

**Minutes of the Special Meeting
Judges of the Superior Court
March 26, 2010**

A special meeting of the Judges of the Superior Court was held, pursuant to notice, on Friday, March 26, 2010 commencing at 2 p.m. in the Jury Assembly Room of the Middlesex Judicial District Courthouse, Middletown, CT.

Present: Chief Justice Rogers; Justices Zarella and McLachlan; Appellate Court Judges Beach, DiPentima, Harper; Superior Court Judges Abery-Wetstone, Adams, Arnold, Baldwin, Bear, Bellis, Bentivegna, Berger, Blawie, Blue, Boland, Brazzel-Massaró, Bright, Burgdorff, Carroll, Clifford, Cohn, Comerford, Conway, Corradino, Cosgrove, Crawford, Cronan, Dennis, Devlin, Domnarski, Dooley, Driscoll, Dubai, Elgo, Epstein, Eschuk, Eveleigh, Frankel, Frazzini, Frechette, Gilligan, Ginocchio, Gleeson, Gold, Graham, Graziani, Hadden, Handy, Hauser, Hiller, Holzberg, Jongbloed, Kahn, Kavanewsky, Keller, Lager, Malone, Marano, Markle, Maronich, Matasavage, Miller, Mintz, Nazzaro, O'Keefe, Olear, Oliver, Ozalis, Pavia, Pinkus, Pittman, Prescott, Prestley, Quinn, Riley, Robaina, A. Robinson, Rodriguez, Rubinow, T. Santos, Schimelman, Schofield, Sferrazza, Shaban, Shapiro, Sheldon, Silbert, Solomon, Suarez, Swienton, M. Taylor, Thim, Trombley, Turner, Upson, Vacchelli, White, Wiese, Wilson, Winslow, Wolven, Woods, Young; Senior Judges Harleston, J. Kaplan, Nadeau and Scholl.

Justice Zarella opened the meeting and gave the report of the Rules Committee.

Following his report, he made the following motion, "I move the adoption of the amendments to the Practice Book which were forwarded to you for use at this meeting." The motion was seconded.

Justice Zarella then called attention to Section 11-20B(b), a proposed new subsection of Section 11-20B, the rule pertaining to documents containing personal identifying information. The first sentence of that subsection reads:

"If the party who filed the document fails to submit a redacted copy of the document within ten days of the order, a nonsuit or default, as appropriate, shall automatically enter against said party for such failure upon the expiration of the ten day period."

Justice Zarella noted that the suggestion had been made to amend the proposed new subsection to provide that the Court may enter sanctions including a nonsuit or default, as appropriate against said party for such failure. Judge Berger moved to amend the first sentence of proposed Section 11-20B(b) to read as follows:

“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 expiration of the ten day period.”

The motion was seconded. Following discussion, Justice Zarella called for a voice vote. The motion to amend the proposed new rule was adopted.

Judge Zarella then recognized Judge Winslow who commented on the proposed new subsection (b) of Section 25-59B, pertaining to documents containing personal identifying information, in the Family Rules. The wording of this subsection, as proposed, is identical to the wording of proposed Section 11-20 B (b), without the amendment adopted by the Judges. She moved to amend the first sentence of proposed Section 25-59B (b) to read as follows:

“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 expiration of the ten day period.”

The motion was seconded and adopted on a voice vote. Justice Zarella then called for a vote on the motion to adopt the amendments to the Practice Book which were forwarded to the judges for use at this meeting, as amended at the meeting. The motion was adopted on a voice vote.

He then offered the following motion:

“I further move:

- (a) that the amendments as just adopted become effective on April 15, 2010, and that the requirement of Practice Book Section 1-9 that a rule not become effective less than sixty days after its promulgation be waived pursuant to the provision of that section;
- (b) that pursuant to Practice Book Section 1-9 (c) the adoption of the

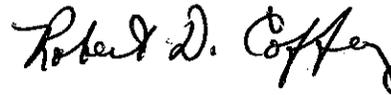
amendments be on an interim basis until the Rules Committee conducts a public hearing on the changes, the Superior Court judges have acted on the revisions after that hearing, and such action becomes effective; and

- (c) that the Reporter of Judicial Decisions may make editorial changes to the amendments including changes in the section numbers and form numbers.

This motion was seconded and adopted by voice vote. A copy of the revisions to the Connecticut Practice Book adopted at this meeting is attached as an appendix to these minutes.

There being no further business, the meeting adjourned at 2:25 p.m.

Respectfully submitted,



Robert D. Coffey
Secretary

RDC/jas

Enc.

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.15. Safekeeping Property

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

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

(2) An "eligible institution" means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the federal government, or (ii) an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection (g) (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 (g) (4) below, subject to the dispute resolution process provided in subsection (g) (4) (E) below.

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

(4) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (g) (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 (g) (4) below.

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

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

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for 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 [(i) such funds are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days, or (ii)] the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection. 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. 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 moneymarket fund. Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

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

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

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

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

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

annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

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

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

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

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

(A) Establishing that all funds the organization might receive pursuant to subsection (g) (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 (g) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

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

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

COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices and comply with the requirements of Practice Book Section 2-27.

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

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

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

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful claims against 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 (g) requires lawyers and law firms to participate in the statutory IOLTA program and provides that client's or third person's funds shall be deposited in an IOLTA account if (i) such funds are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days, or (ii) the lawyer or law firm determines that the funds cannot earn income in excess of the costs incurred to secure such income. In determining whether a client's or third person's funds cannot earn income in excess of the

costs incurred to secure such income, the lawyer or law firm may consider the following factors:

- (1) The amount of the funds to be deposited;
- (2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) The rates of interest or yield at financial institutions where the funds are to be deposited;
- (4) The cost of establishing and administering non-IOLTA accounts for the client's or third person's benefit, including service charges, the costs of the lawyer's or law firm's services, and the costs of preparing any tax reports required for income accruing to the client or third person;
- (5) The capability of financial institutions, lawyers or law firms to calculate and pay income to clients or third persons; and
- (6) Any other circumstances that affect the ability of the client's or third person's funds to earn a net return for the client or third person.]

Subsection (g) 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.

AMENDMENT NOTES: The above changes adopt the provisions of Public Act 09-152, Section 6, which amended General Statutes § 51-81c.

AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

(NEW) 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.

COMMENTARY: The above rule gives the Rules Committee authority to adopt rules on an expedited basis in the event of an emergency declared by the Governor pursuant to General Statutes §§ 19a-131a, 28-9, or both.

(NEW) 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 section 1-10B, section 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 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 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 Statute § 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 Statute § 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 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.

COMMENTARY: Pursuant to Section 5 of Public Act 09-194, the above rule provides for the establishment of a pilot program to increase public access to certain juvenile proceedings.

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be typed or printed on size 8-1/2" x 11" paper, (2) be headed with 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 mortgagors filing a request for mediation under section 16 of public Act 08-176, in which case the request for mediation shall constitute an appearance.] This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above change deletes language that would have become effective on January 1, 2010 to implement Section 16 of P.A. 08-176. The language should be deleted in light of P.A. 09-209, which amended General Statutes § 49-31/, effective July 1, 2009.

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.

COMMENTARY: This amendment clarifies that juris, license, permit or other business-related identification numbers that are otherwise made available to the public

directly by any government agency or entity are not considered personal identifying information for the purpose of this section.

(NEW) Sec. 5-11. 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

(a) In any court proceeding in a family relations matter, as defined in section 46b-1 of the general statutes, or in any proceeding pursuant to section 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 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.

COMMENTARY: The above section adopts the provisions of Section 1 of Public Act 08-67 (codified as C.G.S. § 46b-15c), which expands the circumstances under which a person may testify outside the courtroom and permits the use of videoconferencing to provide such testimony.

In all cases in which a court orders testimony to be taken pursuant to this section, the manner in which and the means whereby the testimony is taken must be consistent with the right to confrontation guaranteed by the federal and state constitutions. U.S. Const., amends VI, XIV; Conn. Const., art. I, 8. The federal and state confrontation

clauses provide a criminal defendant with two protections: "the right physically to face those who testify against him, and the right to conduct cross-examination." Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987). See also, State v. Jarzbek, 204 Conn. 683, (1987).

Subsection (b) expressly protects a party's right to cross-examination.

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 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. [A] 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 non-operational 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.

COMMENTARY: The amendment to the section provides for circumstances where a document that is required to be filed electronically cannot be filed electronically because the court's electronic filing system is not operational during the last two hours of the last day for filing the document.

AMENDMENTS TO THE CIVIL RULES

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. [After such a hearing as the judicial authority determines is necessary under the particular circumstances, the judicial authority shall render its judgment on the application, which judgment shall contain a statement of the facts it has found, with its conclusions thereon.] 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 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.

COMMENTARY: The revisions to this Section make the section consistent with the provisions of General Statutes Section 52-259b.

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 [move to have] request that [the personal identifying information redacted or to have] the document containing the personal identifying information be sealed. [if the personal identifying information cannot be redacted.] In response to such [a motion] request, or on its own motion, the court shall order [the document temporarily sealed pending redaction, shall order the document redacted either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record] 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.

COMMENTARY: The above changes remove the option of ordering the clerk to redact personal identifying information from a document and provide a penalty for the failure of the party who filed the document to comply with a court order to timely file a redacted copy of the document with the court.

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.

(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 [shall not be permitted unless the opinion is 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, [within thirty days of such disclosure,] 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's 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's 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.

(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) [Any request for modification of the approved Schedule for Expert Discovery or of any other time limitation under this section shall be made by motion stating the reasons therefor, and shall be granted if (A) agreed upon by the parties and will not interfere with the trial date; or (B) (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 the modification.]

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.

COMMENTARY: The overall purpose to the proposed amendments to Practice Book 13-4 is to eliminate internal inconsistencies within the rule; to provide uniformity; to foster judicial economy; and to conform the requirements of this section to existing practice.

Subsection (b) (2) permits a party to comply with the disclosure requirements by producing medical records and/or reports of a treating health care provider. It further allows expert testimony from a treating health care provider so long as the disclosed records and/or reports give fair notice of the expert's opinion. Under the current language, expert testimony is automatically precluded with respect to any opinion of which fair notice was not contained in the disclosed records or reports. The proposed amendment to this subsection retains the requirements that a party disclose any opinion to which fair notice is not contained in a health care provider's records or reports. Under the amended language, however, a party failing to disclose any such opinions will be subject to 13-4 (h) in the same manner as any other violation of the expert disclosure rule.

Under the production requirement contained in existing subsection (b) (3), unless otherwise ordered or agreed to, a retained expert's file must be produced within thirty days of disclosure. The proposed amendment eliminates the rigid requirement that an expert's file be produced within thirty days of disclosure. Under the proposed amendment, the parties may choose whether such production is necessary and, if it is, determine the most reasonable time for production under the circumstances of their case. The party requesting file production can do so as part of the uniform scheduling order under 13-4(g). If the parties are unable to agree to a time period for production, the rule contains a default time period of fourteen days prior to the taking of the deposition. The proposed amendment allows counsel to review a retained expert's file prior to a deposition, as was originally intended, but recognizes that in many cases it is often unnecessary to obtain an expert's complete file prior to deposition. The proposed changes serve the underlying purpose of this subsection, reflect the reality of current practice, and provide a uniform method of scheduling any requested production.

Under existing subsection (g) (1), in order to change the time frame for submitting an expert disclosure schedule, the parties must obtain a court order. This requirement has not been widely utilized by either practitioners or the courts.

The proposed changes to 13-4(g) allow the parties to agree upon an expert disclosure scheduling order at a time frame other than 120 days from the return date. Allowing the parties to submit the schedule at a time that they agree upon, i.e. at an early intervention pretrial or a scheduling conference, conforms the Practice Book section to existing practice and saves judicial resources. The proposed amendment does not eliminate the 120 day fall back requirement but simply allows the parties to determine when, under the circumstances of their case, is the most efficient time to set a schedule for expert disclosure. In many cases there is no need for such an early determination of expert scheduling.

Additionally, the current rule provides no guidance for counsel in preparing the required schedule. To address this omission and to foster uniformity, it is proposed that the subsection be amended to incorporate the use of a uniform "Schedule for Expert Discovery" form that would be prescribed by the Office of the Chief Court Administrator.

The final proposed change to subsection (g) (4) allows the parties to modify by agreement the schedule for expert discovery without burdening the court. The current rule

requires that even when the parties agree concerning a schedule modification that will not affect the trial date, they must seek the court's approval by motion. The proposed amendment eliminates the need for judicial involvement when the parties agree and the trial date will not be affected.

Subsection (i) is amended to designate the cases to which the proposed amendments shall apply.

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 [small claims or] 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.

COMMENTARY: The above change is made because Gen. Stat. § 52-259c provides that a fee shall be paid to the clerk upon the filing of a motion to open or set aside a judgment rendered in a small claims matter.

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, 2010, 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 [upon filing] 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 printed 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.

COMMENTARY: The above change is made to accommodate e-filing.

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 [upon filing] 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.

COMMENTARY: The above change is made to accommodate e-filing.

AMENDMENTS TO THE FAMILY RULES

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 [move to redact the personal identifying information or to seal] request that the document [if] containing the personal identifying information [cannot be redacted] be sealed. In response to such [a motion] request, or on its own motion, the court shall order [the document temporarily sealed pending redaction, shall order the document redacted either by the party who filed it or by the clerk, and shall return the original to the party who filed it unless it is necessary to complete the record] 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.

COMMENTARY: The above changes remove the option of ordering the clerk to redact personal identifying information from a document and provide a penalty for the failure of the party who filed the document to comply with a court order to timely file a redacted copy of the document with the court.

[Sec. 25-65. Family Support Magistrates; Procedure

(a) The procedure in any matter which is to be heard and determined by a family support magistrate shall conform, where applicable, to the procedure in and for the superior court except as otherwise provided herein.

(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) Matters to be heard and determined by a family support magistrate shall be placed on the family support magistrate list.

(d) Matters on the family support magistrate list shall be assigned automatically by the family support magistrate 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) Matters upon the family support magistrate list shall not be continued except by order of a family support magistrate.]

COMMENTARY: The substance of this section is now contained in new Chapter 25A, Section 25A-1. This section is no longer necessary and should be repealed.

[Sec. 25-66. 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.]

COMMENTARY: The substance of this section is now contained in new Chapter 25A, Section 25A-20. This section is no longer necessary and should be repealed.

[Sec. 25-67. Support Enforcement Services

In cases where the payment of alimony and support has been ordered, a support enforcement officer, where provided by statute, shall:

(1) 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, (A) bring an application to a family support magistrate for a rule requiring said party to appear before a family support magistrate to show cause why such party should not be held in contempt, or (B) take such other action as is provided by rule or statute.

(2) In connection with subdivision (1) above, or at any other time upon direction of a family support magistrate, investigate the financial situation of the parties and report his or her findings thereon to a family support magistrate which may authorize the officer to bring an application for a rule requiring any party to appear before a family support magistrate to show cause why there should not be a modification of the judgment.

(3) In non-TANF IV-D cases, review child support orders at the request of either parent subject to a support order or, in TANF cases, review child support orders at the request of the bureau of child support enforcement 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.]

COMMENTARY: An amended version of this section has been moved to new Chapter 25A, as Section 25A-21. This section is no longer necessary and should be repealed.

(NEW) CHAPTER 25A FAMILY SUPPORT MAGISTRATE MATTERS

COMMENTARY: 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.

(NEW) 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 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:

- (i) Chapters 1, 2, 4, 5 and 6, in their entirety;
- (ii) Chapter 3, in its entirety except subsection (b) of Section 3-2, and Section 3-9;
- (iii) Chapter 4, in its entirety except Section 4-2;
- (iv) Chapter 7, Section 7-19.

(2) Procedures in Civil Matters:

- (i) Chapter 8, Section 8-1 and 8-2;
- (ii) Chapter 9, Sections 9-1, and 9-18 through 9-20;
- (iii) 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;
- (iv) Chapter 11, Sections 11-1 through 11-8, 11-10 through 11-12 and 11-19;
- (v) Chapter 12, in its entirety;
- (vi) Chapter 13, Sections 13-1 through 13-3, 13-5, 13-8, 13-10 except subsection (c), 13-11A, 13-21 except paragraph (13) of subsection (a), subsections (a), (e), (f), (g) and (h) of Section 13-27, 13-28 and 13-30 through 13-32;
- (vii) Chapter 14, Sections 14-1 through 14-3, 14-9, 14-15, 14-17, 14-18, 14-24 and 14-25.
- (viii) Chapter 15, Sections 15-3, 15-5, 15-7 and 15-8;
- (ix) Chapter 17, Sections 17-1, 17-4, 17-5, 17-19, 17-21, subsection (a) of Sections 17-33, and 17-41;
- (x) Chapter 18, Section 18-19;
- (xi) Chapter 19, Section 19-19;
- (xii) Chapter 20, Sections 20-1 and 20-3;
- (xiii) Chapter 23, Sections 23-20, 23-67 and 23-68.

(3) Procedure in Family Matters:

Chapter 25, Section 25-1, 25-9, 25-12, 25-16, 25-24, 25-61, 25-62 and 25-68.

(b) The term "judicial authority" and the word "judge" as used in the rules referenced in subsection (a) shall include family support magistrates where applicable, unless specifically otherwise designated.

(c) 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.

(d) Matters to be heard and determined by a family support magistrate shall be placed on the family support magistrate list.

(e) Matters on the family support magistrate list 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.

(f) Matters upon the family support magistrate list shall not be continued except by order of a judicial authority.

COMMENTARY: This section is intended to make clear, specifically, what rules of practice are applicable to the practice and procedure for Family Support Magistrate court. It is intended to be all-inclusive and eliminate the discretionary application of rules. It also specifies the manner of filing and the hearing procedures that are specific to Family Support Magistrate court.

As regards the incorporation of Section 6-2, judgment files in Family Support Magistrate court are prepared when necessary for appeals to the Appellate Court and Supreme Court and in certain interstate matters and shall be prepared by the clerk when needed.

As regards the incorporation of Section 13-5, it is intended that the purpose of the protective order in the Title IV-D context is solely to protect litigants against attempts by other litigants to seek discovery beyond that which was ordered disclosed by the judicial authority.

As regards the incorporation of Section 13-29, it is intended to recognize that the information gathering procedures and procedures regarding the taking of testimony such as those set out in the Uniform Interstate Family Support Act (UIFSA) which are different than those set out in this section and that those procedures be utilized when a conflict arises with the provisions of subsections (b) and (c) of Section 13-29.

As regards the incorporation of Section 13-30, it is intended that the term "trial" as used in Section 13-30 includes hearings in Title IV-D child support matters.

As regards the incorporation of Section 19-19, it is suggested that Section 19-19 be deemed applicable to Family Support Magistrate court because, in rare instances, a Family Support Magistrate is confronted with a matter that requires a reference to an accountant. Those cases arise most often with regard to post judgment support enforcement actions that have originated in superior court, or with self-employed obligors.

Subsections (c) through (f) are similar to subsections (b) through (e) of Section 25-65.

(NEW) Sec. 25A-1A. 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.

COMMENTARY: This rule is based on Section 3-2 (b) and is intended to make clear the desire for a prompt filing of an appearance by an attorney for a party, but to recognize that an appearance should be able to be filed at any stage of the proceeding.

(NEW) Sec. 25A-2. 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.

COMMENTARY: This section is similar to Section 3-9, but has been tailored to Family Support Magistrate court. Subsection (e) of this section is intended to clarify that the Chief Child Protection Attorney counsel must file a motion to withdraw as any other attorney.

This section regarding appearances and withdrawals is intended to clarify that an appearance in family court is not an appearance in IV-D court and vice versa. Without this clarification, members of the bar have been faced with a judicial authority counting their appearance for all matters where neither their retainer agreement covers the additional services nor is their sense of their own individual competence contemplated to cover services in the other court.

(NEW) Sec. 25A-2A. 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.

COMMENTARY: The Committee is concerned that some uniform practice be established for providing notice of and requesting telephonic hearings. Telephonic hearings

are commonly used in Family Support Magistrate court for *Uniform Interstate Family Support Act (UIFSA)* proceedings.

(NEW) Sec. 25A-2B. 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 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.

COMMENTARY: This section is similar to Section 4-2, but has been tailored to Family Support Magistrate matters. In Family Support Magistrate court, a support enforcement officer is an authorized person to sign a pleading.

(NEW) Sec. 25A-3. 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.

COMMENTARY: This section is similar to Section 10-20, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-4. 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 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, petition or application that does not comply with this subsection.

COMMENTARY: This section contains the automatic orders from Section 25-5 that were deemed applicable to matters in Family Support Magistrate court. Actions for support brought in the name of the recipient of Title IV-D services require an affidavit to be signed by that recipient. This will provide the opportunity for the Department of Social Services' representative to give that recipient a copy of these automatic orders at that time.

(NEW) Sec. 25A-4A. 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 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 25A-4, but shall instead include a statement that automatic orders have issued in the case pursuant to Section 25A-4 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.

COMMENTARY: This section is similar to Section 25-28, but has been tailored to Family Support Magistrate matters. It is noted that the *Uniform Interstate Family Support Act (UIFSA)* provides a means for notice under General Statutes § 46b-212d which provides an alternative basis for notice of the proceeding.

(NEW) Sec. 25A-5. 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.

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

COMMENTARY: This section is similar to Section 25-24 and reflects the fact that relief is exclusively statutory in Family Support Magistrate court.

(NEW) Sec. 25A-5A. — 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. In Title IV-D child support matters, a motion to cite in or admit new parties is limited to a parent, legal custodian or guardian.

COMMENTARY: There are no individuals other than a parent, legal custodian or guardian, with a proper interest in Title IV-D matters. This section is intended to clarify this situation and to prevent future problems. The Department of Social Services has a policy which allows a caretaker to receive public assistance and to have support payments redirected to such caretaker without obtaining a custody order pursuant to General

Statutes Section 17b-112. See also General Statutes Sections 17b-137a and 46b-215(c) regarding the authority to redirect payments for the support for any child receiving child support enforcement services either to the State of Connecticut or to the present custodial party, as their interests may appear. This section clarifies that for purposes of being a party before the court the individual must have present legal custodial interests rather than the informal possession of a child that happens without court assistance; in those cases DSS may administratively redirect payments but they are not legal parties in interest.

(NEW) Sec. 25A-6. 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 may 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.

COMMENTARY: This section is similar to Section 25-10, but has been tailored to Family Support Magistrate matters. It makes clear that an answer is discretionary and not mandatory just as in family court.

(NEW) Sec. 25A-7. 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.

COMMENTARY: This section is similar to Sec. 25-11, but it has been tailored to Family Support Magistrate matters. The order of pleadings tracks the order in family court. It is specific for Family Support Magistrate court in that it refers to the support and paternity petition. No request to revise is permitted here just as it is not permitted in the family rules.

(NEW) Sec. 25A-8. 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.

COMMENTARY: This section is intended to clarify how a matter may be brought before the court for hearing if it has gone off. This section is similar to Section 11-13.

(NEW) Sec. 25A-8A. –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.

COMMENTARY: This section is based on Section 11-16, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-9. 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: Wage Withholding Form (JD-FM-71).

COMMENTARY: This section is similar to Section 25-30 and makes clear that there is an expectation of proper financial affidavits in Family Support Magistrate court as provided herein. Some aspects of this are admittedly aspirational presently but should be the norm for the process.

(NEW) Sec. 25A-10. Opening Argument

Instead of reading the pleadings, counsel for 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 counsel.

COMMENTARY: This section is similar to Section 15-6, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-11. Motion to Open Judgment of Paternity by Acknowledgement

(a) Any mother or acknowledged father who wishes to challenge an acknowledgement of paternity pursuant to General Statutes Section 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 acknowledgement 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, acknowledgement 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.

COMMENTARY: This section is intended to provide a standard process for a challenge to a paternity acknowledgement. These acknowledgments are not housed in the courthouse but have the statutory effect of a judgment. The challenge addressed by this rule was to find a means to create a process which also created a file with the judgment in it for clerk record keeping purposes. It is intended that the initial burden of proof be on the moving party. Subsection (d) is intended to make clear that while the judgment father may not have initiated a matter through this section, he is not precluded from seeking to open a judgment within an action claiming support against him, or as a special defense to a petition for support. The Family Commission voted to require that the copy of the acknowledgement of paternity be certified. The majority voting of the Family Support Magistrate rules subcommittee thought this would be unduly burdensome.

(NEW) Sec. 25A-12. 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 Section 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.

COMMENTARY: This section is similar to Section 25-26, but has been tailored to Family Support Magistrate matters. The phrase "or any individual" in subsection (c) of this section refers to any individual receiving Title IV-D services for the child(ren) at issue.

(NEW) Sec. 25A-13. 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 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.

(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.

COMMENTARY: This section is similar to Section 25-32, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-14. 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.

COMMENTARY: This section is similar to Section 15-4, but has been tailored to Family Support Magistrate matters. Medical evidence often is admitted into evidence in Family Support Magistrate court regarding an obligor's disability status.

(NEW) Sec. 25A-15. 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 than 14 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.

COMMENTARY: This section is based on Section 13-4 but provides a timetable more realistic for Family Support Magistrate court and creates a discretionary, reasonableness standard for Family Support Magistrate court. Experts are rarely utilized and therefore should be controlled as part of the constraints on discovery issues in general.

(NEW) Sec. 25A-15A. 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.

COMMENTARY: This section is based on Sec. 13-6, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-16. 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

(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-18 with respect to any failure to answer.

COMMENTARY: This section is similar to Section 13-7, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-17. 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 without leave of court at any time after the return day. 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.

(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.

COMMENTARY: This section is similar to Section 13-9, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-18. 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-19, 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 13-8, 13-10 except subsection (c), 25A-15A, 25A-16 or 25A-17, 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.

COMMENTARY: This section is similar to Section 13-14, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-19. 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.

COMMENTARY: This section is similar to Section 13-15, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-19A. 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, 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.

COMMENTARY: This section is similar to Section 13-26, but has been tailored to Family Support Magistrate matters. While it makes clear that depositions may be taken in a Title IV-D matter, this section limits the taking of depositions by requiring leave of the court. Depositions are not needed in most of these expedited proceedings. The requirement of identification of documents (or other tangible evidence sought) will help clarify what complexity exists in the case to require the taking of a deposition, and limit and define its scope. This should prevent abuses of the process.

(NEW) Sec. 25A-19B. –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.

COMMENTARY: This section is based on Section 13-29, but has been tailored to Family Support Magistrate matters.

(NEW) Sec. 25A-20. 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.

COMMENTARY: This provision was originally Section 25-66 and has been moved to this chapter.

(NEW) Sec. 25A-21. 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:

(1) 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, (A) 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 (B) take such other action as is provided by rule or statute.

(2) Review child support orders (A) in non-TFA 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, (B) in TFA cases, at the request of the bureau of child support enforcement, (C) as necessary to comply with federal requirements for 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.

(3) In connection with subdivision (1) or (2) above, or at any other time upon direction of a family support magistrate, investigate (A) the financial situation of the parties, using all appropriate information and resources available to the IV-D child support program, including information obtained through electronic means from state and federal sources in the certified child support system, or (B) 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.

COMMENTARY: This section was originally Section 25-67 and has been moved to this chapter with amendments. It is intended to clarify the actual role of Support Enforcement Services.

NEW PRACTICE BOOK FORM

(NEW) Form 207

**INTERROGATORIES-ACTIONS TO ESTABLISH, ENFORCE OR
MODIFY CHILD SUPPORT ORDERS**

No.
(Plaintiff) : SUPERIOR COURT
: 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, by the hour 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.
- (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 any one, 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.
- (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 worker's 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 re-determined 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, email address and phone number of the lawyer handling the case for you.
- (c) What amount you do 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?
- (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 settler 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)

COMMENTARY: The above form implements Section 25A-16.