

Minutes of the Meeting
Rules Committee
April 16, 2009

On Thursday, April 16, 2009, the Rules Committee met in the Attorneys' Conference Room from 1:30 p.m. to 5:29 p.m. This was a continuation of the meetings held on March 30 and April 7, 2009.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. BARBARA N. BELLIS
HON. THOMAS J. CORRADINO
HON. JACK W. FISCHER
HON. C. IAN MCLACHLAN
HON. LESLIE I. OLEAR
HON. ANTONIO C. ROBAINA
HON. MICHAEL R. SHELDON

Judge Jane S. Scholl was not in attendance at this meeting. Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorney Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

Agenda

1. The members of the Committee who were present for the March 30, 2009, meeting unanimously approved with a revision the minutes of that meeting.

The members of the Committee who were present for the April 7, 2009, meeting unanimously approved the minutes of that meeting.

2. At the April 7, 2009, meeting the undersigned advised the Committee that on July 1, 2009, the terms on the Legal Specialization Screening Committee (LSSC) of Maureen M. Murphy (Vice-Chair) and Anthony M. Fitzgerald, will expire. Rule 7.4B (a) of the Rules of Professional Conduct provides that the Chief Justice, upon recommendation of the Rules Committee, shall appoint members of the bar of this state to the LSSC. At that meeting the Rules Committee agreed that if Attorneys Murphy and Fitzgerald are willing to serve another

term the Committee would recommend their reappointment to the Chief Justice. The Committee asked the undersigned to find out from them if they would like another term on this committee.

At this meeting the undersigned advised the Committee that Attorneys Murphy and Fitzgerald would be willing to serve another term on the LSSC. The Committee thereupon agreed to recommend their reappointment to the Chief Justice.

3. The Committee considered a letter from Nora R. Dannehy, Acting United States Attorney, concerning Rules of Professional Conduct 3.8, regarding the special responsibilities of a prosecutor, and Rule 4.2, regarding communications with persons represented by counsel.

Justice Zarella reported that the Criminal Commission is still reviewing this and has not yet made a recommendation to the Rules Committee concerning it. The Committee thereupon tabled this matter.

4. The Committee considered a proposal by the Connecticut Bar Foundation to amend Section 2-27 (d) to allow the organization designated by the judges of the Superior Court to administer the IOLTA program to receive non-public information obtained from attorney registration forms.

It was pointed out by a member of the Committee that there are statutes that deal with bank records and the disclosure of the information therein.

Justice Zarella stated that he will ask the Connecticut Bar Foundation to discuss its proposal with the banks to see if an agreement can be reached on a revision to Section 2-27 with regard to the disclosure of the information in question.

The Committee thereupon put this matter off to a future meeting.

5. At its April 7 meeting, the Rules Committee considered a proposal submitted by Attorney Kathryn Emmett, President of the Connecticut Trial Lawyers Association, to amend Sections 13-4, 13-27, 10-13, and Form 203 concerning discovery in civil cases. Justice Zarella informed the Committee at that meeting that he discussed this proposal with Attorney Emmett and advised her that, because a revision to Section 13-4 became effective on January 1, 2009, there has been little experience with the operation of this rule. He asked her to forward her proposal to the defense lawyers and obtain their agreement on the changes. She agreed to do so and to forward a report to Justice Zarella concerning this matter.

At this meeting Justice Zarella advised the Committee that he talked with Attorney Emmett concerning this matter and that the CTLA and the defense attorneys have reached

agreement on a number of issues in connection with these proposals. Attorney Emmett had forwarded a written report setting forth the areas of agreement between the two groups which Justice Zarella distributed at this meeting.

After discussion, the Committee made some changes to the proposals and unanimously voted to submit to public hearing the revisions to Sections 13-4, 13-27 and 10-13, and Practice Book Form 203 as set forth in Appendix A attached hereto.

The Committee also unanimously voted that if there is agreement by the CTLA and the defense attorneys concerning further changes to Section 13-4, the Rules Committee approves those changes for purposes of submission to public hearing on June 1.

6. At its last meeting the Committee considered proposed revisions to the small claims rules submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Bench/Bar Centralized Small Claims Committee. At that meeting the Committee raised various issues concerning the proposals and decided to invite members of the Small Claims Committee to attend the next meeting to address the Rules Committee concerning these proposals.

At this meeting Nancy Kierstead, Director of Court Operations, and Maureen P. Finn, Chief Clerk of the Centralized Small Claims Office, were in attendance and answered questions from the Rules Committee concerning the proposals.

After discussion, the Committee made further revisions to some of the proposals and unanimously voted to submit to public hearing the revisions to the small claims rules as set forth in Appendix B attached hereto.

7. The Committee considered proposals submitted by Attorney Livia Barndollar, President of the Connecticut Bar Association, to amend Rule 5.5 of the Rules of Professional Conduct and Practice Book Section 2-15A to permit authorized house counsel to provide pro bono services to non-profit organizations.

Attorney Peter L. Costas attended the meeting and addressed the Committee concerning these proposals.

It was pointed out by a Committee member that the proposals would allow an attorney who could not be admitted in Connecticut to provide pro bono legal services in this state.

After discussion, the proposals were tabled by the Committee.

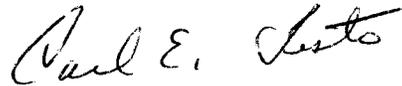
8. The Committee tabled the proposal by Statewide Bar Counsel Michael Bowler to amend Section 2-27 and to adopt new Section 2-27A concerning attorney registration.

9. The Committee tabled proposals submitted by Judge Barbara M. Quinn on behalf of the Civil Commission to amend the discovery rules concerning electronically stored information; comments by Judge Barbara Bellis concerning the proposals; and Uniform Rules Relating to Discovery of Electronically Stored Information, submitted by Uniform State Law Commissioner David Biklen.

10. At its meeting on December 15, 2008, the Rules Committee considered revisions to Chapter 30a of the juvenile rules submitted by Judge Christine E. Keller on behalf of the Juvenile Task Force and voted unanimously to submit the revisions to the Superior Court judges for adoption on an interim basis pursuant to Practice Book Section 1-9 (c).

At this meeting the Committee unanimously voted to submit the proposed revisions to Chapter 30a to public hearing instead of submitting them to the judges for adoption on an interim basis.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (041609 mins)

Sec. 10-13. —Method of Service

Service upon the attorney or upon a pro se party, except service pursuant to Section 10-12 (c), may be by delivering a copy or by mailing it to the last known address of the attorney or party. Delivery of a copy within this section means handing it to the attorney or to the party; or leaving it at the attorney's office with a person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the usual place of abode. Delivery of a copy within this rule, [if the filing was made electronically in accordance with Section 4-4,] may also mean electronic delivery to the last known electronic address of the attorney or party, provided that electronic delivery was consented to in writing by the person served. Service by mail is complete upon mailing. Service by electronic delivery is complete upon sending the electronic notice unless the party making service learns that the attempted service did not reach the electronic address of the person to be served. Service pursuant to Section 10-12 (c) shall be made in the same manner as an original writ and complaint is served or as ordered by the judicial authority.

COMMENTARY: The above revisions provide for service of pleadings by e-mail.

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 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, 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. 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 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 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[,] [or a specified part thereof] 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, 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 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. 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.

(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 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 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: Certain witnesses who may be expected to offer expert testimony at trial, and thus must be disclosed as experts, are nonetheless unaffiliated with either party. Common examples include state medical examiners, police officers who perform accident reconstruction work as part of their official duties, government inspectors or investigators, etc. The current rule fails to distinguish, for file production purposes, between experts who are to some degree within the control of the disclosing party (retained experts), and those who are not retained by any party, and are not within anyone's control for purposes of file production. The above revision to subdivision (b) (3) addresses this situation.

Although the contents of a testifying expert's file subject to production under this rule normally will not be subject to any claim of privilege, there are situations when such a claim may be raised. The above revision to subdivision (c) (1) is intended to make it clear that this rule does not abrogate any such claim of privilege.

The above revision to subsection (e) addresses the situation where an expert witness has been disclosed by one party under subsection (b) of the rule, but particular opinion(s) of that expert sought to be relied on by another party were, for whatever reason, not included in that disclosure. Under such circumstances, any other party should be able to elicit any opinions from the expert if those opinions, and the grounds therefor, have been disclosed in accordance with the rules. Cf. Meena v. Jaiman, 80 Conn. App. 131, 141 (2003) (holding that defendant's expert could not be cross-examined by plaintiff with respect to undisclosed opinions).

Sec. 13-27. —Notice of Deposition; General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization

(a) A party who desires to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Such notice shall not be filed with the court, but shall be served upon each party or each party's attorney [by personal or abode service or by registered or certified mail] in accordance with sections 10-12 through 10-17. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which he or she belongs and the manner of recording. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) Leave of a judicial authority, granted with or without notice, must be obtained only if the party seeks to take a deposition prior to the expiration of twenty days after the return day, except that leave is not required (1) if the adverse party has served a notice of the taking of a deposition or has otherwise sought discovery, or (2) if special notice is given as provided herein.

(c) Leave of a judicial authority is not required for the taking of a deposition by a party if the notice (1) states that the person to be examined is about to go out of this

state, or is bound on a voyage to sea, and will be unavailable for examination unless such person's deposition is taken before the expiration of twenty days after the return day, and (2) sets forth facts to support the statement. The party's attorney shall sign the notice, and this signature constitutes a certification by such attorney that to the best of his or her knowledge, information and belief the statement and supporting facts are true.

(d) Whenever the whereabouts of any adverse party is unknown, a deposition may be taken pursuant to Section 13-26 after such notice as the court, in which such deposition is to be used, or, when such court is not in session, any judge thereof, may direct.

(e) The judicial authority may for good cause shown increase or decrease the time for taking the deposition.

(f) (1) The judicial authority may upon motion order that the testimony at a deposition be recorded by other than stenographic means such as by videotape, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(2) Notwithstanding this section, a deposition may be recorded by videotape without prior court approval if (i) any party desiring to videotape the deposition provides written notice of the videotaping to all parties in either the notice of deposition or other notice served in the same manner as a notice of deposition and (ii) the deposition is also recorded stenographically.

(g) The notice to a party deponent may be accompanied by a request made in compliance with Sections 13-9 through 13-11 for the production of documents and tangible things at the taking of the deposition. The procedure of Sections 13-9 through 13-11 shall apply to the request.

(h) A party may in the notice and in the subpoena name as the deponent a public or private corporation or a partnership or an association or a governmental agency or a state officer in an action arising out of the officer's performance of employment and designate with reasonable particularity the matters on which examination is requested. The organization or state officer so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth,

for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude the taking of a deposition by any other procedure authorized by the rules of practice.

COMMENTARY: The above revision eliminates as unnecessary the requirement to serve notice of deposition by certified mail, return receipt requested.

Form 203
Plaintiff's Interrogatories
Premises Liability Cases

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

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

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

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

- (i) your name and any other name by which you have been known;
- (ii) your date of birth;
- (iii) your home address;
- (iv) your business address.

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

- (i) your name and any other name by which you have been known;
- (ii) your business address;
- (iii) the nature of your business entity (corporation, partnership, etc.);
- (iv) whether you are registered to do business in Connecticut;
- (v) the name of the manager of the property, if applicable.

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

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

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

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

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

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

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

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

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

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

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

(9) State whether you received, at any time [six months] within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

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

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

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

(c) whether the complaint was in writing;

(d) the nature of the complaint.

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

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

PLAINTIFF,

BY

COMMENTARY: The above revision expands the notice period from six months to twenty-four months.

APPENDIX B (041609 mins)

Sec. 24-4. Where Claims Shall Be Filed

Claims shall be filed in the Centralized Small Claims Office or in the clerk's office serving the small claims area designated by the chief court administrator where venue exists, as set forth in General Statutes §§ 51-345, 51-346 and 51-347, except that claims concerning housing matters, as defined by General Statutes § 47a-68, which are filed in a judicial district in which a housing session has been established, shall be filed with the clerk of the housing session for that judicial district or in the Centralized Small Claims Office. [Unless (1) the defendant resides or is doing business, (2) the plaintiff resides, or (3) in housing matters, the premises is located within the small claims area where the claim is to be filed, or within the judicial district if the claim is to be filed in the housing session, the plaintiff, or representative, shall include in the statement of the claim the town where the transaction or injury occurred or other statement as to the basis for venue. (See General Statutes § 51-27a.)] The plaintiff shall include in the statement of the claim a statement of facts that provides the basis for venue in accordance with General Statutes § 51-345 (d), § 51-345 (g) and such other statutes as are applicable.

COMMENTARY: The above changes reflect the creation of the Centralized Small Claims Office.

Sec. 24-9. —Preparation of Writ

The small claims writ and notice of suit shall be on a form prescribed by the office of the chief court administrator. The plaintiff, or representative, shall state the nature and amount of the claim on the writ in concise, untechnical form and shall state the basis upon which the plaintiff, or representative, claims that the statute of limitations has not expired. The [said] writ is to be signed by either the plaintiff, or representative, under oath[, together with an affidavit as to the military status of the defendant]. The oath shall provide that the signer has read the claim, and that to the best of the signer's knowledge, information and belief there is good ground to support it. If the claim [involves items of] is more than a convenient length for entry on the writ in full, the plaintiff, or representative, shall attach [to the writ a list of such items] additional pages as needed. The plaintiff, or representative, shall also state on the writ the plaintiff's and the defendant's places of

residence or other addresses. The plaintiff, or representative, shall not use an address for service that the plaintiff, or representative, knows is not the defendant's current address. At the time of filing any writ, the plaintiff, or representative, shall verify the defendant's address. Such verification shall include confirmation by at least one of the following methods made during the six months prior to the filing of the writ: (1) municipal record verification (e.g., from a street list or tax records); (2) verification from the Department of Motor Vehicles; (3) receipt of correspondence from the defendant with that return address; (4) other verification from the defendant that the address is current; (5) the mailing by first class mail, at least four weeks prior to the filing of the small claims action, of a letter to the defendant at such address, which letter has not been returned by the United States Postal Service. No default judgment shall enter in the absence of such verification or if it is apparent that the defendant did not reside at the address at the time of service.

COMMENTARY: Language has been added to the above section that requires the plaintiff, or representative, to provide information regarding the age of the claim and verification of the defendant's address and that generally strengthens notice provisions. The revision also removes the requirement that the military affidavit is to be filed with the writ. An affidavit as to military status is not needed if the defendant answers the claim. It is also more difficult for pro se plaintiffs to obtain a military affidavit as they normally do not have a defendant's date of birth or social security number and so are unable to use the Department of Defense Manpower Data Center to determine military status. Requiring the affidavit later in the process also reduces the risk that the affidavit will be stale.

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

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

(a) The plaintiff, or representative, shall cause service of the writ and notice of suit separately on each defendant by first class mail with delivery confirmation, by certified mail return receipt requested, by a nationally recognized courier service providing delivery

confirmation, or by a proper officer in the manner in which a writ of summons is served in a civil action. The plaintiff, or representative, shall include any information required by the Office of the Chief Court Administrator. A statement of how service has been made, together with the delivery confirmation or return receipt and the original writ and notice of suit shall be filed with the clerk. The writ and notice of suit and the statement of service shall be returned to the court not later than two months after the date of service.

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

(c) Upon receipt of the writ and accompanying documents, the clerk shall set an answer date and send notice to all plaintiffs or their representatives of the docket number and answer date. The clerk will send an answer form that includes the docket number and answer date to each defendant at the address provided by the plaintiff.

COMMENTARY: The above revision shifts the obligation to make service to the plaintiff and provides four methods of service. The staffing level for small claims matters has been inadequate for some time and the small claims caseload is growing. This necessitates shifting processes to reduce tasks that must be performed by staff. The revision also eliminates service by an indifferent person in small claims matters.

[Sec. 24-11. – Further Service of Claim

If the writ and notice of suit are returned to the court undelivered, the clerk shall issue a further notice setting a new answer date and give that notice to the plaintiff or representative, to be served by a proper officer or indifferent person upon the defendant in the same manner in which a writ of summons is served in a civil action, not less than fifteen nor more than thirty days before the new answer date mentioned in the notice, and make his or her return of service on the writ at least six days before the answer date. If service is not effected within 120 days from the original answer date, the case may be subject to dismissal. This section shall not apply to service made upon a defendant who is an out-of-state corporation.]

COMMENTARY: This section is not necessary in light of the revision to Section 24-10, which shifts to the plaintiff or representative the obligation to make service.

Sec. 24-12. — Answer Date

The answer date shall not be less than fifteen nor more than [thirty] forty-five days after the [date notice is mailed to or service is made on the defendant pursuant to Section 24-10 or after the date service is made on the defendant pursuant to Sections 24-11 or 24-13] writ and accompanying documents are filed in the court.

COMMENTARY: The above revision retains the minimum parameter so the defendant will have enough time to answer the claim. The maximum parameter has been increased because the increased caseload has necessitated that answer dates be further in the future than the thirty day limit permits. The other changes would be consistent with those proposed for Section 24-10 in regard to service of the claim.

[Sec. 24-13. — Alternative Method of Commencing Action

In cases where the plaintiff is represented by an attorney at law, the attorney may, in lieu of proceeding in accordance with the provisions of Section 24-3 and Sections 24-8 through 24-11, proceed in accordance with the following provisions:

(1) After obtaining the answer date from the clerk's office, the attorney shall complete a small claims writ and notice of suit in accordance with the provisions of Sections 24-9 and 24-10 and shall sign the writ as a commissioner of the superior court. Before service of the writ and notice of suit is made on the defendant, the attorney shall give or mail a copy of the completed writ and notice of suit to the clerk of the court in which the claim is to be filed accompanied by the appropriate entry fee.

(2) If the defendant is not an out-of-state corporation, the writ and notice of suit shall be sent by certified mail, return receipt requested, separately to each defendant or served by a proper officer or indifferent person in the manner in which a writ of summons is served in a civil action, not less than fifteen nor more than thirty days before the answer date. If service is made by certified mail, a sworn affidavit stating how service has been made, together with the return receipt and the original writ and notice of suit shall be filed with the clerk as set forth below. In cases where service is made in the same manner in

which a writ is served in a civil action, the officer or indifferent person shall make return of service to the court.

(3) If the defendant is an out-of-state corporation, service of the writ and notice of suit shall be made in accordance with the General Statutes. The officer or other person lawfully empowered to make service shall make return of service to the court.

(4) After service has been made, the filings required above shall be made at least six days before the answer date specified in the notice in the office of the clerk of the small claims area or housing session wherein the action is to be heard.

(5) When service, return and filing have been completed as aforesaid, the service shall be deemed to be the commencement of the action, except that service made upon an out-of-state corporation shall be effective as of the day and hour specified in the General Statutes.

(6) No attorney at law, or firm or association of attorneys at law, shall specify the same answer date for more than twenty small claims cases.]

COMMENTARY: This section is not necessary in light of the revision to Section 24-10, which shifts to the plaintiff or representative the obligation to make service.

Sec. 24-14. —Notice of Time and Place of Hearing

[Except as provided in Section 24-25, w]Whenever a hearing is [required] scheduled, the clerk shall [give or mail] send to each party or representative a notice of the time and place set for hearing. This shall include the street address of the court, [the] a telephone number [of the clerk's office] for inquiries, and the room number or other information sufficient to describe the place where the hearing will be held.

COMMENTARY: The above revisions contemplate other methods of sending notice that may be used in the future and also accommodates the centralization of small claims processing in regard to inquiries.

Sec. 24-16. Answers; Requests for Time to Pay

(a) A defendant, unless the judicial authority shall otherwise order, shall be defaulted and judgment shall enter in accordance with the provisions of Section 24-24, unless such defendant shall, personally or by representative, not later than the answer date, notify the clerk in writing of his or her defense to the claim or file a motion to

transfer pursuant to Section 21-21. The answer should state fully and specifically, but in concise and untechnical form, such parts of the claim as are contested, and the grounds thereof, provided that an answer of general denial shall be sufficient for purposes of this section. Each defendant shall send a copy of the answer to each plaintiff and shall certify on the answer form that the defendant has done so, including the address(es) to which a copy has been mailed. Upon the filing of an answer the clerk shall set the matter down for hearing by the judicial authority [and mail a copy of the answer to the plaintiff or representative].

(b) A defendant who admits the claim but desires time in which to pay may state that fact in the answer, with reasons to support this request, on or before the time set for answering, and may suggest a method of payment which he or she can afford. The request for a proposed method of payment shall be considered by the judicial authority in determining whether there shall be a stay of execution to permit deferred payment or an order of payment. The judicial authority in its discretion may require that a hearing be held concerning such request.

COMMENTARY: The above revision prohibits the entry of a default judgment when a motion to transfer is pending and shifts to the defendant the obligation of providing plaintiff with a copy of the answer.

Sec. 24-17. — Prohibition of Certain Pleadings

No [pleadings] filings other than those provided for in this chapter shall be permitted without permission of the judicial authority.

COMMENTARY: The above change is made for clarity.

Sec. 24-20A. — Request for Documents; Depositions

A party may request from the opposing party documents, or copies thereof, that are necessary or desirable for the full presentation of the case. The party requesting such documents, or copies thereof, shall make the request directly to the opposing party or the party's representative. When a party refuses to honor such request, the requesting party may [bring the request to the judicial authority's attention for a decision] file a motion for production. No deposition shall be taken except by order of the judicial authority.

COMMENTARY: The above revision clarifies the procedure.

Sec. 24-21. Transfer to Regular Docket

(a) A case duly entered on the small claims docket of a small claims area or housing session court location shall be transferred to the regular docket of the superior court or to the regular housing docket, respectively, if the following conditions are met:

(1) The defendant, or the plaintiff if the defendant has filed a counterclaim, shall file a motion to transfer the case to the regular docket. This motion must be filed on or before the answer date with certification of service pursuant to Sections 10-12 et seq. If a motion to open claiming lack of actual notice is granted, the motion to transfer with accompanying documents and fees must be filed within [five] fifteen days after the notice granting the motion to open was sent.

(2) The motion to transfer must be accompanied by (A) a counterclaim in an amount greater than the jurisdiction of the small claims court; or (B) an affidavit stating that a good defense exists to the claim and setting forth with specificity the nature of the defense, or stating that the case has been properly claimed for trial by jury.

(3) The moving party shall pay all necessary statutory fees at the time the motion to transfer is filed, including any jury fees if a claim for trial by jury is filed.

(b) When a defendant or plaintiff on a counterclaim has satisfied one of the conditions of subsection (a) (2) herein, the motion to transfer to the regular docket shall be granted by the judicial authority, without the need for a hearing.

(c) A case [on the small claims docket of a small claims area court location] which has been properly transferred shall be transferred to the docket of the judicial district [within which the small claims area is located] which corresponds to the venue of the small claims matter, except that a housing case [filed in the housing session and] properly transferred shall remain in or be transferred to the housing session and be placed upon the regular housing docket. A case may be consolidated with a case pending in any other clerk's office of the superior court.

COMMENTARY: The above revision clarifies the transfer process in light of the centralization of small claims matters and extends one of the filing time limits.

Sec. 24-24. Judgments in Small Claims; When Presence of the Plaintiff or Representative is Not Required for Entry of Judgment

(a) In any action based on an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest and reasonable attorney's fees, if the defendant has not filed an answer by the answer date and the judicial authority has not required that a hearing be held concerning any request by the defendant for more time to pay, the judicial authority may render judgment in favor of the plaintiff without requiring the presence of the plaintiff or representative before the court, provided the plaintiff has complied with the provisions of this section and Section 24-8. Nothing contained in this section shall prevent the judicial authority from requiring the presence of the plaintiff or representative before the court prior to rendering any such default and judgment if it appears to the judicial authority that additional information or evidence is required prior to the entry of judgment.

(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a [default] judgment whether by default, stipulation or other method, the following affidavits must [be] have been filed by the plaintiff, or representative:

(1) An affidavit of debt signed by the plaintiff, or representative. A small claims writ and notice of suit signed and sworn to by the plaintiff, or representative, shall be considered an affidavit of debt for purposes of this section only if it is sufficiently itemized. Any plaintiff, or representative, claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed [and], the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

(A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff and a copy of the executed instrument shall be attached to the affidavit. If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff, or representative, shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt while also referencing the attached chain of title in the affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also

include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt. If applicable, the allegations shall comply with § 52-118 of the General Statutes.

(B) The affidavit shall simply state the basis upon which the plaintiff, or representative, claims the statute of limitations has not expired.

[(B)](C) If the plaintiff, or representative, has claimed any lawful fees or charges based on a provision of the contract[, including reasonable fees for an attorney at law], the plaintiff, or representative, shall [include in] attach to the affidavit of debt a copy of a portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

[(C)](D) If a claim for a reasonable fee for an attorney at law is made, the plaintiff, or representative, shall include in the affidavit the reasons for the specific amount requested. Any claim for reasonable fees for an attorney at law must be referred to the judicial authority for approval prior to its inclusion in any default judgment.

(2) A military affidavit as required by Section 17-21 of the rules of practice.

COMMENTARY: The above revisions clarify the standards of proof for entry of judgment.

Sec. 24-25. – Failure of the Defendant To Answer

If the defendant does not file an answer by the answer date and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing and the judicial authority shall require the presence of the plaintiff or representative. Notice of the hearing shall be sent to all parties or their representatives. If a defendant files an answer at any time before a default judgment has been entered, including at the time of a scheduled hearing in damages, the default shall be vacated automatically. If the answer is filed at the time of a hearing in damages, the judicial authority shall allow the plaintiff a continuance if requested by the plaintiff, or representative.

COMMENTARY: The above revision provides that notice is to be sent to both plaintiffs and defendants when a matter is scheduled for a hearing in damages. It also provides that a default for failure to file an answer shall be set aside when an answer is filed prior to the entry of judgment and that the plaintiff is entitled to a continuance for a filing at the time of hearing.

Sec. 24-27. — Dismissal for Failure To Obtain Judgment

During the months of January and July of each year, small claims cases which, within one year from the date of the institution of the action, have not gone to judgment [shall] may be dismissed upon the order of the chief court administrator. [No notices of dismissal will be sent by the court.]

COMMENTARY: The above revision requires the court to send notices of dismissal under the small claims dormancy program. The timing of the dormancy program will be discretionary.

Sec. 24-29. — Decision in Small Claims; Time Limit

(a) A written decision stating the reasons for the decision shall be required in matters in which a contested hearing is held, in which a counterclaim is filed or in which a judgment is entered in an amount other than the amount claimed. Nothing in this section precludes the judicial authority from filing a written decision in any matter when such judicial authority deems it appropriate.

(b) Judgments shall be rendered no later than forty-five days from the completion of the proceedings unless such time limit is waived in writing by the parties or their representative. The judgment of the judicial authority shall be recorded by the clerk and notice of the judgment and written decision shall be mailed to each party or representative, if any, in a sealed envelope.

COMMENTARY: The above revision requires magistrates to state reasons in a written decision after a contested hearing.

Sec. 24-30. — Satisfying Judgment

(a) The judicial authority may order that the judgment shall be paid to the prevailing party at a certain date or by specified installments[, and may stay]. Unless otherwise ordered, the issue of execution and other supplementary process shall be stayed during compliance with such order. Such stay may be modified and vacated at any time for good cause. The stay is automatically lifted by a default in post-judgment court ordered payments by the judgment debtor.

(b) When the judgment is satisfied in a small claims action, the party recovering the judgment shall file a written notice thereof within 90 days with the clerk who shall record

the judgment as satisfied, identifying the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

COMMENTARY: The above revision to subsection (a) sets forth a general rule that execution on small claims judgments is stayed while there is compliance with the order of payment. It is automatically lifted upon default by the debtor. The revision to subsection (b) adds a time within which a satisfaction is to be filed with the court.

Sec. 24-31. — Opening Judgment; Costs

(a) The judicial authority may, upon motion, and after such notice by mail, or otherwise as it may order, open any judgment rendered under this procedure[, within four months from the date thereof,] for lack of actual notice to a party, or, within four months from the date thereof, for any other cause that the judicial authority may deem sufficient, and may stay and supersede execution; except that the judicial authority may, for the reasons indicated above, open any judgment rendered by default at any time within four months succeeding the date upon which an execution was levied. The judicial authority may also order the repayment of any sum collected under such judgment, and may render judgment and issue execution therefor. Costs in an amount fixed by the judicial authority and not exceeding \$100 may be awarded, in the discretion of the judicial authority, for or against either party to a motion to open the judgment, and judgment may be rendered and execution may be issued therefor; and any action by the judicial authority may be conditioned upon the payment of such costs or the performance of any proper condition.

(b) When a judgment has been rendered after a contested hearing on the merits, a motion to open shall be scheduled for hearing only upon order of the judicial authority.

COMMENTARY: The above revision removes the time limit for opening judgments for lack of actual notice to a party. The four month time limit remains for opening judgments for other reasons. The revision clarifies that subsection (b) refers to a contested hearing.

Sec. 24-33. Costs in Small Claims

The actual legal disbursements of the prevailing party for entry fee, witness' fees, execution fees, fees for copies, [fees of an indifferent person, and] officers' fees, and costs for service shall be allowed as costs. No other costs shall be allowed either party except by special order of the judicial authority. The judicial authority shall have power in its discretion to award costs, in a sum fixed by the judicial authority, not exceeding \$100 (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim, defense or counterclaim, or has made an unfair, insufficient or misleading answer, or has negligently failed to be ready for trial, or has otherwise sought to hamper a party or the judicial authority in securing a speedy determination of the claim upon its merits, and it may render judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require. In no case shall costs exceed the amount of the judgment.

COMMENTARY: The above revision removes fees for service by an indifferent person to be consistent with other revisions proposing elimination of service by an indifferent person in small claims matters and includes "costs for service" as allowable costs.