conference held in the judicial district court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference; and

(8) With the consent of counsel, a disposition conference held in the geographical area court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference.

(b) Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided.

(c) Unless otherwise required by law or ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(d) Nothing contained in this section shall be construed to establish a right for any person to appear by means of an interactive audiovisual device.

(Adopted Dec. 19, 2006, to take effect March 12, 2007; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, what was the first paragraph of this section was designated as subsection (a). Also, in 2012, subdivisions (6) through (8) of subsection (a) were added, and what was the last paragraph of this section was designated as subsection (b). Subsections (c) and (d) were also added in 2012.

COMMENTARY—2012: The amendments to this section are intended to broaden the application and use of interactive audiovisual devices. These changes are taken from the recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.

Subsection (a) (6) expands the use of video and teleconferencing to proceedings under General Statutes § 54-56d where the defendant is not competent but whose competency may be restored. In such situations, where it is expected that the result of the hearing will be that the matter will be continued to allow for the restoration process to proceed, the defendant and mental health professionals may, by agreement, appear by video from the mental health facility. This section has been expanded to include hearings of this nature.

The change to subsection (a) (5) expands the use of videoconferencing in connection with sentence review division hearings held pursuant to General Statutes § 51-195 et seq. Currently, in most instances, the defendant's physical presence is required at such hearings. One instance where such presence is clearly not required is pursuant to current Section 44-10A, which provides that unless otherwise ordered by the judicial authority and in the discretion of the judicial authority a defendant may consent to being present at his or her sentence review division hearing by means of an interactive audiovisual device. Another such instance is pursuant to General Statutes § 51-196 (b), which provides in relevant part that the sentence review division may, for good cause, "waive its authority to increase the penalty on the defendant and may, thereafter, conduct a hearing on . . . application without the applicant being present. . . ." Nothing in this provision, however, "shall be construed to prohibit an applicant from having counsel present or from appearing pro se at the hearing. . . ." General Statutes § 51-196 (b).

A possible barrier to expanding the use of videoconferencing in sentence review division hearings is that sentence review has been deemed to constitute "a critical stage of the sentencing procedure," and as such, may entitle the applicant to be physically present at the hearing on such review. *Consiglio* v. *Warden*, 153 Conn. 673, 677, 220 A.2d 269 (1966); *State* v. *Reyes*, 19 Conn. App. 695, 564 A.2d 309 (1989). Whether the applicant's presence by way of video is sufficient to satisfy the applicant's right to be present appears to be a matter of

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degree. Some state courts have allowed video hearings to take place during critical stages of a trial and others have not. See *Constitutional and Statutory Validity of Judicial Videoconferencing*, 115 A.L.R.5th 509 (2005). Where crucial aspects of a defendant's physical presence such as demeanor, facial expressions and vocal inflections may be lost or misinterpreted in a televised appearance, proceeding on video may not be appropriate. Id.

The function of the sentence review division is to afford a convicted person a limited appeal for reconsideration of that person's sentence. *State* v. *Spells*, 76 Conn. App. 67, 818 A.2d 808 (2003). The scope of review of the division is to "review the sentence imposed and determine whether the sentence should be modified because it is inappropriate or disproportionate in light of the nature of the offense, the character of the offender, the protection of the public interest, and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended." Practice Book Section 43-28. It is suggested that the division's function can be achieved by allowing the applicant's presence at the sentence review division hearing by way of an interactive audiovisual device and that such appearance will not violate the defendant's right to be present at the hearing.

The above changes also allow videoconferencing technology to be used when the individual is called back to court for a "disposition conference" held pursuant to Sections 39-11 through 39-17.

Sec. 44-11. Docketing and Scheduling in General of Criminal Cases

Upon the return of an indictment or of a summons, or of a warrant previously issued by the judicial authority, or upon receipt of notice of an arrest, the clerk of the court having jurisdiction of the case shall forthwith assign a number to the case, enter it on the criminal docket or on other appropriate documents, and make a file in connection therewith. Such clerk shall immediately notify the prosecuting authority of the number assigned to the case.

(P.B. 1978-1997, Sec. 972.)

Sec. 44-12. —Control of Scheduling

The judicial authority, acting through the clerk, shall control the time and the manner of scheduling all proceedings in criminal cases and shall have the cooperation of the prosecuting authority and defense counsel in carrying out their responsibilities under Sections 44-11 and 44-12. The clerk of the court shall file a written report with the court periodically, as directed by the judicial authority, indicating the age and the status of each pending case, including whether the defendant is being held in custody pending trial and, if so, how long he or she has been held in custody. The clerk shall consult with the prosecuting authority and defense counsel in matters of scheduling so that such clerk may be aware of and advise the judicial authority of any factors affecting the orderly movement of cases.

(P.B. 1978-1997, Sec. 973.)

Sec. 44-13. —Scheduling for Proceedings before Trial; Continuances

Cases should be promptly assigned for arraignments, motions and other preliminary proceedings so as not unduly to delay the progress of the cases or to exceed time limits for such proceedings set by rule or administrative directive. Ordinarily, continuances for any preliminary proceedings, when allowed under these rules, shall not exceed two weeks.

(P.B. 1978-1997, Sec. 975.)

Sec. 44-14. —Assignments for Plea in Judicial District Court Location

Each case pending in a judicial district court location shall be assigned for a plea within two weeks after it is placed on the list of pending cases, unless the judicial authority shall order otherwise.

(P.B. 1978-1997, Sec. 976.)

Sec. 44-15. —Scheduling at Entry of Plea

Upon entry of a not guilty plea, the judicial authority shall, whenever feasible, assign a date certain for the trial of such case, and in jury cases, for a disposition conference pursuant to Sections 39-11 through 39-13, and it shall advise all parties that they are to be prepared to proceed to trial or to a disposition conference on that date. If the setting of a definite date at the time of the not guilty plea is not feasible, the case shall be placed on a trial list of pending cases which shall be maintained by the clerk. Cases shall be placed on the trial list in the order in which the not guilty pleas were entered.

(P.B. 1978-1997, Sec. 977.)

Sec. 44-16. —Scheduling from Trial List

(a) The judicial authority shall assign for trial on dates certain so much of the trial list as shall be deemed necessary for the proper conduct of the court and shall direct the clerk to distribute a list of the cases so assigned to the counsel of record. Cases shall be assigned for trial in the order in which they appear on the trial list and they should be tried in the order in which they are assigned for trial, except that the judicial authority may depart from the listed order and may give priority in assignment or trial to the following types of cases:

(1) Cases in which the defendant is being held in custody for lack of a bond;

(2) Cases in which the judicial authority has granted a motion for a speedy trial; or

(3) Cases in which the judicial authority reasonably believes that the pretrial liberty of the defendant presents unusual risks over those of other criminal cases.

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(b) The judicial authority shall not assign for trial on a date certain a number of cases greater than that which can be reasonably expected to be reached for trial on that date, based on the court's resources for trial and the number and percentage of trials generally conducted.

(P.B. 1978-1997, Sec. 978.)

Sec. 44-17. —Motion to Advance

Upon motion of a party and a showing of good cause, the judicial authority may advance a case for trial prior to the time when it would ordinarily be assigned.

(P.B. 1978-1997, Sec. 979.)

Sec. 44-18. —Continuances

Except for the defendant's arraignment pursuant to Sections 37-1 through 37-12, continuances may be granted only by the judicial authority or with the judicial authority's explicit approval.

(P.B. 1978-1997, Sec. 981.)

Sec. 44-19. Reference to Judge Trial Referee

The judicial authority may, with the consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the superior court in respect to trial, judgment, sentencing and appeal in the case, except that the judicial authority may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer. Any case referred to a judge trial referee shall be deemed to have been referred for all further proceedings, judgment and sentencing, including matters pertaining to any appeal therefrom unless otherwise ordered before or after the reference.

(P.B. 1978-1997, Sec. 997A.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 44-20. Appointment of Guardian Ad Litem

(a) In any criminal proceeding involving an abused or neglected minor child, a guardian ad litem shall be appointed. The judicial authority may also appoint a guardian ad litem for a minor involved in any other criminal proceedings, including those in which the minor resides with and is the victim of a person arrested or charged with a criminal offense, those in which the minor resides in the same household as the victim and the defendant, or those in which the minor is the defendant. Unless the judicial authority orders that another person be appointed guardian ad litem, the family relations counselor or family relations caseworker shall be designated as guardian ad litem.

(b) If the guardian ad litem is not the family relations counselor or family relations caseworker, the judicial authority may order compensation for the services rendered in accordance with the established Judicial Branch fee schedule.

(P.B. 1978-1997, Sec. 998.)

Sec. 44-21. Infractions and Violations; When Treated as an Offense

Pursuant to subdivision (4) of Section 44-37, infractions and violations are included in the general definition of "offense," and, except as distinguished in Sections 44-21 through 44-29, they are treated as any other offense under these rules.

(P.B. 1978-1997, Sec. 1000.)

Sec. 44-22. —Form of Summons and Complaint for Infractions and Violations

In all infractions and violations a summons and complaint shall, insofar as applicable, be used in the form designated in Section 36-7.

(P.B. 1978-1997, Sec. 1002.)

Sec. 44-23. —When Custody Not Required

(a) Except for those offenses listed in Section 44-24, and as provided in subsection (b) herein, a resident of the state of Connecticut or of a state that is a signatory with Connecticut of a no-bail compact, who has been arrested for a violation of any statute relating to motor vehicles, shall be issued a summons and complaint, and may, in the discretion of the law enforcement officer, be released without bail on his or her promise to appear.

(b) Any resident of the state of Connecticut who is charged with an infraction or violation payable by mail pursuant to statute, and any resident of a state that is a signatory with Connecticut of a no-bail compact who is charged with an infraction involving a motor vehicle or with a violation of General Statutes § 14-219(e), shall not be taken into custody, but shall be issued a summons and complaint and follow the procedure set forth in Sections 44-25 through 44-27.

(P.B. 1978-1997, Sec. 1004.)

Sec. 44-24. —When Custody Required

(a) Any person charged with an infraction or with a violation, whether or not payable by mail pursuant to statute, who is not a resident of the state of Connecticut or of a state that is a signatory with Connecticut of a no-bail compact shall be taken into custody.

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(b) In the following offenses, the defendant, whether or not a resident of this state, shall be taken into custody:

(1) Driving while under the influence of intoxicating liquor or drugs;

(2) Using a motor vehicle without the permission of the owner;

(3) Evading responsibility;

(4) Any offenses involving an accident resulting in death; or

(5) Any felonies.

(P.B. 1978-1997, Sec. 1005.)

Sec. 44-25. —Plea of Nolo Contendere to Infraction or Violation

Any resident of Connecticut or of a state that is a signatory with Connecticut of a no-bail compact who is charged with any infraction or with any violation which is payable by mail pursuant to statute may pay the penalty, either by mail or in person, to the centralized infractions bureau at the address set forth on the complaint on or before the answer date designated in the complaint or, if the case is pending at a court location, may pay the penalty by mail or in person at such court location. The payment of the fine shall be considered a plea of nolo contendere and shall be inadmissible in any proceeding, criminal or civil, to establish the conduct of the person making such payment, except for any administrative sanctions imposed by the commissioner of motor vehicles pursuant to title 14 of the General Statutes.

(P.B. 1978-1997, Sec. 1007.)

Sec. 44-26. —Pleas of Not Guilty to Infraction or Violation

Pleas of not guilty for infractions and for violations which are payable by mail pursuant to statute may be accepted only at the centralized infractions bureau and at those locations authorized by the General Statutes.

(P.B. 1978-1997, Sec. 1008.)

Sec. 44-27. —Hearing of Infractions, Violations to Which Not Guilty Plea Filed

(a) Upon entry of a plea of not guilty to an infraction or to a violation which is payable by mail pursuant to statute, the clerk shall file such plea and forthwith transmit the file to the prosecuting authority for review.

(b) Unless a nolle prosequi or a dismissal is entered in the matter within ten days of the filing of a not guilty plea, the clerk shall schedule a hearing and shall send the defendant a written notice of the date, time and place of such hearing.

(c) Hearings shall be conducted in accordance with the criminal rules of evidence and with the provisions of chapter 42 insofar as the provisions of that chapter are applicable.

(d) A nolle prosequi or a dismissal may be entered in the absence of the defendant. In the event a nolle prosequi or a dismissal is entered in the matter, the clerk shall send a written notice of such disposition to any defendant who was not before the court at the time of such disposition. The entry of a nolle prosequi hereunder shall not operate as a waiver of the defendant's right thereafter to seek a dismissal pursuant to Section 39-30.

(P.B. 1978-1997, Sec. 1008A.)

Sec. 44-28. —Location of Infractions Bureau and Role of Clerks

(a) There shall be a centralized infractions bureau of the superior court to handle payments or pleas of not guilty with respect to the commission of infractions and of violations which are payable by mail pursuant to statute.

(b) For the purpose of processing such matters which are not finally disposed at the centralized infractions bureau, the principal clerk's office of the superior court in each geographical area shall be the infractions bureau for such geographical area. The judges of the superior court may establish such other bureaus when and where they may deem them necessary and they may designate the clerks or the assistant clerks of the court, or any other appropriate persons, as clerks of such bureaus. If no other person is so designated by the judges, the clerk of the superior court for the geographical area shall be the clerk of each infractions bureau in that geographical area.

(P.B. 1978-1997, Sec. 1010.)

Sec. 44-29. —Powers of Centralized Infractions Bureau

Subject to the limitations in Sections 44-25 and 44-26, the centralized infractions bureau shall have the power to accept a plea of nolo contendere and the payment of fines in cases which have been designated by statute as infractions or as violations which are payable by mail.

(P.B. 1978-1997, Sec. 1011.)

Sec. 44-30. —Hearing by Magistrates of Infractions and Certain Motor Vehicle Violations

(a) Infractions and motor vehicle violations which may be submitted to a magistrate pursuant to statute may be heard by magistrates in those court locations where a magistrate has been appointed by the chief court administrator, except that magistrates may not conduct jury trials.

(b) Hearings by magistrates shall be conducted in accordance with the criminal rules of evidence

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and with the provisions of chapter 42 insofar as the provisions of that chapter are applicable. A magistrate shall sign all orders the magistrate issues, such signature to be followed by the word ''magistrate.''

(c) A decision of the magistrate, including any penalty imposed, shall become a judgment of the court if no demand for a trial de novo is filed. Such decision of the magistrate shall become null and void if a timely demand for a trial de novo is filed. A demand for a trial de novo shall be filed with the court clerk within five days of the date the decision was rendered by the magistrate and, if filed by the prosecuting authority, it shall include a certification that a copy thereof has been served on the defendant or his or her attorney, in accordance with the rules of practice.

(d) If the defendant is charged with more than one offense, and not all such offenses are motor vehicle violations within the jurisdiction of a magistrate, a judicial authority shall hear and decide such case.

(e) This section shall be inapplicable at any court location to which a magistrate has not been assigned by the chief court administrator.

(P.B. 1978-1997, Sec. 1011D.)

Sec. 44-31. Motion to Quash Subpoena Pursuant to Inquiry into Commission of Crime

(a) Whenever a subpoena has been issued to compel the attendance of a witness or the production of documents at an inquiry conducted by an investigative grand jury, the person summoned may file a motion to quash the subpoena with the chief clerk of the judicial district wherein the investigation is then being conducted. No fees or costs shall be required or assessed.

(b) The motion shall be docketed as a criminal matter. The party filing the motion shall be designated as the plaintiff and the state's attorney for such judicial district shall be designated as the defendant. A prosecuting authority shall appear and defend on behalf of the state's attorney.

(c) Unless otherwise ordered by the judicial authority before whom such hearing shall be conducted, the hearing on the motion to quash shall be conducted in public and the court file on the motion to quash shall be open to public inspection.

(d) The motion shall be heard forthwith by a judicial authority who is not a member of the panel of judges which acted on the application, nor the grand jury in the proceeding. The hearing date and time shall be set by the clerk after consultation with the judicial authority having responsibility for the conduct of criminal business within the judicial district. The clerk shall give notice to the parties of the hearing so scheduled.

(P.B. 1978-1997, Sec. 1012A.)

Sec. 44-32. Fees and Expenses; Return of Subpoenas

An officer or an indifferent person serving subpoenas in criminal cases will not be allowed fees for returning the same to the court unless the person returns them in person or actually pays for their return, and then only the sum paid will be allowed, not exceeding the legal fees for returning civil process. No fee shall be paid to any police officer for serving subpoenas.

(P.B. 1978-1997, Sec. 1014.)

Sec. 44-33. —Indigent Witnesses

An officer or any other person serving a subpoena or a capias in criminal cases on behalf of the state on witnesses who are indigent and unable to procure the means of traveling to the court will be allowed a reasonable compensation for providing transportation of such witnesses to the court; a reasonable sum will be taxed for the support of such witnesses during their necessary attendance at court.

(P.B. 1978-1997, Sec. 1015.)

Sec. 44-34. —Fees for Witnesses

Witnesses in attendance in more cases than one at the same time will be allowed fees for travel and attendance in one case only. The travel of nonresident witnesses will be computed and taxed from the state line on the usual course of travel in all cases where witnesses' fees are not paid under General Statutes § 54-82i or § 54-152.

(P.B. 1978-1997, Sec. 1016.)

Sec. 44-35. —Officer's Fees on Extradition; Habeas Corpus

Any officer having charge of a person who is arrested upon an extradition warrant for delivery to another state and required to attend court upon a writ of habeas corpus shall be entitled to receive the same fees and expenses as such officer would receive for presenting a prisoner before the court for trial, and such fees and expenses are to be paid to such officer by the officer of such other state upon the surrender of the prisoner or, if the prisoner is released, they are to be taxed and allowed him or her at the next term of the court in the judicial district or geographical area where such prisoner was held.

(P.B. 1978-1997, Sec. 1017.)

Sec. 44-36. —Fee on Motion to Open Certain Judgments

Upon the filing of a motion to open judgment in any case in which the defendant has been

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charged with violation of a motor vehicle statute and has failed to appear at the time and place assigned for trial or, where applicable, has failed to plead or pay the fine and additional fee by mail, and the judicial authority has reported such failure to the commissioner of motor vehicles, the movant shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.

(P.B. 1978-1997, Sec. 1020A.)

Sec. 44-37. Definition of Terms

Unless the context clearly requires otherwise:

(1) ''Prosecuting authority'' means any person appointed or otherwise designated or charged generally or specially with the duty of prosecuting persons accused of criminal offenses in any court, and includes, but is not limited to, the chief state's attorney and any deputies or assistants and each state's attorney of the superior court and any deputies or assistants.

(2) ''Public defender'' means any attorney appointed or otherwise designated or charged generally or specially by the court with the duty of representing persons accused of criminal offenses in any court or of representing anyone in habeas corpus proceedings or appeals, and includes, but is not limited to, the chief public defender and any deputies or assistants, and each public defender and any deputies or assistants.

(3) ''Law enforcement officer'' means any person vested by law with a duty to maintain public order or to make arrests for offenses, and includes, but is not limited to, a member of the state police department or an organized local police department, a detective in the division of criminal justice, a sheriff or deputy sheriff, a conservation officer or special conservation officer as defined in General Statutes § 26-5, a constable who performs criminal law enforcement duties, a special policeman appointed under General Statutes §§ 29-18, 29-18a or 29-19, or an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility. ''Law enforcement officer'' also includes state and judicial marshals, but only where the use of that term in these rules is consistent with the authority given to such marshals by statute.

(4) ''Offense'' means any crime or violation which constitutes a breach of any law of this state or any local law or ordinance of a political subdivision of this state, for which a sentence of a term of imprisonment or a fine, or both, may be imposed, including infractions.

(5) ''Crime'' means a felony or a misdemeanor.

(6) ''Violation'' means an offense for which the only sentence authorized is a fine and which is not expressly designated as an infraction.

(7) ''Felony'' means an offense for which a person may be sentenced to a term of imprisonment in excess of one year.

(8) ''Misdemeanor'' means an offense for which a person may be sentenced to a term of imprisonment of not more than one year.

(9) ''Infraction'' means an act or a failure to act which is designated by the General Statutes as an infraction.

(10) ''Trial'' means that judicial proceeding at which the guilt or innocence of the defendant to the offense or offenses charged is to be determined.

(P.B. 1978-1997, Sec. 1021.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

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RULES OF APPELLATE PROCEDURE

CHAPTER 60

GENERAL PROVISIONS RELATING TO APPELLATE RULES AND APPELLATE REVIEW

Sec.
60-1. Rules to Be Liberally Interpreted
60-2. Supervision of Procedure
60-3. Suspension of the Rules
60-4. Definitions
60-5. Review by the Court; Plain Error; Preservation of Claims
60-6. Appellate Jurists Sitting as Superior Court Judges

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 60-1. Rules to Be Liberally Interpreted

The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice.

(P.B. 1978-1997, Sec. 4182.)

Sec. 60-2. Supervision of Procedure

The supervision and control of the proceedings on appeal shall be in the court having appellate jurisdiction from the time the appeal is filed, or earlier, if appropriate, and, except as otherwise provided in these rules, any motion the purpose of which is to complete or perfect the trial court record for presentation on appeal shall be made to the court in which the appeal is pending. The court may, on its own motion or upon motion of any party, modify or vacate any order made by the trial court, or a judge thereof, in relation to the prosecution of the appeal. It may also, for example, on its own motion or upon motion of any party, (1) order a judge to take any action necessary to complete the trial court record for the proper presentation of the appeal; (2) when it appears that by reason of omission from the prepared record of matters of record in the trial court the questions of law in the case are not properly presented, order the appellant to cause to be photocopied the portions so omitted; (3) order improper matter stricken from the record or from a brief or appendix; (4) order a stay of any proceedings ancillary to a case on appeal; (5) order the addition to the prepared record of parts of the file necessary to present correctly or fully the matters comprehended by Sections 67-4 and 67-5; (6) order that a party for good cause shown may file a late appeal, petition for certification, brief or any other document, unless the court lacks jurisdiction to allow the late filing; (7) order that a hearing be held to determine whether it has jurisdiction over a pending matter; (8) order an appeal to be dismissed unless the appellant complies with specific orders of the trial court, submits to the process of the trial court, or is purged of contempt of the trial court; (9) remand any pending matter to the trial court for the resolution of factual issues where necessary; (10) correct technical or other minor mistakes in a published opinion which do not affect the rescript.

(P.B. 1978-1997, Sec. 4183.)

Sec. 60-3. Suspension of the Rules

In the interest of expediting decision, or for other good cause shown, the court in which the appeal is pending may suspend the requirements or provisions of any of these rules in a particular case on motion of a party or on its own motion and may order proceedings in accordance with its direction.

(P.B. 1978-1997, Sec. 4187.)

Sec. 60-4. Definitions

''Appellant'' shall mean the party, or parties if an appeal is jointly filed, taking the appeal. ''Appellee'' shall mean all other parties in the trial court at the time of judgment, unless after judgment the matter was withdrawn as to them or unless a motion for permission not to participate in the appeal has been granted by the court.

''Counsel of record'' shall also include all parties appearing pro se, and ''court reporter'' shall refer to all court reporters and court reporting monitors.

''Administrative appeal'' shall mean an appeal from a judgment of the superior court concerning the appeal to that court from a decision of any officer, board, commission or agency of the state or of any political subdivision of the state.

''Motion'' should be read to include applications and petitions other than petitions for certification.

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"Petition" does not include petitions for certification unless the context clearly requires.

(P.B. 1978-1997, Sec. 4001A) (For additional definitions, see Secs.61-10,62-2 and 76-6.)

Sec. 60-5. Review by the Court; Plain Error; Preservation of Claims

The court may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous in view of the evidence and pleadings in the whole record, or that the decision is otherwise erroneous in law.

The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court.

In jury trials, where there is a motion, argument, or offer of proof or evidence in the absence of the jury, whether during trial or before, pertaining to an issue that later arises in the presence of the jury, and counsel has fully complied with the requirements for preserving any objection or exception to the judge's adverse ruling thereon in the absence of the jury, the matter shall be deemed to be distinctly raised at the trial for purposes of this rule without a further objection or exception provided that the grounds for such objection or exception, and the ruling thereon as previously articulated, remain the same.

If the court deems it necessary to the proper disposition of the cause, it may remand the case for a further articulation of the basis of the trial court's factual findings or decision.

It is the responsibility of the appellant to provide an adequate record for review as provided in Section 61-10.

(P.B. 1978-1997, Sec. 4061.)

Sec. 60-6. Appellate Jurists Sitting as Superior Court Judges

Without the permission of the chief justice, the justices of the supreme court and the judges of the appellate court will not, as judges of the superior court, in vacation, or when the superior court is not in session, pass orders which may be the subject of an appeal, unless it appears that there is a necessity for prompt action, and that no other judges having jurisdiction over the matter can conveniently act.

(P.B. 1978-1997, Sec. 4186.)

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CHAPTER 61

REMEDY BY APPEAL

Sec.
61-1. Right of Appeal
61-2. Appeal of Judgment on Entire Complaint, Counterclaim or Cross Complaint
61-3. Appeal of Judgment on Part of Complaint, Counterclaim or Cross Complaint that Disposes of All Claims in that Pleading Brought by or against One or More Parties
61-4. Appeal of Judgment That Disposes of At Least One Cause of Action While Not Disposing of Either (1) An Entire Complaint, Counterclaim or Cross Complaint, or (2) All the Causes of Action in a Pleading Brought by or against a Party
61-5. Deferring Appeal until Judgment Rendered That Disposes of Case for All Purposes and as to All Parties
61-6. Appeal of Judgment or Ruling in Criminal Case
61-7. Joint and Consolidated Appeals
61-8. Cross Appeals
61-9. Decisions Subsequent to Filing of Appeal; Amended Appeals
61-10. Responsibility of Appellant to Provide Adequate Record for Review
61-11. Stay of Execution in Noncriminal Cases
61-12. Discretionary Stays
61-13. Stay of Execution in Criminal Case
61-14. Review of Order concerning Stay; When Stay May Be Requested from Court Having Appellate Jurisdiction
61-15. Stay of Execution in Death Penalty Case
61-16. Notification of (1) Bankruptcy Filing, (2) Disposition of Bankruptcy Case, and (3) Order of Bankruptcy Court Granting Relief from Automatic Stay

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 61-1. Right of Appeal

An aggrieved party may appeal from a final judgment, except as otherwise provided by law.

(P.B. 1978-1997, Sec. 4000.)

Sec. 61-2. Appeal of Judgment on Entire Complaint, Counterclaim or Cross Complaint

When judgment has been rendered on an entire complaint, counterclaim or cross complaint, whether by judgment on the granting of a motion to strike pursuant to Section 10-44, by dismissal pursuant to Section 10-30, by summary judgment pursuant to Section 17-44, or otherwise, such judgment shall constitute a final judgment.

If at the time a judgment referred to in this section is rendered, an undisposed complaint, counterclaim or cross complaint remains in the case, appeal from such a judgment may be deferred (unless the appellee objects as set forth in Section 61-5) until the entire case is concluded by the rendering of judgment on the last such outstanding complaint, counterclaim or cross complaint.

If the judgment disposing of the complaint, counterclaim or cross complaint resolves all causes of action brought by or against a party who is not a party in any remaining complaint, counterclaim, or cross complaint, a notice of intent to appeal in accordance with the provisions of Section 61-5 must be filed in order to preserve the right to appeal such a judgment at the conclusion of the case.

(P.B. 1978-1997, Sec. 4002A.)

Sec. 61-3. Appeal of Judgment on Part of Complaint, Counterclaim or Cross Complaint that Disposes of All Claims in that Pleading Brought by or against One or More Parties

A judgment disposing of only a part of a complaint, counterclaim, or cross complaint is a final judgment if that judgment disposes of all causes of action in that complaint, counterclaim, or cross complaint brought by or against a particular party or parties.

Such a judgment shall be a final judgment regardless of whether judgment was rendered on the granting of a motion to strike pursuant to Section 10-44, by dismissal pursuant to Section 10-30, by summary judgment pursuant to Section 17-44, or otherwise. The appeal from such judgment may be deferred (unless an objection is filed pursuant to Section 61-5) until the final judgment that disposes of the case for all purposes and as to all parties is rendered. If the appeal from such a judgment is to be deferred, a notice of intent to appeal must be filed in accordance with the provisions of Section 61-5.

A party entitled to appeal under this section may appeal regardless of which party moved for the judgment to be made final.

(P.B. 1978-1997, Sec. 4002B.)

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Sec. 61-4. Appeal of Judgment That Disposes of At Least One Cause of Action While Not Disposing of Either (1) An Entire Complaint, Counterclaim or Cross Complaint, or (2) All the Causes of Action in a Pleading Brought by or against a Party

(Amended July 23, 1998, to take effect Jan. 1, 1999.)

(a) **Judgment not final unless trial court makes written determination and chief justice or chief judge concurs**

This section applies to a trial court judgment that disposes of at least one cause of action where the judgment does not dispose of either of the following: (1) an entire complaint, counterclaim, or cross complaint, or (2) all the causes of action in a complaint, counterclaim or cross complaint brought by or against a party. If the order sought to be appealed does not meet these exact criteria, the trial court is without authority to make the determination necessary to the order's being immediately appealed.

This section does not apply to a judgment that disposes of an entire complaint, counterclaim, or cross complaint (see Section 61-2); and it does not apply to a trial court judgment that partially disposes of a complaint, counterclaim, or cross complaint, if the order disposes of all the causes of action in that pleading brought by or against one or more parties (see Section 61-3).

When the trial court renders a judgment to which this section applies, such judgment shall not ordinarily constitute an appealable final judgment. Such a judgment shall be considered an appealable final judgment only if the trial court makes a written determination that the issues resolved by the judgment are of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified, and the chief justice or chief judge of the court having appellate jurisdiction concurs.

If the procedure outlined in this section is followed, such judgment shall be an appealable final judgment, regardless of whether judgment was rendered on the granting of a motion to strike pursuant to Section 10-44, by dismissal pursuant to Section 10-30, by summary judgment pursuant to Section 17-44, or otherwise.

A party entitled to appeal under this section may appeal regardless of which party moved for the judgment to be made final.

(b) **Procedure for obtaining written determination and chief justice's or chief judge's concurrence; when to file appeal**

If the trial court renders a judgment described in this section without making a written determination, any party may file a motion in the trial court for such a determination within the statutory appeal period, or, if there is no applicable statutory appeal period, within twenty days after notice of the partial judgment has been sent to counsel. Papers opposing the motion may be filed within ten days after the filing of the motion.

Within twenty days after notice of such a determination in favor of appealability has been sent to counsel, any party intending to appeal shall submit an original plus three copies of a motion for permission to file an appeal with the clerk of the court having appellate jurisdiction. The motion shall state the reasons why an appeal should be permitted. Papers opposing the motion may be filed within ten days after the filing of the motion. The motion and any opposition papers shall be referred to the chief justice or chief judge to rule on the motion. If the chief justice or chief judge is unavailable or disqualified, the most senior justice or judge who is available and is not disqualified shall rule on the motion.

The appellate clerk shall send notice to the parties of the decision of the chief justice or chief judge on the motion for permission to file an appeal. For purposes of counting the time within which the appeal must be filed, the date of the issuance of notice of the decision on this motion shall be considered the date of issuance of notice of the rendition of the judgment or decision from which the appeal is taken.

(P.B. 1978-1997, Sec. 4002C.) (Amended July 23, 1998, to take effect Jan. 1, 1999.)

Sec. 61-5. Deferring Appeal until Judgment Rendered That Disposes of Case for All Purposes and as to All Parties

(a) **When notice of intent to appeal required; procedure for filing**

An appeal of a judgment described in Sections 61-2 or 61-3 may be deferred until the judgment that disposes of the case for all purposes and as to all parties is rendered. In the following two instances only, a notice of intent to appeal must be filed in order to defer the taking of an appeal until the final judgment that disposes of the case for all purposes and as to all parties is rendered:

(1) when the deferred appeal is to be taken from a judgment that not only disposes of an entire complaint, counterclaim or cross complaint but also disposes of all the causes of action brought by or against a party or parties so that that party or parties are not parties to any remaining complaint, counterclaim or cross complaint; or

(2) when the deferred appeal is to be taken from a judgment that disposes of only part of a complaint, counterclaim, or cross complaint but nevertheless disposes of all causes of action in that pleading brought by or against a particular party or parties.

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In the event that the party aggrieved by a judgment described in (1) or (2) above elects to defer the taking of the appeal until the disposition of the entire case, the aggrieved party must, within the appeal period provided by statute, or, if there is no applicable statutory appeal period, within twenty days after issuance of notice of the judgment described in (1) or (2) above, file in the trial court a notice of intent to appeal the judgment, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with the provisions of Section 62-7.

When a notice of intent to appeal has been filed in accordance with this subsection, an objection to the deferral of the appeal may be made by (1) any party who, after the rendering of judgment on an entire complaint, counterclaim or cross complaint, is no longer a party to any remaining complaint, counterclaim, or cross complaint, or (2) any party who, by virtue of a judgment on a portion of any complaint, counterclaim, or cross complaint, is no longer a party to that complaint, counterclaim, or cross complaint. Objection shall be filed in the trial court, within twenty days of the filing of the notice of intent to appeal, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with the provisions of Section 62-7.

When such a party has filed a notice of objection to the deferral of the appeal, the appeal shall not be deferred, and the appellant shall file the appeal within twenty days of the filing of such notice of objection.

(b) **Effect of failure to file notice of intent to appeal when required; effect of filing notice of intent to appeal when not required**

If an aggrieved party, without having filed a timely notice of intent to appeal, files an appeal claiming that a judgment described in (1) or (2) of subsection (a) of this section was rendered improperly, the issues relating to such earlier judgment will be subject to dismissal as untimely.

The use of the notice of intent to appeal is abolished in all instances except as provided in subsection (a) of this section, which sets forth the two instances in which a notice of intent must be filed. Except as provided in subsection (a), the filing of a notice of intent to appeal will preserve no appeal rights.

(P.B. 1978-1997, Sec. 4002D.)

Sec. 61-6. Appeal of Judgment or Ruling in Criminal Case

(Amended July 26, 2000, to take effect Jan. 1, 2001.)

(a) **Appeal by defendant**

(1) **Appeal from final judgment**

The defendant may appeal from a conviction for an offense when the conviction has become a final judgment. The conviction becomes a final judgment after imposition of sentence. In cases where a final judgment has been rendered on fewer than all counts in the information or complaint, the defendant may appeal from that judgment at the time it is rendered.

(2) **Appeal of ruling following judgment rendered upon conditional plea of nolo contendere**

(i) **On motion to dismiss or suppress**

When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress or motion to dismiss, the defendant, after the imposition of sentence, may file an appeal within the time prescribed by law. The issue to be considered in such appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this subsection shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution. The court shall not accept a nolo contendere plea pursuant to this subsection where the denial of the motion to suppress or motion to dismiss would not be dispositive of the case in the trial court. The court shall also decline to accept such a nolo contendere plea where the record available for review of the denial of the motion to suppress or motion to dismiss is inadequate for appellate review of the court's determination thereof.

(ii) **On any motion made prior to close of evidence**

With the approval of the court, after a hearing to consider any objections thereto, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any motion made prior to the close of evidence, which motion must be specified in such written reservation. If the defendant prevails on appeal, the judgment shall be set aside and the defendant shall be allowed to withdraw the conditional plea of guilty or nolo contendere after the case has been remanded to the trial court. A plea of guilty or nolo contendere under this subsection shall not constitute a waiver of nonjurisdictional defects in the criminal prosecution. The court shall not accept a plea of guilty or nolo contendere pursuant to this subsection where the adverse determination of the specified motion would not be dispositive of the case in the trial court. The court shall also decline to accept such a nolo

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contendere or guilty plea where the record available for review of the ruling upon the specified motion is inadequate for appellate review of the court's determination thereof.

(b) **Appeal by state**

The state, with the permission of the presiding judge of the trial court and as provided by law, may appeal from a final judgment. In cases where an appealable judgment has been rendered on fewer than all counts of the information or complaint, the state may appeal from the judgment at the time it is rendered.

(c) **Appeal from a ruling**

To the extent provided by law, the defendant or the state may appeal from a ruling that is not a final judgment or from an interlocutory ruling deemed to be a final judgment.

(P.B. 1978-1997, Sec. 4003.) (Amended July 26, 2000, to take effect Jan. 1, 2001; amended June 17, 2008, to take effect Jan. 1, 2009.)

Sec. 61-7. Joint and Consolidated Appeals

(a) (1) Two or more plaintiffs or defendants in the same case may appeal jointly or severally. Separate cases heard together and involving at least one common party may as of right be appealed jointly, provided all the trial court docket numbers are shown on the appeal form (JD-SC-28 and JD-SC-29).

(2) Prior to the filing of an appeal the trial court, on motion of any party or on its own motion, may order that a joint appeal be filed in any situation not covered by the preceding paragraph.

(3) In the case of a joint appeal, only one entry fee is required.

(b) (1) The supreme court, on motion of any party or on its own motion may order that appeals pending in the supreme court be consolidated.

(2) When an appeal pending in the supreme court involves the same cause of action, transaction or occurrence as an appeal pending in the appellate court, the supreme court may, on motion of any party or on its own motion, order that the appeals be consolidated in the supreme court. The court may order consolidation at any time before the assignment of the appeals for hearing.

(3) The appellate court, on motion of any party or on its own motion, may order that appeals pending in the appellate court be consolidated.

(4) There shall be no refund of fees if appeals are consolidated.

(c) Whenever appeals are jointly filed or are consolidated, only a single record shall be prepared. In addition, all appellants must file a single, consolidated brief and all appellees must file a single, consolidated brief; provided, however, that any party may file a request in writing to the chief justice or chief judge, as the case may be, for permission to file a separate brief if the joint parties cannot agree upon the contents of the joint brief or to brief issues which are not common to the joint parties.

(P.B. 1978-1997, Sec. 4004.)

Sec. 61-8. Cross Appeals

Any appellee or appellees aggrieved by the judgment or decision from which the appellant has appealed may jointly or severally file a cross appeal within ten days from the filing of the appeal. Except where otherwise provided, the filing and form of cross appeals, extensions of time for filing them, and all subsequent proceedings shall be the same as though the cross appeal were an original appeal. No entry or record fee need be paid.

(P.B. 1978-1997, Sec. 4005.)

Sec. 61-9. Decisions Subsequent to Filing of Appeal; Amended Appeals

Should the trial court, subsequent to the filing of the appeal, make a decision which the appellant desires to have reviewed, the appellant shall file an amended appeal form in the trial court within twenty days from the issuance of notice of the decision as provided for in Section 63-1. At the time the amended appeal form is filed, the appellant shall submit a copy thereof, endorsed in accordance with Section 63-3, to the appellate clerk together with any amendments to the documents required by Section 63-4.

No additional fee is required to be paid upon the filing of an amended appeal.

If the amended appeal is filed after the filing of the appellant's brief but before the filing of the appellee's brief, the appellant may move for leave to file a supplemental brief. If the amended appeal is filed after the filing of the appellee's brief, either party may move for such leave. In any event, the court may order that an amended appeal be briefed or heard separately from the original appeal.

Unless the court shall order otherwise, if the appellant has filed a second appeal in the same case, the appeal papers shall be treated as an amended appeal under this rule, and, in that event, there shall be no refund of the fees paid.

If, after an amended appeal is filed, the original appeal is dismissed for lack of jurisdiction, the amended appeal shall not be void as long as the amended appeal was filed from a judgment or order from which an original appeal could have been filed.

(P.B. 1978-1997, Sec. 4006.) (Amended July 30, 2009, to take effect Jan. 1, 2010.)

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Sec. 61-10. Responsibility of Appellant to Provide Adequate Record for Review

It is the responsibility of the appellant to provide an adequate record for review. The appellant shall determine whether the entire trial court record is complete, correct and otherwise perfected for presentation on appeal. For purposes of this section, the term ''record'' is not limited to its meaning pursuant to Section 63-4 (a) (2), but includes all trial court decisions, documents and exhibits necessary and appropriate for appellate review of any claimed impropriety.

(P.B. 1978-1997, Sec. 4007.)

Sec. 61-11. Stay of Execution in Noncriminal Cases

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

(a) **Automatic stay of execution**

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut supreme court), and Section 71-7 (petitions for certiorari by the United States supreme court).

(b) **Matters in which no automatic stay is available under this rule**

Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection. In addition, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15 or to orders of periodic alimony, support, custody or visitation in domestic relations matters brought pursuant to chapter 25 or to any later modification of such orders.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, ''administrative appeal'' means an appeal taken from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals taken pursuant to the Uniform Administrative Procedure Act, ''administrative appeal'' includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) **Termination of stay**

Termination of a stay may be sought in accordance with subsection (d) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is taken, only for delay or (2) the due administration of justice so requires, the judge may at any time after a hearing, upon motion or sua sponte, order that the stay be terminated.

(d) **Motions to terminate stay**

A motion to terminate a stay of execution may be filed before judgment; if it is, it may be ruled upon when judgment is entered. If such a motion is filed before judgment, or after judgment but before an appeal, it shall be filed in triplicate with the clerk of the superior court. If it is filed after an appeal is filed, an original and three copies shall be filed with the appellate clerk, who shall forward the motion to the judge who tried the case. That judge shall file any ruling thereon with the appellate clerk and with the clerk of the trial court where the matter was tried. If the judge who tried the case is unavailable, the motion shall be forwarded to the clerk of the court in the judicial district where the case was tried, who shall assign the motion for a hearing and decision to any judge of the superior court.

(e) **Motions to request stay**

Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(For stays of execution in criminal cases, see Section 61-13; for stays in death penalty cases, see Section 61-15.)

(P.B. 1978-1997, Sec. 4046.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended July 21, 1999, to take effect Jan. 1, 2000; amended July 26, 2000, to take effect Jan. 1, 2001; amended Oct. 10, 2001, to take effect Jan. 1, 2002; amended May 12, 2004, to take effect Jan. 1, 2005.)

Sec. 61-12. Discretionary Stays

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the superior court pending appeal shall be made to the judge who tried the case unless that judge is unavailable, in which case the motion may be made to any judge of the superior court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is

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rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditional on the posting of suitable security.

In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to take an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11.

(P.B. 1978-1997, Sec. 4047.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 61-13. Stay of Execution in Criminal Case

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

Except as otherwise provided in this rule, a judgment in a criminal case shall be stayed from the time of the judgment until the time to take an appeal has expired, and then, if an appeal is filed, until ten days after its final determination. The stay provisions apply to an appeal from a judgment, to an appeal from a judgment on a petition for a new trial and to a writ of error, where those matters arise from a criminal conviction or sentence. Unless otherwise provided in this rule, all stays are subject to termination under subsection (d).

(a) **Appeal by defendant arising from a sentence**

(1) **Sentence of imprisonment**

A sentence of imprisonment shall be stayed automatically by an appeal, provided the defendant is released on bail.

(2) **Sentence of probation or conditional discharge**

Upon motion by the defendant to the trial court, a sentence of probation or conditional discharge may be stayed if an appeal is taken. If the sentence is stayed, the court shall fix the terms of the stay. If the sentence on appeal is not stayed, the court shall specify when the term of probation shall commence. If the sentence is not stayed and a condition of the sentence is restitution or other payment of money, the court shall order that such payments be made to the clerk of the trial court to be held by said clerk until ten days after final determination of the appeal.

(3) **Sentence of a fine**

A sentence to pay a fine shall be stayed automatically by an appeal, and the stay shall not be subject to termination.

(4) **Sentencing sanctions of restitution and forfeiture**

The execution of a sanction of restitution or forfeiture of property, which was imposed as part of a sentence, shall be stayed automatically by an appeal. Upon motion by the state or upon its own motion, the trial court may issue orders reasonably necessary to ensure compliance with the sanction upon final disposition of the appeal.

(5) **Other sentencing sanctions**

Upon motion by the defendant, other sanctions imposed as part of a sentence, including those imposed under General Statutes §§ 53a-40c, 53a-40e, 54-102b, 54-102g, and 54-260, may be stayed by an appeal. If the sanction is stayed, the trial court may issue orders reasonably necessary to ensure compliance with the sanction upon final disposition of the appeal.

(b) **Appeal by defendant from presentence order**

In an appeal from a presentence order where the defendant claims that an existing right, such as a right not to be tried, will be irreparably lost if the order is not reviewed immediately, the appeal shall stay automatically further proceedings in the trial court.

(c) **Appeal by the state from a judgment**

In an appeal by the state, the appeal shall stay automatically further proceedings in the trial court until ten days after the final determination of the appeal. The defendant shall be released pending determination of an appeal by the state from any judgment not resulting in a sentence, the effect of which is to terminate the entire prosecution.

(d) **Motion for stay or to terminate a stay**

If a motion for a stay or a motion to terminate a stay is filed before the appeal is taken, the original motion and three copies shall be filed with the trial court. After the appeal is taken, the motion and three copies shall be filed in the appellate court; motions filed in the appellate court shall be forwarded by the clerk of the appellate court to the trial court for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the court in which the case was tried and shall be assigned for a hearing and decision to any judge of the superior court. Upon hearing and consideration of the motion, the trial court shall decide the motion by filing with the court clerk a written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by the court reporter and signed by the trial court. Pending the filing or consideration of a motion for stay, a temporary stay may be ordered sua sponte or on written or oral motion.

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In appeals by defendant from a presentence order and appeals by the state from a judgment, the judge who tried the case may terminate any stay, upon motion and hearing, if the judge is of the opinion that (1) an extension to appeal is sought, or the appeal is taken, only for delay, or (2) the due administration of justice so requires.

(For stays of execution in death penalty cases, see Section 61-15.)

(P.B. 1978-1997, Sec. 4048.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended Oct. 10, 2001, to take effect Jan. 1, 2002.)

Sec. 61-14. Review of Order concerning Stay; When Stay May Be Requested from Court Having Appellate Jurisdiction

(Amended July 23, 1998, to take effect Jan. 1, 1999.)

The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Execution of an order of the court terminating a stay of execution shall be stayed for ten days from the issuance of notice of the order, and if a motion for review is filed within that period, the order shall be stayed pending decision of the motion, unless the court having appellate jurisdiction rules otherwise.

A motion for extension of time to file a motion for review of a ruling concerning a stay of execution must be filed in the trial court but shall not automatically stay the execution after the ten days has expired, except that the trial judge may order a stay pending a ruling on the motion for extension of time.

A ruling concerning a stay is a judgment in a trial to the court for purposes of Section 64-1, and the trial court making such a ruling shall state its decision, either orally or in writing, in accordance with the requirements of that section.

In any case in which there is no automatic stay of execution and in which the trial court denies, or refuses to rule on, a motion for stay, an aggrieved party may request a stay of execution of the judgment from the court having appellate jurisdiction pending the filing of and ruling upon a motion for review. The request must be filed with the appellate clerk.

(P.B. 1978-1997, Sec. 4049. See also Secs. 66-2 and 66-3.) (Amended July 23, 1998, to take effect Jan. 1, 1999.)

Sec. 61-15. Stay of Execution in Death Penalty Case

If the defendant is sentenced to death, the sentence shall be stayed for the period within which to take an appeal. If the defendant has taken an appeal to the supreme or appellate court of this state or to the United States supreme court or brought a writ of error, writ of certiorari, writ of habeas corpus, application for a pardon or petition for a new trial, the taking of the appeal, the making of the application for a writ of certiorari or for a pardon, or the return into court of the writ of error, writ of habeas corpus, or petition for a new trial shall, unless, upon application by the state's attorney and after hearing, the supreme court otherwise orders, stay the execution of the death penalty until the clerk of the court where the trial was had has received notification of the termination of any such proceeding by decision or otherwise, and for thirty days thereafter. Upon application by the defendant, the supreme court may grant a stay of execution to prepare a writ of error, a writ of certiorari, writ of habeas corpus, application for a pardon or petition for a new trial. Upon application by the defendant and after hearing, the supreme court may extend a stay of execution beyond the time limits stated within this rule for good cause shown. No appellate procedure shall be deemed to have terminated until the end of the period allowed by law for the filing of a motion for reconsideration, or, if such motion is filed, until the proceedings consequent thereon are finally determined. When execution is stayed under the provisions of this section, the clerk of the court shall forthwith give notice thereof to the warden of the institution in which such defendant is in custody. If the original judgment of conviction has been affirmed or remains in full force at the time when the clerk has received the notification of the termination of any proceedings by appeal, writ of certiorari, writ of error, writ of habeas corpus, application for a pardon or petition for a new trial, and the day designated for the infliction of the death penalty has then passed or will pass within thirty days thereafter, the defendant shall, within said period of thirty days, upon an order of the court in which the judgment was rendered at a regular or special criminal session thereof, be presented before said court by the warden of the institution in which the defendant is in custody or his deputy, and the court, with the judge assigned to hold the session presiding, shall thereupon designate a day for the infliction of the death penalty and the clerk of the court shall issue a warrant of execution, reciting therein the original judgment, the fact of the stay of execution and the final order of the court, which warrant shall be forthwith served upon the warden or his deputy. (For stays of execution in other criminal cases, see Section 61-13.)

(Adopted July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 61-16. Notification of (1) Bankruptcy Filing, (2) Disposition of Bankruptcy Case and (3) Order of Bankruptcy Court Granting Relief from Automatic Stay

(a) If a party to an appeal files a bankruptcy petition, that party shall immediately notify the

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appellate clerk in writing. The notification shall set forth the date the bankruptcy petition was filed, the bankruptcy court in which the petition was filed, the name of the bankruptcy debtor and the docket number of the bankruptcy case.

(b) Upon resolution of the bankruptcy case, the party who filed for bankruptcy protection shall immediately notify the appellate clerk in writing that the case has been resolved in the bankruptcy court. If the bankruptcy court grants relief from the automatic bankruptcy stay, the party obtaining such relief shall immediately notify the appellate clerk in writing of the termination of the automatic stay.

(Adopted July 24, 2002, to take effect Oct. 1, 2002.)

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CHAPTER 62

CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 62-1. Chief Judge

(a) The chief justice shall designate one of the judges of the appellate court as chief judge of the appellate court.

(b) With the approval of the chief justice, the chief judge shall (1) schedule such sessions as may be necessary, at such locations as the facilitation of court business requires, (2) designate as many panels as may be necessary, and assign three judges to each panel, and (3) designate a presiding judge for each panel on which the chief judge does not sit.

(P.B. 1978-1997, Sec. 4028.)

Sec. 62-2. Clerk

The justices of the supreme court shall appoint an appellate clerk who shall be the chief clerk of the supreme court and of the appellate court, but who shall not be the chief clerk of any judicial district. As used in these rules, the clerk of any trial court from which an appeal is taken shall be referred to as the clerk of the trial court.

(P.B. 1978-1997, Sec. 4029.)

Sec. 62-3. Entry of Cases

The appellate clerk, upon receipt of an appeal, reservation, or writ of error, shall enter the case upon the docket of the court to which the appeal was taken.

(P.B. 1978-1997, Sec. 4031.)

Sec. 62-4. Case to Remain on Docket of Trial Court

A case that has been appealed shall remain on the docket of the court where it was tried until the appeal is decided or terminated.

(P.B. 1978-1997, Sec. 4032.)

Sec. 62-5. Changes in Parties

Any change in the parties to an action pending an appeal shall be made in the court in which the appeal is pending. The appellate clerk shall notify the clerk of the trial court of any change.

(P.B. 1978-1997, Sec. 4033.)

Sec. 62-6. Signature on Papers

All papers including original copies of briefs shall be signed by counsel of record. Each pleading or other document filed shall set forth the signer's telephone and facsimile numbers, mailing address, and, if applicable, the signer's juris number.

(P.B. 1978-1997, Sec. 4030.)

Sec. 62-7. Matters of Form; Filings; Certification to Counsel

It is the responsibility of counsel of record to submit papers for filing in a timely manner and in the proper form.

The appellate clerk may refuse to accept for filing any papers presented in a form not in compliance with these rules; in refusing, the appellate clerk shall indicate how the papers have failed to comply. The clerk shall stamp any papers refused with the date on which they were received before returning them, and shall retain a copy thereof. Any papers correcting a noncomplying filing shall be deemed to be timely filed if resubmitted to the appellate clerk without delay. The time for responding to any such paper shall not start to run until the correcting paper is filed.

Except for the transcript of evidence or where otherwise indicated, an original and fifteen copies of all papers shall be filed with the appellate clerk. For copies of the initial appeal papers, see Sections 63-3 and 63-4; for copies of papers withdrawing an appeal or writ of error, see Section 63-9; for copies of motions and opposition papers, see Section 66-3 (motions in general), Section

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66-1 (extension of time), Section 61-11 (termination of stay of execution), and Section 66-5 (rectification); for copies of briefs, see Section 67-2; for copies of the record, see Section 68-7; for copies of petitions for certification and opposition papers, see Sections 84-4 and 84-6; for copies of certified questions from courts of other jurisdictions, see Section 82-4.

All papers except the transcript and regulations filed pursuant to Section 81-6 shall contain a certification that a copy has been served on each other counsel of record, including the names, addresses and telephone and facsimile numbers of all counsel served. The certification concerning briefs may be signed by counsel of record or the printer on the last page of one of the briefs or on a separate typewritten document filed with the briefs. All service and filing by mail shall be by first class or express United States mail, postage prepaid, or by hand delivery.

If a document must be filed by a certain date under these rules or under any statutory provision, the document must be received by the appellate clerk by the close of business on that date; it is not sufficient that a document be mailed by that date to the appellate clerk unless a rule or statutory provision expressly so computes the time.

The signed original of documents filed pursuant to sections 66-3, 67-2, 81-2, 81-3, 84-5 and 84-6 shall bear an attached certificate indicating that the document is in compliance with all of the requirements of the rule under which it is being filed.

(P.B. 1978-1997, Sec. 4014.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended July 24, 2002, to take effect Oct. 1, 2002; amended May 15, 2003, to take effect Jan. 1, 2004.)

Sec. 62-8. Names of Counsel; Appearance

Counsel for all parties in the trial court shall be deemed to have appeared in the appeal unless permission to withdraw has been granted pursuant to Section 62-9 or unless an in lieu of appearance pursuant to Section 3-8 has been filed by other counsel. Counsel who filed the appeal or filed an appearance in the appellate court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. Unless otherwise provided by statute or rule, counsel who have so appeared shall be entitled to review all trial court docket sheets and files, including sealed files, and shall be entitled to participate in proceedings in the trial court on motions filed in the trial court pursuant to Section 66-1 and motions filed in the appellate court but referred to the trial court for decision. Where counsel did not file the appeal but have appeared in the appellate court, a copy of an appearance form stamped by the appellate clerk's office shall be satisfactory evidence of an appearance in an appeal. This rule shall not be deemed to permit appellate counsel to review records that were sealed as to trial counsel but retained in the trial court file for appellate review.

This rule shall not be deemed to excuse trial counsel with respect to preserving a defendant's right to appeal pursuant to Section 63-7; nor shall this rule prevent trial counsel from moving for a withdrawal of appearance pursuant to Section 62-9.

No change, substitution or withdrawal of counsel shall be permitted after the due date of the final reply brief without leave of the court.

(P.B. 1978-1997, Sec. 4034.) (Amended Sept. 8, 2004, to take effect Jan. 1, 2005; amended May 4, 2006, to take effect Jan. 1, 2007; amended Jan. 4, 2007, to take effect Jan. 1, 2008.)

Sec. 62-8A. Attorneys of Other Jurisdictions Participating Pro Hac Vice on Appeal

(a) An attorney, who upon written application pursuant to Section 2-16 has been permitted by a judge of the superior court to participate in the presentation of a cause or appeal pending in this state, shall be allowed to participate in any appeal of said cause without filing a written application to the court having jurisdiction over the appeal. All terms, conditions and obligations set forth in Section 2-16 shall remain in full effect. The chief clerk of the superior court for the judicial district in which the cause originated shall continue to serve as the agent upon whom process and notice of service may be served.

(b) Any attorney who is in good standing at the bar of another state and who has not appeared pro hac vice in the superior court to participate in the cause now pending on appeal, may for good cause shown, upon written application presented by a member of the bar of this state, be permitted in the discretion of the court having jurisdiction over the appeal to participate in the presentation of the appeal; provided, however, that (1) such application shall be accompanied by an affidavit (A) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred or has resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (B) designating the chief clerk of the superior court for the judicial district in which the cause originated as his or her agent upon whom process and notice of service may be served, and agreeing to register with the statewide grievance committee in accordance with the provisions of chapter 2 of

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the rules of practice while appearing in the appeal and for two years after the completion of the matter in which the attorney appeared, (C) identifying the number of attorneys in his or her firm who are appearing pro hac vice in the cause now on appeal or who have filed or intend to file an application to appear pro hac vice in this appeal, and (D) stating whether an application was filed pursuant to Section 2-16 in the superior court and, if so, the disposition of said application, and (2) a member of the bar of this state must be present at all proceedings and arguments and must sign all motions, briefs and other papers filed with the court having jurisdiction over the appeal and assume full responsibility for them and for the conduct of the appeal and of the attorney to whom such privilege is accorded. Said application shall be made to the court having jurisdiction over the appeal. The application shall be filed in accordance with Sections 66-2 and 66-3. Good cause for according such privilege may include a showing that by reason of a long-standing attorney-client relationship, predating the cause of action or subject matter of the appeal, the attorney has acquired a specialized skill or knowledge with respect to issues on appeal or to the client's affairs that are important to the appeal, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the statewide grievance committee of such action.

(c) No application to appear pro hac vice shall be permitted after the due date of the final reply brief as set forth in Section 67-3 without leave of the court.

(Adopted May 4, 2006, to take effect Jan. 1, 2007; amended Jan. 4, 2007, to take effect Jan. 1, 2008.)

Sec. 62-9. Withdrawal 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 lieu of the appearance of such attorney or party in accordance with Section 62-8.

(b) An attorney may, by motion, withdraw his or her appearance for a party after an additional appearance representing the same party has been entered on the docket. A motion to withdraw pursuant to this subsection shall state that an additional appearance has been entered on appeal. The appellate clerk may as of course grant the motion if the additional appearance has been entered.

(c) Except as provided in subsections (a) and (b), no attorney whose appearance has been entered on the docket shall withdraw his or her appearance without leave of the court. A motion for leave to withdraw shall be filed with the appellate clerk in accordance with Sections 66-2 and 66-3. The motion shall include the current address of the party as to whom the attorney seeks to withdraw. No motion for leave to withdraw shall be granted until the court is satisfied that reasonable notice has been given to the party being represented and to other counsel and pro se parties of record. Reasonable notice to the party or parties may be satisfied by filing along with the motion, a certified or registered mail return receipt signed by the individual party or parties represented by the attorney.

(d) A motion for leave to withdraw appearance of appointed appellate counsel pursuant to Section 43-34 shall be filed with the appellate clerk. The form of the motion shall comply with Sections 66-2 and 66-3, except that only an original and one copy shall be filed. The brief accompanying the motion, as required under Section 43-35, shall comply with Section 43-35 in form and substance. The original of the brief and the transcript of the pertinent proceedings shall be filed with the appellate clerk with the motion to withdraw. The motion, brief and transcript shall be referred to the trial court for decision. That decision may be reviewed pursuant to Section 66-6.

(P.B. 1978-1997, Sec. 4035.) (Amended Jan. 29, 2009, to take effect March 1, 2009.)

Sec. 62-9A. Hybrid Representation; Removal or Substitution of Counsel in Criminal and Habeas Corpus Appeals

(Amended Jan. 29, 2009, to take effect March 1, 2009.)

On appeal, a defendant or habeas petitioner has no right to self-representation while represented by counsel. If an indigent defendant or habeas petitioner wishes to replace appointed counsel or remove appointed counsel and appear pro se, in lieu of such counsel, the defendant or habeas petitioner shall file a motion with the appellate clerk making such request and setting forth the reasons therefor. An original and three copies of the motion shall be filed. A copy of such motion shall be served, in accordance with Section 62-7, upon the attorney sought to be removed or replaced and upon the state.

The appellate clerk shall forward the motion to the trial judge, who shall conduct a hearing and enter appropriate orders consistent with the relevant provisions of chapter 44 of these rules. The

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decision on the motion shall be filed with the appellate clerk.

(Adopted Sept. 8, 2004, to take effect Jan. 1, 2005; amended Jan. 29, 2009, to take effect March 1, 2009.)

Sec. 62-10. Files to Be Available to Parties

Subject to the provisions of Section 62-11, the clerk of the trial court and the appellate clerk or the appellate messenger having custody of the files, evidence and exhibits in any case shall make them available for the use of any party or counsel to that party, whether or not the file is sealed. This provision applies to counsel who have appeared in either the trial court or the appellate court. This rule shall not be deemed to permit appellate counsel to review records that were sealed as to trial counsel but retained in the trial court file for appellate review.

(P.B. 1978-1997, Sec. 4036.) (Amended Sept. 8, 2004, to take effect Jan. 1, 2005.)

Sec. 62-11. Files and Records Not to Be Removed

No files, records or exhibits in the custody of officers of the court shall be removed from the court except by the appellate clerk, the reporter of judicial decisions or by order or permission of an appellate jurist.

(P.B. 1978-1997, Sec. 4037.)

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CHAPTER 63

FILING THE APPEAL; WITHDRAWALS

Sec.
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 63-1. Time to Appeal

(a) **General provisions**

Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. The appeal period may be extended if permitted by Section 66-1 (a). If circumstances give rise to a new appeal period as provided in subsection (c) of this rule, such new period may be similarly extended as long as no extension of the original appeal period was obtained.

If a motion is filed within the appeal period that might give rise to a new appeal period as provided in subsection (c) of this rule, the appeal may be filed either in the original appeal period, which continues to run, or in the new appeal period.

As used in this rule, ''appeal period'' includes any extension of such period obtained pursuant to Section 66-1 (a).

(b) **When appeal period begins**

If notice of the judgment or decision is given in open court, the appeal period shall begin on that day. If notice is given only by mail, the appeal period shall begin on the day that notice was mailed to counsel and pro se parties of record by the trial court clerk. The failure to give notice of judgment to a nonappearing party shall not affect the running of the appeal period.

In criminal cases where the appeal is from a judgment of conviction, the appeal period shall begin when sentence is pronounced in open court.

In civil jury cases, the appeal period shall begin when the verdict is accepted.

(c) **New appeal period**

(1) **How new appeal period is created**

If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion, except as provided for additur or remittitur in the next paragraph.

If a motion for additur or remittitur is filed within the appeal period and granted, a new twenty day appeal period shall begin upon the earlier of (A) acceptance of the additur or remittitur or (B) expiration of the time set for the acceptance. If the motion is denied, the new appeal period shall begin on the day that notice of the ruling is given.

Motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; the setting aside of the verdict; judgment notwithstanding the verdict; reargument of the judgment or decision; collateral source reduction; additur; remittitur; or any alteration of the terms of the judgment.

Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court's decision; or reargument of a motion listed in the previous paragraph.

If, within the appeal period, any motion is filed, pursuant to Section 63-6 or 63-7, seeking waiver of fees, costs and security or appointment of counsel, a new twenty day appeal period or statutory period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion. If a party files, pursuant to Section 66-6, a motion for review of any such motion, the new appeal period shall begin on the day that notice of the ruling is given on the motion for review.

(2) **Who may appeal during new appeal period**

If a new appeal period arises due to the filing of a motion that, if granted, would render a judgment, decision or acceptance of the verdict ineffective,

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any party may take an appeal during the new appeal period regardless of who filed or prevailed upon such motion. If, however, a new appeal period arises due to the filing of a motion for waiver of fees, costs and security or a motion for appointment of counsel, only the party who filed such motion may take an appeal during the new appeal period.

(3) **What may be appealed during new appeal period**

The new appeal period may be used for appealing the original judgment or decision and/or for appealing any order that gave rise to the new appeal period. Such period may also be used for amending an existing appeal pursuant to Section 61-9 to challenge the ruling that gave rise to the new appeal period. Rulings on motions for waiver of fees, costs and security or motions for appointment of counsel may not be appealed during the new appeal period but may be challenged by motion for review in accordance with Section 66-6.

(d) **When motion to stay briefing obligations may be filed**

If, after an appeal has been taken but before the appeal period has expired, any motion is filed that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, any party may move to stay the briefing obligations of the parties in accordance with Section 67-12.

(e) **Simultaneous filing of motions**

Any party filing more than one motion that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, shall file such motions simultaneously insofar as simultaneous filing is possible.

(P.B. 1978-1997, Sec. 4009.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended Sept. 22, 2004, to take effect Jan. 1, 2005; amended June 17, 2008, to take effect Jan. 1, 2009.)

Sec. 63-2. Expiration of Time Limitations; Counting Days

In determining the last day for filing any papers, the last day shall, and the first day shall not, be counted. Time shall be counted by calendar, not working, days.

When the last day of any limitation of time for filing any paper under these rules or an order of the court falls on a day when the office of the trial court or of the appellate clerk is not required to be open, the paper may be filed on the next day when such office is required so to be open.

(P.B. 1978-1997, Sec. 4010.)

Sec. 63-3. Filing of Appeal; Number of Copies

(Amended July 30, 2009, to take effect Jan. 1, 2010.)

Any appeal may be filed in the original trial court or the court to which the case was transferred or in any judicial district court in the state, except that juvenile appeals and appeals from interlocutory orders, if permitted by law, must be filed with the clerk of the original trial court or the court to which the case was transferred. An appeal in any case that may be e-filed pursuant to Section 4-4 also may be e-filed in accordance with the procedures and technical standards set forth on the judicial branch website. An application for a fee waiver pursuant to Sections 63-6 or 63-7 must be filed with the clerk of the court in which the case was tried or otherwise resolved.

The original appeal form shall be accompanied by a certification that a copy thereof has been served on each counsel of record, as defined in Section 60-4, in accordance with the provisions of Section 62-7. At the time the appeal is filed, the appellant shall, as set forth in Section 63-5, pay to the clerk of the trial court all required fees. The clerk shall: (1) endorse on the original appeal form the date and time of filing and the receipt or waiver of fees; (2) return the original endorsed appeal form to the appellant; and (3) immediately notify the clerk of the original trial court that an appeal has been filed. In addition, in noncriminal matters, the clerk shall, without cost, provide the appellant with a copy of the docket sheet (DS1) listing the counsel for all parties. In criminal and habeas corpus matters, the clerk shall also send a copy of the endorsed appeal form to the office of the chief state's attorney, appellate bureau. If an appeal is e-filed, the paper confirmation of e-filing, together with the appeal form, shall be used in lieu of the endorsed appeal form for purposes of this rule.

On the same day on which the original appeal form is endorsed by the trial court clerk, the appellant shall deliver a copy of the endorsed appeal form to the clerk of the trial court in which the case was originally filed and the clerk of any trial court to which the case was subsequently transferred. The copy may be delivered by hand, fax or any other electronic means permitted by Section 4-4. The appellant shall obtain proof that the original trial court and any subsequent trial court received the copy on the same day on which it was delivered.

Within ten days of filing the appeal, the appellant shall file with the appellate clerk the original and one copy of the endorsed appeal form; the docket sheet, if any; the papers required by Section 63-4; and proof that a copy of the endorsed appeal form was transmitted to the original trial court and to any trial court to which the case subsequently was transferred. The appellant shall certify that a copy of the endorsed appeal form was served on: (1) the clerk of the original trial

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court; (2) the clerk of any other trial court to which the case was transferred; and (3) any trial court whose decision is the subject of the appeal. The appellant shall also certify that a copy of the endorsed appeal form and all other papers required by Section 63-4 was served on (1) every other party in the manner set forth in Section 62-7 and (2) in criminal and habeas corpus matters, the office of the chief state's attorney, appellate bureau.

The appellate clerk, upon receipt of the foregoing, shall docket the appeal, affix to the endorsed appeal form the docket number assigned to the appeal and send one copy to the trial judge and one copy to each party to the appeal and, in criminal and habeas corpus matters, to the office of the chief state's attorney, appellate bureau.

(P.B. 1978-1997, Sec. 4012.) (Amended July 30, 2009, to take effect Jan. 1, 2010; amended March 25, 2010, to take effect May 1, 2010.)

Sec. 63-4. Additional Papers to Be Filed by Appellant and Appellee when Filing Appeal

(a) At the time the appellant sends a copy of the endorsed appeal form and the docket sheet to the appellate clerk, the appellant shall also send the appellate clerk an original and one copy of the following:

(1) A preliminary statement of the issues intended for presentation on appeal. If any appellee wishes to (A) present for review alternate grounds upon which the judgment may be affirmed, (B) present for review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial, or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A preliminary designation of the specific pleadings in the trial court case file which the appellant deems necessary to include in the record including their dates of filing in the trial court, and, if applicable, their number as listed on the docket sheet. If any other party objects to the inclusion of any pleadings in the trial court case file designated by the appellant or deems it necessary to include other pleadings in the record, that party may, within twenty days from the filing of the appellant's designation of the record, file an objection to the designation of the appellant, or file a designation of those other pleadings deemed necessary. No portion of the transcript of evidence shall be designated for inclusion in the record. Any objection or proposed supplemental designation shall be reviewed by the appellate clerk pursuant to Section 68-3. The appellant shall file a revised designation of the specific pleadings at the time the brief of the appellant is filed.

(3) A certificate stating that no transcript is deemed necessary, or a copy of the transcript order acknowledgment form (JD-ES-38) with section I thereof completed, filed with the official reporter pursuant to Section 63-8. If any other party deems any other parts of the transcript necessary, that party shall, within twenty days from the filing of the appellant's transcript papers, file a copy of the order form (JD-ES-38), which that party has placed in compliance with Section 63-8.

If the appellant is to rely on transcript delivered prior to the taking of the appeal, an order form (JD-ES-38) shall be filed stating that an electronic version of a previously delivered transcript has been ordered. The detailed statement of the transcript to be relied on required by Section 63-8 also must be filed. If any other party deems any other parts of the transcript necessary, and those parts have not been delivered at the time of the taking of the appeal, that party shall have twenty days to order those additional parts. If any other party is to rely on transcript delivered prior to the taking of the appeal, an order form (JD-ES-38) shall be filed within twenty days, stating that an electronic version of a previously delivered transcript has been ordered.

(4) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal and their trial and appellate counsel and the names and addresses of all persons having a legal interest in the cause on appeal sufficient to raise a substantial question whether a judge should be disqualified from participating in the decision on the case by virtue of that judge's personal or financial interest in any such persons; (B) the case names and docket numbers of all pending appeals to the supreme court or appellate court which arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by the appeal; (C) whether there were exhibits in the trial court; and (D) in criminal cases, whether the defendant is incarcerated as a result of the proceedings in which the appeal is being taken. If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant.

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(5) In all noncriminal matters, except for matters exempt from a preargument conference pursuant to Section 63-10, a preargument conference statement.

(6) Except for (A) habeas corpus matters based on criminal convictions, (B) pre- and postjudgment orders in matters claiming dissolution of marriage, legal separation or annulment, (C) prejudgment remedies under chapter 903a of the General Statutes and (D) actions of foreclosure of title to real property, in all noncriminal cases, a draft judgment file prepared in the form prescribed by Section 6-2 et seq. If any appellee disagrees in any respect with the draft judgment file, that appellee shall file either a statement specifying the disagreement or a separate draft judgment file within twenty days of the filing of the appellant's draft. The appellate clerk shall transmit the appellant's draft judgment file and any disagreeing statements or other drafts to the trial court clerk. The trial court clerk shall, within twenty days of receipt of such documents and, if necessary, after consultation with the judge who tried the case, file the original judgment file, sending copies, in the manner prescribed by Section 68-1, to the appellate clerk. The appellate clerk shall send copies to all counsel of record on the appeal. Any objections to the form of the judgment file may thereafter be raised only by a motion for rectification under Section 66-5.

If the trial court clerk fails to file the original judgment file within twenty days as required, the appellant may file with the appellate clerk a notice that the judgment file has not been so filed. The appellate clerk shall notify the trial court clerk and the trial judge of the pending appeal and the fact that the disagreement over the judgment file has not been resolved, after which the trial court clerk shall promptly file the judgment file as prescribed above.

(7) Except for habeas corpus matters based on criminal convictions and all cases in which the attorney general is a party, has appeared on behalf of a party or has filed an amicus brief in proceedings prior to the appeal, in all noncriminal cases where the constitutionality of a state statute has been challenged, a notice identifying the statute, the name and address of the party challenging it, and whether the statute's constitutionality was upheld by the trial court. The appellate clerk shall send a copy of such notice to the attorney general.

(8) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a copy of the time, date, scope and duration of sealing order form (JD-CL-76) shall be attached to the appeal form. (See Section 77-2.)

(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues or the designation of the pleadings in the trial court case file at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. If leave to file such an amendment is granted, the adverse party shall have the right to move for permission to file a supplemental brief and for an extension of time. Amendments to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.

(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

(P.B. 1978-1997, Sec. 4013.) (Amended April 3, 2002, to take effect Nov.1, 2002; amended Oct. 14, 2003, to take effect Jan. 1, 2004; amended Jan. 4, 2007, to take effect Jan. 1, 2008; amended April 6, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, "except for matters exempt from a preargument conference pursuant to Section 63-10" was added to subdivision (5) of subsection (a), before "a preargument conference statement."

COMMENTARY—2012: Subdivision (5) of subsection (a), which addresses the filing of a preargument conference form in noncriminal cases, has been amended to exempt from the filing requirement those cases that are listed in Section 63-10 as not being eligible for preargument conferences.

Sec. 63-5. Fees

At the time of filing the appeal, the appellant, or one of the appellants, shall, unless the appeal is taken by the state, or the costs have been waived pursuant to Section 63-6 or 63-7, pay to the clerk of the trial court the fees provided by statute. Security for costs is not required to take an appeal, but security may at any time, on motion and notice to the appellant, be ordered by the court. Such security shall be filed with the trial court.

(P.B. 1978-1997, Sec. 4015.)

Sec. 63-6. Waiver of Fees, Costs and Security—Civil Cases

If a party in any case where fees and costs may lawfully be waived is indigent and desires to appeal, that party may, within the time provided by the rules for taking an appeal, make written application, to the court to which the fees required by statute or rule are to be paid, for relief from payment of fees, costs and expenses. The application must be under oath and recite, or it must be accompanied by an affidavit reciting, the grounds upon which the applicant proposes to appeal and the facts concerning the applicant's financial status.

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The judicial authority shall assign the request for waiver of fees, costs and expenses for a hearing within twenty days of its filing and shall act promptly on the application following the hearing. Where a request arises out of a habeas corpus proceeding, the request shall be handled pursuant to Section 63-7.

If the court is satisfied that the applicant is indigent and has a statutory or constitutional right to court appointed counsel or a statutory right to appeal without payment of fees, costs and expenses, the court may (1) waive payment by the applicant of fees specified by statute and of taxable costs, and waive the requirement of Section 63-5 concerning the furnishing of security for costs upon appeal, and (2) order that the necessary expenses of prosecuting the appeal be paid by the state. The court may not consider the relative merits of a proposed appeal in acting upon an application pursuant to this section.

Before incurring any expense in excess of $100, including the expense of obtaining a transcript of the necessary proceedings or testimony, counsel for the applicant shall obtain the permission of the judge who presided at the applicant's trial. The judge shall authorize a transcript at state expense only of the portions of testimony or proceedings which may be pertinent to the issues on appeal.

The sole remedy of any party desiring the court to review an order concerning the waiver of fees, costs and security shall be by motion for review under Section 66-6.

(P.B. 1978-1997, Sec. 4017.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amened June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 63-7. Waiver of Fees, Costs and Security—Criminal Cases

Any defendant in a criminal case who is indigent and desires to appeal, and has not previously been determined to be indigent, may, within the time provided by the rules for taking an appeal, make written application to the court to which the fees required by statute or rule are to be paid, for relief from payment of fees, costs and expenses. The application must be under oath and recite, or it must be accompanied by an affidavit reciting, the grounds upon which the applicant proposes to appeal and the facts concerning the applicant's financial status.

The application must be sent to the public defender's office for investigation. The judicial authority shall assign the request for waiver of fees, costs and expenses for hearing within twenty days after filing, and the trial counsel, the trial public defender's office to which the application had been sent for investigation and the chief of legal services of the public defender's office shall be notified in writing by the clerk's office of the date of such hearing.

The judicial authority shall act promptly on the application following the hearing. Upon determination by the judicial authority that a defendant in a criminal case is indigent, the court to which the fees required by statute or rule are to be paid may (1) waive payment by the defendant of fees specified by statute and of taxable costs, and waive the requirement of Section 63-5 concerning the furnishing of security for costs upon appeal, (2) order that the necessary expenses of prosecuting the appeal be paid by the state, and (3) appoint appellate counsel and permit the withdrawal of the trial attorney's appearance provided the judicial authority is satisfied that that attorney has cooperated fully with appellate counsel in the preparation of the defendant's appeal as set forth in Section 43-33.

When the judicial authority has appointed an attorney in private practice to represent the defendant upon appeal, the attorney shall obtain the approval of the judicial authority who presided at the trial before incurring any expense in excess of $100, including the expense of obtaining a transcript of the necessary proceedings or testimony. The judicial authority shall authorize a transcript at state expense only of the portions of proceedings or testimony which may be pertinent to the issues on appeal.

The sole remedy of any defendant desiring the court to review an order concerning the waiver of fees, costs and security or the appointment of counsel shall be by motion for review under Section 66-6.

(P.B. 1978-1997, Sec. 4018.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 63-8. Ordering and Filing of Transcripts

(a) On or before the date of filing the appeal, the appellant shall, subject to Section 63-6 or 63-7 if applicable, order, using Form JD-ES-38, from the official reporter a transcript and an electronic version of a transcript of the parts of the proceedings not already on file which the appellant deems necessary for the proper presentation of the appeal. Such order shall specify the case name, docket number, judge's name(s), and hearing date(s), and include a detailed statement describing the parts of the proceedings of which a transcript has been ordered, for example, "the voir dire on Monday, May 25, 1995," or "the entire sentencing proceeding before Smith, J., on June 4, 1995." If any other party deems other parts of the transcript necessary, that party shall, within twenty days from the filing of the appeal, similarly

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order those parts, and an electronic version of those parts, in writing from the official reporter.

(b) A party must make satisfactory arrangements for payment of the costs of the transcript, pursuant to guidelines established by the chief court administrator. After those arrangements have been made, the official reporter shall send the party who ordered the transcript a written acknowledgment of the order, including an estimate of the date of delivery of, and the number of pages in, the transcript. The ordering party shall file it forthwith with the appellate clerk with certification pursuant to Section 62-7 to all counsel of record. The official reporter shall also immediately send copies of the acknowledgment to the chief court administrator and the appellate clerk. If the final portion of the transcript cannot be delivered on or before the estimated delivery date on the acknowledgment, the official reporter will, not later than the next business day, issue to the ordering party an amended transcript order acknowledgment form (JD-ES-38A) with a revised estimated delivery date and shall also immediately send copies of the amended acknowledgment form to the chief court administrator and the appellate clerk. The ordering party shall file the amended acknowledgment form forthwith with the appellate clerk with certification pursuant to Section 62-7 to all counsel of record.

(c) The official reporter shall cause each court reporter involved in the production of the transcript to prepare a certificate of delivery stating the number of pages in the transcript and the date of its delivery to the party who ordered it, and a certificate stating that an electronic version of the transcript has been produced and delivered in accordance with section 63-8A. If delivery is by mail, the transcript, including the electronic version of the transcript, shall be mailed first class certified, return receipt requested. The date of mailing is the date of delivery. If delivery is manual, the court reporter shall obtain a receipt acknowledging delivery. The date of the receipt is the date of delivery. Each court reporter shall forward the certificates of delivery to the official reporter with a copy to the chief court administrator. Upon receipt of all the certificates of delivery, the official reporter shall forward to the appellate clerk, with copies to the chief court administrator and the party who ordered the transcript, including an electronic transcript, a certificate of completion stating the total number of pages in the entire transcript and the date of final delivery of the transcript.

(d) Upon receipt of the certificate of completion from the official reporter, counsel who ordered the transcript shall file a certification that a paper copy of the certificate of completion has been sent to all counsel of record in accordance with Section 62-7.

(e) (1) The appellant is required, either before or simultaneously with the filing of the appellant's brief, to file with the appellate clerk one unmarked, nonreturnable copy of the transcript, including a copy of the court reporter's certification page, ordered pursuant to subsection (a).

(2) All other parties are likewise required, either before or simultaneously with the filing of their briefs, to file those additional portions ordered pursuant to subsection (a) but shall not include the portions already filed by the appellant.

(3) The party filing the transcript shall provide the appellate clerk and all opposing counsel with a list of the number, and inclusive dates, of the volumes being filed. Form JD-CL-62, or one similar to it, should be used to satisfy this subsection.

(P.B. 1978-1997, Sec. 4019.) (Amended April 3, 2002, to take effect Nov. 1, 2002.)

Sec. 63-8A. Electronic Copies of Transcripts

(a) Any party ordering a transcript of evidence as part of an appeal, a writ of error, or a motion for review shall, at the same time, order from the court reporter an electronic version of the transcript. If the party already has the transcript to be submitted to the court, the party shall order an electronic version of the transcript within the period specified by these rules for the ordering of a transcript.

(b) Whenever an electronic transcript is ordered in accordance with this section, the court reporter shall produce, on disks provided by the official court reporter, an electronic version of the transcript in Rich Text File (rtf) format.

(c) The court reporter shall file a disk containing the electronic version of the transcript with the appropriate court and with the ordering party, together with a certification that the electronic version of the transcript is accurate and a certificate of delivery.

(d) The electronic version of the transcript shall be filed with the court and delivered to the ordering party at the same time as the paper copy is delivered to the ordering party, provided that if only an electronic version of the transcript is ordered, the electronic version shall be filed and delivered within ten days of its order unless a different time period is specified by the court.

(Adopted Sept. 12, 2002, to take effect Nov.1, 2002.)

Sec. 63-9. Filing Withdrawals of Appeals or Writs of Error

A withdrawal of an appeal or writ of error shall be filed with the appellate clerk, who shall send

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a copy to the trial judge and the clerk of the trial court.

Prior to oral argument, an appeal or writ of error may be withdrawn as of right; thereafter it may be withdrawn only on motion to the court in which the appeal is pending.

Unless an appeal or writ of error is withdrawn on the consent of the appellee without costs, costs shall be taxed as if the trial court judgment had been affirmed.

(P.B. 1978-1997, Sec. 4038.)

Sec. 63-10. Preargument Conferences

The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct that conferences of the parties be scheduled in advance of oral argument. All civil cases are eligible for preargument conferences except habeas corpus appeals; appeals where a party is self-represented; appeals involving juveniles, such as delinquency and termination of parental rights cases; and appeals from the suspension of a motor vehicle license due to operating under the influence of liquor or drugs. A party in an exempt case may request a preargument conference by writing a letter, certified to all parties, to the appellate clerk explaining why the case should not be exempt. The chief justice may designate a judge trial referee or senior judge to preside at a conference. The scheduling of or attendance at a preargument conference shall not affect the duty of the parties to adhere to the times set for the filing of briefs. Failure of counsel to attend a preargument conference may result in the imposition of sanctions under Section 85-2. Unless other arrangements have been approved in advance by the conference judge, parties shall be present at the conference site and available for consultation. When a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such preargument conference unless the conference judge, in his or her discretion, requires the attendance of the adjuster at the conference. The conference proceedings shall not be brought to the attention of the court by the presiding officer or any of the parties unless the conference results in a final disposition of the appeal.

The following matters may be considered:

(1) Possibility of settlement;

(2) Simplification of issues;

(3) Amendments to the preliminary statement of issues;

(4) Transfer to the supreme court;

(5) Timetable for the filing of briefs;

(6) En banc review; and

(7) Such other matters as the conference judge shall consider appropriate.

All matters scheduled for a preargument conference before a judge trial referee are referred to that official by the chief court administrator pursuant to General Statutes § 52-434a, which vests judge trial referees with the same powers and jurisdiction as superior court judges and senior judges, including the power to implement settlements by opening and modifying judgments.

(P.B. 1978-1997, Sec. 4103.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended April 6, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, the first sentence of this section read: "The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct the appellate clerk to schedule conferences of the parties in advance of oral argument." In 2012, what are now the second and third sentences were added.

COMMENTARY—2012: The first sentence of the rule has been amended to delete the reference to the appellate clerk's office as being the entity responsible for scheduling preargument conferences. In fact, the conference judges, not the appellate clerk's office, schedule preargument conferences. The two new sentences list matters that are not eligible for preargument conferences and create a procedure for requesting a conference in an exempt case.

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CHAPTER 64

PROCEDURE CONCERNING MEMORANDUM OF DECISION

Sec.
64-1. Statement of Decision by Trial Court; When Required; How Stated; Contents
Sec.
64-2. Exceptions to Section 64-1

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 64-1. Statement of Decision by Trial Court; When Required; How Stated; Contents

(Amended July 23, 1998, to take effect Jan. 1, 1999.)

(a) The court shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of executions, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Section 41-8, (4) in ruling on motions to suppress under Section 41-12, (5) in granting a motion to set aside a verdict under Section 16-35, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter, and, if there is an appeal, the trial court shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed in the trial court clerk's office. This section does not apply in small claims actions and to matters listed in Section 64-2.

(b) If the trial judge fails to file a memorandum of decision or sign a transcript of the oral decision in any case covered by subsection (a), the appellant may file with the appellate clerk an original and three copies of a notice that the decision has not been filed in compliance with subsection (a). The notice shall specify the trial judge involved and the date of the ruling for which no memorandum of decision was filed. The appellate clerk shall promptly notify the trial judge of the filing of the appeal and the notice. The trial court shall thereafter comply with subsection (a).

(P.B. 1978-1997, Sec. 4059.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 64-2. Exceptions to Section 64-1

(a) In any uncontested matter where no aspect of the matter is in dispute, in any pendente lite family relations matter whether contested or uncontested, or in any dismissal under Section 14-3, the oral or written decision as provided in Section 64-1 is not required. The trial clerk shall, however, promptly notify the trial judge of the filing of the appeal.

(b) Within twenty days from the filing of an appeal from a contested pendente lite order or from a dismissal under Section 14-3 in which an oral or written decision has not been made pursuant to subsection (a), each party to the appeal shall file a brief with the trial court discussing the legal and factual issues in the matter. Within twenty days after the briefs have been filed by the parties, the court shall file a written memorandum of decision stating the factual basis for its decision on the issues in the matter and its conclusion as to each claim of law raised by the parties.

(P.B. 1978-1997, Sec. 4060.)

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CHAPTER 65

TRANSFER OF CASES

Sec.
65-1. Transfer of Cases by Supreme Court
65-2. Motion for Transfer from Appellate Court to Supreme Court
65-3. Transfer of Petitions for Review of Bail Orders from Appellate Court to Supreme Court
65-4. Transfer of Matters Brought to Wrong Court

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 65-1. Transfer of Cases by Supreme Court

When, pursuant to General Statutes § 51-199 (c), the supreme court (1) transfers to itself a cause in the appellate court, or (2) transfers a cause or a class of causes from itself to the appellate court, the appellate clerk shall notify all parties and the clerk of the trial court that the appeal has been transferred. A case so transferred shall be entered upon the docket of the court to which it has been transferred. There shall be no fee on such transfer. The appellate clerk may require the parties to take such steps as may be necessary to make the appeal conform to the rules of the court to which it has been transferred, for example, supply the court with additional copies of the record and the briefs.

(P.B. 1978-1997, Sec. 4023.)

Sec. 65-2. Motion for Transfer from Appellate Court to Supreme Court

After the filing of an appeal in the appellate court, but in no event after the case has been assigned for hearing, any party may move for transfer to the supreme court. The motion, addressed to the supreme court, shall specify, in accordance with provisions of Section 66-2, the reasons why the party believes that the supreme court should hear the appeal directly. A copy of the memorandum of decision of the trial court, if any, shall be attached to the motion. The filing of a motion for transfer shall not stay proceedings in the appellate court.

If, at any time before the final determination of an appeal, the appellate court is of the opinion that the appeal is appropriate for supreme court review, the appellate court may file a brief statement of the reasons why transfer is appropriate. The supreme court shall treat the statement as a motion to transfer and shall promptly decide whether to transfer the case to itself.

(P.B. 1978-1997, Sec. 4024; 4135.)

Sec. 65-3. Transfer of Petitions for Review of Bail Orders from Appellate Court to Supreme Court

Whenever a petition for review of an order of the superior court concerning release is filed in the appellate court pursuant to General Statutes § 54-63g in any case on appeal to the supreme court or where the defendant could appeal to the supreme court if convicted, such petition shall be transferred to the supreme court pursuant to the exercise of the supreme court's transfer jurisdiction under General Statutes § 51-199 (c) for review of such order.

(P.B. 1978-1997, Sec. 4025.)

Sec. 65-4. Transfer of Matters Brought to Wrong Court

Any appeal or cause brought to the supreme court or the appellate court which is not properly within the jurisdiction of the court to which it is brought shall not be dismissed for the reason that it was brought to the wrong court but shall be transferred by the appellate clerk to the court with jurisdiction and entered on its docket. Any timely filed appeal or cause transferred shall be considered timely filed in the appropriate court. The appellate clerk shall notify all parties and the clerk of the trial court that the appeal or cause has been transferred. In the event that an appeal or cause is so transferred, no additional fees or security for costs will be due.

(P.B. 1978-1997, Sec. 4027.)

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CHAPTER 66

MOTIONS AND OTHER PROCEDURES

Sec.
66-1. Extension of Time
66-2. Motions, Petitions and Applications; Supporting Memoranda
66-2A. Supreme Court Briefs on Compact Disc; Hyperlinking
66-3. Motion Procedures and Filing
66-4. Hearings on Motions
66-5. Motion for Rectification; Motion for Articulation
66-6. Motion for Review; In General
66-7. Motion for Review of Motion for Rectification of Appeal or Articulation
66-8. Motion to Dismiss

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 66-1. Extension of Time

(a) Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be taken is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court to which the appeal is taken. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

For extensions of time to file a cross appeal, see Section 61-8; to file a petition for certification to the supreme court, see Section 84-7; to file a petition for certification to the appellate court, see Section 81-5.

(b) If an appeal has been filed, the time provided for taking any step necessary to prosecute or to defend the appeal may be extended by the court in which the appeal is pending.

(c) (1) Extensions shall be granted only upon a written motion filed with the clerk of the trial court, in the case of a preappeal motion, and with the appellate clerk, in the case of a postappeal motion. The motion, only an original of which need be filed, should set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been mailed to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been taken.

(2) The appellate clerk is authorized to grant or to deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(3) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.

(4) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(5) Any action by the trial court judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) (2) of this section is reviewable pursuant to Section 66-6.

(6) Postappeal motions for extension of time may be filed, signed or verified by electronic means that comply with procedures and technical standards set forth on the judicial branch website. A paper filed by electronic means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these

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rules. Service and proof of service shall be made pursuant to Sections 10-13, 10-14 and 62-7.

(P.B. 1978-1997, Sec. 4040.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended Feb. 1, 2005, to take effect Jan. 1, 2006; amended Jan. 29, 2009, to take effect March 1, 2009; amended July 30, 2009, to take effect Jan. 1, 2010.)

Sec. 66-2. Motions, Petitions and Applications; Supporting Memoranda

(a) Motions, petitions and applications shall be specific. No motion, petition or application will be considered unless it clearly sets forth in separate paragraphs appropriately captioned: (1) a brief history of the case; (2) the specific facts upon which the moving party relies; and (3) the legal grounds upon which the moving party relies. A separate memorandum of law may but need not be filed. If the moving party intends to file a memorandum of law in support of the motion, petition or application, however, such memorandum shall be filed with the motion, petition or application. A party intending to oppose a motion, petition or application shall file a brief statement clearly setting forth in separate paragraphs appropriately captioned the factual and legal grounds for opposition within ten days after the filing of the motion, petition or application. If an opposing party chooses to file a memorandum of law in opposition to a motion, petition or application, that party shall do so within ten days after the filing of the motion, petition or application. Responses to memoranda in opposition are not permitted. Except as provided in subsection (e) below, no proposed order is required.

(b) Except with special permission of the appellate clerk, the motion, petition or application and memorandum of law taken together shall not exceed ten pages, and the memorandum of law in opposition thereto shall not exceed ten pages.

(c) Where counsel for the moving party certifies that all other parties to the appeal have consented to the granting of the motion, petition or application, the motion, petition or application may be submitted to the court immediately upon filing and may be acted upon without awaiting expiration of the time for filing opposition papers. Notice of such consent certification shall be indicated on the first page of the document.

(d) Motions which are not dispositive of the appeal may be ruled upon by one or more members of the court subject to review by a full panel upon a motion for reconsideration pursuant to Section 71-5.

(e) Motions that are directed to the trial court, such as motions to terminate stay pursuant to Section 61-11 or motions for rectification or articulation pursuant to Section 66-5, shall: (1) include both the trial court and the appellate court docket numbers in the caption of the case; (2) state in the first paragraph the name of the trial court judge, or panel of judges, who issued the order or orders to be reviewed; (3) include a proper order for the trial court pursuant to Section 11-1; and (4) comply with the requirements of Section 66-3. Such motions will be forwarded to the trial court by the appellate clerk.

(P.B. 1978-1997, Sec. 4041.) (Amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 66-2A. Supreme Court Briefs on Compact Disc; Hyperlinking

In addition to the filing of the requisite number of printed briefs and the submission of the electronic version of briefs as required by Section 67-2, the supreme court will accept all briefs in an appeal on a single compact disc, read-only memory (CD-ROM). Counsel who wish to file such a CD-ROM should consult with opposing counsel and self-represented litigants who should cooperate in its preparation. If only one party wishes to participate in the preparation of the CD-ROM, that party may prepare the CD-ROM with briefs provided by all parties, as long as (1) those parties consent, (2) all briefs are hyperlinked as described below and (3) all parties who have filed briefs are afforded an opportunity to review the CD-ROM before it is filed.

The CD-ROM briefs shall comply with the current technical specifications available on the judicial branch website and shall be identical in content and format to the printed version. The CD-ROM briefs shall be word-searchable and hyperlinked to each other and to the full text of all cases, statutes, rules and treatises cited therein. The disc and its paper sleeve shall be labeled with the title of the case, the docket number and the documents reproduced on the disc.

Twenty copies of the CD-ROM shall be filed in the office of the appellate clerk no later than thirty days after the last paper brief is filed, accompanied by proof of service of at least one disc on each other party.

(Adopted July 30, 2009, to take effect Jan. 1, 2010.)

Sec. 66-3. Motion Procedures and Filing

Except as otherwise provided, the original and fifteen copies of motions, petitions, applications, memoranda of law and stipulations brought to the court shall be filed with the appellate clerk. All papers shall contain a certification that a copy has been served on each other counsel of record in accordance with the provisions of Section 62-7. No motion or other paper mentioned above shall be filed after expiration of the time for its filing, and no amendment to any of these filings shall be filed, except on written motion and by consent

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of the court. Motions shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in motions: arial and univers. Each page of a motion, petition, application, memorandum of law, stipulation and opposition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. A certificate shall be attached to the signed original paper, indicating that it is in compliance with all the provisions of this section.

(P.B. 1978-1997, Sec. 4042.) (Amended Oct. 16, 2002, to take effect Jan. 1, 2003; amended May 15, 2003, to take effect Jan. 1, 2004.)

Sec. 66-4. Hearings on Motions

Hearings on motions will be assigned only upon order of the court and only in exceptional cases. In cases involving parties who are self-represented and incarcerated, hearings on motions may be conducted by videoconference upon direction of the court.

(P.B. 1978-1997, Sec. 4043.) (Amended April 6, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, what is now the second sentence was added.

COMMENTARY—2012: This amendment mirrors the amendment to Section 70-1, which provides that oral argument in cases involving self-represented, incarcerated parties may be conducted by videoconference.

Sec. 66-5. Motion for Rectification; Motion for Articulation

A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought.

Except in cases where the trial court was a three judge court, an original and three copies of such motion shall be filed with the appellate clerk. Where the trial court was a three judge court, an original and five copies of such motion shall be filed. Any other party may oppose the motion by filing an original and three or five copies of an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation.

The appellate clerk shall forward the motion for rectification or articulation and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion for rectification or articulation for a decision on the motion. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues raised or for the proper presentation of questions reserved. The trial judge shall file the decision on the motion with the appellate clerk.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are based. The trial judge shall file any such order changing the judgment or the record with the appellate clerk.

Corrections made before the record is prepared shall be included in it. If the record has been prepared, the appellate clerk may prepare a supplemental record, to be distributed in the same way as the original record.

The sole remedy of any party desiring the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a timely motion pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation shall be filed within thirty-five days after the delivery of the last portion of the transcripts or, if none, after the filing of the appeal, or, if no memorandum of decision was filed before the filing of the appeal, after the filing of the memorandum of decision. If the court, sua sponte, sets a different deadline from that provided in Section 67-3 for filing the appellant's brief, a motion for rectification or articulation shall be filed ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. The filing deadline may be extended for good cause. No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.

A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.

(P.B. 1978-1997, Sec. 4051.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended July 24, 2002, to take effect Oct. 1, 2002.)

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Sec. 66-6. Motion for Review; In General

The court may, on written motion for review stating the grounds for the relief sought, modify or vacate any order made by the trial court under Section 66-1 (a); any action by the appellate clerk under Section 66-1 (c) (2); any order made by the trial court, or by the workers' compensation commissioner in cases arising under General Statutes § 31-290a (b), relating to the perfecting of the record for an appeal or the procedure of prosecuting or defending against an appeal; any order made by the trial court concerning a stay of execution in a case on appeal; any order made by the trial court concerning the waiver of fees, costs and security under Section 63-6 or 63-7; or any order concerning the withdrawal of appointed appellate counsel pursuant to Section 62-9 (d). Motions for review shall be filed within ten days from the issuance of notice of the order sought to be reviewed. Motions for review of the clerk's taxation of costs under judgments of the court having appellate jurisdiction shall be governed by Section 71-3.

If a motion for review of a decision depends on a transcript of evidence or proceedings taken by a court reporter, the moving party shall file with the motion either a transcript or a copy of the transcript order form (JD-ES-38). The opposing party may, within one week after the transcript or the copy of the order form is filed by the moving party, file either a transcript of additional evidence or a copy of the order form. Parties filing or ordering a transcript shall order an electronic version of the transcript in accordance with Section 63-8A.

(P.B. 1978-1997, Sec. 4053.) (Amended April 3, 2002, to take effect Nov. 1, 2002; amended June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 66-7. Motion for Review of Motion for Rectification of Appeal or Articulation

Any party aggrieved by the action of the trial judge as regards rectification of the appeal or articulation under Section 66-5 may, within ten days of the issuance of notice of the order sought to be reviewed, make a written motion for review to the court, to be filed with the appellate clerk, and the court may, upon such a motion, direct any action it deems proper. If the motion depends upon a transcript of evidence or proceedings taken by a court reporter, the procedure set forth in Section 66-6 shall be followed. Corrections which the court makes or orders made pursuant hereto shall be included in the prepared record in the same way in which, under Section 66-5, corrections made by the trial judge are included.

(P.B. 1978-1997, Sec. 4054.)

Sec. 66-8. Motion to Dismiss

Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Sections 66-2 and 66-3 within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided that a motion based on lack of jurisdiction may be filed at any time. The court may on its own motion order that an appeal be dismissed for lack of jurisdiction.

(P.B. 1978-1997, Sec. 4056.)

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CHAPTER 67

BRIEFS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 67-1. Brief and Appendix

In any brief or appendix, the plaintiff and defendant shall be referred to as such rather than as appellant and appellee, wherever it is possible to do so; on a reservation the plaintiff below shall be regarded as the appellant.

Each brief shall contain a concise statement of the principal issue or issues involved in the appeal. The statement ordinarily should not exceed one page in length and should be on a page by itself. The court may refuse to receive a brief not complying with this requirement.

The evidence referred to in the brief, and in the appendix if one is filed, will be deemed to embrace all testimony produced at the trial material to the issues on the appeal, although the court may, if sufficient cause appears, consult the transcript of evidence on file or the trial court case file to supplement or explain the evidence.

Any party to an appeal from an administrative agency who claims that the record before the agency does not support its decision, shall include in such party's brief or in the appendix thereto such portions of the record or evidence returned by the agency but not included in the record as that party deems material to such claim. If such portions of the record or evidence have already been included in another party's brief or appendix, inclusion in a second brief is not necessary, and reference to such already-filed brief or appendix will be sufficient. Any other party may include or refer to in that party's brief, reply brief or appendix such additional portions of the record or the evidence as such party deems material. The portions of the record returned by the agency contained in the record before the court and in an appendix to a brief, supplemented by such papers returned by the agency as are of such a nature that they cannot be conveniently photocopied, will be deemed to embrace all of the record returned by the agency material to the issues on the appeal. The court may, however, consult any of the papers returned by the agency to supplement or explain the portions contained in the record and briefs.

(P.B. 1978-1997, Sec. 4064.)

Sec. 67-2. Format; Copies; Electronic Briefing Requirement for Cases to Be Argued in the Supreme Court

(Amended Jan. 29, 2009, to take effect March 1, 2009.)

(a) Original briefs and appendices shall be typewritten or clearly photocopied from a typewritten original on white 8 1/2 by 11 inch paper. Unless ordered otherwise, the brief shall be copied on one side of the page only. The brief shall be fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page; footnotes and block quotations may, however, be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in briefs: arial and univers.

(b) If constitutional provisions, statutes, ordinances, regulations or portions of the transcript are contained in an appendix, they may be reproduced in their original form so long as the document is not reduced to less than 75 percent of its original form.

(c) Each page of a brief or appendix shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.

(d) Pages shall be numbered in the center of the bottom of the page.

(e) Briefs and appendices shall be firmly bound 1/4 inch from the left side, at points approximately 1/4, 1/2 and 3/4 of the length of the page, so as to make an easily opened volume.

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(f) Any request for deviation from the above requirements shall be addressed to the appellate clerk.

(g) If the appeal is in the supreme court, the original and twenty-five legible photocopies of each brief and appendix shall be filed with the appellate clerk, accompanied by certification of service attached to the original brief only that a copy thereof has been sent to each counsel of record and to any trial judge who rendered a decision which is the subject matter of the appeal, in compliance with Section 62-7. If the appeal is in the appellate court, the original and fifteen legible photocopies of each brief and appendix shall be filed with the appellate clerk, accompanied by certification of service attached to the original brief only that a copy thereof has been sent to each counsel of record and to any trial judge who rendered a decision which is the subject matter of the appeal, in compliance with Section 62-7. See Section 65-1 for cases subsequently transferred. Every brief shall designate on the front page the name, address, telephone and facsimile numbers and e-mail address of the individual counsel who is to argue the appeal. The plaintiff and defendant shall be referred to as such rather than as appellant and appellee, wherever it is possible to do so. For the purposes of this rule, on a reservation, the plaintiff below shall be regarded as the appellant.

(h) Briefs and separately bound appendices shall have a suitable front cover of heavy paper in the color indicated: briefs for appellants and plaintiffs in error, light blue; briefs for appellees and defendants in error, pink; reply briefs, white; briefs for amicus curiae, light green. Covers of briefs filed for cross appeals shall be of the same color as indicated for that party on the original appeal briefs. If a supplemental brief is ordered or permitted by the court, the cover shall be the same color as indicated for that party's original brief. A back cover is not necessary; however, if one is used, it must be white.

(i) Briefs and separately bound appendices must bear on the cover, in the following order, from the top of the page: (1) the name of the court; (2) the number of the case; (3) the name of the case as it appears in the judgment file of the trial court; (4) the nature of the brief (e.g., brief of the defendant-appellant; brief of the plaintiff-appellee on the appeal and of the plaintiff-cross appellant on the cross appeal); (5) the name, address and, if they are different from arguing counsel's telephone and facsimile numbers and e-mail address, the telephone and facsimile numbers and e-mail address of the party's counsel of record, and of the arguing counsel, if different. The foregoing shall be displayed in the upper case of an arial or univers typeface of 12 point or larger size. A certificate shall be attached to the signed, original brief, indicating that the brief complies with all the provisions of this rule.

(j) Sections 67-4, 67-5 and 67-8 should be consulted for guidance as to when an appendix is necessary and for specific requirements regarding appendices.

(k) In addition to the requirements of subsection (g) of this section, in a case that is to be argued in the supreme court, an electronic version of every brief filed by a party represented by counsel, or a person represented by counsel who has been granted permission to appear as an amicus curiae, shall be submitted to the court in accordance with guidelines established by the court and published on the judicial branch website. The electronic version shall be submitted as soon as practicable after the filing of the party's paper brief. A party who is not represented by counsel is not required to submit an electronic version of his or her brief. Any appendix, whether attached to the brief or separately bound, shall not be electronically submitted.

(*l*) No argument shall be allowed any party who has not filed a brief or who has not joined in the brief of another party.

(P.B. 1978-1997, Sec. 4064A.) (Amended June 7, 2001, to take effect Sept. 1, 2001; amended Jan. 29, 2009, to take effect March 1, 2009; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 67-3. Page Limitations; Time for Filing Briefs

Except as otherwise ordered, the brief of the appellant shall not exceed thirty-five pages and shall be filed within forty-five days after the delivery date of the transcript ordered by the appellant. In cases where no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, the appellant's brief shall be filed within forty-five days of the filing of the appeal.

The delivery date of the paper—not electronic—transcript shall be used, where applicable, in determining the filing date of briefs.

Any party whose interest in the judgment will not be affected by the appeal and who intends not to file a brief shall inform the appellate clerk of this intent prior to the deadline for the filing of the appellee's brief. In the case of multiple appellees, an appellee who supports the position of the appellant shall meet the appellant's time schedule for filing a brief.

Except as otherwise ordered, the brief of the appellee shall not exceed thirty-five pages, and shall be filed within thirty days after the filing of

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the appellant's brief or the delivery date of the portions of the transcript ordered only by that appellee, whichever is later.

The appellant may within twenty days after the filing of the appellee's brief file a reply brief which shall not exceed fifteen pages.

Where there is a cross appeal, the brief of the cross appellant shall be combined with the brief of the appellee, and this brief shall not exceed fifty pages, and shall be filed at the time the appellee's brief is due. The brief of the cross appellee shall be combined with the appellant's reply brief, if any, and this brief shall not exceed forty pages and shall be filed within thirty days after the filing of the original appellee's brief. The cross appellant may within twenty days after the filing of the cross appellee's brief file a cross appellant's reply brief which shall not exceed fifteen pages.

Where cases are consolidated or a joint appeal has been filed, the brief of the appellants and that of the appellees shall not exceed the page limitations specified above.

All page limitations shall be exclusive of appendices, the statement of issues, the table of authorities, the table of contents, if any, and, in the case of an amicus brief, the statement of the interest of the amicus curiae required by Section 67-7. The last page of a brief shall likewise not be counted if it contains only the signature of counsel of record.

Briefs shall not exceed the page limitations set forth herein except by permission of the chief justice or chief judge. Requests for permission to exceed the page limitations shall be made by letter, filed with the appellate clerk, stating both the compelling reason for the request and the number of additional pages sought.

Where a claim relies on the state constitution as an independent ground for relief, the clerk shall, upon request by letter, grant an additional five pages for the appellant and appellee briefs, and an additional two pages for the reply brief, which pages are to be used for the state constitutional argument only.

(P.B. 1978-1997, Sec. 4064B.) (Amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 67-4. The Appellant's Brief; Contents and Organization

The appellant's brief shall contain the following:

(a) A concise statement setting forth, in separately numbered paragraphs, without detail or discussion, the principal issue or issues involved in the appeal, with appropriate references to the page or pages of the brief where the issue is discussed, pursuant to subsection (d) hereof. The court may refuse to receive a brief not complying with this requirement. Such statement shall be deemed in replacement of and shall supersede the preliminary statement of issues.

(b) A table of authorities cited in the brief, with references to the page or pages of the brief where the citations to those authorities appear. Citations shall be in the form provided in Section 67-11.

(c) A statement of the nature of the proceedings and of the facts of the case bearing on the issues raised. The statement of facts shall be in narrative form, shall be supported by appropriate references to the page or pages of the transcript or to the document upon which the party relies and shall not be unnecessarily detailed or voluminous.

(d) The argument, divided under appropriate headings into as many parts as there are points to be presented, with appropriate references to the statement of facts or to the page or pages of the transcript or to the relevant document. The argument on each point shall include a separate, brief statement of the standard of review the appellant believes should be applied.

(1) When error is claimed in the trial court's refusal to charge the jury as requested, the party claiming such error shall include in the brief of that party or the appendix thereto a verbatim statement of the relevant portions of the charge as requested and as given by the court and any relevant exceptions to the charge as given and shall recite in narrative form any evidence which it is claimed would entitle that party to the charge as requested, with appropriate references to the page or pages of the transcript.

(2) When error is claimed in the charge to the jury, the brief or appendix shall include a verbatim statement of all relevant portions of the charge and all relevant exceptions to the charge. Unless essential to review of a claimed error, a verbatim statement of the entire charge to the jury should not be included in the brief or appendix. Evidence relevant to the claimed error shall be recited in narrative form with appropriate references to the page or pages of the transcript.

(3) When error is claimed in any evidentiary ruling in a court or jury case, the brief or appendix shall include a verbatim statement of the following: the question or offer of exhibit; the objection and the ground on which it was based; the ground on which the evidence was claimed to be admissible; the answer, if any; and the ruling.

(4) When error is claimed in any other ruling in a court or jury case, the brief or appendix shall include the pertinent motion or pleading as well as any other pertinent documents which are a part of the trial court case file but are not included in the record.

(5) When the basis of an evidentiary or other ruling referred to in subsection (d) (3) or (d) (4)

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cannot be understood without knowledge of the evidence or proceeding which preceded or followed the ruling, a brief narrative or verbatim statement of the evidence or proceeding should be made. A verbatim excerpt from the transcript should not be used if a narrative statement will suffice. When the same ruling is repeated, the brief should contain only a single ruling unless the other rulings are further illustrative of the rule which determined the action of the trial court or establish the materiality or harmfulness of the error claimed. The statement of rulings in the brief shall include appropriate references to the page or pages of the transcript.

(e) A short conclusion stating the precise relief sought.

(f) The text of the pertinent portions of any constitutional provision, statute, ordinance or regulation at issue or on which the appellant relies. Such text need not be included in the brief if it is included in the appendix to the appellant's brief.

(g) In appeals filed pursuant to Section 81-4, a statement identifying the version of the land use regulations filed with the appellate clerk.

The brief shall be organized in the following order: table of contents, if any; statement of issues; table of authorities; if the appeal was filed pursuant to Section 81-4, statement identifying version of land use regulations filed with the appellate clerk; if amicus, statement of interest of the amicus curiae; statement of facts; argument; conclusion and statement of relief requested; signature; and certification pursuant to Section 62-7.

(P.B. 1978-1997, Sec. 4064C.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended July 24, 2002, to take effect Oct. 1, 2002; amended July 30, 2009, to take effect Jan. 1, 2010; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 67-5. The Appellee's Brief; Contents and Organization

The brief of the appellee shall contain, in a form corresponding to that stated in Section 67-4, the following:

(a) A counter statement of any issue involved as to which the appellee disagrees with the statement of the appellant or a statement of any other grounds which were properly raised by an appellee under Section 63-4. Such statement shall be deemed in replacement of and shall supersede the preliminary statement of the issues.

(b) A table of authorities cited in the brief, with references to the page or pages of the brief where the citations to those authorities appear. Citations shall be in the form provided in Section 67-11.

(c) A counter statement of any fact as to which the appellee disagrees with the statement of the appellant. The counter statement of facts shall be in narrative form and shall be supported by appropriate references to the page or pages of the transcript or to the relevant document upon which the appellee relies. An appellee may not rely on any fact unless it is set forth in the appellee's counter statement of facts or in the appellant's statement of facts or is incorporated in any brief of the parties in accordance with Section 67-4 (d) or with subsection (d) hereof.

(d) The argument of the appellee, divided as provided in Section 67-4 (d). The argument on each point shall include a separate, brief statement of the standard of review the appellee believes should be applied. The argument may augment or take exception to the appellant's presentation of rulings or the charge by reference to any relevant part of the court's charge or any other evidence in narrative or verbatim form which is relevant to such question, with appropriate references to the statements of facts or to the page or pages of the transcript or to the relevant document.

(e) Claims, if any, directed to any rulings or decisions of the trial court adverse to the appellee. These shall be made in the manner provided in Section 67-4 (d).

(f) A short conclusion stating the precise relief sought.

(g) The text of the pertinent portions of any constitutional provision, statute, ordinance or regulation at issue or on which the appellee relies. Such text need not be included in the brief if it is included in the appellant's brief or appendix or in the appendix to the appellee's brief.

(h) In appeals filed pursuant to Section 81-4, a statement as to whether the appellee disputes the applicability of the version of the land use regulations filed with the appellate clerk. If the appellee disputes the applicability of such regulations, it shall set forth its basis for maintaining that such regulations do not apply.

The brief shall be organized in the following order: table of contents, if any; statement of issues; table of authorities; if amicus, statement of interest of the amicus curiae; statement of facts; argument; conclusion and statement of relief requested; signature; and certification pursuant to Section 62-7.

(i) When the appellee is also the cross appellant, the issues on the cross appeal shall be briefed in accordance with Section 67-4. In such a case, the briefs shall clearly label which sections of the brief refer to the appeal and which refer to the cross appeal.

(P.B. 1978-1997, Sec. 4064D.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended July 24, 2002, to take effect Oct. 1, 2002; amended June 2, 2005, to take effect Jan. 1, 2006; amended July 30, 2009, to take effect Jan. 1, 2010; amended June 2, 2010, to take effect Jan. 1, 2011.)

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Sec. 67-6. Statutory (§ 53a-46b) Review of Death Sentences

(a) When a sentence of death has been imposed upon a defendant, following a conviction of a capital felony in violation of General Statutes § 53a-54b and the hearing upon imposition of the death penalty pursuant to General Statutes § 53a-46a, the briefs of the parties shall include a discussion of the issues set forth in General Statutes § 53a-46b (b), to wit, whether (1) the sentence was the product of passion, prejudice or any other arbitrary factor; (2) the evidence fails to support the finding of an aggravating circumstance specified in subsection (h) of § 53a-46a; and (3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant.

(b) For the purpose of reviewing the issue of disproportionality pursuant to General Statutes § 53a-46b (b), the briefs of the parties shall contain appendices setting forth the circumstances of the crimes that are claimed to be similar to that of which the defendant has been convicted and the characters and records of the defendants involved therein so far as these are ascertainable from the transcripts of those trials and hearings on the imposition of the death penalty or may be judicially noticed. Only those capital felony cases that have been prosecuted in this state after October 1, 1973, and in which hearings on the imposition of the death penalty have taken place, whether or not the death penalty has been imposed, shall be deemed eligible for consideration as "similar cases," unless the court, on application of a party claiming that the resulting pool of eligible cases is inadequate for disproportionality review, shall modify this limitation in a particular case. Any such application shall identify the additional case or cases claimed to be similar and set forth, in addition to the circumstances of the crime and the character and record of the defendant involved, the provisions of the applicable statutes pertaining to the imposition of the death penalty with citations of pertinent decisions interpreting such provisions.

Any such application shall be filed within thirty days after the delivery date of the transcript ordered by the appellant, or, if no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, such application shall be filed within thirty days after filing the appeal.

(P.B. 1978-1997, Sec. 4064E.)

Sec. 67-7. The Amicus Curiae Brief

A brief of an amicus curiae in cases before the court on the merits may be filed only with the permission of the court. An application for permission to appear as amicus curiae and to file a brief shall be filed within twenty days after the filing of the brief of the party, if any, whom the applicant intends to support, and if there is no such party, then the application shall be filed no later than twenty days after the filing of the appellee's brief.

The application shall state concisely the nature of the applicant's interest and the reasons why a brief of an amicus curiae should be allowed. The length of the brief shall not exceed ten pages unless a specific request is made for a brief of more than that length. The application shall conform to the requirements set forth in Sections 66-2 and 66-3. The amicus application should specifically set forth reasons to justify the filing of a brief in excess of ten pages. A party served with an application may within ten days after the filing of the application file an objection concisely stating the reasons therefor.

All briefs filed under this section shall comply with the applicable provisions of this chapter and shall set forth the interest of the amicus curiae.

An amicus curiae may argue orally only when a specific request for such permission is granted by the court in which the appeal is pending.

With the exception of briefs filed by the attorney general as provided by this rule, all briefs shall indicate whether counsel for a party wrote the brief in whole or in part and whether such counsel or a party contributed to the cost of the preparation or submission of the brief and shall identify those persons, other than the amicus curiae, its members or its counsel, who made such monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

An amicus curiae may argue orally only when a specific request for such permission is granted by the court in which the appeal is pending.

Except for habeas corpus matters based on criminal convictions, if an appeal in a noncriminal matter involves an attack on the constitutionality of a state statute, the attorney general may appear and file a brief amicus curiae as of right. Notice of the attorney general's intention to appear and to file a brief shall be given to the appellate clerk and all parties no later than the date on which the brief of the party that the attorney general supports is filed, and the attorney general's brief will be due twenty days after the filing of the brief of the party that the attorney general supports.

(P.B. 1978-1997, Sec. 4064F.) (Amended June 17, 2008, to take effect Jan. 1, 2009.)

Sec. 67-8. The Appendix

No appendix is required in either a court or a jury case, except where an opinion is cited that

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is not officially published, in which case the text of the opinion must be included in the appendix. An appendix may be used to excerpt lengthy exhibits or quotations from the transcripts or to comply with the provisions of Section 67-4 subsections (d) or (e). To reproduce a full transcript or lengthy exhibit when an excerpt would suffice is a misuse of an appendix. If use of any appendix is indicated, all materials must be included in a single appendix.

The appendix shall be prepared in accordance with Section 67-2. An appendix shall be paginated separately from the brief and may be bound with it or separately. Where, however, binding the brief and appendix together would affect the integrity of the binding or where the appendix exceeds one hundred numbered pages, the appendix and brief shall be bound separately. Pages of an appendix shall be numbered consecutively and be preceded by the letter "A" (e.g., A1 . . . A25 . . . A53).

An appendix of any length may be reproduced on both sides of a page; an appendix, however, in excess of fifty numbered pages must be reproduced on both sides of a page. An appendix shall have at its beginning a table of contents of any papers in it and shall also have an index of the names of witnesses whose testimony is cited within it. If any part of the testimony of a witness is omitted, this shall be indicated by asterisks. After giving the name of a witness, the party who called that witness shall be designated and it shall be stated whether the testimony quoted was given on direct, cross or other examination.

(P.B. 1978-1997, Sec. 4064G.) (Amended Jan. 29, 2009, to take effect March 1, 2009.)

Sec. 67-9. Citation of Unreported Decisions

A decision not officially reported may be cited before the court only if the person making reference to it provides the court and opposing counsel with copies of the decision. If it is cited in a brief, a copy of the text of the decision must be included in the appendix to the brief.

(P.B. 1978-1997, Sec. 4064H.)

Sec. 67-10. Citation of Supplemental Authorities after Brief Is Filed

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the appellate clerk of such supplemental authorities, by letter, with a copy certified to all counsel of record in accordance with Section 62-7. The clerk shall be provided with an original and seven copies of the letter. The letter shall set forth the citations of the authorities. If the authority is an unreported decision, a copy of the text of the decision must accompany the letter. The letter shall concisely and without argument state the relevance of the supplemental citations and shall include, where applicable, reference to the pertinent page(s) of the brief. Any response shall be made promptly and shall be similarly limited.

This section may not be used after oral argument to elaborate on points made or to address points not made.

(P.B. 1978-1997, Sec. 4064J.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended July 9, 2008, to take effect Jan. 1, 2009.)

Sec. 67-11. Table of Authorities; Citation of Cases

(a) In the table of authorities, citations to state cases shall be to the official reporter first, if available, followed by the regional reporter. Citations to cases from jurisdictions having no official reporter shall identify the court rendering the decision. Citations to opinions of the United States Supreme Court shall be to the United States Reports, if therein; otherwise, such citations shall be to the Supreme Court Reporter, the Lawyer's Edition, or United States Law Week, in that order of preference.

(b) In the argument portion of a brief, citations to Connecticut cases shall be to the official reporter only. Citations to other state cases may be to either the official reporter or the regional reporter. United States Supreme Court cases should be cited as they appear in the table of authorities.

(c) If a case is not available in print and is available on an electronic database, such as LEXIS, Westlaw, CaseBase or LOIS, the case shall be cited to that database. In the table of authorities, citations to such cases shall include the case name; docket number; name of the database and, if applicable, numeric identifiers unique to the database; court name; and full date of the disposition of the case. Screen, page or paragraph numbers shall be preceded by an asterisk. In the argument portion of a brief, such cases shall be cited only by name and database. If such a case is published in a print reporter after the filing of the party's brief, but prior to the case on appeal being orally argued or submitted for decision on the record and briefs, the party who cited the unreported case shall, by letter, inform the chief clerk of the print citation of that case.

(Adopted July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 67-12. Stay of Briefing Obligations upon Filing of Certain Motions after Appeal Is Taken

As provided in Section 63-1, if, after an appeal has been taken but before the appeal period has expired, a motion is filed that would render the

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judgment, decision or acceptance of the verdict ineffective, any party may move to stay the briefing obligations of the parties. The chief clerk may grant such motions for up to sixty days. Any further request for stay must be made by motion to the appellate court having jurisdiction prior to the expiration of the stay granted by the chief clerk. Such request must describe the status of the motion in the trial court and must demonstrate that a resolution of the motion is being actively pursued. After all such motions have been decided by the trial court, the appellant shall, within ten days of notice of the ruling on the last such outstanding motion, file a statement with the appellate clerk that such motions have been decided, together with a copy of the decisions on any such motions. The filing of such statement shall reinstate the appellate obligations of the parties, and the date of notice of the ruling on the last outstanding motion shall be treated as the date of the filing of the appeal for the purpose of briefing pursuant to Section 67-3.

(Adopted July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 67-13. Briefs in Family and Juvenile Matters and Other Matters involving Minor Children

In family and juvenile matters and other matters involving minor children, counsel for the minor child and/or counsel for the guardian ad litem shall, within ten days of the filing of the appellee's brief, file either: (1) a brief, (2) a statement adopting the brief of either the appellant or an appellee, or (3) a detailed statement that the factual or legal issues on appeal do not implicate the child's interests.

(Adopted Nov. 4, 2004, to take effect Jan. 1, 2005.)

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CHAPTER 68

RECORD

Sec.
68-1. Responsibilities of Trial Court Clerk regarding Copying Case File and Additions to Case File Made after Appeal is Taken; Exhibits and Lodged Records
68-2. Record Preparation
68-3. Record Contents
68-4. Record Format
68-5. Record where More than One Appeal
68-6. Record where Several Cases Present Same Question
68-7. Record Filing
68-8. Supplements
68-9. Evidence Not to Be Included in Record
68-10. Record in Administrative Appeals; Exceptions
68-11. Decision to Be Part of Record

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 68-1. Responsibilities of Trial Court Clerk regarding Copying Case File and Additions to Case File Made after Appeal is Taken; Exhibits and Lodged Records

Within ten days of the filing of an appeal, the clerk of the trial court shall prepare and forward to the appellate clerk two complete copies of the case file, including the docket sheets (DS1 and DS2) and all written requests to charge. No omissions may be made from the case file except upon the authorization of the appellate clerk. The appellate clerk may direct the clerk of the trial court to prepare and to forward a case file in any other instance in which it is needed. The clerk of the trial court shall forward to the appellate clerk two copies of all additions made to the case file after the initial preparation and transmittal of the case file.

Each document of the case file must be numbered, and the file must include a table of contents listing each item entered in the file according to its number.

In an appeal from an administrative agency, the papers returned by the agency to the trial court, even though annexed to and incorporated by reference in the answer, shall accompany the copies of the file but need not be included in the copies of the file.

All exhibits in the trial court are deemed exhibits on appeal and are deemed in the custody of the appellate clerk while the appeal is pending. The appellate clerk shall notify the clerk of the trial court of the exhibits required by the court in which the appeal is pending. Within ten days of such notice, the clerk of the trial court shall transmit those exhibits to the appellate clerk accompanied by a list of all exhibits in the case. The trial court clerk shall notify all counsel and self-represented litigants of the transmittal and provide them with a copy of the exhibit list. The provisions of this paragraph shall apply to records lodged pursuant to Section 7-4C.

(P.B. 1978-1997, Sec. 4084.) (Amended July 24, 2002, to take effect Oct. 1, 2002; amended Oct. 15, 2003, to take effect Jan. 1, 2004; amended July 30, 2009, to take effect Jan. 1, 2010.)

Sec. 68-2. Record Preparation

As soon as possible after the filing of the appellant's brief, the appellate clerk shall prepare and certify the record for use upon the hearing in the court having appellate jurisdiction of any case the file of which has been delivered to or prepared by such clerk.

Upon certification of the record by the appellate clerk, the appellant shall cause the record to be photocopied in accordance with these rules.

(P.B. 1978-1997, Sec. 4085.)

Sec. 68-3. Record Contents

The appellate clerk, in preparing the record, must study the case with sufficient care, must study the revised designation of specific pleadings, submitted pursuant to Section 63-4 (a) (2), and the brief of the appellant, and may confer with counsel, and, if necessary, with the clerk of the trial court, to determine what part of the case file should become the record. The appellate clerk should include nothing in the record which is not necessary for the proper presentation of the statement of issues or for the proper presentation of questions reserved.

No officer's return or exhibit, except as provided herein, shall be photocopied unless it is at issue in the appeal. The record returned to the trial court by an administrative agency shall, even though incorporated by reference in a pleading, not be photocopied except to the extent provided in Section 68-10. In the discretion of the appellate clerk,

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exhibits annexed to a pleading may be photocopied so far as they are relevant to any issue presented in the appeal and are not excessive in length.

(P.B. 1978-1997, Sec. 4086.) (Amended Oct. 10, 2001, to take effect Jan. 1, 2002.)

Sec. 68-4. Record Format

Cases brought to the supreme or appellate court otherwise than by writ of error shall be entitled as they were in the judgment of the trial court.

The date when each paper contained in the record was filed must be stated.

The appellant shall prepare a table of contents giving the title or nature of each paper in its order as photocopied.

The record shall be photocopied on white 8 1/2 by 11 inch paper.

The cover of the record shall be yellow.

(P.B. 1978-1997, Sec. 4087.)

Sec. 68-5. Record where More than One Appeal

In the discretion of the appellate clerk where more than one appeal is taken in a case, such clerk may prepare only one record.

(P.B. 1978-1997, Sec. 4090.)

Sec. 68-6. Record where Several Cases Present Same Question

In the discretion of the appellate clerk where several cases are pending in which the same question of law is presented, whether between the same or different parties, such clerk may prepare only one record of the pleadings, exhibits, or other papers which are part of the record in more than one of the cases may be included in only one of them, with suitable references to the record in that case made in the records in the other cases.

(P.B. 1978-1997, Sec. 4091.)

Sec. 68-7. Record Filing

Within twenty days of the certification of the record by the appellate clerk pursuant to Section 68-2, the appellant shall file the record in accordance with the instructions which accompany it, with a certification attached to the original record only that a copy thereof has been sent to each counsel of record and any trial judge who rendered a decision that is being challenged on appeal.

(P.B. 1978-1997, Sec. 4092.) (Amended Nov. 4, 2004, to take effect Jan. 1, 2005.)

Sec. 68-8. Supplements

After the record has been filed, the appellate clerk shall distribute to each appellate jurist a copy of any supplement to the record.

(P.B. 1978-1997, Sec. 4093.)

Sec. 68-9. Evidence Not to Be Included in Record

Evidence of witnesses before a court, including evidence necessary upon an appeal from the denial of a motion to set aside a nonsuit, evidence taken before a committee or state referee and filed in court in connection with exceptions to a report, and, except as hereinafter provided, evidence taken before an administrative officer or board and filed in court in connection with a petition or an appeal, or admitted at a hearing shall not be placed in the record except as it is made a part of a pleading, or of a finding or report in explanation of a ruling made in the course of a hearing, but it may be presented in the brief as provided in Sections 67-1, 67-4 and 67-5. The reproduction of evidence taken before an administrative agency shall be governed by Section 68-10, and the reproduction of evidence contained in exhibits annexed to pleadings shall be governed by Section 68-3.

(P.B. 1978-1997, Sec. 4094.)

Sec. 68-10. Record in Administrative Appeals; Exceptions

(a) Except as provided in subsection (b), in appeals from administrative agencies, the record shall include the part of the return of the administrative agency which identifies the papers returned to the trial court, and also such of the papers returned as consist of (1) the application or appeal to the agency; (2) the notice of hearing and the affidavit of publication, if they are in issue on the appeal; and (3) any minutes or decision showing the action taken by the agency, the reasons assigned for that action, and any findings and conclusions of fact made by the agency. The record shall also contain such other portions of the returned record as the judge who tried the case shall order included or as the appellate clerk finds is needed for the proper presentation of any of the issues on the appeal but in no event, unless the judge who tried the case directs otherwise, the testimony before the agency or the documentary evidence offered at its hearings. Relevant portions of the record before the agency returned by it to the trial court but not included in the record should be reproduced in the brief as provided in Sections 67-1, 67-4 and 67-5.

(b) Subsection (a) shall not apply to the following administrative appeals:

(1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-117a and 12-119.

(2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103.

(3) Appeals from the commissioner of revenue services.

(4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139.

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(5) Any other appeal in which the parties received a trial de novo in the superior court.

The record in these matters shall be prepared pursuant to the rules for the preparation of the record in ordinary civil actions.

(P.B. 1978-1997, Sec. 4095.)

Sec. 68-11. Decision to Be Part of Record

The oral or written decision shall become a part of the record on appeal. See Sections 64-1 and 64-2.

(P.B. 1978-1997, Sec. 4096.)

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CHAPTER 69

ASSIGNMENT OF CASES FOR ARGUMENT

Sec.
69-1. Printed Docket
69-2. Cases Ready for Assignment
69-3. Time for Assignments; Order of Assignment

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 69-1. Printed Docket

The appellate clerk shall periodically prepare a printed docket of all pending cases which are not on a current assignment list for oral argument and which appear to be ready for assignment under Section 69-2 or have been ordered to be heard by the court and shall send a copy to each appellate jurist, to each counsel appearing in the cases entered on the printed docket, and to the reporter of judicial decisions.

(P.B. 1978-1997, Sec. 4100.)

Sec. 69-2. Cases Ready for Assignment

Cases will be considered ready for assignment when the record and all briefs of all parties, including reply briefs, have been filed or, if the record has been filed, the time for filing reply briefs has expired. Any case ready for assignment may be assigned pursuant to Section 69-3. After notice to counsel of a date and time to be heard, the chief justice, the chief judge, or a designee may order the assignment for oral argument of any appeal, notwithstanding the fact that the case on appeal does not appear on the printed docket.

Cases may be assigned for argument on a standby basis in which event counsel will be notified at least forty-eight hours before the time scheduled for oral argument that the standby case is to be heard.

If a case scheduled for oral argument, whether on standby basis or not, is settled or withdrawn for any reason, counsel for the appellant shall notify the appellate clerk of that fact promptly and shall not wait until the time scheduled for oral argument.

(P.B. 1978-1997, Sec. 4101.) (Amended July 23, 1998, to take effect Jan. 1, 1999.)

Sec. 69-3. Time for Assignments; Order of Assignment

Assignments of cases for oral argument ordinarily will be made in the order in which the cases become ready for argument pursuant to Section 69-2. Requests for variations from this order, stating the reason therefor, shall be made by letter certified pursuant to Section 62-7, addressed to the appellate clerk and delivered, mailed or sent by facsimile to the clerk's office in time for the appellate clerk to receive it at least two working days on which the clerk's office is required to be open before assignments are made. An attorney making such a request shall also indicate that a copy of the request has been mailed to each of his or her clients who are parties to the appeal.

Assignments for oral argument in the supreme court and appellate court shall take precedence over all other judicial branch assignments.

The appellate clerk will forthwith mail copies of the assignment list to all counsel of record.

(P.B. 1978-1997, Sec. 4104.) (Amended Jan. 29, 2009, to take effect March 1, 2009.)

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CHAPTER 70

ARGUMENTS AND MEDIA COVERAGE OF COURT PROCEEDINGS

Sec.	
70-1.	Oral Argument; Videoconferencing of Oral Argument in Certain Cases
70-2.	Submission without Oral Argument on Request of Parties
70-3.	Order of Argument
70-4.	Time Allowed for Oral Argument; Who May Argue
70-5.	Points to Be Argued
70-6.	Reconsideration when Court Evenly Divided
70-7.	Appellate Court Consideration En Banc and Reargument En Banc
70-8.	Special Sessions
70-9.	Coverage of Court Proceedings by Cameras and Electronic Media
70-10.	Cameras and Electronic Media; Coverage of Supreme and Appellate Court Proceedings by News Media [Repealed]

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 70-1. Oral Argument; Videoconferencing of Oral Argument in Certain Cases

(Amended May 19, 2011, to take effect Jan. 1, 2012.)

(a) Oral argument will be allowed as of right in all appeals except as provided in subsection (b) of this rule.

(b) In civil cases where: (1) the dispositive issue or set of issues has been recently authoritatively decided; or (2) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument, notice will be sent to counsel of record that the case will be decided on the briefs and record only. This notice will be sent after the record and all briefs have been filed. Any party may request argument by letter addressed to the appellate clerk stating briefly the reasons why oral argument is appropriate and shall do so within seven days of the issuance of the court's notice. After receipt and consideration of such a request, the court will either assign the case for oral argument or assign the case for disposition without oral argument, as it deems appropriate.

(c) In matters involving parties who are self-represented and incarcerated, oral argument may be conducted by videoconference upon direction of the court in its discretion.

(P.B. 1978-1997, Sec. 4106.) (Amended May 19, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled "Right to Oral Argument."

Also, prior to 2012, this section read: "(a) Oral argument will be allowed as of right in all appeals except in civil cases where:

"(1) the appeal is frivolous; or

"(2) the dispositive issue or set of issues has been recently authoritatively decided; or

"(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

"(b) When the court determines that a civil case is appropriate for disposition without oral argument, or on an abbreviated time schedule, notice will be sent to counsel. Any party may request a hearing on the court's determination by letter addressed to the appellate clerk stating briefly the reasons why oral argument is appropriate, and shall do so within seven days of the issuance of the court's notice. The matter will be set down for a motion calendar at which time the parties may be heard briefly on whether oral argument should be allowed."

COMMENTARY—2012: Under the prior rule, if a party disagreed with the court's determination that his or her appeal should be disposed of without oral argument, the party could file a request for a hearing on that determination, and the matter would be set down for a brief hearing on whether oral argument should be permitted. This amendment changes that procedure by eliminating the hearing on whether oral argument of the appeal should be allowed and places the determination of whether a case should be orally argued in the discretion of the court.

Subsection (c) has been added to provide that matters involving self-represented, incarcerated parties may be calendared, upon direction of the court, for a hearing by videoconference. It is anticipated that this procedure will be used only when necessary, considering the circumstances of the individual case, and not in every case involving self-represented, incarcerated parties.

Sec. 70-2. Submission without Oral Argument on Request of Parties

(Amended May 19, 2011, to take effect Jan. 1, 2012.)

With the permission of the court, counsel of record may, before or after a case has been assigned for a hearing, submit the case for decision on the record and briefs only, without oral argument. No request for submission without oral argument will be granted unless the requesting party certifies that all other parties agree to waive oral argument. This rule applies only to counsel of record who have filed a brief or joined in the brief of another party.

(P.B. 1978-1997, Sec. 4102.) (Amended May 19, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: Prior to 2012, this section was entitled "When Oral Argument Not Required."

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Also, prior to 2012, this section read: "With the permission of the court, counsel may, after a case has been assigned for a hearing, submit it for decision on the record and briefs only, without oral argument."

COMMENTARY—2012: This amendment provides that requests for disposition without oral argument may be made before *or* after a case has been assigned for a hearing. All parties are required to consent to such a request. In addition, the amendment clarifies that only those who have filed a brief or joined in another party's brief may request waiver of oral argument. The latter change reflects the provisions of Sections 67-2 (*l*) and 70-4, which bar a party who has not filed a brief or joined in the brief of another party from participating in oral argument. It should be noted that " '[c]ounsel of record,' " as defined in Section 60-4, includes "all parties appearing pro se . . . ."

Sec. 70-3. Order of Argument

Counsel for the appellant or plaintiff in error will be entitled to open and close the argument. On a reservation, the plaintiff will open and close, unless the court otherwise directs, except in suits for the construction of wills or of interpleader, when the court will fix the order of argument. If there are cross appeals, the original appellant will open and close unless the court otherwise orders for cause shown. If there are consolidated appeals, the parties in the appeal filed first in the trial court will argue first unless the court otherwise orders.

(P.B. 1978-1997, Sec. 4107.)

Sec. 70-4. Time Allowed for Oral Argument; Who May Argue

The time occupied in the argument of any case shall not exceed one-half hour on each side, without special leave of the court, granted before the argument begins. The time thus limited and allowed may be apportioned among counsel on the same side of a case as they may choose. The court may terminate the argument whenever in its judgment further argument is unnecessary.

Except by special permission of the presiding jurist, which permission must be obtained prior to the date assigned for hearing, no more than one counsel shall present oral argument for any one party to the appeal.

No argument shall be allowed any party who has not filed a brief or who has not joined in the brief of another party.

(P.B. 1978-1997, Sec. 4108.)

Sec. 70-5. Points to Be Argued

(a) Oral argument should clarify and focus arguments in the written briefs. The court discourages oral argument read from a prepared text and lengthy quotations from legal precedents, the transcript, or the record.

(b) Counsel should assume that the court has read the briefs in advance of oral argument. No points made in briefs will be considered waived because not argued orally. Rebuttal argument shall be confined to the points presented by the argument of opposing counsel.

(P.B. 1978-1997, Sec. 4109.)

Sec. 70-6. Reconsideration when Court Evenly Divided

When the court is evenly divided as to the result, the court shall reconsider the case, with or without oral argument, with an odd number of justices or judges.

(P.B. 1978-1997, Sec. 4111.)

Sec. 70-7. Appellate Court Consideration En Banc and Reargument En Banc

(Amended July 21, 1999, to take effect Jan. 1, 2000; amended June 2, 2010, to take effect Jan. 1, 2011.)

(a) Before a case is assigned for oral argument, the chief judge may order, on the motion of a party or sua sponte, that a case be heard en banc.

(b) After argument but before decision, the entire court may order that the case be considered en banc with or without further oral argument or with or without supplemental briefs. The judges who did not hear oral argument shall have available to them the electronic recording or a transcript of the oral argument before participating in the decision.

(c) After decision, the entire court may order, on the motion of a party pursuant to Section 71-5 or sua sponte, that reargument be heard en banc.

(P.B. 1978-1997, Sec. 4112.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 70-8. Special Sessions

The supreme court will be deemed in special session whenever the justices meet for consultation; but the presence of the clerk or a judicial marshal will not be required, unless specially directed.

(P.B. 1978-1997, Sec. 4115.) (Amended Oct. 10, 2001, to take effect Jan. 1, 2002.)

Sec. 70-9. Coverage of Court Proceedings by Cameras and Electronic Media

(Amended April 11, 2007, to take effect June 1, 2007.)

(a) Except for those matters enumerated in subsection (c) of this rule, all judicial courtroom proceedings in the supreme and appellate courts are presumed to be subject to coverage by cameras and electronic media.

(b) (i) All such proceedings may be broadcast, televised, videotaped, audio recorded or photographed unless: (A) the panel of jurists grants a motion by a party or a victim in a case requesting the limitation or preclusion of such coverage, or (B) the panel of jurists, on its own motion, limits

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or precludes such coverage. The right to permit or to exclude coverage, whether partially or totally, at any time in the interests of the administration of justice shall remain with the panel of jurists.

(ii) Any party or victim who desires to file a motion to limit or preclude coverage shall do so not later than one week before the start of the term for which the case is subject to being assigned, as indicated on a printed docket pursuant to Section 69-1. The party or victim shall mail a copy of such motion to each counsel or pro se party and to any other victim in the case. The party or victim shall give notice to any such victim by notifying the state's attorney in a criminal case, the attorney or guardian ad litem for a minor child in cases involving a minor victim or child represented by an attorney or guardian ad litem, and to any other victim or child by notifying the Connecticut Victim Advocate. Endorsed on the motion shall be certification of such mailing. The appellate clerk shall refer any such motion to the panel of jurists for review as soon as the panel is determined. The panel of jurists may consider a late motion to limit or preclude coverage. Prior to acting on such motion, the panel of jurists shall provide any media outlet expected to cover the proceeding an opportunity to respond in writing to the motion.

(iii) In acting on such motion or on its own motion, the panel of jurists will apply the presumption that all judicial courtroom proceedings in the supreme and appellate courts are subject to coverage by cameras and electronic media. In addition, it will be guided by the principles that such coverage should be limited only if there is good cause to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the competing interests at issue.

(iv) In acting on such motion or its own motion, the panel of jurists will conclude that the presumption in favor of coverage by cameras and electronic media has been overcome only if it is satisfied that good cause exists for a limitation or preclusion on coverage. If the panel of jurists orders a limitation or preclusion on coverage, it will provide a statement of its reasons. A statement may be written or stated on the record in open court.

(c) (i) The presumption in favor of coverage shall not apply to cases involving: (A) sexual assault; (B) risk of injury to, or impairing the morals of, a child; (C) abuse or neglect of a child; (D) termination of parental rights; and (E) contested questions of child custody or visitation.

(ii) In cases to which the presumption in favor of coverage does not apply, any person may request such coverage by filing a motion not later than one week before the start of the term for which the case is subject to being assigned, as indicated on a printed docket pursuant to Section 69-1. The applicant shall mail a copy of such written request to each counsel or pro se party and to any victim or child in the case. The applicant shall give notice to any such victim by notifying the state's attorney in a criminal case, the attorney or guardian ad litem for a minor child in cases involving a minor victim or child represented by an attorney or guardian ad litem, and to any other victim or child by notifying the Connecticut Victim Advocate. Endorsed on the motion shall be a certification of such mailing. The appellate clerk shall refer any such motion to the panel of jurists for review as soon as the panel is determined. The panel of jurists may consider a late motion requesting coverage. Prior to acting on such motion, the panel of jurists shall provide the parties, any such minor children and any victims of the offense an opportunity to respond in writing to the motion. The panel of jurists shall grant the motion only if it is satisfied that the need for such coverage outweighs the privacy interests involved in the case.

(d) The supreme and appellate courts shall establish appropriate protocols governing the number, location and use of all forms of coverage consistent with these rules.

(e) As used in this rule, ''panel of jurists'' means the justices or judges assigned to hear a particular case.

(P.B. 1978-1997, Sec. 4116A.) (Amended Feb. 19, 2003, to take effect Jan. 1, 2004; amended April 11, 2007, to take effect June 1, 2007.)

Sec. 70-10. Cameras and Electronic Media; Coverage of Supreme and Appellate Court Proceedings by News Media

[Repealed as of June 1, 2007.]

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CHAPTER 71

APPELLATE JUDGMENTS AND OPINIONS

Sec.
71-1. Appellate Judgment Files
71-2. Costs Included in Judgments
71-3. Motion to Reconsider Costs
71-4. Opinions; Rescripts; Notice; Official Release Date
71-5. Motions for Reconsideration; Motions for Reconsideration En Banc
71-6. Stay of Proceedings
71-7. Stays of Execution Pending Decision by United States Supreme Court

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 71-1. Appellate Judgment Files

Judgments of the court may be embodied in judgment files, to be drawn upon request and signed by the appellate clerk. Unless the court otherwise directs, a judgment shall be deemed to have been rendered on the date an opinion or memorandum decision appears in the Connecticut Law Journal; except that if an opinion or decision is issued by slip opinion or by oral announcement from the bench, the judgment shall be deemed to have been rendered on the date that appears as the officially released date in the slip opinion or the date that the oral announcement is made. In the case of an order on, for example, a motion or petition, the order shall be deemed to have been made on the date that the appellate clerk issues notice of the order to the clerk of the trial court and to all counsel of record. Judgments or orders shall be entered as of the appropriate date.

(P.B. 1978-1997, Sec. 4117.) (Amended Jan. 29, 2009, to take effect March 1, 2009; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 71-2. Costs Included in Judgments

Except as otherwise provided herein, in all appeals or writs of error which go to judgment in the supreme or appellate court including an order for a new trial, costs shall be taxed to the prevailing party by the appellate clerk, in the absence of special order to the contrary by the court. On all reservations the mandate which follows the opinion of the court will specify what costs shall be taxed. A bill of costs shall be filed with the appellate clerk no more than thirty days after the notice of the appellate decision, or, of the denial of a motion for reconsideration, or, of the denial of a petition for certification by the supreme court of this state, whichever is latest.

(P.B. 1978-1997, Sec. 4118.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 71-3. Motion to Reconsider Costs

Any party may within ten days after the issuance of the decision on the taxation of costs file a written motion, in accordance with the provisions of Sections 66-2 and 66-3, that the court review the clerk's taxation of costs under its judgment. Any such motion must be submitted without oral argument.

(P.B. 1978-1997, Sec. 4119.)

Sec. 71-4. Opinions; Rescripts; Notice; Official Release Date

(Amended Jan. 29, 2009, to take effect March 1, 2009.)

(a) After the court hands down an opinion in any case other than a case involving a question certified from a federal court, the reporter of judicial decisions shall send a copy of the opinion and the original rescript to the clerk of the trial court and shall send a copy of the rescript to the appellate clerk. Notice of the decision of the court shall be deemed to have been given, for all purposes, on the official release date that appears in the court's opinion.

(b) Notices of decisions upon motions and of orders of the court shall be given by the appellate clerk to the clerk of the trial court and to all counsel of record.

(c) The official release date of an opinion or memorandum decision appears in the court's opinion or memorandum decision. In the case of an order on, for example, a motion or petition, the official release date is the date that the appellate clerk issues notice of an order to the clerk of the trial court and to all counsel of record.

(d) The opinions of the court in the bound volumes of the Connecticut Reports and the Connecticut Appellate Reports are the official opinions. The appellate clerk is authorized to furnish official copies of those opinions and, until the

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bound volumes are published, of the opinions as they appear in the Connecticut Law Journal.

(P.B. 1978-1997, Sec. 4120.) (Amended Jan. 29, 2009, to take effect March 1, 2009; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 71-5. Motions for Reconsideration; Motions for Reconsideration En Banc

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

A motion for reconsideration will not be entertained unless filed with the appellate clerk, accompanied by a receipt showing that the fee was paid or waived, within ten days from the date when the decision or any order being challenged is officially released. The fee may be paid to the clerk of any trial court in the state.

The motion for reconsideration shall state briefly the grounds for requesting reconsideration.

A party may also request reconsideration en banc by placing "en banc" in the caption of the motion and requesting such relief as an alternative to reconsideration by the panel.

Whenever reconsideration en banc is sought, the motion shall state briefly why reconsideration en banc is necessary (for example, to secure or maintain uniformity of decision or because of the importance of the decision) and shall also state the names of the decisions, if any, with which the decision conflicts. A motion for reconsideration shall be treated as a motion for reconsideration en banc when any member of the court which decided the matter will not be available, within a reasonable time, to act on the motion for reconsideration.

(P.B. 1978-1997, Sec. 4121.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 71-6. Stay of Proceedings

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

Unless the chief justice or chief judge shall otherwise direct, any stay of proceedings which was in effect during the pendency of the appeal shall continue until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until twenty days after its disposition, and, if it is granted, until the appeal is finally determined. If no stay of proceedings was in effect during the pendency of the appeal and the decision of the court having appellate jurisdiction would change the position of any party from its position during the pendency of the appeal, all proceedings to enforce or carry out the decision of the court having appellate jurisdiction shall be stayed until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until twenty days after its disposition, and, if it is granted, until the appeal is finally determined. (See also Section 61-11.)

(P.B. 1978-1997, Sec. 4123.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 71-7. Stays of Execution Pending Decision by United States Supreme Court

When a case has gone to judgment in the state supreme court and a party to the action wishes to obtain a stay of execution pending a decision in the case by the United States supreme court, that party shall, within twenty days of the judgment, file a motion for stay with the state supreme court. The filing of the motion shall operate as a stay pending the state supreme court's decision thereon.

When the state supreme court has denied a petition for certification from the appellate court, any stay in existence at the time of such denial shall remain in effect for twenty days. Any party to the action wishing to extend such stay of execution or to otherwise obtain a stay of execution pending a decision in the case by the United States supreme court shall file a motion for stay with the appellate court. The filing of the motion shall operate as a stay pending the appellate court's decision thereon.

(P.B. 1978-1997, Sec. 4050.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

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CHAPTER 72

WRITS OF ERROR

Sec.		Sec.	
72-1.	Writs of Error; In General	72-3.	Applicable Procedure
72-2.	Form	72-4.	Applicability of Rules

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 72-1. Writs of Error; In General

(a) Writs of error for errors in matters of law only may be brought from a final judgment of the superior court to the supreme court in the following cases: (1) a decision binding on an aggrieved nonparty; (2) a summary decision of criminal contempt; (3) a denial of transfer of a small claims action to the regular docket; and (4) as otherwise necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

(b) No writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification, or (2) the parties, by failure timely to seek a transfer or otherwise, have consented to have the case determined by a court or tribunal from whose judgment there is no right of appeal or opportunity for certification.

(P.B. 1978-1997, Sec. 4143A.) (Amended Nov. 19, 2003, to take effect Jan. 1, 2004.)

Sec. 72-2. Form

The writ shall contain in numbered paragraphs the facts upon which the petitioner relies and a statement of the relief claimed.

(P.B. 1978-1997, Sec. 4143A.) (Amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 72-3. Applicable Procedure

(a) Upon payment in the trial court of the filing fee, the writ, if in proper form, shall be allowed and signed by a judge or clerk of the court in which the judgment or decree was rendered. The writ shall be presented for signature within twenty days of the date notice of the judgment or decision complained of is given but shall be signed by the judge or clerk even if not presented in a timely manner. Failure without cause to present the writ in a timely manner may be ground for dismissal of the writ by the supreme court.

(b) The writ shall be served and returned as other civil process, except that (1) the writ shall be served at least ten days before the return day, and (2) shall be returned to the appellate clerk at least one day before the return day. The return days of the supreme court are any Tuesday not less than twelve nor more than thirty days after the writ is signed.

(c) If the writ is brought against a judge of the superior court to contest a summary decision of criminal contempt by that judge, the defendant in error shall be the superior court. In all other writs of error, the writ shall bear the caption of the underlying action in which the judgment or decision was rendered. All parties to the underlying action shall be served in accordance with chapter 8 of these rules.

(d) The writ shall be deemed filed the day it is returned. The appellate clerk shall forthwith give notice to all parties of the filing of the writ.

(e) Within twenty days after filing the writ, the plaintiff in error shall file with the appellate clerk two copies of such documents as are necessary to present the claims of error made in the writ, including pertinent pleadings, memoranda of decision and judgment file, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section 62-7.

(f) In the event a transcript is necessary, the plaintiff in error shall follow the procedure set forth in Sections 63-8 and 63-8A.

(g) Within ten days of the filing by the plaintiff in error of the documents referred to in subsections (e) and (f) of this rule, the defendant in error may file two copies of such additional documents as are necessary to defend the action, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section 62-7.

(h) Answers or other pleas shall not be filed in response to any writ of error.

(P.B. 1978-1997, Sec. 4144.) (Amended Nov. 19, 2003, to take effect Jan. 1, 2004; amended June 2, 2010, to take effect Jan. 1, 2011.)

Sec. 72-4. Applicability of Rules

Except as otherwise provided by statute or rule, the prosecution and defense of a writ of error shall be in accordance with the rules for appeals.

(P.B. 1978-1997, Sec. 4145.) (Amended Nov. 19, 2003, to take effect Jan. 1, 2004.)

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CHAPTER 73

RESERVATIONS

Sec.
73-1. Procedure; Form

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 73-1. Procedure; Form

(a) Any reservation shall be taken to the supreme court or to the appellate court from those cases in which an appeal could have been taken directly to the supreme court, or to the appellate court, respectively, had judgment been rendered. Reservations in cases where the proper court for the appeal cannot be determined prior to judgment shall be taken directly to the supreme court.

(b) All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

(c) Before any question shall be reserved by any court, counsel shall file in that court a stipulation which shall clearly and fully state the question or questions upon which advice is desired; that their present determination by the appellate court having jurisdiction would be in the interest of simplicity, directness and economy in judicial action, the grounds for such allegation being particularly stated; that the answers to the questions will determine, or are reasonably certain to enter into the final determination of the case; and that the parties request that the questions be reserved for the advice of the appellate court having jurisdiction. The stipulation shall also designate the specific pleadings in the trial court case file which are necessary for the presentation of the question or questions sought to be reserved and shall state the undisputed facts which are essential for determination of the question or questions sought to be reserved. With the stipulation the parties shall file a joint docketing statement in the format specified in Section 63-4 (a) (4) for regular appeals.

(d) Upon the ordering of a reservation by the superior court, the clerk of the trial court shall send notice of the reservation to the appellate clerk and to all parties of record. The date of issuance of this notice shall be deemed the filing date of the appeal for purposes of the brief filing deadlines of Section 67-3. No entry fee shall be paid to the superior court and no costs shall be taxed in favor of any party. With the notice of reservation, the clerk of the trial court shall send to the appellate clerk two copies each of the stipulation, its accompanying joint docketing statement, the superior court's order of reservation, and the docket sheet (DS1) listing the counsel for all parties.

(e) The court will not entertain a reservation for its advice upon questions of law arising in any action unless the question or questions presented are such as are, in the opinion of the court, reasonably certain to enter into the decision of the case, and it appears that their present determination would be in the interest of simplicity, directness and economy of judicial action.

(f) The advice of the appellate court on a reservation may be reviewed by the supreme court only upon the granting of certification as provided in chapter 84.

(P.B. 1978-1997, Sec. 4147.)

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CHAPTER 74

APPEALS FROM JUDICIAL REVIEW COUNCIL

Sec.		Sec.	
74-1.	Time to Take; Form; Filing; Costs	74-5.	Parties
74-2.	Papers to Be Filed	74-6.	Applicability of Rules
74-3.	Costs and Security Not Required	74-7.	Action on Recommendation when No Appeal
74-4.	Decision of Council; Remand by Supreme Court	74-8.	Initiation of Action by Supreme Court

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 74-1. Time to Take; Form; Filing; Costs

Appeals from decisions of the judicial review council shall be taken within twenty days from the date the decision appealed from is received by the respondent judge.

The appeal shall be directed to and filed with the supreme court and shall be accompanied by a certification that a copy thereof has been served on the chair or executive director of the judicial review council in accordance with the provisions of Section 62-7. No fee shall be required to be paid. The appellate clerk shall docket the appeal, note thereon the date and time of the filing, affix the docket number assigned to the appeal and send a copy to the judicial review council and to each appearing party.

(P.B. 1978-1997, Sec. 4150.)

Sec. 74-2. Papers to Be Filed

The respondent judge shall submit, as set forth in Section 61-5, to the appellate clerk at the time the appeal is filed:

(a) a copy of the decision of the judicial review council appealed from, and

(b) the submissions required by Section 63-4.

(P.B. 1978-1997, Sec. 4151.)

Sec. 74-3. Costs and Security Not Required

Statutory fees, taxable costs and the requirement for furnishing security for costs are waived.

(P.B. 1978-1997, Sec. 4152.)

Sec. 74-4. Decision of Council; Remand by Supreme Court

The judicial review council shall state its decision in writing on the issues of the case and, if there are factual issues, the factual basis for its decision. The judicial review council shall state in its decision its conclusion as to each claim of law raised by the parties. If the supreme court deems it necessary to the proper disposition of the cause, it may remand the case to the judicial review council for clarification of the basis for its decision.

(P.B. 1978-1997, Sec. 4153.)

Sec. 74-5. Parties

The parties shall be referred to as the judicial review council and the respondent.

(P.B. 1978-1997, Sec. 4154.)

Sec. 74-6. Applicability of Rules

All proceedings subsequent to the filing of the appeal shall be governed by the rules applicable to appeals and appeals from administrative agencies.

(P.B. 1978-1997, Sec. 4155.)

Sec. 74-7. Action on Recommendation when No Appeal

In the event that the respondent judge does not appeal a decision by the judicial review council to recommend to the supreme court such judge's suspension or removal, the council shall, at the expiration of the time to appeal, forward to the appellate clerk a certified copy of its decision together with those parts of the record and transcript as it deems necessary for a proper consideration of its recommendation.

The appellate clerk shall note the date of filing on the documents, notify the chief justice that they have been filed, and prepare sufficient copies for the members of the supreme court. That court shall, as soon as practicable, review the filed documents and render a decision on the recommendation of the council.

(P.B. 1978-1997, Sec. 4156.)

Sec. 74-8. Initiation of Action by Supreme Court

In the event that the supreme court, on its own motion, wishes to initiate proceedings against a judge, it shall refer the matter to the judicial review council or, if the judge to be investigated is a member of that council, to a committee of three state referees for investigation and hearing.

The council or the committee shall render a decision pursuant to Section 74-4 and forward a copy of its decision to the respondent judge and to the appellate clerk.

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The decision may be appealed by the respondent judge pursuant to the provisions of this chapter. If the respondent judge fails to appeal within the time provided, the decision shall be final, unless it was rendered by a committee or contains a recommendation for suspension or removal of the judge, in which case, at the expiration of the time to appeal, the council or committee shall file pertinent parts of the record and transcript with the appellate clerk pursuant to Section 74-7 and the supreme court shall render a decision thereon.

(P.B. 1978-1997, Sec. 4157.)

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CHAPTER 75

APPEALS FROM COUNCIL ON PROBATE JUDICIAL CONDUCT

Sec.		Sec.	
75-1.	Time to Take; Form; Filing; Costs	75-4.	Decision of Council; Remand by Supreme Court
75-2.	Papers to Be Filed	75-5.	Parties
75-3.	Costs and Security Not Required	75-6.	Applicability of Rules

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 75-1. Time to Take; Form; Filing; Costs

Appeals from decisions of the council on probate judicial conduct to reprimand or censure shall be taken within twenty days from the date that notice of the reprimand or censure is received by the respondent judge.

The appeal shall be directed to and filed with the supreme court, and shall be accompanied by a certification that a copy thereof has been served on the chair or secretary of the council on probate judicial conduct in accordance with the provisions of Section 62-7. No fee shall be required to be paid. The appellate clerk shall docket the appeal, note on the form the date and time of the filing, affix the docket number assigned to the appeal and send a copy to the council on probate judicial conduct and to each appearing party.

(P.B. 1978-1997, Sec. 4159.)

Sec. 75-2. Papers to Be Filed

The appellant shall submit, as set forth in Section 62-7, to the appellate clerk at the time the appeal is filed:

(a) a copy of the decision of the council on probate judicial conduct appealed from, and

(b) the submissions required by Section 63-4.

(P.B. 1978-1997, Sec. 4160.)

Sec. 75-3. Costs and Security Not Required

Statutory fees, taxable costs and the requirement for furnishing security for costs are waived.

(P.B. 1978-1997, Sec. 4161.)

Sec. 75-4. Decision of Council; Remand by Supreme Court

The council on probate judicial conduct shall state its decision in writing on the issues of the case. Within two weeks of receipt of notice of an appeal, the council shall file a finding of fact and conclusions therefrom. If the supreme court deems it necessary to the proper disposition of the cause, it may remand the case to the council on probate judicial conduct for clarification of the basis of its decision.

(P.B. 1978-1997, Sec. 4162.)

Sec. 75-5. Parties

The parties shall be referred to as the council on probate judicial conduct and the respondent.

(P.B. 1978-1997, Sec. 4163.)

Sec. 75-6. Applicability of Rules

All proceedings subsequent to the filing of the appeal shall be governed by the rules applicable to appeals and appeals from administrative agencies.

(P.B. 1978-1997, Sec. 4164.)

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CHAPTER 76

APPEALS IN WORKERS' COMPENSATION CASES

Sec.		Sec.	
76-1.	Applicability of Rules	76-4.	Fees and Costs
76-2.	Filing Appeal	76-5.	Reservation of Case
76-3.	Record; Preparation of Case File; Exhibits	76-6.	Definitions

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 76-1. Applicability of Rules

Except as otherwise noted in Sections 76-2 through 76-6, the practice and procedure for appeals to the appellate court (1) from a decision of the compensation review board (board), or (2) from a decision of a workers' compensation commissioner acting pursuant to General Statutes § 31-290a (b) (§ 31-290a commissioner), shall conform to the rules of practice governing other appeals.

(P.B. 1978-1997, Sec. 4165.)

Sec. 76-2. Filing Appeal

The appeal shall be filed with the appellate clerk accompanied by a certification that a copy thereof has been served on each party of record and on the board or the § 31-290a commissioner, as appropriate, in accordance with the provisions of Section 62-7.

The appellate clerk shall stamp or note on the appeal the date and time of filing, shall docket the appeal, shall affix to the appeal the docket number assigned to it, and shall send one copy to the board or the § 31-290a commissioner, as appropriate, and one copy to each appearing party.

(P.B. 1978-1997, Sec. 4165.1.)

Sec. 76-3. Record; Preparation of Case File; Exhibits

Within ten days of the issuance of notice of the filing of an appeal, the board or the § 31-290a commissioner, as appropriate, shall cause to be filed with the appellate clerk two complete copies of the case file. No omissions may be made from the case file except upon the authorization of the appellate clerk. Each document of the case file must be numbered and the file must include a table of contents listing each item entered in the file according to its number.

All exhibits before the board or the § 31-290a commissioner are deemed exhibits on appeal. The appellate clerk shall notify the board or the § 31-290a commissioner of the exhibits required by the court. It shall be the responsibility of the board or the § 31-290a commissioner to transmit those exhibits promptly to the appellate clerk.

(P.B. 1978-1997, Sec. 4165.2.)

Sec. 76-4. Fees and Costs

On appeals from the board or the § 31-290a commissioner, or upon the reservation of a workers' compensation case by the compensation review board, no entry fee shall be paid, and no costs shall be taxed in favor of either party provided that if an appeal is found by the court either to be frivolous or to be taken for the purpose of vexation or delay, the court may tax costs in its discretion against the person so taking the appeal.

(P.B. 1978-1997, Sec. 4165.4.)

Sec. 76-5. Reservation of Case

When, in any case arising under the provisions of this chapter, the compensation review board is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the appellate court, in order that a definite rule be established applicable to future cases, the compensation review board may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the appellate court. Upon a reservation so made, no costs or fees shall be taxed in favor of either party. Upon the filing of such a reservation, the question shall come before the appellate court as though an appeal had been taken, and that court shall thereupon reserve the case for the opinion of the supreme court in the manner herein indicated; but if, in the opinion of the appellate court, the principles of law involved in the decision are in fact free from reasonable doubt and the public interest does not in fact require that they be determined by the supreme court, the appellate court may, in its discretion, hear and determine the controversy as in other cases. Any reservation under this rule may be transferred to the supreme

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court on its own motion pursuant to General Statutes § 51-199 (c) or on the motion of any party pursuant to Section 65-2.

(P.B. 1978-1997, Sec. 4165.5.) (Amended July 21, 1999, to take effect Jan. 1, 2000.)

Sec. 76-6. Definitions

With regard to appeals from the board or the § 31-290a commissioner, references in the rules of appellate procedure to trial court or trial judge shall, where applicable, be deemed to mean the individuals who comprised the board which rendered the decision from which the appeal was taken, or the § 31-290a commissioner, as appropriate.

(P.B. 1978-1997, Sec. 4165.6; see also Sec. 60-4)

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CHAPTER 77

PROCEDURES CONCERNING COURT CLOSURE AND SEALING ORDERS OR ORDERS LIMITING THE DISCLOSURE OF FILES, AFFIDAVITS, DOCUMENTS OR OTHER MATERIAL

(Amended Oct. 15, 2003, to take effect Jan. 1, 2004.)

Sec.
77-1. Expedited Review of an Order concerning Court Closure, or an Order that Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

Sec.
77-2. Sealing Orders; Treatment of Lodged Records

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 77-1. Expedited Review of an Order concerning Court Closure, or an Order that Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

(Amended July 21, 1999, to take effect Jan. 1, 2000.)

(a) Except as provided in subsection (b), any person affected by a court order which prohibits the public or any person from attending any session of court, or any order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding, may seek review of such order by filing an original and fifteen copies of a petition for review with the appellate court within seventy-two hours after the issuance of the order. The petition shall fully comply with Sections 66-2 and 66-3. The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate court. An appendix containing the information or complaint, the answer, all motions pertaining to the matter, the opinion or orders of the trial court sought to be reviewed, a list of all parties with the names, addresses, telephone and facsimile numbers and, if applicable, the juris number of their counsel, the names of all judges who participated in the case, and a transcript order acknowledgment form (JD-ES-38), shall be attached to each copy of the petition.

Any person filing a petition for review pursuant to this rule shall serve a copy of the petition and appendix upon (1) all parties to the case and (2) any nonparty who sought the closure order or order sealing or limiting disclosure by facsimile or hand delivery on the same day as the petition is filed. Any party or nonparty who sought such order may file a written response within ninety-six hours after the filing of the petition for review. Failure to file a written response shall not preclude that party or nonparty who sought the order under review from participating in the hearing on the petition.

The filing of any petition for review of a court order which prohibits the public or any person from attending any session of court shall stay the order until the final determination of the review. The filing of any petition for review of an order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court shall not stay the order during the review.

The appellate court shall hold an expedited hearing on any petition for review on the fifth business day next following the day upon which the certificate of completion provided for by Section 63-8 (c) has been filed with the appellate clerk. After such hearing the appellate court may affirm, modify or vacate the order reviewed.

(b) This section shall not apply to court orders concerning any session of court conducted pursuant to General Statutes §§ 46b-11, 46b-49, 46b-122, 54-76h, and any order issued pursuant to a rule that seals or limits the disclosure of any affidavit in support of an arrest warrant, or any other provision of the General Statutes under which the court is authorized to close proceedings.

(P.B. 1978-1997, Sec. 4166.) (Amended July 21, 1999, and December 13, 1999, to take effect Jan. 1, 2000.)

Sec. 77-2. Sealing Orders; Treatment of Lodged Records

(a) When, by order of the trial court or by operation of statute, a trial court file is sealed or is subject to limited disclosure, all filings with the appellate clerk in that matter shall be treated similarly unless otherwise ordered by the court having appellate jurisdiction. Any sealing or limitation on disclosure ordered by the trial court or required

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by operation of statute as to any affidavit, document or other material filed in the trial court shall continue throughout the appellate process.

(b) If a claim is raised on appeal challenging the denial of a motion to seal or limit disclosure pursuant to Section 7-4B (d), a lodged record shall remain conditionally under seal in the court having appellate jurisdiction and shall be treated as an exhibit pursuant to the provisions of Section 68-1.

(Adopted Oct. 15, 2003, to take effect Jan. 1, 2004.)

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CHAPTER 78

REVIEW OF GRAND JURY RECORD OR FINDING ORDER

Sec.
78-1. Review of an Order concerning Disclosure of Grand Jury Record or Finding

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 78-1. Review of an Order concerning Disclosure of Grand Jury Record or Finding

Any person aggrieved by an order of a panel or an investigatory grand jury pursuant to General Statutes § 54-47g may seek review of such order by filing a petition for review with the appellate court within seventy-two hours after the issuance of the order. The filing of any such petition for review shall stay the order until the final determination of the petition. The appellate court shall hold an expedited hearing on such petition. After such hearing, the appellate court may affirm, modify or vacate the order reviewed.

(P.B. 1978-1997, Sec. 4166A.)

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CHAPTER 78a

REVIEW OF ORDERS CONCERNING RELEASE ON BAIL

Sec.
78a-1. Petition for Review of Order concerning Release on Bail

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 78a-1. Petition for Review of Order concerning Release on Bail

Any accused person or the state, aggrieved by an order of the superior court concerning release, may petition the appellate court for review of such order. Any such petition shall have precedence over any other matter before the appellate court and any hearing ordered by the court shall be held expeditiously with reasonable notice.

Petitions for review of bail must conform to the requirements for motions for review set forth in Section 66-6 and are subject to transfer to the supreme court pursuant to Section 65-3.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

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CHAPTER 79

APPEALS IN JUVENILE MATTERS

Sec.
79-1. Time to Take; Form; Filing; Costs
79-2. Clerk's Duties
79-3. Inspection of Records
79-4. Hearings; Confidentiality
79-5. Briefs

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 79-1. Time to Take; Form; Filing; Costs

Appeals from judgments of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment from which the appeal is taken.

The appeal shall be filed with the clerk in charge of juvenile matters with sufficient copies so that the clerk may distribute copies as required by Section 79-2.

An appellant who is indigent may make written application to the court before which the juvenile matter was heard for waiver of fees as provided in Section 63-6 or 63-7.

(P.B. 1978-1997, Sec. 4166B.)

Sec. 79-2. Clerk's Duties

In addition to the clerk's duties as specified in Section 63-3, the clerk of the superior court in charge of juvenile matters shall also send a copy of the endorsed appeal form and the docket sheet to the commissioner of children and families, to the petitioner upon whose application the proceedings in the superior court were instituted, unless such party is the appellant, to any person or agency having custody of any child who is a subject of the proceeding, and to all other interested persons; and if the addresses of any such persons do not appear of record, such juvenile clerk shall call the matter to the attention of a judge of the superior court who shall make such an order of notice as such judge deems advisable.

(P.B. 1978-1997, Sec. 4166B.1.)

Sec. 79-3. Inspection of Records

The records and papers of any juvenile matter shall be open for inspection only to counsel of record and to others having a proper interest therein only upon order of the court. The name of the child or youth involved in any appeal from a juvenile matter shall not appear on the record of the appeal.

(P.B. 1978-1997, Sec. 4166B.2.)

Sec. 79-4. Hearings; Confidentiality

(a) For the purpose of maintaining confidentiality, upon the hearing of an appeal from a juvenile matter, the court may exclude any person from the court whose presence is unnecessary.

(b) All proceedings shall be conducted in a manner that will preserve the anonymity of the child or youth.

(P.B. 1978-1997, Sec. 4166B.3.) (Amended Oct. 15, 2003, to take effect Jan. 1, 2004.)

Sec. 79-5. Briefs

Briefing in juvenile matters shall be in accordance with the general rules for briefing appeals, except that a brief or statement in accordance with Section 67-13 shall be filed by counsel for the minor child and/or counsel for the guardian ad litem within ten days of the filing of the appellee's brief.

(Adopted Nov. 4, 2004, to take effect Jan. 1, 2005.)

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CHAPTER 80

APPEALS IN HABEAS CORPUS PROCEEDINGS FOLLOWING CONVICTION

Sec.
80-1. Certification to Appeal; Procedure on Appeal

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 80-1. Certification to Appeal; Procedure on Appeal

In any habeas corpus proceeding where the party desiring to appeal is required by statute to petition the trial court for certification that a question is involved in the decision which ought to be reviewed by the appellate court, the petition for such certification shall be made to the judge who tried the case or, if such judge is unavailable, a judge of the superior court designated by the chief court administrator, within ten days after the case is decided. The appeal shall be filed within twenty days from the issuance of the notice of decision on the petition for certification, unless an application for waiver of fees, costs and security is filed pursuant to Section 63-6, in which event the appeal shall be filed within twenty days from the decision on the application.

(P.B. 1978-1997, Sec. 4166C.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended May 12, 2004, to take effect Jan. 1, 2005.)

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CHAPTER 81

APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

Sec.		Sec.	
81-1.	Petition; Where to File; Time to File; Service; Fee	81-4.	Proceedings after Certification by Appellate Court
81-2.	Form of Petition	81-5.	Extensions of Time
81-3.	Statement in Opposition to Petition	81-6.	Filing of Regulations

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 81-1. Petition; Where to File; Time to File; Service; Fee

(a) A petition for certification in accordance with chapters 124 and 440 of the General Statutes shall be filed by the party aggrieved by the decision of the trial court in the trial court within twenty days from the issuance of notice of the decision of the trial court. If within this period a timely motion is filed which, if granted, would render the trial court judgment ineffective, as, for example, a motion for a new trial, then the twenty days shall run from the issuance of notice of the decision thereon.

The petitioner shall file the original and one copy of the petition with, and pay a filing fee to, the clerk of the trial court. The clerk shall endorse on the original petition the date and time of filing and the receipt, or waiver, of fees. The clerk shall return the original endorsed petition to the petitioner, who shall promptly file it, together with fifteen additional copies, with the appellate clerk. The petitioner shall serve a copy upon every other party in the manner set forth in Section 62-7.

(b) Any other party aggrieved by the decision of the trial court may file a cross petition within ten days of the filing of the original petition. The filing of cross petitions, including the payment of the fee, service pursuant to Section 62-7, the form of the cross petition, and all subsequent proceedings shall be the same as though the cross petition were an original petition.

(c) The filing of a petition or cross petition by one party shall be deemed to be a filing on behalf of that party only.

(P.B. 1978-1997, Sec. 4142.) (Amended Sept. 22, 2004, to take effect Jan. 1, 2005; amended May 4, 2006, to take effect Jan. 1, 2007.)

Sec. 81-2. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.

(2) A statement of the basis for certification identifying the specific reasons why the appellate court should allow the extraordinary relief of certification. These reasons may include but are not limited to the following:

(A) The court below has decided a question of substance not theretofore determined by the supreme court or the appellate court or has decided it in a way probably not in accord with applicable decisions of the supreme court or the appellate court.

(B) The decision under review is in conflict with other decisions of the court below.

(C) The court below has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by any other court, as to call for an exercise of the appellate court's supervision.

(D) A question of great public importance is involved.

(3) A summary of the case containing the facts material to the consideration of the questions presented, reciting the disposition of the matter in the trial court, and describing specifically how the trial court decided the questions presented for review in the petition.

(4) A concise argument amplifying the reasons relied upon to support the petition. No separate memorandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix containing the opinion or order of the trial court sought to be reviewed, a copy of the order on any motion which would stay or extend the time period for filing the petition, and a list of all parties to the appeal in the trial court with the names, addresses, telephone and facsimile numbers, and, if applicable, the juris numbers of their counsel.

(b) The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or

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twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in petitions: arial and univers. Each page of a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. A certificate shall be attached to the signed, original petition, indicating that it is in compliance with all the provisions of this rule.

(P.B. 1978-1997, Sec. 4142.1.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended Jan. 17, 2002, to take effect April 15, 2002; amended May 15, 2003, to take effect Jan. 1, 2004.)

Sec. 81-3. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition in the trial court, any party may file a statement in opposition to the petition. The original statement in opposition, together with fifteen additional copies, shall be filed with the appellate clerk. The statement shall disclose any reasons why certification should not be granted by the appellate court and shall be presented in a manner which is responsive, in form and content, to the petition it opposes. The statement in opposition shall not exceed ten pages in length, except with special permission of the appellate clerk. The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in the statement in opposition: arial and univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. A certificate shall be attached to the signed, original statement in opposition, indicating that it is in compliance with all the provisions of this rule.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be served in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(P.B. 1978-1997, Sec. 4142.2.) (Amended Jan. 17, 2002, to take effect April 15, 2002; amended May 15, 2003, to take effect Jan. 1, 2004; amended May 4, 2006, to take effect Jan. 1, 2007.)

Sec. 81-4. Proceedings after Certification by Appellate Court

Within twenty days from the issuance of notice of certification, the petitioner, who shall be considered the appellant, shall file the appeal in the manner provided by Section 63-3, take all other steps as may be required by Section 63-4, and in accordance with Section 63-5 shall pay the appropriate fees and give security. The clerk of the trial court must forward the case file to the appellate clerk in accordance with Section 68-1. Except as otherwise noted in Section 81-6, all proceedings subsequent to the filing of the appeal shall be governed by the rules applicable to appeals and appeals from administrative agencies.

(P.B. 1978-1997, Sec. 4142.3.) (Amended July 24, 2002, to take effect Oct. 1, 2002.)

Sec. 81-5. Extensions of Time

Motions for extensions of time for purposes of filing a petition for certification or a statement in opposition thereto shall be filed with the appellate clerk and shall be governed by Section 66-1.

(P.B. 1978-1997, Sec. 4142.4.)

Sec. 81-6. Filing of Regulations

The appellant's brief shall be filed simultaneously with one complete copy of the local land use regulations that were in effect at the time of the hearing that gave rise to the agency action or ruling in dispute. The regulations shall be certified by the local zoning or equivalent official as having been in effect at the time of the hearing. The appellant need not serve a copy of such regulations on other counsel of record.

(Adopted July 24, 2002, to take effect Oct. 1, 2002.)

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CHAPTER 82

CERTIFIED QUESTIONS TO OR FROM COURTS OF OTHER JURISDICTIONS

(Amended Nov. 4, 2004, to take effect Jan. 1, 2005; amended Feb. 1, 2005, to take effect Jan. 1, 2006.)

Sec.		Sec.	
82-1.	Certification of Questions from Other Courts	82-5.	Receipt; Costs of Certification
82-2.	Method of Initiating [Repealed]	82-6.	Briefs and Argument
82-3.	Contents of Certification Request	82-7.	Opinion
82-4.	Preparation of Certification Request	82-8.	Certification of Questions to Other Courts

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 82-1. Certification of Questions from Other Courts

The supreme court may answer questions of law certified to it by a court of the United States or by the highest court of another state, as defined in General Statutes § 51-199b, or by the highest court of a tribe of Native Americans recognized by federal law when requested by the certifying court if the answer may be determinative of an issue in pending litigation in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this state.

(P.B. 1978-1997, Sec. 4168.) (Amended Nov. 4, 2004, to take effect Jan. 1, 2005; amended Feb. 1, 2005, to take effect Jan. 1, 2006.)

Sec. 82-2. Method of Initiating

[Repealed as of Jan. 1, 2005.]

Sec. 82-3. Contents of Certification Request

A certification request shall set forth: (1) The questions of law to be answered; (2) a finding or stipulation approved by the court setting forth all facts relevant to answering the questions certified and showing fully the nature of the controversy in which the questions arose; (3) that the receiving court may reformulate the questions; and (4) the names and addresses of counsel of record and pro se parties.

The questions presented should be such as will be determinative of the case, and it must appear that their present determination would be in the interest of simplicity, directness and economy of judicial action.

All questions presented shall be specific and shall be phrased so as to require a Yes or No answer, wherever possible.

(P.B. 1978-1997, Sec. 4170.) (Amended Nov. 4, 2004, to take effect Jan. 1, 2005.)

Sec. 82-4. Preparation of Certification Request

The certification request shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The certification request shall be submitted together with eight copies thereof and also eight copies of any briefs or other documents relating to the questions certified. Upon receipt of the certification request, the appellate clerk shall notify the parties who shall be allowed a period of ten days from the date of mailing such notice to file objections to the acceptance of the certification request. The supreme court shall either preliminarily accept or decline the certification request. An order of preliminary acceptance shall not prevent the supreme court from rejecting the certification if it should later appear to have been improvidently ordered.

The supreme court may decline to answer the questions certified whenever it appears that the questions have been improperly framed, the necessary facts have not been fully set forth, or, for any other reason, certification has been improvidently ordered. The supreme court may also request the certifying court to provide additional facts required for a decision upon the questions certified, and also to clarify such questions when necessary. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion thereof may be necessary in answering the questions.

(P.B. 1978-1997, Sec. 4171.)

Sec. 82-5. Receipt; Costs of Certification

Upon issuance of an order of preliminary acceptance, the appellate clerk shall docket the order, affix to the order the docket number assigned, and shall send notice of issuance of such order, with the docket number assigned, to the certifying court and to all parties. Within twenty days of receipt of such notice, the fees and costs shall be paid equally by the parties, unless otherwise

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ordered by the certifying court in its order of certification. In addition, within twenty days of preliminary acceptance, the parties shall file a docketing statement in the format specified in Section 63-4 (a) (4). No security or recognizance shall be required, and no costs shall be taxed in favor of either party.

(P.B. 1978-1997, Sec. 4172.)

Sec. 82-6. Briefs and Argument

The plaintiff in the court that requested certification shall be deemed the appellant, and the defendant in such court shall be deemed the appellee for purposes of these rules, unless otherwise ordered by the court.

Briefs filed by the parties shall conform to the rules here. The time for filing briefs shall commence from the mailing of notice of preliminary acceptance of the certification order.

Oral argument shall be as provided for by the rules here, unless otherwise ordered by the court.

(P.B. 1978-1997, Sec. 4173.) (Amended Nov. 4, 2004, to take effect Jan. 1, 2005.)

Sec. 82-7. Opinion

Upon publication thereof, the written opinion of the supreme court in response to the question or questions certified shall be sent by the appellate clerk to the certifying court. Unless otherwise ordered by the supreme court, official notification to counsel of record shall be the publication of the opinion in the Connecticut Law Journal.

(P.B. 1978-1997, Sec. 4174.)

Sec. 82-8. Certification of Questions to Other Courts

The supreme court, on its own motion or motion of a party, may certify a question of law to the highest court of another state, as defined in General Statutes § 51-199b, or to the highest court of a tribe of Native Americans recognized by federal law if the pending cause involves a question to be decided under the law of the other jurisdiction; the answer to the question may be determinative of an issue in the pending cause; and the question is one for which no answer is provided by a controlling appellate decision, constitutional provision, or statute of the other jurisdiction. The procedures for certification from the supreme court to the receiving court shall be those provided in the statutes or rules of the receiving court.

(Adopted Feb. 1, 2005, to take effect Jan. 1, 2006.)

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CHAPTER 83

CERTIFICATION PURSUANT TO GENERAL STATUTES § 52-265a IN CASES OF SUBSTANTIAL PUBLIC INTEREST

Sec.		Sec.	
83-1.	Application; In General	83-3.	Application Denied
83-2.	Application Granted	83-4.	Unavailability of Chief Justice

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 83-1. Application; In General

Prior to filing an appeal pursuant to General Statutes § 52-265a, the party seeking to appeal shall, within two weeks of the issuance of the order or decision of the superior court, submit an original plus three copies of an application for certification by the chief justice (1) stating the question of law on which the appeal is to be based, (2) describing the substantial public interest that is alleged to be involved, and (3) explaining why delay may work a substantial injustice.

Using an expeditious delivery method such as overnight mail or facsimile or other electronic medium, the party submitting the application shall provide the trial judge, the trial court clerk, and all counsel of record with a copy of the application. This requirement is in addition to the customary certification requirements of Section 62-7.

(P.B. 1978-1997, Sec. 4177.) (Amended July 26, 2000, to take effect Jan. 1, 2001.)

Sec. 83-2. Application Granted

If any application is certified pursuant to General Statutes § 52-265a by the chief justice, the usual rules of procedure shall apply except as modified by the supreme court pursuant to Sections 60-2 or 60-3. The party certified to appeal shall have such additional time as the order of certification allows to file the appeal.

(P.B. 1978-1997, Sec. 4178.)

Sec. 83-3. Application Denied

If an application pursuant to General Statutes § 52-265a is denied by the chief justice, the denial shall be deemed to terminate all proceedings relating to the appeal.

(P.B. 1978-1997, Sec. 4179.)

Sec. 83-4. Unavailability of Chief Justice

If the chief justice is unavailable or disqualified, the most senior associate justice who is available and is not disqualified shall rule on the application for certification.

(P.B. 1978-1997, Sec. 4180.)

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CHAPTER 84

APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

Sec.	
84-1.	Certification by Supreme Court
84-2.	Basis for Certification
84-3.	Stay of Execution
84-4.	Petition; Time to File; Where to File; Service; Fee
84-5.	Form of Petition
84-6.	Statement in Opposition to Petition
84-7.	Extensions of Time
84-8.	Grant or Denial of Certification
84-9.	Proceedings after Certification; Appeals Deemed Pending
84-10.	Record
84-11.	Papers to Be Filed by Appellant and Appellee
84-12.	Applicability of Rules

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 84-1. Certification by Supreme Court

An appeal may be taken to the supreme court upon the final determination of an appeal in the appellate court where the supreme court, upon petition of an aggrieved party, certifies the case for review.

(P.B. 1978-1997, Sec. 4126.)

Sec. 84-2. Basis for Certification

Certification by the supreme court on petition by a party is not a matter of right but of sound judicial discretion and will be allowed only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(1) Where the appellate court has decided a question of substance not theretofore determined by the supreme court or has decided it in a way probably not in accord with applicable decisions of the supreme court.

(2) Where the decision under review is in conflict with other decisions of the appellate court.

(3) Where the appellate court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by any other court, as to call for an exercise of the supreme court's supervision.

(4) Where a question of great public importance is involved.

(5) Where the judges of the appellate panel are divided in their decision or, though concurring in the result, are unable to agree upon a common ground of decision.

(P.B. 1978-1997, Sec. 4127.)

Sec. 84-3. Stay of Execution

In any action in which a stay of proceedings was in effect during the pendency of the appeal, or, if no stay of proceedings was in effect, in which the decision of the appellate court would change the position of any party from its position during the pendency of the appeal, proceedings to enforce or carry out the judgment shall be stayed until the time to file the petition has expired. If a petition by a party is filed, the proceedings shall be stayed until the supreme court acts on the petition and, if the petition is granted, until the final determination of the cause; but if the presiding judge of an appellate panel which heard the case is of the opinion that the certification proceedings have been taken only for delay or that the due administration of justice so requires, such presiding judge may, up to the time the supreme court acts upon the petition, upon motion order that the stay be terminated. If such presiding judge is unavailable, the most senior judge on such panel who is available may act upon such a motion for termination of the stay.

(P.B. 1978-1997, Sec. 4128.)

Sec. 84-4. Petition; Time to File; Where to File; Service; Fee

(a) A petition for certification shall be filed by the petitioner within twenty days of (1) the date the opinion is officially released as set forth in Section 71-4, or (2) the issuance of notice of any order or judgment finally determining a cause in the appellate court, whichever is earlier. If within this period a timely motion is filed which, if granted, would render the appellate court order or judgment ineffective, as, for example, a motion for reconsideration, or if within this period an application for waiver of fees is filed, then the twenty days shall run from the issuance of notice of the decision thereon.

Except in workers' compensation cases, the petitioner for certification shall file the original and one copy of the petition with, and pay a filing fee to, the clerk of the trial court except that no fee shall be required in cases where a waiver of fees, costs and expenses under Section 63-6 or 63-7

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was previously granted. The fee may be paid to the clerk of any trial court in the state. The clerk shall endorse on the original petition the date and time of filing and the receipt, or waiver, of fees. The clerk shall return the original endorsed petition to the petitioner, who shall promptly send it, together with fifteen additional copies, to the appellate clerk. The petitioner shall serve a copy upon every other party in the manner set forth in Section 62-7, and if the fee was paid at a location other than the original trial court, then the petitioner shall also serve a copy upon the clerk of the original trial court.

In workers' compensation cases the petitioner shall file the original and fifteen copies with the appellate clerk. The petitioner shall serve a copy upon every other party in the manner set forth in Section 62-7, and upon the trial commissioner in a General Statutes § 31-290a appeal and upon the compensation review board in an appeal from that board. No fee is required in workers' compensation cases.

(b) Any other party aggrieved by the judgment of the appellate court may file a cross petition within ten days of the filing of the original petition. The filing of cross petitions, including the payment of the fee, service pursuant to Section 62-7, the form of the cross petition, and all subsequent proceedings shall be the same as though the cross petition were an original petition.

(c) The filing of a petition or cross petition by one party shall not be deemed to be a filing on behalf of any other party.

(P.B. 1978-1997, Sec. 4129.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended July 21, 1999, to take effect Jan. 1, 2000; amended Oct. 10, 2001, to take effect Jan. 1, 2002; amended May 4, 2006, to take effect Jan. 1, 2007.)

Sec. 84-5. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The supreme court will ordinarily consider only those questions squarely raised, subject to any limitation in the order granting certification.

(2) A statement of the basis for certification identifying the specific reasons, including but not limited to those enumerated in Section 84-2, why the supreme court should allow the extraordinary relief of certification.

(3) A summary of the case containing the facts material to the consideration of the questions presented, reciting the disposition of the matter in the appellate court, and describing specifically how the appellate court decided the questions presented for review in the petition.

(4) A concise argument amplifying the reasons relied upon to support the petition. No separate memorandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix containing:

(A) the opinion or order of the appellate court sought to be reviewed,

(B) if the opinion or order of the appellate court was a summary affirmance or dismissal, a copy of the trial court's memorandum of decision that was entered in connection with the claim raised by the petitioner before the appellate court, or, if no memorandum was filed, a copy of the trial court's ruling on the matter,

(C) a copy of the order on any motion which would stay or extend the time period for filing the petition,

(D) a list of all parties to the appeal in the appellate court with the names, addresses, telephone and facsimile numbers, and if applicable, the juris numbers of their trial and appellate counsel.

The appendix may be reproduced on both sides of a page.

(b) The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in petitions: arial and univers. Each page of a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. A certificate shall be attached to the signed, original petition, indicating that it is in compliance with all the provisions of this rule.

(P.B. 1978-1997, Sec. 4130.) (Amended July 23, 1998, to take effect Jan. 1, 1999; amended Jan. 17, 2002, to take effect April 15, 2002; amended May 15, 2003, to take effect Jan. 1, 2004.)

Sec. 84-6. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition in the trial court, any party may file a statement in opposition to the petition. The original statement in opposition, together with fifteen additional copies, shall be filed with the appellate clerk. The statement in opposition shall disclose any reasons why certification should not be granted by the supreme court and shall be presented in a manner which is responsive, in form and content, to the petition it opposes. The statement in opposition shall not exceed ten pages in length except with special permission of the appellate clerk.

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The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in the statement in opposition: arial and univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. A certificate shall be attached to the signed, original statement in opposition, indicating that it is in compliance with all the provisions of this rule.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be served in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(P.B. 1978-1997, Sec. 4131.) (Amended Jan. 17, 2002, to take effect April 15, 2002; amended May 15, 2003, to take effect Jan. 1, 2004; amended May 4, 2006, to take effect Jan. 1, 2007.)

Sec. 84-7. Extensions of Time

Motions for extensions of time for purposes of filing a petition for certification or a statement in opposition thereto shall be filed with the appellate clerk and shall be governed by Section 66-1.

(P.B. 1978-1997, Sec. 4132.)

Sec. 84-8. Grant or Denial of Certification

A petition by a party shall be granted on the affirmative vote of three or more justices of the supreme court. Upon the determination of any petition, the appellate clerk shall enter an order granting or denying the certification in accordance with the determination of the court and shall send notice of the court's order to the clerk of the trial court and to counsel.

(P.B. 1978-1997, Sec. 4136.)

Sec. 84-9. Proceedings after Certification; Appeals Deemed Pending

Whenever certification is granted by the supreme court, the cause shall be deemed pending on appeal in the supreme court and the appellate clerk shall enter the case upon the docket. Where a petition has been granted, the petitioner shall be considered the appellant. The appellant shall pay the filing fee to the clerk of any trial court within twenty days from the issuance of notice of certification. No fee shall be required, however, in workers' compensation cases or in cases where a waiver of fees, costs and expenses under Sections 63-6 or 63-7 was previously granted. The appellant shall certify to all other counsel and to the clerk of the trial court from which the cause arose that the fees have been paid or that no fees were required. Security for costs is not required to take an appeal pursuant to a grant of certification, but security may at any time, on motion and notice to the appellant, be ordered by the supreme court. Such security, if ordered, shall be filed with the trial court. The appellant shall also file with the appellate clerk the docketing statement required by Section 63-4 (a) (4). The appellant's brief shall be filed within forty-five days from the issuance of notice of certification, and thereafter the time limits for filing the appellee's brief and the reply brief, if any, shall be in accordance with Section 67-3.

The issues which the appellant may present are limited to those raised in the petition for certification, except where the issues are further limited by the order granting certification.

(P.B. 1978-1997, Sec. 4138.) (Amended July 24, 2002, to take effect Oct. 1, 2002.)

Sec. 84-10. Record

Those portions of the record on appeal to the appellate court relevant to the issue certified by the supreme court shall constitute the record on appeal to the supreme court and shall be prepared and distributed in the same manner as in other appeals to the supreme court. In addition, the record shall include the appellate court order or decision on the order granting certification and, to the extent the appellate clerk deems appropriate, any papers subsequently filed pursuant to Section 84-11.

The argument, if any, before the appellate court shall not be considered part of the record on appeal to the supreme court, except upon motion by a party showing special and important reasons therefor.

(P.B. 1978-1997, Sec. 4139.)

Sec. 84-11. Papers to Be Filed by Appellant and Appellee

(a) Upon the granting of certification, the appellee may present for review alternative grounds upon which the judgment may be affirmed provided those grounds were raised and briefed in the appellate court. Any party to the appeal may also present for review adverse rulings or decisions which should be considered on the appeal in the event of a new trial, provided that such party has raised such claims in the appellate court. If such alternative grounds for affirmation or adverse rulings or decisions to be considered in the event of a new trial were not raised in the appellate court, the party seeking to raise them

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in the supreme court must move for special permission to do so prior to the filing of that party's brief. Such permission will be granted only in exceptional cases where the interests of justice so require.

(b) Any party may also present for review any claim that the relief afforded by the appellate court in its judgment should be modified, provided such claim was raised in the appellate court either in such party's brief or upon a motion for reconsideration.

(c) Any party desiring to present alternative grounds for affirmance, adverse rulings or decisions in the event of a new trial or a claim concerning the relief ordered by the appellate court shall file a statement thereof within fourteen days from the issuance of notice of certification. Parties shall not file other Section 63-4 papers on a certified appeal without permission of the supreme court.

(P.B. 1978-1997, Sec. 4140.) (Amended July 28, 1999, to take effect Jan. 1, 2000.)

Sec. 84-12. Applicability of Rules

The rules governing other appeals shall, so far as applicable, and to the extent they have not been modified by this chapter, be the rules for all proceedings subsequent to the granting of certification.

(P.B. 1978-1997, Sec. 4141.)

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CHAPTER 84a

MATTERS WITHIN SUPREME COURT'S ORIGINAL JURISDICTION IN WHICH FACTS MAY BE FOUND

Sec.		Sec.	
84a-1.	Application of Rules	84a-4.	Reference of Issues of Fact
84a-2.	Pleadings and Motions	84a-5.	Evidence
84a-3.	Discovery	84a-6.	Other Officers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 84a-1. Application of Rules

These rules apply only to an action within the original jurisdiction of the supreme court in which facts may be found.

These rules do not apply to (1) a motion to invoke the court's supervisory powers under Section 60-2 of these rules, or (2) certified questions of law from courts of other jurisdictions under chapter 82 of these rules.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 84a-2. Pleadings and Motions

Unless otherwise ordered in a particular case, the form of pleadings and motions prescribed in the rules of practice should be followed in an original action in the supreme court. In other respects, those rules, when their application is appropriate, may be taken as a guide to procedure in an original action in this court.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 84a-3. Discovery

The rules of practice pertaining to discovery shall not apply in original actions in the supreme court except to the extent expressly authorized by the court in a particular case.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 84a-4. Reference of Issues of Fact

(a) **Reference**

Issues of fact closed on pleadings in an original action in the supreme court may be referred, by order of the chief justice or his or her designee, to a senior judge, justice or judge trial referee or, should the parties agree, to any other person or persons, which referral may contain such provisions as the court deems advisable.

(b) **Procedure**

Unless otherwise ordered by the court, if any reference is made pursuant to subsection (a), the rules of practice pertaining to references in chapter 19 of these rules shall apply.

(c) **Costs of References**

The court may allocate the costs of the reference in its discretion.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 84a-5. Evidence

The Connecticut Code of Evidence may be taken as a guide to the admission of evidence in an original action in the supreme court.

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

Sec. 84a-6. Other Officers

The court may appoint such other officers as the court deems advisable in carrying out its original jurisdiction. The costs of such officers shall be taxed in accordance with Section 84a-4 (c).

(Adopted June 2, 2005, to take effect Jan. 1, 2006.)

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CHAPTER 85

SANCTIONS

Sec.
85-1. Lack of Diligence in Prosecuting or Defending Appeal
85-2. Other Actions Subject to Sanctions
85-3. Procedure on Sanctions

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 85-1. Lack of Diligence in Prosecuting or Defending Appeal

If a party shall fail to prosecute an appeal with proper diligence, the court may dismiss the appeal with costs. If a party shall fail to defend against an appeal with proper diligence, the court may set aside in whole or in part the judgment under attack, with costs, and direct the entry of an appropriate final judgment by the trial court against the party guilty of the failure. If that party is a defendant in the action, the directed judgment may be in the nature of a judgment by default for such amount as may, upon a hearing in damages, be found to be due. If that party is a plaintiff in the action, the directed judgment may be one dismissing the action as to that plaintiff, and the judgment shall operate as an adjudication upon the merits. The statutory provisions regarding the opening of judgments of nonsuit and by default shall not apply to a judgment directed under the provisions of this rule.

(P.B. 1978-1997, Sec. 4184A.)

Sec. 85-2. Other Actions Subject to Sanctions

Actions which may result in the imposition of sanctions include, but are not limited to, the following:

(1) Failure to comply with rules and orders of the court.

(2) Filing of any papers which unduly delay the progress of an appeal.

(3) Presentation of unnecessary or unwarranted motions or opposition to motions.

(4) Presentation of unnecessary or unwarranted issues on appeal.

(5) Presentation of a frivolous appeal or frivolous issues on appeal.

(6) Presentation of a frivolous defense or defenses on appeal.

(7) Failure to attend preargument settlement conferences.

(8) Disregard of rules governing withdrawal of appeals.

(9) Repeated failures to meet deadlines.

Offenders will be subject, at the discretion of the court, to appropriate discipline, including the prohibition against appearing in the court or filing any papers in the court for a reasonable and definite period of time, the imposition of a fine pursuant to General Statutes § 51-84, and costs and payment of expenses, together with attorney's fees to the opposing party.

The sanction of prohibition against filing any papers in the court shall not prevent an offender from filing a motion for reconsideration of that sanction within seven days.

Offenders subject to such discipline include both counsel and pro se parties and, if appropriate, parties represented by counsel.

(P.B. 1978-1997, Sec. 4184B.)

Sec. 85-3. Procedure on Sanctions

Sanctions may be imposed by the court, on its own motion, or on motion by any party to the appeal. A motion for sanctions may be filed at any time. A hearing at which any party may be heard shall be held before the imposition of any sanction.

(P.B. 1978-1997, Sec. 4184C.)

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CHAPTER 86

RULES CHANGES; EFFECTIVE DATE; APPLICABILITY

Sec.
86-1. Publication of Rules; Effective Date
Sec.
86-2. Rule Changes; Applicability to Pending Appeals

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 86-1. Publication of Rules; Effective Date

Each rule hereafter adopted by the justices of the supreme court and the judges of the appellate court shall be promulgated by being published once in the Connecticut Law Journal. The rule shall become effective at such date as the justices and judges shall prescribe, but not less than sixty days after its promulgation. The justices and judges may waive the sixty day provision if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously.

(P.B. 1978-1997, Sec. 4188.) (Amended May 12, 2004, to take effect Jan. 1, 2005.)

Sec. 86-2. Rule Changes; Applicability to Pending Appeals

Whenever a new rule is adopted or a change is made to an existing rule, the new rule or rule change shall apply to all appeals pending on the effective date of the new rule or rule change and to all appeals filed thereafter. Appellate papers filed prior to the effective date of any new rule or rule change need not be refiled.

Any difficulty occasioned by the application of a new rule or rule change to appeals taken prior to the effective date thereof shall be resolved in the spirit of Section 60-1.

(P.B. 1978-1997, Sec. 4189.) (Amended July 26, 2000, to take effect Jan. 1, 2001.)

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REFERENCE TABLE

Rules in the Practice Book of 1978 as amended* to Rules in the Practice Book of 1998. The numbers in the center column are the temporary rule numbers assigned in the Connecticut Law Journal (CLJ) of July 29, 1997.

P.B. 1978-1997 Sec.	CLJ	P.B. 1998 Sec.
1		1-1
None	1A	1-2
2		1-3
3		1-4
4		1-5
5		1-6
5A		1-7
6		1-8
7		1-9
7A Title		None
7B		1-10
7C		1-11
8		2-1
9		2-2
10 Title		None
11		2-3
12		2-4
13		2-5
14		2-6
15A		2-7
16		2-8
17		2-9
18		2-10
18A		2-11
19		2-12
20 Title		None
21		2-13
22		2-14
23		2-15
24		2-16
24A Title		None
24B		2-17
24C		2-18
24D		2-19
24E		2-20
24F		2-21
25		2-22
26		2-23
26A		2-24
26B		2-25
27		2-26
27A		2-27
27A.1		2-28
27B		2-29
27C Title		None
27D		2-30
27E		2-31
27F		2-32
27G		2-33
27H		2-34
27J		2-35
27M		2-36
27M.1		2-37
27N		2-38
28 Title		None
28A		2-39
28B		2-40
28B.1		2-41
28C		2-42
28D		2-43
29		2-44
30		2-45
30A		2-46
31		2-47
31A		2-48
31B		2-49
32		2-50
34		2-51
35		2-52
36		2-53
36A		2-54
37		2-55
38 Title		None
39		2-56
40		2-57
41		2-58
42		2-59
44		2-60
45		2-61
46		2-62
46A		2-63
46B		2-64
46C		2-65
47		2-66
48		2-67
48A		None
49		8-1
50		8-2
51		8-3
52		8-4
53		8-5
54		8-6
55		8-7
56		8-8
57		8-9
58		8-10
59		8-11
60		8-12
63 Title		None
64(a)	7P	3-1
64(b)	7Q	3-2
64(b)	7R	3-3
64(c)	7S	3-4
None	7T	3-5
None	7U	3-6
None	7V	3-7
65	7W	3-8
68	7CC	3-14
69	7DD	3-15
70	7EE	3-16

* Rules repealed prior to 1995 are not represented in this table.

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P.B. 1978-1997 Sec.	CLJ	P.B. 1998 Sec.
71	7FF	3-17
72	7GG	3-18
73	7HH	3-19
74	7II	3-20
75	7JJ	3-21
76	7Z	3-11
77	7X	3-9
77(d)	7Y	3-10
78	7AA	3-12
79	7BB	3-13
80		9-1
81		9-2
82 Title		None
83		9-3
84		9-4
84A		9-5
85		9-6
86 Title		None
87		9-7
88		9-8
89		9-9
90		9-10
91		9-11
92		9-12
93		9-13
94		9-14
95		9-15
96		9-16
97		9-17
98 Title		None
99		9-18
100		9-19
101		9-20
102		9-21
103		9-22
104		9-23
105		9-24
106		9-25
107 Title		None
108		10-1
109		10-2
109A		10-3
110		10-4
111		10-5
112		10-6
113		10-7
114		10-8
115		10-9
116		10-10
117		10-11
118	7KK	4-1
119	7LL	4-2
120 Title		None
121		10-12
122		10-13
123		10-14
124		10-15
125		10-16
126		10-17
127	7MM	4-3
128		10-18
129		10-19
130 Title		None
131		10-20
132 Title		None
133		10-21
134		10-22
135		10-23
136		10-24
137		10-25
138		10-26
139		10-27
140		10-28
141		10-29
142		10-30
143		10-31
144		10-32
145		10-33
146		10-34
147		10-35
148		10-36
149		10-37
150		10-38
151 Title		None
152		10-39
153		10-40
154		10-41
155		10-42
156		10-43
157		10-44
158		10-45
159 Title		None
160		10-46
161		10-47
162		10-48
163		10-49
164		10-50
165		10-51
166		10-52
167		10-53
168		10-54
169		10-55
170 Title		None
171		10-56
172		10-57
173		10-58
174 Title		None
175		10-59
176		10-60
177		10-61
178		10-62
179		10-63
180		10-64
181		10-65
182		10-66
183		10-67
184 Title		None
185		10-68
186		10-69
187		10-70

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P.B. 1978-1997 Sec.	CLJ	P.B. 1998 Sec.
189		10-71
190		10-72
191		10-73
192		10-74
193		10-75
194		10-76
195		10-77
195A		10-78
195B		10-79
196		11-1
197		11-2
198		11-3
199		11-4
200		11-5
201		11-6
202		11-7
202A		11-8
203		11-9
204		11-10
204A		11-11
204B		11-12
205 Title		None
206		11-13
207		11-14
208		11-15
209		11-16
210		11-17
211		11-18
211A		11-19
211B		11-20
212		12-1
213		12-2
215		12-3
216		13-1
217 Title		None
218		13-2
219		13-3
220		13-4
221		13-5
222 Title		None
223		13-6
224		13-7
225		13-8
226 Title		None
227		13-9
228		13-10
229		13-11
230		13-12
230A		13-13
231		13-14
232		13-15
233		13-16
234		13-17
235		13-18
236		13-19
236A		13-20
236B		13-21
237 Title		None
238		13-22
239		13-23
240		13-24
241		13-25
242 Title		None
243		13-26
244		13-27
245		13-28
246		13-29
247		13-30
248		13-31
249		13-32
250	7CCC	7-1
250A		14-1
250B		14-2
251		14-3
252 Title		None
253		None
254		14-4
255		14-5
256		14-6
257		14-7
258		14-8
259		14-9
260		14-10
262 Title		None
263		14-11
264		14-12
265		14-13
267		None
268		14-14
269 Title		None
270		14-15
271		14-16
272		None
273		14-17
274		14-18
274A		14-19
276		14-20
277		14-21
278		14-22
279		14-23
280		14-24
281		14-25
282		None
283		15-1
284		15-2
284A		15-3
285A	7NN	5-1
286	7PP	5-3
287	7QQ	5-4
288	7RR	5-5
289	7SS	5-6
290		15-4
291	7TT	5-7
292 Title		None
293	7UU	5-8
294	7VV	5-9
295		15-5
296		15-6
297		15-7
299	7D	1-12

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300	7F	1-13
301		None
302		15-8
303		16-4(c)
303A		16-1
None	303B	16-2
None	303C	16-3
304		16-4
None	304A	16-5
305		16-6
305A		16-7
None	305B	16-8
306		16-9
307		16-10
308		16-11
None	308A	16-12
309		16-13
309A		16-14
309B		16-15
None	309C	16-16
311		16-17
312		16-18
313		16-19
314 Title		None
315		16-20
316		16-21
317		16-22
318		16-23
318A		16-24
None	318B	16-25
None	318C	16-26
None	318D	16-27
None	318E	16-28
None	318F	16-29
None	318G	16-30
None	318H	16-31
None	318I	16-32
None	318J.	16-33
None	318K	16-34
319 Title		None
320		16-35
320A		16-36
321		16-37
322		16-38
323		17-1
324		17-2
325		17-3
326		17-4
327		17-5
328		17-6
329		None
330		None
331 Title		None
332		17-7
333		17-8
334		17-9
334A	7XX	6-1
335 Title		None
336	7YY	6-2
337	7ZZ	6-3
338	7AAA	6-4
339	7BBB	6-5
340		17-10
341 Title		None
342		17-11
343		17-12
344		17-13
345 Title		None
346		17-14
347		17-15
348		17-16
349		17-17
350		17-18
351		17-19
352		17-20
353		17-21
354		17-22
355 Title		None
356		17-23
357		17-24
358		17-25
359		17-26
360		17-27
360A		None
361		17-28
362		17-29
362A		17-30
363		17-31
363A		17-32
364		17-33
365 Title		None
367		17-34
368		17-35
369		17-36
370		None
371		17-37
372		17-38
373		17-39
374		17-40
375		17-41
376		17-42
377		17-43
378 Title		None
379		17-44
380		17-45
381		17-46
382		17-47
383		17-48
384		17-49
385		17-50
386		17-51
387		17-52
387A		17-53
388 Title		None
389		17-54
390		17-55
391		17-56
392		17-57
393		17-58
394		17-59

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395	7DDD	7-2
395A		7-19
396	7EEE	7-3
397	7FFF	7-4
397A		7-20
397B	7TTT	7-18
398	7GGG	7-5
399	7HHH	7-6
400	7III	7-7
401		7-21
402	7JJJ	7-8
403	7KKK	7-9
403A Title		None
403B	7LLL	7-10
403C	7MMM	7-11
403D	7NNN	7-12
403E	7OOO	7-13
403F	7PPP	7-14
403G	7QQQ	7-15
403H	7RRR	7-16
405	7SSS	7-17
406		None
407		18-1
408		None
409		18-2
410		18-3
411		18-4
412		18-5
413		18-6
414		18-7
415		18-8
416		18-9
417		18-10
418		18-11
419		18-12
420		18-13
421		18-14
422		18-15
423		18-16
424		18-17
425		18-18
427		18-19
428		19-1
429		19-2
430		19-3
430A		19-4
431		19-5
432		19-6
433		19-7
434		19-8
435		19-9
436		19-10
437		19-11
438		19-12
439		19-13
440		19-14
441		19-15
442		19-16
443		19-17
444		19-18
445		19-19
446		20-1
447		20-2
448		20-3
449		20-4
450		20-5
451		20-6
452 Title		None
453	1201	25-2
454	1207	25-7
455	1208	25-8
456	1209	25-9
457	1210	25-10
458	1255	25-53
459		None
460		None
461	1229	25-28
462	1230	25-29
463	1231	25-30
464	1227	25-26
464A	1236	25-35
465 Title		None
466		None
467		None
468		None
469		None
470		None
471		None
472	1237	25-36
473	1238	25-37
474		None
475		None
476	1259	25-57
477	1260	25-58
478	1261	25-59
479	1262	25-60
479A	1267	25-65
479B	1268	25-66
481	1269	25-67
481A	1271	25-69
484	1264	25-62
484A	1265	25-63
484B	1266	25-64
484C	1270	25-68
485		21-1
486		21-2
487		21-3
488		21-4
489		21-5
490		21-6
491 Title		None
492		21-7
493		21-8
494		21-9
495		21-10
496		21-11
497		21-12
498		21-13
499		21-14
500		21-15

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502		21-17
503		21-18
504 Title		None
505		21-19
506		21-20
507		21-21
508		21-22
509		21-23
510		21-24
511A		22-1
511B		22-2
514		22-3
515 Title		None
515A		22-4
516		22-5
516A		22-6
518		22-7
518A		22-8
519		22-9
525		23-1
525A		23-2
525B		23-3
525C		23-4
525D		23-5
525E		23-6
525F		23-7
525G		23-8
525H		23-9
525I		23-10
525J		23-11
525K		23-12
526		23-16
526A		23-17
None	526L	23-13
None	526M	23-14
None	526N	23-15
527		23-18
528		23-19
528A		23-20
529		23-21
529A		23-22
529B		23-23
529C		23-24
529D		23-25
529E		23-26
529F		23-27
529G		23-28
529H		23-29
529I		23-30
529J		23-31
529K		23-32
529L		23-33
529M		23-34
529N		23-35
529O		23-36
529P		23-37
529Q		23-38
529R		23-39
529S		23-40
529T		23-41
529U		23-42
530		None
531		None
532		None
533		None
534		None
535		None
536		None
537 Title		None
538		23-43
539		23-44
540 Title		None
541		23-45
542		23-46
543		23-47
544		23-48
545		23-49
546		23-50
546A		23-51
546B Title		None
546C		23-52
546D		23-53
546E		23-54
546F		23-55
546G		23-56
546H		23-57
546J		23-58
546K		23-59
546L Title		None
546M		23-60
546N		23-61
546O		23-62
546P		23-63
546Q		23-64
546R		23-65
546S		23-66
546T		23-67
547		24-1
548		24-2
549		24-3
550		24-4
551		24-5
552		24-6
553		24-7
555 Title		None
556		24-8
557		24-9
559		24-10
561		24-11
562		24-12
563		24-13
564		24-14
565		24-15
566 Title		None
567		24-16
568		24-17
569		24-18
570		24-19
571		24-20

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572		24-21
573 Title		None
574		24-22
575		24-23
576 Title		None
577		24-24
578		24-25
579		24-26
580		24-27
581		24-28
582		24-29
583		24-30
584		24-31
585		24-32
589 Title		None
590		24-33
592 Title		None
593		36-1
593A		36-2
594		36-3
595		36-4
596		36-5
597		36-6
598 Title		None
599		36-7
600 Title		None
601		36-8
602		36-9
603		36-10
604 Title		None
615 Title		None
616		36-11
617		36-12
618		36-13
619		36-14
620		36-15
621 Title		None
622		36-16
623		36-17
624		36-18
625		36-19
626		36-20
627		36-21
628		36-22
629		None
630		None
631		None
632		None
633		None
634 Title		None
635		37-1
635A		37-2
636 Title		None
637		37-3
638		37-4
639 Title		None
640		37-5
641		37-6
642 Title		None
643		37-7
644		37-8
645		37-9
646 Title		None
647		37-10
648		37-11
649 Title		None
650		37-12
652 Title		None
653 Title		None
654		38-1
655 Title		None
656		38-2
657		38-3
658		38-4
659		38-5
660 Title		None
661		38-6
662 Title		None
663		38-7
664		38-8
665		38-9
666		38-10
668		38-11
669		38-12
670		None
671 Title		None
672 Title		None
673		38-13
674		38-14
675		38-15
675A		38-16
676		38-17
677		38-18
680 Title		None
681 Title		None
682		38-19
683		38-20
684		38-21
None	684A	38-22
685		38-23
686 Title		None
687		39-1
688		39-2
689		39-3
690		39-4
691 Title		None
692		39-5
693		39-6
694		39-7
695 Title		None
696		39-8
697		39-9
698		39-10
699 Title		None
700		39-11
701		39-12
702		39-13
703 Title		None
704		39-14
705		39-15

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706		39-16
707		39-17
708 Title		None
709		39-18
710 Title		None
711		39-19
712		39-20
713		39-21
714 Title		None
715		39-22
716		39-23
717		39-24
718		39-25
719 Title		None
720		39-26
721		39-27
722		39-28
723 Title		None
724 Title		None
725		39-29
726		39-30
727		39-31
728		39-32
730		39-33
731 Title		None
732		40-1
733		40-2
734		40-3
735		40-4
735A		40-5
736 Title		None
737		40-6
737A		40-7
737B		40-8
738		40-9
739		40-10
740 Title		None
741		40-11
742		40-12
743		40-13
744		None
745		None
746		40-14
747		None
748 Title		None
749		40-15
750		None
751 Title		None
752		None
753		None
754		40-16
755		None
756 Title		None
757 Title		None
758		40-17
759		40-18
760		40-19
760A		40-20
761		None
762 Title		None
763		40-21
764		40-22
765		40-23
766		None
767		40-24
768		40-25
769		40-26
769A		40-27
770		40-28
771		40-29
772		40-30
773		40-31
774		None
775 Title		None
776		40-32
777		40-33
778		40-34
779		40-35
780		40-36
781		40-37
782		40-38
783		40-39
784 Title		None
785		40-40
786		40-41
787		40-42
788		40-43
789 Title		None
790 Title		None
791		40-44
792		40-45
793		40-46
794		40-47
795		40-48
796		40-49
797		40-50
798		40-51
799		40-52
800		40-53
801		40-54
802		40-55
803		40-56
804		40-57
805		40-58
806 Title		None
807		41-1
808		41-2
809		41-3
810		41-4
811		41-5
812		41-6
813		41-7
814 Title		None
815		41-8
816		41-9
817		41-10
818		41-11
820 Title		None
821		41-12
822		41-13

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823		41-14
824		41-15
825		41-16
826		41-17
827 Title		None
828		41-18
829		41-19
830 Title		None
831		41-20
832		41-21
833		41-22
834 Title		None
835		41-23
836		41-24
837		41-25
838 Title		None
839		42-1
840		42-2
841		42-3
842		42-4
843		42-5
844		42-6
845		42-7
845A		42-8
845B		42-9
846 Title		None
846A		42-10
847		42-11
848		42-12
849		42-13
850		42-14
850A	7RR	5-5
850B		42-15
851 Title		None
852		42-16
853		42-17
854		42-18
854A		42-19
855		42-20
856		42-21
857		42-22
858		42-23
859 Title		None
860		42-24
861		42-25
862 Title		None
863		42-26
864		42-27
865		42-28
866 Title		None
867		42-29
868		42-30
869		42-31
870		42-32
871		42-33
872		42-34
873 Title		None
874		42-35
875	7QQ	5-4
876		42-36
877		None
878 Title		None
879		42-37
880		42-38
881		42-39
882 Title		None
883		42-40
884		42-41
885		42-42
886 Title		None
887		42-43
888		42-44
889		42-45
890 Title		None
891 Title		None
892		42-46
893		42-47
894		42-48
895		42-49
896 Title		None
897 Title		None
898		42-50
899		42-51
900		42-52
901 Title		None
902		42-53
903		42-54
904		42-55
905		42-56
906 Title		None
907		43-1
908		43-2
909 Title		None
910		43-3
911		43-4
912		43-5
913		43-6
914 Title		None
915		43-7
916		43-8
917		43-9
918 Title		None
919		43-10
920 Title		None
921		43-11
922		43-12
923 Title		None
924		43-13
925		43-14
926		43-15
927		43-16
928 Title		None
929		43-17
930 Title		None
931		43-18
932		43-19
932A		43-20
933 Title		None
934		43-21
935		43-22

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936 Title		None
937		43-23
938		43-24
939		43-25
940		43-26
941		43-27
942		43-28
943		43-29
944		None
945		43-30
946 Title		None
947		43-31
948		43-32
949 Title		None
950		43-33
951 Title		None
952		43-34
953		43-35
954		43-36
955		43-37
956		43-38
956A Title		None
956B		43-39
956C		43-40
956D		43-41
956E		43-42
956F		43-43
957 Title		None
958 Title		None
959		44-1
960		44-2
961		44-3
962 Title		None
963		44-4
964		44-5
965		44-6
966 Title		None
967		44-7
968		44-8
969		44-9
970		44-10
971 Title		None
972		44-11
973		44-12
974 Title		None
975		44-13
976		44-14
977		44-15
978		44-16
979		44-17
980 Title		None
981		44-18
982		None
983	7WW	5-10
984 Title		None
985	7F	1-14
986	7G	1-15
987 Title		None
988	7H	1-16
989	7I	1-17
990 Title		None
991	7J	1-18
992	7K	1-19
993	7L	1-20
994	7M	1-21
995 Title		None
996	7N	1-22
997	7O	1-23
997A		44-19
998		44-20
999 Title		None
1000		44-21
1002		44-22
1003 Title		None
1004		44-23
1005		44-24
1006 Title		None
1007		44-25
1008		44-26
1008A		44-27
1009 Title		None
1010		44-28
1011		44-29
1011A Title		None
1011D		44-30
1011E	7TTT	7-18
1012A		44-31
1013 Title		None
1014		44-32
1015		44-33
1016		44-34
1017		44-35
1018		None
1019		None
1020		None
1020A		44-36
1021		44-37
1023.1		26-1
1024.1(1)		27-1
1024.1(2)		27-2
1025.1(1)		27-3
1025.1(2)		27-4
1025.1(3)		27-5
1025.1(4)		27-5
1025.1(5)		27-7
1025.1(6)		27-7
1025.1(7)		27-8
1025.1(8)		27-6
1025.1(9)		27-6
1026.1		28-1
1027.1(1)		29-1
1027.1(2)		29-1
1027.1(3)		29-2
1027.1(4)		29-2
1030.1(1)		30-1
1030.1(2)		30-2
1030.1(3)		30-3
1030.1(4)		30-4
1031.1(1)		30-5
1031.1(2)		30-6

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1031.1(3)		30-7
1031.1(4)		30-8
1032.1(1)		30-9
1032.1(2), (3)		30-10
1032.1(4)		30-11
1033.1(1)		31-1
1033.1(2)		31-1
1033.1(3)		31-1
1033.1(4)		31-2
1033.1(5)		31-3
1033.1(6)		31-4
1034.1(1)		31-5
1034.1(2)		31-6
1034.1(3)		31-6
1034.1(4)		31-7
1030.1(5)		31-8
1030.1(6)		31-9
1035.1		31-10
1036.1		31-11
1037.1		31-12
1038.1		31-13
1040.1(1)		32-1
1040.1(2)		32-1
1040.1(3)		32-2
1040.1(4)		32-2
1040.1(5)		32-3
1040.1(6)		32-4
1040.1(7)		32-5
1041.1(1)		32-6
1041.1(2)		32-7
1041.1(3)		32-8
1041.1(4)		32-9
1042.1(1)		33-1
1042.1(2)		33-1
1042.1(3)		33-2
1042.1(4)		33-3
1042.1(5)		33-4
1042.1(6)		33-3
1043.1(1)		33-5
1043.1(2)		33-5
1043.1(3)		33-6
1043.1(4)		33-7
1044.1		33-8
1045.1(1)		33-9
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1055.1		35-1
1056.1		None
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1061.1		None
1062.1		None

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None	1202	25-3
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None	1204	25-5
None	1205	25-6
[454]	1207	25-7
[455]	1208	25-8
[456]	1209	25-9
[457]	1210	25-10
None	1211	25-11
None	1212	25-12
None	1213	25-13
None	1214	25-14
None	1215	25-15
None	1217	25-16
None	1218	25-17
None	1219	25-18
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None	1221	25-20
None	1222	25-21
None	1223	25-22
None	1224	25-23
None	1225	25-24
None	1226	25-25
[464]	1227	25-26
None	1228	25-27
[461]	1229	25-28
[462]	1230	25-29
[463]	1231	25-30
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None	1234	25-33
None	1235	25-34
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None	1242	25-40
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None	1249	25-47
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[458]	1255	25-53
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4016 Title		None
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* Rules repealed prior to 1995 are not represented in this table.

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23-38		.529Q
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23-47		.543
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25-1	1200	None
25-2	1201	453
25-3	1202	None
25-4	1203	None
25-5	1204	None
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25-10	1210	457
25-11	1211	None
25-12	1212	None
25-13	1213	None
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25-15	1215	None
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25-27	1228	None
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25-34	1235	None
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25-52	1254	None
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25-54	1256	None
25-55	1257	None
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38-23		.685
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	am	Jan. 1, 2008
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Rule 1.5	am	Jan. 1, 2007
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Rule 1.7	am	Jan. 1, 2007
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	am	Jan. 1, 2008
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Rule 1.9	am	Jan. 1, 2007
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	am	Jan. 1, 2009;
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	am	Jan. 1, 2009
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	am	Sept. 1, 2007;
	am	Aug. 1, 2008;
	am	Aug. 1, 2010;
	am	Jan. 1, 2012
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	am	Jan. 1, 2007
Rule 1.17	ad	Jan. 1, 2007
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	am	Jan. 1, 2008
Rule 3.6	am	Jan. 1, 2003;
	am	Jan. 1, 2007
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	am	Jan. 1, 2008;
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Code, Jud. Conduct	rw	Jan. 1, 2011
P.B. Section		
1-1 (title)	am	Jan. 1, 2012
1-1	am	Jan. 1, 2001;
	am	Jan. 1, 2012
1-4	am	Jan. 1, 2007
1-9A	ad	Jan. 1, 2009
1-9B	ad	Jan. 1, 2011
1-10 (title)	am	Jan. 1, 2008
1-10	am	Oct. 1, 2005;
	am	Jan. 1, 2008;
	am	Aug. 1, 2008
1-10 (b)	ex	Oct. 1, 2006;
	ex	Oct. 1, 2007
1-10A	ad	Jan. 1, 2008
1-10B	ad	Jan. 1, 2008;
	am	Jan. 1, 2012
1-11 (title)	am	Jan. 1, 2008
1-11	am	Jan. 1, 2008;
	rp	Jan. 1, 2012
1-11A	ad	Jan. 1, 2008;
	am	Jan. 1, 2012
1-11B	ad	Jan. 1, 2008
1-11C (title)	am	Jan. 1, 2012
1-11C	ad	Jan. 1, 2008;
	am	Jan. 1, 2012
1-11D	ad	Jan. 1, 2011
1-13A	ad	Jan. 1, 2000
1-14	am	Jan. 1, 2000
1-15	rp	Jan. 1, 2000
1-16 (title)	am	Jan. 1, 2000
1-16	am	Jan. 1, 2000
1-17	am	Jan. 1, 2000
1-18	am	Jan. 1, 2000
1-19 (title)	am	Jan. 1, 2000
1-19	am	Jan. 1, 2000
1-20 (title)	am	Jan. 1, 2000
1-20	am	Jan. 1, 2000
1-21 (title)	am	Jan. 1, 2000
1-21	am	Jan. 1, 2000

*This table is designed to reflect, at a glance, changes made in the Practice Book since its effective date of October 1, 1997. The first and third columns indicate the sections changed or added and the effective dates thereof. Under "Action Taken," in the second column, the abbreviations signify: ad (adopted); am (amended); def (deferred until); ex (extended); int (interim) and rp (repealed); rw (rewritten); tr (transferred); tc (technical change: title).

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	Action Taken	Effective Date
1-21A	ad	Jan. 1, 2000
1-24	ad	Jan. 1, 2008
2-1	am	Sept. 1, 1998
2-4	am	Jan. 1, 2012
2-4A	ad	Jan. 1, 2007
2-5	am	Jan. 1, 2011
2-5A (title)	am	Sept. 1, 2011
2-5A	ad	Jan. 1, 2011;
	am	Sept. 1, 2011
2-8	am	Jan. 1, 2008;
	am	Jan. 1, 2011
2-9 (title)	am	Jan. 1, 2009
2-9	am	Jan. 1, 2009;
	am	Jan. 1, 2011
2-11 (title)	am	Jan. 1, 2009
2-11	am	Sept. 1, 1998
2-11A	ad	Jan. 1, 2009
2-12	am	Jan. 1, 2007;
	am	Jan. 1, 2011
2-13	am	Jan. 1, 2000;
	am	Jan. 1, 2010;
	am	Jan. 1, 2011;
	am	Jan. 1, 2012
2-14	rp	Jan. 1, 2012
2-15	am	Jan. 1, 2011;
	rp	Jan. 1, 2012
2-15A	ad	Jan. 1, 2008;
	am	Jan. 1, 2009;
	am	Jan. 1, 2010
2-16	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2008;
	am	Jan. 1, 2012
2-17	am	Jan. 1, 2011
2-18	am	Jan. 1, 2011
2-20	am	Sept. 1, 1998
2-27 (title)	am	Jan. 1, 2008
2-27	am	Jan. 1, 2002;
	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007;
	am	Jan. 1, 2008;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
2-27 (e)	am	July 1, 2007
2-28	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-28A	ad	July 1, 2007;
	am	Jan. 1, 2011
2-28B	ad	July 1, 2007
2-29	am	July 1, 2003;
	def	Jan. 1, 2004
2-31	am	July 1, 2003;
	def	Jan. 1, 2004
2-32	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	July 1, 2003;
	def & am	Jan. 1, 2004;
	am	Jan. 1, 2005;
	am	Jan. 1, 2006;
	am	Jan. 1, 2009
2-34	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2010
2-34A	ad	July 1, 2003;
	def & am	Jan. 1, 2004;
	am	Jan. 1, 2005
2-35	am	Jan. 1, 2000;
	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007;
	am	Jan. 1, 2008;
	am	Jan. 1, 2009
2-36	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-37	am	Jan. 1, 2000
2-38	am	Sept. 1, 1998;
	am	Jan. 1, 2000;
	am	July 1, 2003;
	def & am	Jan. 1, 2004;
	am	Jan. 1, 2008;
	am	Jan. 1, 2009
2-39	am	Sept. 1, 1998;
	am	Jan. 1, 2002;
	am	July 1, 2003;
	def	Jan. 1, 2004
2-40	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-41	am	Sept. 1, 1998;
	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-42	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-44A	ad	Jan. 1, 2008
2-47	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2005;
	am	Jan. 1, 2006;
	am	Jan. 1, 2007
2-47A	ad	Jan. 1, 2007
2-48	am	July 1, 2003;
	def	Jan. 1, 2004
2-50 (title)	am	Jan. 1, 2007
2-50	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007;
	am	Jan. 1, 2008;
	am	Jan. 1, 2009
2-52	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2006;
	am	Jan. 1, 2008
2-53	am	Jan. 1, 2001;
	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007;
	am	Jan. 1, 2011
2-54	am	Jan. 1, 2000
2-55	int	Nov. 17, 1999;
	am	Jan. 1, 2000
2-56	am	July 1, 2003;
	def	Jan. 1, 2004
2-58	am	July 1, 2003;

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	Action Taken	Effective Date
	def	Jan. 1, 2004
2-59	am	July 1, 2003;
	def	Jan. 1, 2004
2-64	am	July 1, 2003;
	def	Jan. 1, 2004
2-65	am	Jan. 1, 2010
2-68	ad	Jan. 1, 1999;
	am	May 17, 2005
2-68A	ad	May 17, 2005
2-69	ad	Jan. 1, 1999
2-70	ad	Jan. 1, 1999;
	int	Nov. 17,1999;
	am	Jan. 1, 2000;
	am	July 13, 2004;
	am	May 17, 2005;
	am	Jan. 1, 2006
2-71	ad	Jan. 1, 1999
2-72	ad	Jan. 1, 1999
2-73	ad	Jan. 1, 1999;
	am	May 17, 2005
2-74	ad	Jan. 1, 1999;
	am	Jan. 1, 2012
2-75	ad	Jan. 1, 1999
2-76	ad	Jan. 1, 1999;
	am	May 17, 2005;
	am	Jan. 1, 2007
2-77	ad	Jan. 1, 1999;
	am	May 17, 2005
2-78	ad	Jan. 1, 1999
2-79	ad	Jan. 1, 1999;
	am	Jan. 1, 2006
2-80	ad	Jan. 1, 1999
2-81	ad	Jan. 1, 1999
2-82	am	July 1, 2003;
	def	Jan. 1, 2004;
	am	Jan. 1, 2007
2-83	ad	July 1, 2003;
	def & int	Jan. 1, 2004
3-3	am	Jan. 1, 2010;
	am	Jan. 1, 2011;
	am	Jan. 1, 2012
3-4 (title)	am	Jan. 1, 2012
3-4	am	Jan. 1, 2012
3-5 (title)	am	Jan. 1, 2012
3-5	am	Jan. 1, 2012
3-9	am	Jan. 1, 2007;
	am	Jan. 1, 2009;
	am	Jan. 1, 2011
3-10	am	Jan. 1, 2001;
	am	Jan. 1, 2002;
	am	Jan. 1, 2005
3-16	am	Jan. 1, 2000
	am	Jan. 1, 2010
4-1	am	Jan. 1, 2002;
	am	Jan. 1, 2012
4-2	am	Jan. 1, 2010
4-4	ad	Jan. 1, 1999;
	am	Jan. 1, 2009
4-5	ad	Jan. 1, 2001
4-6	ad	Jan. 1, 2001
4-7	ad	Jan. 1, 2010;
	am	Jan. 1, 2011
5-11 (title)	am	Jan. 1, 2012
5-11	ad	Jan. 1, 2011;
	am	Jan. 1, 2012
6-1	am	Jan. 1, 2000
6-2	am	Jan. 1, 2007
6-3	am	Jan. 1, 2007
6-4	am	Jan. 1, 2003;
	am	Jan. 1, 2007
6-5	am	Jan. 1, 2002;
	am	July 1, 2003
7-4A	ad	July 1, 2003
7-4B	ad	July 1, 2003;
	am	Jan. 1, 2005
7-4C	ad	July 1, 2003
7-5 (title)	tc	Jan. 1, 2012
7-5	am	Jan. 1, 2012
7-10	am	Jan. 1, 1999
7-11	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	Jan. 1, 2004;
	am	Jan. 1, 2007
7-13 (title)	am	Jan. 1, 1999
7-13	am	Jan. 1, 1999;
	am	Jan. 1, 2004;
	am	Jan. 1, 2008;
	am	Jan. 1, 2010
7-17	am	Oct. 1, 2003;
	am	July 13, 2004;
	am	Jan. 1, 2011
7-19 (title)	tc	Jan. 1, 2012
7-20	am	Jan. 1, 2009
8-1	am	Jan. 1, 2000;
	am	Jan. 1, 2005
8-2	am	Jan. 1, 2011
9-8	am	Jan. 1, 2010
9-9 (title)	am	Jan. 1, 2010
9-9	am	Jan. 1, 2010
10-12 (title)	tc	Jan. 1, 2012
10-12	am	Jan. 1, 2010
10-13	am	Jan. 1, 1999;
	am	Jan. 1, 2005;
	am	Jan. 1, 2010
10-14	am	Jan. 1, 1999;
	am	Jan. 1, 2005
10-30 (title)	am	Jan. 1, 2004
10-30	am	Jan. 1, 2004;
	am	Jan. 1, 2005
10-36	am	Jan. 1, 2012
10-37	am	Jan. 1, 2012
10-39	am	Jan. 1, 2000
10-40 (title)	am	Jan. 1, 2004
10-40	am	Jan. 1, 2004;
	am	Jan. 1, 2005
10-44	am	Jan. 1, 2004
11-1	am	Jan. 1, 2012
11-13	am	Jan. 1, 2003;
	am	Jan. 1, 2012
11-14	am	Jan. 1, 2008
11-18	am	Jan. 1, 2000;
	am	Jan. 1, 2005;
	am	Jan. 1, 2008;
	am	Jan. 1, 2012
11-20 (title)	am	July 1, 2003
11-20	am	Jan. 1, 2000;
	am	July 1, 2003;

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	Action Taken	Effective Date
	am	Jan. 1, 2005;
	am	Jan. 1, 2012
11-20A	ad	July 1, 2003;
	am	Jan. 1, 2005;
	am	Jan. 1, 2012
11-20B	ad	Jan. 1, 2010;
	am	Jan. 1, 2011
11-21	ad	Jan. 1, 1999
12-3	am	Jan. 1, 1999
13-1	am	Jan. 1, 2012
13-2	am	Jan. 1, 2012
13-3	am	Jan. 1, 2008
13-4	am	Jan. 1, 2009;
	am	Sept. 1, 2009;
	am	Jan. 1, 2011
13-5	am	Jan. 1, 2012
13-6	am	Jan. 1, 2000
	am	Jan. 1, 2002;
	am	Jan. 1, 2009
13-7	am	Jan. 1, 2000;
	am	Jan. 1, 2012
13-8	am	Jan. 1, 2002;
	am	Jan. 1, 2012
13-9	am	Jan. 1, 2000;
	am	Jan. 1, 2002;
	am	Jan. 1, 2006;
	am	Jan. 1, 2012
13-10	am	Jan. 1, 2000;
	am	Jan. 1, 2002;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
13-11	am	Jan. 1, 2011
13-11A	ad	Jan. 1, 2006
13-13	am	Jan. 1, 2012
13-14	am	Jan. 1, 2012
13-19	am	Jan. 1, 2010;
	am	Jan. 1, 2012
13-22	am	Jan. 1, 2009
13-23	am	Jan. 1, 2009
13-27	am	Jan. 1, 2001;
	am	Jan. 1, 2010
13-28	am	Jan. 1, 2005
13-30	am	Jan. 1, 2001;
	am	Jan. 1, 2004;
	am	Jan. 1, 2005;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
13-33	ad	Jan. 1, 2012
14-1	am	Jan. 1, 2005
14-2 (title)	am	Jan. 1, 2003
14-2	am	Jan. 1, 2003
14-3	am	Jan. 1, 2003;
	am	Jan. 1, 2012
14-6	am	Jan. 1, 2012
14-7	am	Jan. 1, 2005;
	am	Jan. 1, 2012
14-7A	ad	Jan. 1, 2007
14-7B	ad	Jan. 1, 2012
14-13	am	Jan. 1, 2006
14-25	am	Jan. 1, 2003
15-8	am	Jan. 1, 2009
16-5	am	Jan. 1, 2005
16-15	am	Jan. 1, 2012
16-31	am	Jan. 1, 2001
16-33	am	Jan. 1, 1999
16-36	int	June 28, 1999;
	am	Jan. 1, 2000;
	tr	Jan. 1, 2012
17-2A	ad	Jan. 1, 2012
17-4	am	Jan. 1, 2010;
	am	Jan. 1, 2011
17-4A	ad	Jan. 1, 2001
17-7	am	Jan. 1, 2012
17-11 (title)	am	Jan. 1, 2007
17-11	am	Jan. 1, 2003;
	am	Jan. 1, 2007
17-12	am	Jan. 1, 2007
17-13	am	Jan. 1, 2007
17-14 (title)	am	Jan. 1, 2007
17-14	am	Jan. 1, 2003;
	am	Jan. 1, 2007;
	am	Jan. 1, 2009
17-14A	ad	Jan. 1, 2007
17-15	am	Jan. 1, 2003;
	am	Jan. 1, 2007
17-16	am	Jan. 1, 2003;
	am	Jan. 1, 2007
17-17 (title)	am	Jan. 1, 2007
17-17	am	Jan. 1, 2007
17-18	am	Jan. 1, 2007;
	am	Jan. 1, 2009
17-20	am	Jan. 1, 2005;
	am	Jan. 1, 2010;
	am	Jan. 1, 2011;
	am	Jan. 1, 2012
17-21 (title)	am	Jan. 1, 2006
17-21	am	Jan. 1, 2006
17-22	am	Jan. 1, 2012
17-24	am	Jan. 1, 1999
17-25	am	Jan. 1, 2012
17-27	am	Jan. 1, 2012
17-29	am	Jan. 1, 2012
17-30 (title)	am	Jan. 1, 2001
17-30	am	Jan. 1, 2001;
	am	Jan. 1, 2006
17-32	am	Jan. 1, 2011
17-33	am	Jan. 1, 2003
17-33A	ad	Jan. 1, 2010
17-36	am	Jan. 1, 1999
17-45 (title)	am	Jan. 1, 2004
17-45	am	Jan. 1, 2001;
	am	Jan. 1, 2004;
	am	Jan. 1, 2005
17-53	am	Jan. 1, 2001;
	am	Jan. 1, 2002
17-55	am	Jan. 1, 2000
17-56	am	Jan. 1, 2000
18-1	am	Jan. 1, 2002
18-5	am	Jan. 1, 2006
19-1	am	Jan. 1, 2000;
	am	Jan. 1, 2007;
	am	Jan. 1, 2012
19-2A	ad	Jan. 1, 2000
19-3 (title)	am	Jan. 1, 2000
19-3	am	Jan. 1, 2003
19-3A	ad	Jan. 1, 2012
19-4 (title)	am	Jan. 1, 2012
19-4	am	Jan. 1, 2012

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	Action Taken	Effective Date
19-6	am	Jan. 1, 2000
19-7	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-8	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-9	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-10	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-11	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-12	rp	Jan. 1, 2000
19-13	rp	Jan. 1, 2000
19-14	am	Jan. 1, 2000;
	am	Jan. 1, 2001;
	am	Jan. 1, 2012
19-15	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-16	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-17	am	Jan. 1, 2000;
	am	Jan. 1, 2012
19-18	am	Jan. 1, 2000
20-2	am	Jan. 1, 2002
21-4	am	Jan. 1, 2002
21-12	am	Jan. 1, 2002
21-13	am	Jan. 1, 2012
21-14	am	Jan. 1, 2002
22-1	am	Sept. 1, 1998;
	am	Jan. 1, 2002
23-22	am	Jan. 1, 2002
23-40	am	Jan. 1, 2000
23-41	am	Jan. 1, 2010
23-42	am	Jan. 1, 2010
23-44	am	Jan. 1, 2002
23-53	am	Jan. 1, 1999
23-60	am	Jan. 1, 1999
23-61	am	Jan. 1, 1999
23-63	am	Jan. 1, 1999
23-65	am	Jan. 1, 1999
23-66	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	Jan. 1, 2003
23-67	am	Jan. 1, 2003
23-68	ad	Mar. 12, 2007
24-1	am	Jan. 1, 2001
24-2 (title)	am	Jan. 1, 2001
24-2	am	Jan. 1, 2001
24-3 (title)	am	Jan. 1, 2011
24-3	am	Jan. 1, 2011
24-4	am	Jan. 1, 1999;
	am	Jan. 1, 2011
24-6 (title)	am	Jan. 1, 2010
24-6	am	Jan. 1, 2001;
	am	Jan. 1, 2002;
	am	Jan. 1, 2011
24-7 (title)	am	Jan. 1, 2001
24-7	am	Jan. 1, 2001
24-8	am	Jan. 1, 2001
24-9	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-10 (title)	am	Jan. 1, 2001
24-10	am	Jan. 1, 2001;
	am	Jan. 1, 2008;
	am	Jan. 1, 2011
24-11	am	Jan. 1, 2001;
	rp	Jan. 1, 2011
24-12	am	Jan. 1, 2011
24-13	am	Jan. 1, 1999;
	am	Jan. 1, 2001;
	rp	Jan. 1, 2011
24-14	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-15	am	Jan. 1, 2001
24-16 (title)	am	Jan. 1, 2001
24-16	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-17 (title)	am	Jan. 1, 2011
24-17	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-18	rp	Jan. 1, 2001
24-19	am	Jan. 1, 2001
24-20 (title)	am	Jan. 1, 2001
24-20	am	Jan. 1, 2001
24-20A	ad	Jan. 1, 2001;
	am	Jan. 1, 2011
24-21	am	Jan. 1, 1999;
	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-22	am	Jan. 1, 2001
24-24	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-25	am	Jan. 1, 2011
24-27	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-29 (title)	am	Jan. 1, 2001
24-29	am	Jan. 1, 2001;
	am	Jan. 1, 2011;
	am	Jan. 1, 2012
24-30	am	Jan. 1, 2001;
	am	Jan. 1, 2002;
	am	Jan. 1, 2004;
	am	Jan. 1, 2011
24-31	am	Jan. 1, 2001;
	am	Jan. 1, 2011
24-32	am	Jan. 1, 2000;
	am	Jan. 1, 2003
24-33	am	Jan. 1, 2000;
	am	Jan. 1, 2011
25-1	am	Jan. 1, 2000;
	am	Jan. 1, 2007
25-2 (title)	am	Jan. 1, 2007
25-2	am	Jan. 1, 2002;
	am	Jan. 1, 2007;
	am	Jan. 1, 2008;
	am	Jan. 1, 2009
25-2A	ad	Aug. 15, 2011
25-3	am	Jan. 1, 2000;
	am	Jan. 1, 2001;
	am	Jan. 1, 2007
25-4	am	Jan. 1, 2000;
	am	Jan. 1, 2001;
	am	Jan. 1, 2007
25-5 (title)	am	Jan. 1, 2000
25-5	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	Jan. 1, 2007;

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	Action Taken	Effective Date
	am	Jan. 1, 2008;
	am	Jan. 1, 2012
25-5A	ad	Jan. 1, 2012
25-7 (title)	am	Jan. 1, 2000
25-7	am	Jan. 1, 2000
25-8 (title)	am	Jan. 1, 2007
25-8	am	Jan. 1, 2007
25-9	am	Jan. 1, 2000;
	am	Jan. 1, 2007
25-10	am	Jan. 1, 2000;
	am	Jan. 1, 2007
25-23	am	July 1, 2003
25-26	am	Jan. 1, 2006;
	am	Oct. 1, 2007
25-27	am	Jan. 1, 2000
25-28	am	Jan. 1, 2000;
	am	Jan. 1, 2007
25-29	am	Jan. 1, 2007
25-30	am	Jan. 1, 2003;
	am	Jan. 1, 2007
25-31	am	Aug. 15, 2011
25-32	am	Jan. 1, 1999;
	am	Jan. 1, 2007
25-32A	ad	Aug. 15, 2011
25-32B	ad	Aug. 15, 2011
25-34	am	Aug. 15, 2011
25-36 (title)	am	Jan. 1, 2009
25-36	am	Jan. 1, 2009
25-39	am	Mar. 12, 2007
25-50	am	Jan. 1, 2000
25-51	am	Jan. 1, 2007
25-55	am	Jan. 1, 2000
25-57	am	Jan. 1, 2000;
	am	Jan. 1, 2002
25-58 (title)	am	Jan. 1, 2007
25-58	am	Jan. 1, 2000;
	am	Jan. 1, 2007
25-59 (title)	am	July 1, 2003
25-59	am	July 1, 2003;
	am	Jan. 1, 2005;
	am	Jan. 1, 2012
25-59A	ad	July 1, 2003;
	am	Jan. 1, 2005;
	am	Jan. 1, 2012
25-59B	ad	Jan. 1, 2010;
	am	Jan. 1, 2011
25-60 (title)	am	Aug. 15, 2011
25-60	am	Aug. 15, 2011
25-60A	ad	Aug. 15, 2011
25-62	am	Jan. 1, 2012
25-62A	ad	Jan. 1, 2012
25-65	rp	Aug. 1, 2010
25-66	rp	Aug. 1, 2010
25-67	am	Jan. 1, 1999;
	am	Jan. 1, 2007;
	rp	Aug. 1, 2010
25a-1	ad	Aug. 1, 2010
25a-2	ad	Aug. 1, 2010
25a-3	ad	Aug. 1, 2010
25a-4	ad	Aug. 1, 2010
25a-5	ad	Aug. 1, 2010
25a-6	ad	Aug. 1, 2010
25a-7	ad	Aug. 1, 2010
25a-8	ad	Aug. 1, 2010
25a-9	ad	Aug. 1, 2010
25a-10	ad	Aug. 1, 2010
25a-11	ad	Aug. 1, 2010
25a-12	ad	Aug. 1, 2010
25a-13	ad	Aug. 1, 2010
25a-14	ad	Aug. 1, 2010
25a-15	ad	Aug. 1, 2010
25a-16	ad	Aug. 1, 2010
25a-17	ad	Aug. 1, 2010
25a-18	ad	Aug. 1, 2010
25a-19	ad	Aug. 1, 2010
25a-20	ad	Aug. 1, 2010
25a-21	ad	Aug. 1, 2010
25a-22	ad	Aug. 1, 2010
25a-23	ad	Aug. 1, 2010
25a-24	ad	Aug. 1, 2010
25a-25	ad	Aug. 1, 2010
25a-26	ad	Aug. 1, 2010
25a-27	ad	Aug. 1, 2010
25a-28	ad	Aug. 1, 2010
25a-29	ad	Aug. 1, 2010
25a-30	ad	Aug. 1, 2010
26-1	am	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2011;
	am	Jan. 1, 2012
27-1	am	Jan. 1, 2003
27-1A (title)	am	Jan. 1, 2009
27-1A	am	Jan. 1, 2009
27-2	rp	Jan. 1, 2003
27-3	rp	Jan. 1, 2003
27-4	am	Jan. 1, 2003;
	am	Jan. 1, 2009
27-4A (title)	am	Jan. 1, 2009
27-4A	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
27-5 (title)	am	Jan. 1, 2009
27-5	am	Jan. 1, 2003;
	am	Jan. 1, 2009
27-6	am	Jan. 1, 2003;
	am	Jan. 1, 2009
27-7	am	Jan. 1, 2003;
	am	Jan. 1, 2009
27-8	rp	Jan. 1, 2003
27-8A (title)	am	Jan. 1, 2009
27-8A	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
27-9	ad	Jan. 1, 2009
28-1	rp	Jan. 1, 2003
29-1 (title)	am	Jan. 1, 2003
29-1	am	Jan. 1, 2003
29-1A	ad	Jan. 1, 2003
29-1B	ad	Jan. 1, 2003
29-2	am	Jan. 1, 2003
30-1	rp	Jan. 1, 2003
30-1A	ad	Jan. 1, 2003
30-2	rp	Jan. 1, 2003
30-2A	ad	Jan. 1, 2009;
	am	Jan. 1, 2012
30-3	am	Jan. 1, 2003
30-4	am	Jan. 1, 2003;
	am	Jan. 1, 2009
30-5	am	Jan. 1, 2003;
	am	Jan. 1, 2012

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30-6	am	Jan. 1, 2003;
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	am	Jan. 1, 2012
30-7	am	Jan. 1, 2003;
	am	Jan. 1, 2009
30-8	am	Jan. 1, 2003;
	am	Jan. 1, 2009
30-9	am	Jan. 1, 2003
30-10 (title)	am	Jan. 1, 2003
30-10	am	Jan. 1, 2003;
	am	Jan. 1, 2009
30-11	am	Jan. 1, 2009
30a-1	ad	Jan. 1, 2003;
	am	Jan. 1, 2010
30a-1A	ad	Jan. 1, 2010
30a-2	ad	Jan. 1, 2003
30a-3 (title)	am	Jan. 1, 2004
30a-3	ad	Jan. 1, 2003;
	am	Jan. 1, 2004
30a-4	ad	Jan. 1, 2003;
	am	Jan. 1, 2010
30a-5	ad	Jan. 1, 2003;
	am	Jan. 1, 2007;
	am	Jan. 1, 2010
30a-6	ad	Jan. 1, 2003;
	am	Jan. 1, 2010
30a-6A	ad	Jan. 1, 2010
30a-7	ad	Jan. 1, 2003
30a-8	ad	Jan. 1, 2003;
	am	Jan. 1, 2010
31-1	rp	Jan. 1, 2003
31-2	rp	Jan. 1, 2003
31-3	rp	Jan. 1, 2003
31-4	rp	Jan. 1, 2003
31-5	rp	Jan. 1, 2003
31-6	rp	Jan. 1, 2003
31-7	rp	Jan. 1, 2003
31-8	rp	Jan. 1, 2003
31-9	rp	Jan. 1, 2003
31-10	rp	Jan. 1, 2003
31-11	rp	Jan. 1, 2003
31-12	rp	Jan. 1, 2003
31-13	rp	Jan. 1, 2003
31a-1	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-1A	ad	Jan. 1, 2009
31a-2	ad	Jan. 1, 2003
31a-3	ad	Jan. 1, 2003
31a-4	ad	Jan. 1, 2003
31a-5	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-6	ad	Jan. 1, 2003
31a-7	ad	Jan. 1, 2003
31a-8	ad	Jan. 1, 2003
31a-9	ad	Jan. 1, 2003
31a-10	ad	Jan. 1, 2003
31a-11	ad	Jan. 1, 2003
31a-12	ad	Jan. 1, 2003
31a-13	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-13A	ad	Jan. 1, 2009
31a-14	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-15	ad	Jan. 1, 2003
31a-16	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-17	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-18	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
31a-19	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2010
31a-19A	ad	Jan. 1, 2009
31a-20	ad	Jan. 1, 2009
31a-21	ad	Jan. 1, 2010
32-1	rp	Jan. 1, 2003
32-2	rp	Jan. 1, 2003
32-3	rp	Jan. 1, 2003
32-4	rp	Jan. 1, 2003
32-5	rp	Jan. 1, 2003
32-6	rp	Jan. 1, 2003
32-7	rp	Jan. 1, 2003
32-8	rp	Jan. 1, 2003
32-9	rp	Jan. 1, 2003
32a-1	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
32a-2	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
32a-3	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
32a-4 (title)	am	Jan. 1, 2009
32a-4	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
32a-5 (title)	am	Jan. 1, 2009
32a-5	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
32a-6	ad	Jan. 1, 2003
32a-7	ad	Jan. 1, 2003;
	am	Jan. 1, 2010
32a-8	ad	Jan. 1, 2003
32a-9	ad	Jan. 1, 2009
33-1	rp	Jan. 1, 2003
33-2	rp	Jan. 1, 2003
33-3	rp	Jan. 1, 2003
33-4	rp	Jan. 1, 2003
33-5	rp	Jan. 1, 2003
33-6	rp	Jan. 1, 2003
33-7	rp	Jan. 1, 2003
33-8	rp	Jan. 1, 2003
33-9	rp	Jan. 1, 2003
33-10	rp	Jan. 1, 2003
33-11	rp	Jan. 1, 2003
33-12	rp	Jan. 1, 2003
33-13	rp	Jan. 1, 2003
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33a-2	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
33a-3	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
33a-4	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
33a-5	ad	Jan. 1, 2003
33a-6	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
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33a-7	ad	Jan. 1, 2003;

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	am	Jan. 1, 2009
34-1	rp	Jan. 1, 2003
34-2	rp	Jan. 1, 2003
34-3	rp	Jan. 1, 2003
34-4	rp	Jan. 1, 2003
34a-1	ad	Jan. 1, 2003;
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	am	Jan. 1, 2011;
	am	Jan. 1, 2012
34a-2	ad	Jan. 1, 2003
34a-3	ad	Jan. 1, 2003
34a-4	ad	Jan. 1, 2003
34a-5	ad	Jan. 1, 2003
34a-6	ad	Jan. 1, 2003
34a-7	ad	Jan. 1, 2003
34a-8	ad	Jan. 1, 2003
34a-9	ad	Jan. 1, 2003
34a-10	ad	Jan. 1, 2003
34a-11	ad	Jan. 1, 2003
34a-12	ad	Jan. 1, 2003
34a-13	ad	Jan. 1, 2003
34a-14	ad	Jan. 1, 2003
34a-15	ad	Jan. 1, 2003
34a-16	ad	Jan. 1, 2003
34a-17	ad	Jan. 1, 2003
34a-18	ad	Jan. 1, 2003
34a-19	ad	Jan. 1, 2003
34a-20	ad	Jan. 1, 2003
34a-21	ad	Jan. 1, 2003;
	am	Jan. 1, 2011
34a-22	ad	Jan. 1, 2003
34a-23	ad	Jan. 1, 2003
35-1	rp	Jan. 1, 2003
35-2	rp	Jan. 1, 2003
35-3	rp	Jan. 1, 2003
35-4	rp	Jan. 1, 2003
35-5	rp	Jan. 1, 2003
35a-1 (title)	am	Jan. 1, 2009
35a-1	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
35a-1A	ad	Jan. 1, 2009
35a-1B	ad	Jan. 1, 2009
35a-2	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-3	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-4 (title)	am	Jan. 1, 2012
35a-4	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
35a-5 (title)	am	Jan. 1, 2009
35a-5	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-6	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-6A	ad	Jan. 1, 2009
	ad	Jan. 1, 2009
35a-7	ad	Jan. 1, 2003
35a-7A	ad	Jan. 1, 2009

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	am	Jan. 1, 2009;
	am	Jan. 1, 2011
35a-9	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
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35a-11	ad	Jan. 1, 2003
35a-12	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-12A	ad	Jan. 1, 2012
35a-13	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-14 (title)	am	Jan. 1, 2009
35a-14	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
35a-14A (title)	am	Jan. 1, 2012
35a-14A	ad	Jan. 1, 2009;
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35a-15	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-16	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-17	ad	Jan. 1, 2003;
	rp	Jan. 1, 2009
35a-18	ad	Jan. 1, 2003;
	am	Jan. 1, 2009
35a-19	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2011
35a-20 (title)	am	Jan. 1, 2009;
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35a-20	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2012
35a-21	ad	Jan. 1, 2003;
	am	Jan. 1, 2009;
	am	Jan. 1, 2011
35a-22	ad	Jan. 1, 2012
36-2	am	July 1, 2003;
	am	Jan. 1, 2005;
	am	Jan. 1, 2010
37-12	am	Jan. 1, 2008;
	am	Jan. 1, 2010
38-3	am	Jan. 1, 1999
38-4	am	Jan. 1, 2006;
	am	Jan. 1, 2007
38-9	am	Jan. 1, 2004
38-10	rp	Jan. 1, 2006
40-10	am	Jan. 1, 2010
40-11 (title)	am	Jan. 1, 2010
40-11	am	Jan. 1, 2010
40-13 (title)	am	Jan. 1, 2010
40-13	am	Jan. 1, 2010
40-13A	am	Jan. 1, 2010
40-14	am	Jan. 1, 2010
42-10	am	Jan. 1, 2002
42-12	am	Jan. 1, 2010
42-19	am	Jan. 1, 2002
42-34	am	Jan. 1, 2009
42-49 (title)	am	July 1, 2003
42-49	am	Jan. 1, 2000;
	am	July 1, 2003;
	am	Jan. 1, 2005

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	am	Jan. 1, 2005
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43-9	am	Jan. 1, 2009
43-29A	ad	Jan. 1, 2002
43-38	am	Jan. 1, 2004
44-10	am	Mar. 12, 2007
44-10A	ad	Mar. 12, 2007;
	am	Jan. 1, 2012
44-19	am	Jan. 1, 2006
44-37	am	Jan. 1, 2002
61-4 (title)	am	Jan. 1, 1999
61-4	am	Jan. 1, 1999
61-6 (title)	am	Jan. 1, 2001
61-6	am	Jan. 1, 2001;
	am	Jan. 1, 2009
61-9	am	Jan. 1, 2010
61-11 (title)	am	Jan. 1, 2000
61-11	am	Jan. 1, 2000;
	am	Jan. 1, 2001;
	am	Jan. 1, 2002;
	am	Jan. 1, 2005
61-12 (title)	am	Jan. 1, 2000
61-12	am	Jan. 1, 2000
61-13 (title)	am	Jan. 1, 2000
61-13	am	Jan. 1, 2000;
	am	Jan. 1, 2002
61-14 (title)	am	Jan. 1, 1999
61-14	am	Jan. 1, 1999
61-15	ad	Jan. 1, 2000
61-16	am	Oct. 1, 2002
62-7	am	Jan. 1, 1999;
	am	Oct. 1, 2002;
	am	Jan. 1, 2004
62-8	am	Jan. 1, 2005;
	am	Jan. 1, 2007;
	am	Jan. 1, 2008
62-8A	ad	Jan. 1, 2007;
	am	Jan. 1, 2008
62-9	am	Mar. 1, 2009
62-9A (title)	am	Mar. 1, 2009
62-9A	ad	Jan. 1, 2005
	am	Mar. 1, 2009
62-10	am	Jan. 1, 2005
63-1	am	Jan. 1, 2000;
	am	Jan. 1, 2005;
	am	Jan. 1, 2006;
	am	Jan. 1, 2009
63-3 (title)	am	Jan. 1, 2010
63-3	am	Jan. 1, 2010;
	am	May 1, 2010
63-4	am	Nov. 1, 2002;
	am	Jan. 1, 2004;
	am	Jan. 1, 2008;
	am	Jan. 1, 2012
63-6	am	Jan. 1, 2000;
	am	Jan. 1, 2006
63-7	am	Jan. 1, 2000
63-8	am	Nov. 1, 2002
63-8A	ad	Nov. 1, 2002
63-10	am	Jan. 1, 2000;
	am	Jan. 1, 2012
64-1	am	Jan. 1, 1999
66-1	am	Jan. 1, 2000;
	am	Jan. 1, 2006;
	am	Mar. 1, 2009;
	am	Jan. 1, 2010
66-2A	am	Jan. 1, 2010
66-3	am	Jan. 1, 2003;
	am	Jan. 1, 2004
66-4	am	Jan. 1, 2012
66-5	am	Jan. 1, 2000;
	am	Oct. 1, 2002
66-6	am	Nov. 1, 2002;
	am	Jan. 1, 2006
67-2 (title)	am	Mar. 1, 2009
67-2	am	Sept. 1, 2001;
	am	Mar. 1, 2009
67-4	am	Jan. 1, 2000;
	am	Oct. 1, 2002;
	am	Jan. 1, 2010
67-5	am	Jan. 1, 2000;
	am	Oct. 1, 2002;
	am	Jan. 1, 2006;
	am	Jan. 1, 2010
67-7	am	Jan. 1, 2009
67-8	am	Mar. 1, 2009
67-10	am	Jan. 1, 2009
67-11	ad	Jan. 1, 2000
67-12	ad	Jan. 1, 2000
67-13	ad	Jan. 1, 2005
68-1 (title)	am	Jan. 1, 1999
68-1	am	Jan. 1, 1999;
	am	Oct. 1, 2002;
	am	Jan. 1, 2010
68-3	am	Jan. 1, 2002
68-7	ad	Jan. 1, 2005
69-2	am	Jan. 1, 1999
69-3	am	Mar. 1, 2009
70-1 (title)	am	Jan. 1, 2012
70-1	am	Jan. 1, 2012
70-2 (title)	am	Jan. 1, 2012
70-2	am	Jan. 1, 2012
70-7 (title)	am	Jan. 1, 2000
70-7	am	Jan. 1, 2000
70-8	am	Jan. 1, 2002
70-9 (title)	am	June 1, 2007
70-9	am	Jan. 1, 2004;
	am	June 1, 2007
70-10 (title)	am	Jan. 1, 2004
70-10	am	Jan. 1, 2004;
	rp	June 1, 2007
71-1	am	Mar. 1, 2009
71-2	am	Jan. 1, 2000
71-4 (title)	am	Mar. 1, 2009
71-4	am	Mar. 1, 2009
71-5 (title)	am	Jan. 1, 2000
71-5	am	Jan. 1, 2000
71-6 (title)	am	Jan. 1, 2000
71-6	am	Jan. 1, 2000
71-7	am	Jan. 1, 2000
72-1	am	Jan. 1, 2004
72-3	am	Jan. 1, 2004
72-4	am	Jan. 1, 2004
76-5	am	Jan. 1, 2000
77-1	am	Jan. 1, 2000
77-2	am	Jan. 1, 2004
78A-1	ad	Jan. 1, 2006

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	am	Jan. 1, 2005
81-1	am	Jan. 1, 2005;
	am	Jan. 1, 2007
81-2	am	Jan. 1, 1999;
	am	April 15, 2002;
	am	Jan. 1, 2004
81-3	am	April 15, 2002;
	am	Jan. 1, 2004;
	am	Jan. 1, 2007
81-4	am	Oct. 1, 2002
81-6	am	Oct. 1, 2002
82-1 (title)	am	Jan. 1, 2006
82-1	am	Jan. 1, 2005
82-2	rp	Jan. 1, 2005
82-3	am	Jan. 1, 2005
82-6	am	Jan. 1, 2005
82-8	ad	Jan. 1, 2006
83-1	am	Jan. 1, 2001
84-4	am	Jan. 1, 1999;
	am	Jan. 1, 2000;
	am	Jan. 1, 2007
84-5	am	Jan. 1, 1999;
	am	Jan. 1, 2002;
	am	April 15, 2002;
	am	Jan. 1, 2004
84-6	am	April 15, 2002;
	am	Jan. 1, 2004;
	am	Jan. 1, 2007
84-9	am	Oct. 1, 2002
84-11	am	Jan. 1, 2000
84a-1	ad	Jan. 1, 2006
84a-2	ad	Jan. 1, 2006
84a-3	ad	Jan. 1, 2006
84a-4	ad	Jan. 1, 2006
84a-5	ad	Jan. 1, 2006
84a-6	ad	Jan. 1, 2006
86-1	am	Jan. 1, 2005
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	am	Jan. 1, 2008
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	am	Jan. 1, 2008
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	am	Jan. 1, 2008;
	am	Jan. 1, 2010
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	am	Jan. 1, 2006;
	am	Jan. 1, 2008
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APPENDIX OF FORMS

The forms in this appendix were adopted by the judges of the Superior Court and are specifically referenced in the rules, with the exception of Form 101, which implements Section 4-1.

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Form 101

Heading of Pleadings, Motions and Requests

No.

_____ Superior Court

(First Named Plaintiff)

Judicial District of *(or)* G.A. No.

v. _____

at _____

_____ _____

(First Named Defendant) (Date)

_____

(Name or Designation of Pleading or Motion)

(P.B. 1963, Form 249; P.B. 1978-1997, Form 105.1)

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Form 201

Plaintiff's Interrogatories

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the prosecution of this action and can be provided by the Defendant with substantially greater facility than could otherwise be obtained. Definition: ''You'' shall mean the Defendant to whom these interrogatories are directed except that if that Defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, ''you'' shall also refer to the Defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) State the following:

(a) your full name and any other name(s) by which you have been known;

(b) your date of birth;

(c) your motor vehicle operator's license number;

(d) your home address;

(e) your business address;

(f) if you were not the owner of the subject vehicle, the name and address of the owner or lessor of the subject vehicle on the date of the alleged occurrence.

(2) Have you made any statements, as defined in Practice Book Section 13-1, to any person regarding any of the incidents alleged in the Complaint?

COMMENT:

This interrogatory is intended to include party statements made to a representative of an insurance company prior to involvement of defense counsel.

(3) If the answer to Interrogatory #2 is affirmative, state:

(a) the name and address of the person or persons to whom such statements were made;

(b) the date on which such statements were made;

(c) the form of the statement (i.e., whether written, made by recording device or recorded by a stenographer, etc.);

(d) the name and address of each person having custody, or a copy or copies of each statement.

(4) State the names and addresses of all persons known to you who were present at the time of the incident alleged in the Complaint or who observed or witnessed all or part of the incident.

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(5) As to each individual named in response to Interrogatory #4, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1 concerning the subject matter of the Complaint in this lawsuit. If your answer to this Interrogatory is affirmative, state also:

(a) the date on which the statement or statements were taken;

(b) the names and addresses of the person or persons who took such statement or statements;

(c) the names and addresses of any person or persons present when such statement or statements were taken;

(d) whether such statement or statements were written, made by recording device or taken by court reporter or stenographer;

(e) the names and addresses of any person or persons having custody or a copy or copies or such statement or statements.

(6) Are you aware of any photographs depicting the accident scene, any vehicle involved in the incident alleged in the Complaint, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs taken of each such subject by each photographer, please state:

(a) the name and address of the photographer, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken;

(c) the subject (e.g., ''Plaintiff's vehicle,'' ''scene,'' etc.);

(d) the number of photographs.

(7) If, at the time of the incident alleged in the Complaint, you were covered by an insurance policy under which an insurer may be liable to satisfy part or all of a judgment or reimburse you for payments to satisfy part or all of a judgment, state the following:

(a) the name(s) and address(es) of the insured(s);

(b) the amount of coverage under each insurance policy;

(c) the name(s) and address(es) of said insurer(s).

(8) If at the time of the incident which is the subject of this lawsuit you were protected against the type of risk which is the subject of this lawsuit by excess umbrella insurance, or any other insurance, state:

(a) the name(s) and address(es) of the named insured;

(b) the amount of coverage effective at this time;

(c) the name(s) and address(es) of said insurer(s).

(9) State whether any insurer, as described in Interrogatories #7 and #8 above, has disclaimed/reserved its duty to indemnify any insured or any other person protected by said policy.

(10) If applicable, describe in detail the damage to your vehicle.

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(11) If applicable, please state the name and address of an appraiser or firm which appraised or repaired the damage to the vehicle owned or operated by you.

(12) If any of the Defendants are deceased, please state the date and place of death, whether an estate has been created, and the name and address of the legal representative thereof.

(13) If any of the Defendants is a business entity that has changed its name or status as a business entity (whether by dissolution, merger, acquisition, name change, or in any other manner) since the date of the incident alleged in the Complaint, please identify such Defendant, state the date of the change, and describe the change.

(14) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether, at the time of the incident, you were operating that vehicle in the course of your employment with any person or legal entity not named as a party to this lawsuit, and, if so, state the full name and address of that person or entity.

(15) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether you consumed or used any alcoholic beverages, drugs or medications within the eight (8) hours next preceding the time of the incident alleged in the Complaint and, if so, indicate what you consumed or used, how much you consumed, and when.

(16) Please state whether, within eight (8) hours after the incident alleged in the Complaint, any testing was performed to determine the presence of alcohol, drugs or other medications in your blood, and, if so, state:

(a) the name and address of the hospital, person or entity performing such test or screen;

(b) the date and time;

(c) the results.

(17) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape, or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

PLAINTIFF,

BY_____

I, _____, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief. (Defendant)
Subscribed and sworn to before me this _____ day of _____, 20____.

_____
Notary Public/
Commissioner of the Superior Court

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CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20____ to (names and addresses of all opposing counsel and self-represented parties upon whom service is required by Practice Book Section 10-12 et seq.).

_____
(Attorney Signature)

(P.B. 1978–1997, Form 106.10A.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 29, 2007, to take effect Jan. 1, 2008.)

TECHNICAL CHANGE: In 2012, references to ''pro se'' have been replaced with ''self-represented.''

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Form 202

Defendant's Interrogatories

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Defendant, hereby propounds the following interrogatories to be answered by the Plaintiff _____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the defense of this action and can be provided by the Plaintiff with substantially greater facility than could otherwise be obtained.

Definition: ''You'' shall mean the Plaintiff to whom these interrogatories are directed except that if suit has been instituted by the representative of the estate of a decedent, ward, or incapable person, ''you'' shall also refer to the Plaintiff's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) State the following:

(a) your full name and any other name(s) by which you have been known;

(b) your date of birth;

(c) your motor vehicle operator's license number;

(d) your home address;

(e) your business address;

(f) if you were not the owner of the subject vehicle, the name and address of the owner or lessor of the subject vehicle on the date of the alleged occurrence.

(2) Identify and list each injury you claim to have sustained as a result of the incidents alleged in the Complaint.

(3) When, where and from whom did you first receive treatment for said injuries?

(4) If you were treated at a hospital for injuries sustained in the alleged incident, state the name and location of each hospital and the dates of such treatment and confinement therein.

(5) State the name and address of each physician, therapist or other source of treatment for the conditions or injuries you sustained as a result of the incident alleged in your Complaint.

(6) When and from whom did you last receive any medical attention for injuries alleged to have been sustained as a result of the incident alleged in your Complaint?

(7) On what date were you fully recovered from the injuries or conditions alleged in your Complaint?

(8) If you claim you are not fully recovered, state precisely from what injuries or conditions you are presently suffering?

(9) Are you presently under the care of any doctor or other health care provider for the treatment of injuries alleged to have been sustained as a result of the incident alleged in your Complaint?

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(10) If the answer to Interrogatory #9 is in the affirmative, state the name and address of each physician or other health care provider who is treating you.

(11) Do you claim any present disability resulting from injuries or conditions allegedly sustained as a result of the incident alleged in your Complaint?

(12) If so, state the nature of the disability claimed.

(13) Do you claim any permanent disability resulting from said incident?

(14) If the answer to Interrogatory #13 is in the affirmative, please answer the following:

(a) list the parts of your body which are disabled;

(b) list the motions, activities or use of your body which you have lost or which you are unable to perform;

(c) state the percentage of loss of use claimed as to each part of your body;

(d) state the name and address of the person who made the prognosis for permanent disability and the percentage of loss of use;

(e) list the date for each such prognosis.

(15) If you were or are confined to your home or your bed as a result of injuries or conditions sustained as a result of the incident alleged in your Complaint, state the dates you were so confined.

(16) List each medical report received by you or your attorney relating to your alleged injuries or conditions by stating the name and address of the treating doctor or other health care provider, and of any doctor or health care person you anticipate calling as a trial witness, who provided each such report and the date thereof.

(17) List each item of expense which you claim to have incurred as a result of the incident alleged in your Complaint, the amount thereof and state the name and address of the person or organization to whom each item has been paid or is payable.

(18) For each item of expense identified in response to Interrogatory #17, if any such expense, or portion thereof, has been paid or reimbursed or is reimbursable by an insurer, state, as to each such item of expense, the name of the insurer that made such payment or reimbursement or that is responsible for such reimbursement.

(19) If, during the ten year period prior to the date of the incident alleged in the Complaint, you were under a doctor's care for any conditions which were in any way similar or related to those identified and listed in your response to Interrogatory #2, state the nature of said conditions, the dates on which treatment was received, and the name of the doctor or health care provider.

(20) If, during the ten year period prior to the date of the incident alleged in your Complaint, you were involved in any incident in which you received personal injuries similar or related to those identified and listed in your response to Interrogatory #2, please answer the following with respect to each such earlier incident:

(a) on what date and in what manner did you sustain such injuries?

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(b) did you make a claim against anyone as a result of said accident?

(c) if so, provide the name and address of the person or persons against whom a claim was made;

(d) if suit was brought, state the name and location of the Court, the return date of the suit, and the docket number;

(e) state the nature of the injuries received in said accident;

(f) state the name and address of each physician who treated you for said injuries;

(g) state the dates on which you were so treated;

(h) state the nature of the treatment received on each such date;

(i) if you are presently or permanently disabled as a result of said injuries, please state the nature of such disability, the name and address of each physician who diagnosed said disability and the date of each such diagnosis.

(21) If you were involved in any incident in which you received personal injuries since the date of the incident alleged in the Complaint, please answer the following:

(a) on what date and in what manner did you sustain said injuries?

(b) did you make a claim against anyone as a result of said accident?

(c) if so, provide the name and address of the person or persons against whom a claim was made;

(d) if suit was brought, state the name and location of the Court, the return date of the suit, and the docket number;

(e) state the nature of the injuries received in said accident;

(f) state the name and address of each physician who treated you for said injuries;

(g) state the dates on which you were so treated;

(h) state the nature of the treatment received on each such date;

(i) if you are presently or permanently disabled as a result of said injuries, please state the nature of such disability, the name and address of each physician who diagnosed said disability and the date of each such diagnosis.

(22) Please state the name and address of any medical service provider who has rendered an opinion in writing or through testimony that you have sustained a permanent disability to any body part other than those listed in response to Interrogatories #13, #14, #20 or #21, and:

(a) list each such part of your body that has been assessed a permanent disability;

(b) state the percentage of loss of use assessed as to each part of your body;

(c) state the date on which each such assessment was made.

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(23) If you claim that as a result of the incident alleged in your Complaint you were prevented from following your usual occupation, or otherwise lost time from work, please provide the following information:

(a) the name and address of your employer on the date of the incident alleged in the Complaint;

(b) the nature of your occupation and a precise description of your job responsibilities with said employer on the date of the incident alleged in the Complaint;

(c) your average, weekly earnings, salary, or income received from said employment for the year preceding the date of the incident alleged in the Complaint;

(d) the date following the date of the incident alleged in the Complaint on which you resumed the duties of said employment;

(e) what loss of income do you claim as a result of the incident alleged in your Complaint and how is said loss computed?

(f) the dates on which you were unable to perform the duties of your occupation and lost time from work as a result of injuries or conditions claimed to have been sustained as a result of the incident alleged in your Complaint;

(g) the names and addresses of each employer for whom you worked for three years prior to the date of the incident alleged in your Complaint.

(24) Do you claim an impairment of earning capacity?

(25) List any other expenses or loss and the amount thereof not already set forth and which you claim to have incurred as a result of the incident alleged in your Complaint.

(26) If you have signed a covenant not to sue, a release or discharge of any claim you had, have or may have against any person, corporation or other entity as a result of the incident alleged in your Complaint, please state in whose favor it was given, the date thereof, and the consideration paid to you for giving it.

(27) If you or anyone on your behalf agreed or made an agreement with any person, corporation or other entity to limit in any way the liability of such person, corporation or other entity as a result of any claim you have or may have as a result of the incident alleged in your Complaint, please state in whose favor it was given, the date thereof, and the consideration paid to you for giving it.

(28) If since the date of the incident alleged in your Complaint, you have made any claims for Workers' Compensation benefits, state the nature of such claims and the dates on which they were made.

(29) Have you made any statements, as defined in Practice Book Section 13-1, to any person regarding any of the events or happenings alleged in your Complaint?

COMMENT:

This interrogatory is intended to include party statements made to a representative of an insurance company prior to involvement of defense counsel.

(30) State the names and addresses of all persons known to you who were present at the time of the incident alleged in your Complaint or who observed or witnessed all or part of the accident.

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(31) As to each individual named in response to Interrogatory #30, state whether to your knowledge, or the knowledge of your attorney, such individual has given any statement or statements as defined in Practice Book Section 13-1 concerning the subject matter of your Complaint or alleged injuries. If your answer to this Interrogatory is affirmative, state also:

(a) the date on which such statement or statements were taken;

(b) the names and addresses of the person or persons who took such statement or statements;

(c) the names and addresses of any person or persons present when such statement or statements were taken;

(d) whether such statement or statements were written, made by recording device or taken by court reporter or stenographer;

(e) the names and addresses of any person or persons having custody or a copy or copies of such statement or statements.

(32) Are you aware of any photographs depicting the accident scene, any vehicle involved in the incident alleged in the Complaint, or any condition of injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs taken of each such subject by each photographer, please state:

(a) the name and address of the photographer, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken;

(c) the subject (e.g., ''Plaintiff's vehicle,'' ''scene,'' etc.);

(d) the number of photographs.

(33) If you were the operator of any motor vehicle involved in the incident that is the subject of this action, please state whether you consumed or used any alcoholic beverages, drugs or medications within the eight (8) hours next preceding the time of the incident alleged in the Complaint and, if so, indicate what you consumed or used, how much you consumed, and when.

(34) Please state whether, within eight (8) hours after the incident alleged in the Complaint, any testing was performed to determine the presence of alcohol, drugs or other medications in your blood, and, if so, state:

(a) the name and address of the hospital, person or entity performing such test or screen;

(b) the date and time;

(c) the results.

(35) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

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DEFENDANT,

BY_____

I, _____, hereby certify that I have reviewed the above Interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

_____
(Plaintiff)

Subscribed and sworn to before me this _____ day of _____, 20____.

_____
Notary Public

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20____ to _____.

_____
(Attorney Signature)

(P.B. 1978–1997, Form 106.10B.) (Amended June 21, 2004, to take effect Jan. 1, 2005, amended June 29, 2007, to take effect Jan. 1, 2008.)

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Form 203

Plaintiff's Interrogatories
Premises Liability Cases

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within thirty (30) days of the filing hereof insofar as the disclosure sought will be of assistance in the prosecution of this action and can be provided by the Defendant with substantially greater facility than could otherwise be obtained.

(1) Identify the person(s) who, at the time of the Plaintiff's alleged injury, owned the premises where the Plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your date of birth;

(iii) your home address;

(iv) your business address.

(b) If the owner is not a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your business address;

(iii) the nature of your business entity (corporation, partnership, etc.);

(iv) whether you are registered to do business in Connecticut;

(v) the name of the manager of the property, if applicable.

(2) Identify the person(s) who, at the time of the Plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the Plaintiff claims to have been injured.

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured.

(4) State whether you had in effect at the time of the Plaintiff's injuries any written policies or procedures that relate to the kind of conduct or condition the Plaintiff alleges caused the injury.

(5) State whether it is your business practice to prepare, or to obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

(6) State whether any written report of the incident described in the Complaint was prepared by you or your employees in the regular course of business.

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(7) State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the Plaintiff claims to have been injured.

(8) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers;

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;

(c) the time and date a sign or barrier was erected;

(d) the size of the sign or barrier and wording that appeared thereon.

(9) State whether you received, at any time within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

(10) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name and address of the person who made the complaint;

(b) the name, address and person to whom said complaint was made;

(c) whether the complaint was in writing;

(d) the nature of the complaint.

(11) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

12-23. (Interrogatories #1 (a) through (e), #2 through #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

(P.B. 1978-1997, Form 106.10C.) (Amended June 20, 2005, to take effect Jan. 1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 22, 2009, to take effect Jan. 1, 2010.)

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Form 204

Plaintiff's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Plaintiff(s) hereby request(s) that the Defendant provide counsel for the Plaintiff(s) with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff(s) the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on (day), (date) at (time).

Definition: "You" shall mean the Defendant to whom these interrogatories are directed except that if that Defendant has been sued as the representative of the estate of a decedent, ward, or incapable person, "you" shall also refer to the Defendant's decedent, ward or incapable person unless the context of an interrogatory clearly indicates otherwise.

(1) A copy of the appraisal or bill for repairs as identified in response to Interrogatory #11.

(2) A copy of declaration page(s) of each insurance policy identified in response to Interrogatory #7 and/or #8.

(3) If the answer to Interrogatory #9 is in the affirmative, a copy of the complete policy contents of each insurance policy identified in response to Interrogatory #7 and/or #8.

(4) A copy of any photographs identified in response to Interrogatory #6.

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of all lease agreements pertaining to any motor vehicle involved in the incident which is the subject of this action, which was owned or operated by you or your employee, and all documents referenced or incorporated therein.

(7) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #16, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same for each hospital, person or entity that performed such test or screen. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(8) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20____ to _____.

_____
(Attorney Signature)

(P.B. 1978–1997, Form 106.11A.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 26, 2007, to take effect Jan. 1, 2008.)

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Form 205

Defendant's Requests for Production

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) If a claim for lost wages or lost earning capacity is being made copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶5 and ¶6 above.

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(8) Copies of all documentation of claims of right to reimbursement provided to the Plaintiff by third party payors, and copies of, or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26.

(10) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(13) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20_____ to _____.

_____
(Attorney Signature)

(P.B. 1978-1997, Form 106.11B.) (Amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 26, 2007, to take effect Jan. 1, 2008; amended June 20, 2011, to take effect Jan. 1, 2012.)

HISTORY—2012: In 2012, in Defendant's Standard Request No. 3, "[i]f a claim for lost wages or lost earning capacity is being made" was added to the beginning of the sentence, before "copies of."

COMMENTARY—2012: This amendment makes Defendant's Standard Request No. 3 parallel to Defendant's Standard Request No. 4 and compliant with Practice Book § 13-2, which limits the scope of discovery to materials relevant to the pending action. Defendant's Standard Request No. 4, for the production of tax returns, is contingent on the making of a lost wage or lost earning capacity claim. Production of wage and employment records should likewise be contingent on the making of a lost wage or lost earning capacity claim. In the absence of a claim, such information is not necessarily relevant and so should not be the subject of an automatic order. (In a case where the plaintiff does not make a lost wage or earning capacity claim and the defendant nonetheless claims that wage and employment records are material to the pending action, the defendant could certainly seek permission to obtain those records through additional discovery.)

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Form 206

Plaintiff's Requests for Production
Premises Liability

No. CV-	: SUPERIOR COURT
(Plaintiff)	: JUDICIAL DISTRICT OF
VS.	: AT
(Defendant)	: (Date)

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of on _____ on (day), (date) at (time).

(1) A copy of the policies or procedures identified in response to Interrogatory #4.

(2) A copy of the report identified in response to Interrogatory #6.

(3) A copy of any written complaints identified in Interrogatory #10.

(4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered and

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.

(6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

PLAINTIFF,

BY _____

(P.B. 1978–1997, Form 106.11C.) (Amended June 29, 2007, to take effect Jan. 1, 2008.)

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Form 207

Interrogatories—Actions to Establish, Enforce or Modify Child Support Orders

No.	: SUPERIOR COURT
(Plaintiff)	: FAMILY SUPPORT
	: MAGISTRATE DIVISION
VS.	: JUDICIAL DISTRICT OF
	: AT
(Defendant)	: (Date)

The undersigned, on behalf of the plaintiff/defendant, propounds the following interrogatories to be answered by the defendant/plaintiff within thirty (30) days of the filing hereof.

(1) For your present residence:

(a) What is the address?

(b) What type of property is it (apartment, condominium, single-family home)?

(c) Who is the owner of the property?

(d) What is your relationship to the owner (landlord, parents, spouse)?

(e) When did you start living at this residence?

(2) List the names of all the adults that live with you.

(a) For each adult you live with, what is your relationship to them (spouse, sibling, roommate, parent, girlfriend or boyfriend)?

(b) For each adult you live with, what is their financial contribution to the household (who pays the rent, who pays the utilities, who buys the groceries)?

(3) Give the name and address of your employer.

(a) Are you employed full-time or part-time? Are you self-employed? If you are self-employed, do not answer (b) through (h) and go directly to question 4.

(b) Are you paid a salary, on an hourly basis, or do you work on commission or tips?

(c) What is your income per week?

(d) How many hours per week do you usually work?

(e) Is overtime available, and if it is, how many hours per week do you work overtime and what are you paid?

(f) Do you, or have you, ever received bonus income from your employment and what is the basis for the bonus?

(g) Does your employer deduct federal and state taxes and Medicare from your wages or are you responsible for filing your own deductions? If you file, provide a copy of your most recent tax returns.

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(h) Do you have a second source of employment? If so, please provide the same information as requested in (a) through (g).

(4) If you are self-employed:

(a) Are you part of a partnership, corporation or LLC, and if you are, give the name of the business and your role in it?

(b) Name the other people involved in your business and their roles.

(c) Does the business file taxes (if so, bring copies of the last two tax returns filed to your next court date)?

(d) Describe the work you do.

(e) How many hours per week do you work, on average?

(f) How much do you typically earn per hour?

(g) List your business expenses, and what they cost per week.

(h) State how you are typically paid (check or cash).

(i) Name the five people or companies you did most of your work for in the last year.

(j) If you have a business account, what bank is it at (bring copies of the last six months of bank statements to your next court date)?

(k) Do you work alone or do you employ anyone and pay them wages? If you employ anyone, please identify them, their relationship to you, if any, and the amount you pay them.

(*l*) How do you keep your payment and expense records? Do you employ an accountant, and if so, please give the name and address of the accountant responsible for your records?

(5) Except for your current job, list all the places you have worked for the last three years. For each place, list the address, the type of work you did, the dates you worked there and how much you were paid at each job.

(6) If you cannot work because of a disability, what is the nature of your disability?

(a) What is the date you became disabled?

(b) Is this disability permanent or temporary?

(c) If a doctor has told you that you cannot work, what is the name of the doctor and his or her office (bring a note from this doctor stating that you cannot work to your next court date)?

(d) If a doctor has told you that you cannot work, did he or she say you cannot work full-time or part-time?

(e) If you have a partial or permanent disability, please provide the percentage rating.

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(f) Is your disability the result of an automobile accident, an accident at work, an accident at home or otherwise? Please give the date and details of the incident and whether you have filed a lawsuit or workers' compensation claim as a result.

(g) Have you had any children since the incident? If so, list their dates of birth.

(7) Have you applied for Social Security Disability (SSD) or Supplemental Security Income (SSI)?

(a) If you did, when did you apply and where are you in the application process?

(b) Have you been told if or when you will receive benefits? If so, who told you and what is the date they gave you?

(c) If your application for SSD and/or SSI has been denied, did you appeal? If you appealed, what is the status of the appeal and what lawyer, if any, represents you?

(d) Have you applied for or are you receiving state assistance?

(e) Are you a recipient of the state supplement program, medical assistance program, temporary family assistance program, state-administered general assistance program (SAGA medical or cash)? If so, state the source of the benefit, the effective date of the benefit and the date when your eligibility for benefits will be redetermined by the department of social services.

(8) Do you have any lawsuits pending?

(a) If you do, what type of case is it?

(b) Give the name, address, e-mail address and phone number of the lawyer handling the case for you.

(c) What amount do you expect to recover and when do you expect to receive it?

(d) If you have already settled the case, please provide a copy of the settlement statement.

(9) Do you expect to inherit any money or property in the next six months?

(a) If you do, who do you expect to inherit from and where do they or where did they live?

(b) What do you expect to inherit, what is its value and when do you expect to inherit it?

(c) What is the name and address of the person or lawyer handling the estate and where is the probate court in which the action is filed?

(10) Is anyone holding any money for you? If so, name the person, their relationship to you, their address and the amount of money they are holding.

(11) Do you own any rental properties, by yourself, with someone else or in trust? If the answer is yes:

(a) Is the property residential or commercial?

(b) Please identify the location of the property or properties, include the address and identify your ownership interest.

(c) Do you derive any income from the property? Do you calculate your net income from the property on a weekly, monthly or yearly basis?

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(d) What are your expenses relating to the property or properties? Please state the amount of your mortgage payment, if any, and the amount of your taxes, insurance and utility payments, if any, and your method of payment of these expenses.

(e) Did you have to apply for a loan to finance any part of the real property or to finance the purchase of any personal property? If so, identify the item, state the amount of the loan and give a copy of the loan application.

(12) Are you the beneficiary or settlor of a trust?

(a) If so, please identify the trust, the type of trust, the date of the creation of the trust, the name and address of the trustee and how the trust is funded.

(b) How often do you receive a distribution from the trust and from whom and in what amounts are the distributions?

BY_____

I, _____, certify that I have reviewed the interrogatories set out above and the responses to those interrogatories and they are true and accurate to the best of my knowledge and belief.

_____

Subscribed and sworn to before me this_____ day of _____, 20____.

_____
Notary Public/Commissioner of Superior Court

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this _____ day of _____, 20____ to (names and addresses of all opposing counsel and self-represented parties upon whom service is required by Practice Book Section 10-12 et seq.).

_____
(Attorney Signature)

(Adopted June 21, 2010, to take effect Aug. 1, 2010.)

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INDEX OF OFFICIAL JUDICIAL BRANCH FORMS
USED IN CIVIL, FAMILY AND JUVENILE MATTERS

The following is a select list of official Judicial Branch forms used in civil, family and juvenile matters. All forms listed are available in an electronic version except those which have an asterisk (*) after the form number. Please see the Judicial Branch website at www.jud2.ct.gov/webforms/ for the most current version of the electronic forms. Any of the listed forms may be obtained from the clerks' offices and court service centers.

General	
JD-CL-12	Appearance Form
JD-CL-68	Attorney Retirement - Written Notice
JD-CL-73	Facsimile Filing Cover Sheet
JD-CL-90	Request to Bring Audio/Visual Equipment into the Courthouse
JD-CL-92	Request for Exclusion from Electronic Services Requirements
JD-CL-93	Interpreter Services Request Form
JD-CL-96	Request to Conform Case Initiation Data Entry to Summons

Civil Matters	
JD-CL-43	Subpoena, Civil
JD-CL-46	Authorization for Release of Information
JD-CL-47*	Application for Waiver of Fees Appointment of Counsel
JD-CL-51	Affidavit, Lost Bond Receipt
JD-CL-53	Claim for Jury
JD-CL-54	Request and Stipulation for Referral to a Private Alternative Dispute Resolution (ADR) Provider
JD-CL-61	Court-Annexed Mediation Request
JD-CL-71	Request for Exemption from Docket Management Program (DMP) Dismissal
JD-CL-71E	Request for Exemption from Docket Management Program (DMP) Dismissal - Electronic
JD-CL-77	Request for Adjudication, Complex Litigation Docket (CLD)
JD-CL-80	Request for Nondisclosure of Information in Protection Order Registry

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JD-CL-87	Attorney/Firm Request for Exclusion from Electronic Filing of Request for Exemption from Docket Management Program Dismissal
JD-CL-104	General Restraining Order Notification (Family)
JD-CL-104A	Information Concerning Firearms in Relief of Abuse Cases
JD-CV-1	Summons, Civil
JD-CV-1c	Civil Case Type Codes Listing
JD-CV-2	Civil Summons, Continuation of Parties
JD-CV-3	Wage Execution Proceedings - Application, Order, Execution
JD-CV-3a	Exemption and Modification Claim Form, Wage Execution
JD-CV-3	Wage Execution Proceedings, Application, Order, Execution (with automatic calculations)
JD-CV-5	Property Execution Proceedings - Application, Order, Execution
JD-CV-5	Property Execution Proceedings - Application, Order, Execution (with automatic calculations)
JD-CV-5b	Exemption Claim Form, Property Execution
JD-CV-5c	Property Execution Proceedings, Claim for Determination of Interests in Disputed Property
JD-CV-11	Certificate of Closed Pleadings
JD-CV-21	Motion for Continuance
JD-CV-23	Post Judgment Remedies, Interrogatories
JD-CV-23a	Interrogatories
JD-CV-24	Financial Institution Execution Proceedings - Judgment Debtor who is a Natural Person, Application and Execution
JD-CV-24	Financial Institution Execution Proceedings - Judgment Debtor who is a Natural Person, Application and Execution (with automatic calculations)
JD-CV-24a	Exemption Claim Form, Financial Institution Execution
JD-CV-24N	Financial Institution Execution Proceedings - Judgment Debtor who is not a Natural Person, Application and Execution
JD-CV-24N	Financial Institution Execution Proceedings - Judgment Debtor who is not a Natural Person, Application and Execution (with automatic calculations)
JD-CV-39	Application for Case Referral - Complex Litigation Docket
JD-CV-40	Small Claims Writ and Notice of Suit
JD-CV-40R*	Answer to Counterclaim/Setoff

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JD-CV-40S	Instructions for Completing Service by a Proper Officer
JD-CV-41	Withdrawal
JD-CV-49	Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments
JD-CV-49	Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments (with automatic calculations)
JD-CV-51	Motion to Open Judgment (Small Claims and Housing Matters)
JD-CV-52	Affidavit of Debt Re: Motion for Default for Failure to Appear, Judgment and Order for Weekly Payments
JD-CV-54	Petition for Examination of Judgment Debtor and Notice of Hearing
JD-CV-56	Expedited Process Track, Consent of Parties
JD-CV-58	First Order of Notice Upon Attachment of Estate of Nonresident
JD-CV-61*	Answer to Counterclaim
JD-CV-62	Application for Issuance of Subpoena
JD-CV-63*	Motion for First Order of Notice Attachment of Estate - Nonresident
JD-CV-67	Continuation of Parties
JD-CV-68	Petition for Order Re: Commission on Human Rights and Opportunities and Notice of Hearing
JD-CV-69	Affidavit of Service, Petition for Order Re: Commission on Human Rights and Opportunities and Notice of Hearing
JD-CV-70	Withdrawal - Small Claims and Housing Matters
JD-CV-72	Application for Hearing on Exempt Status of Funds
JD-CV-73	Affidavit RE: Exempt Status of Funds
JD-CV-77	Foreclosure Worksheet
JD-CV-77	Foreclosure Worksheet (with automatic calculations)
JD-CV-78	Uniform Procedures for Foreclosure Judgment, Presentation Instructions
JD-CV-88	Sales Agreement — Foreclosure
JD-CV-95	Foreclosure Mediation — Objection
JD-CV-96	Foreclosure Mediation — Motion for Permission to Request Mediation Later than 15 Days After Return Date or to Change Mediation Period
JD-CV-99	Foreclosure — Motion for Approval of Committee Sale, Approval of Committee Deed, Acceptance of Committee Report, Allowance of Fees and Expenses, Allowance of Appraiser's Fees

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JD-CV-100	Foreclosure — Motion for Advice
JD-CV-101	Foreclosure — Motion for Possession
JD-CV-102	Foreclosure — Plaintiff's Bid at Foreclosure Sale and Committee's Response
JD-CV-106	Answer to Complaint — Civil Cases Only
JD-CV-107	Motion to Open Judgment (Civil Matters Other than Small Claims and Housing Matters)
JD-CV-111	Consent of Parties to Referral to Judge Trial Referee - Civil Matters - For Trial, Judgment and Appeal
JD-CV-115	Expert Discovery Schedule Proposal or Request for Scheduling Conference
JD-CV-116	Caseflow Request

Family Matters	
JD-FM-3	Summons, Family Actions
JD-FM-6	Financial Affidavit
JD-FM-6	Financial Affidavit (with calculations)
JD-FM-15	Application for Contempt Order, Income Withholding, and/or Other Relief
JD-FM-75	Application for Waiver of Fees/Appointment of Counsel
JD-FM-75	Application for Waiver of Fees/Appointment of Counsel (with calculations)
JD-FM-97	Family Violence Education Program, Application, Orders and Disposition
JD-FM-111	Appeal from Family Support Magistrate
JD-FM-137	Application for Relief from Abuse
JD-FM-138	Affidavit – Relief from Abuse
JD-FM-146*	Paternity Petition
JD-FM-148*	Support Petition
JD-FM-159	Divorce Complaint (Dissolution of Marriage)
JD-FM-159A	Dissolution of Civil Union Complaint
JD-FM-160	Dissolution Answer
JD-FM-161	Custody/Visitation Application
JD-FM-163	Case Management Agreement

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JD-FM-164	Affidavit Concerning Children
JD-FM-164A	Addendum to Affidavit Concerning Children
JD-FM-167	Motion for Order of Notice in Family Cases
JD-FM-172	Dissolution Agreement
JD-FM-172A	Instructions to Complete the Dissolution Agreement Form (JD-FM-172) (Spanish/English)
JD-FM-173	Motion for Contempt
JD-FM-174	Motion for Modification
JD-FM-176	Motion for Orders Before Judgment (Pendente Lite) in Family Cases
JD-FM-178	Affidavit Concerning Military Service
JD-FM-182*	Custody/Visitation Answer
JD-FM-183	Custody/Visitation Agreement
JD-FM-185	Motion for Intervention in Family Matters
JD-FM-188	Request for Nondisclosure of Location Information
JD-FM-200	Motion to Approve Arbitration Agreement in Family Cases
JD-FM-202	Request for Leave
JD-FM-206	Motion to Open Judgment (Family Matters)

Juvenile Matters	
JD-JM-12	Erasure of Record, Petition/Order
JD-JM-13	Appearance, Juvenile Matters
JD-JM-29	Waiver of Child/Parent, Statement of Responsibility
JD-JM-30	Custody Affidavit
JD-JM-34	Application and Writ, Habeas Corpus
JD-JM-58	Motion/Order of Temporary Custody/Order to Appear
JD-JM-60	Affidavit/Consent to Termination of Parental Rights
JD-JM-61	Order of Notice, Petition to Terminate Parental Rights
JD-JM-90	Petition for Emancipation
JD-JM-98	Petition: Neglected, Uncared-for, Dependent Child/Youth
JD-JM-114	Application for Appointment of Counsel/Waiver of Fees
JD-JM-114	Application for Appointment of Counsel/Waiver of Fees (with calculations)
JD-JM-119	Complaint - School Truancy/Defiance, Family with Service Needs
JD-JM-120	Complaint, Non-School, Family with Service Needs

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JD-JM-123	Order of Temporary Custody - FWSN
JD-JM-127*	Petition for Extension of Commitment/FWSN
JD-JM-134	School Violence Prevention Program, Motion, Order, Disposition
JD-JM-140	Motion for Continuance, Juvenile Matters
JD-JM-141	Motion for Intervention in Juvenile Matters
JD-JM-142	Complaint, Youth in Crisis
JD-JM-144	Petition: Youth in Crisis
JD-JM-150	Application For Issuance of Subpoena, Juvenile Matters
JD-JM-172	Affidavit Concerning Military Service — Juvenile Matters
JD-JM-178	Order to Provide Education Records and Receipt
JD-JM-181	Summary Guide to Juvenile Court Jurisdiction

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SUPERIOR COURT STANDING ORDERS

Standing Orders that have been issued for civil, family, juvenile and criminal matters in the Superior Court may be accessed on the Judicial Branch website at www.jud.ct.gov. From the link to **Courts** on the main page of the website, click on **Superior Court** and then click on **Standing Orders**.

Standing Orders are provided on the Judicial Branch website for the convenience of the bench and bar. They are not adopted by the Superior Court judges and are not Practice Book rules.

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